

## Annex III of the VAC

### Incident Response Contract-Vessel-Requesting State

**Procurement procedure:** EMSA/CPNEG/2/2021

Service Contracts for Stand-by Oil Spill Recovery Vessel(s)

Phase II – Invitation to Tender

#### 0. DEFINITIONS

1. **Contract Form:** The form attached to this Incident Response Contract (annex 2).
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 jointly and severally liable vis-à-vis the Requesting Party for the performance of this Incident Response Contract.
4. **Day(s):** Calendar day(s) of 24 hours.
5. **Dispersants:** Approved oil dispersants<sup>1</sup> if so provided with the Vessel as per annex 3 “Vessel info sheet” and if so chosen by the Requesting Party as per the option in Box C.2.1 of the Contract Form. The Dispersants may be supplied by the Requesting Party, the Contractor shall provide the dispersant application system if part of the equipment package as per annex 3 “Vessel info sheet” and if so chosen by the Requesting Party as per the option in Box C.2.2.
6. **EMSA:** The European Maritime Safety Agency.
7. **Equipment:** The oil pollution response equipment carried on board the Vessel as per the option chosen by the Requesting Party in Box C of the Contract Form.
8. **Notice of Arrival:** Notice sent by the Contractor to the SOSC or her/his nominee (and to the Requesting Party for information purposes) when the Vessel arrives at the Place of Delivery as per Box D.4 and is fully ready to perform the contractually required Services and Duties.
9. **Notice of Ending Operational Activities:** Notice sent by the Requesting Party or by the SOSC or her/his nominee to the Contractor indicating the date in which the assistance of the Vessel for Oil Pollution Response activities shall cease.
10. **Notice of Readiness:** Notice sent by the Contractor to the Requesting Party and to the SOSC or her/his nominee confirming that the Vessel is equipped as per the option chosen by the Requesting Party in Box C, and indicating the earliest possible date and time for leaving the Port of Departure as per Box B.3 to go to the Place of Delivery as per Box D.4.
11. **Notice of Redelivery:** Notice sent by the Contractor to the Requesting Party at the arrival in the Place of Redelivery as per Box B.3.
12. **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.
13. **Oil spill causing incident:** The known or unknown incident which led to the services of the Contractor being requested by the Requesting Party.
14. **Place of Delivery:** The place or port indicated in Box D.4, mostly but not always the designated oil spill location where the Vessel will report on arrival.

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<sup>1</sup> Normally type 3 dispersants.

15. **Place of Re-Delivery:** Place stated in Box B.3 where the Vessel shall be redelivered on the expiration or earlier termination of this Incident Response Contract free of cargo and with clean tanks, decks and hull, or such other port or place as may be mutually agreed.
16. **Requesting Party:** Public body representing the Requesting State to which the Contractor agrees to render the oil pollution response activities as set out in Box D.1.
17. **Supreme on Scene Commander (SOSC):** A person so called or whoever may for the purpose of this Incident Response Contract be considered as equivalent thereto appointed by the Requesting Party to assume the command and control of operations in case of an oil spill. The SOSC being authorised to delegate one or more tasks to one or more nominees on board the Vessel.
18. **Time:** UTC. Any reference to time in this contract should be understood as UTC.
19. **Vessel:** the Vessel used to perform this Contract and identified in Box A.1.

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

and

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

HAVE AGREED:

that the Contractor shall provide the Vessel referred to in Box A.1 to the Requesting State indicated in Box D as represented by the Requesting Party in Box D.1 for the purposes of oil or other pollutant recovery and storage and discharging activities and/or, if a dispersant application system is part of the equipment package as per annex 3 "Vessel info sheet", dispersant application activities under the terms and conditions of this Incident Response Contract, hereinafter referred to as the Contract.

## **I. SERVICES**

- I.1. The Requesting State 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. The Master, the Crew and the Vessel shall carry out the services and duties required under this Contract promptly and with due care as well as with utmost despatch within the capabilities of the Vessel and its equipment and shall render all assistance customary in an oil or other pollutant recovery, storage and discharge operation and/or dispersant application operation, by day and by night and at such times and on such schedules as the Requesting Party may reasonably require without any obligations of the Requesting Party to pay to the Contractor or the Master, Officers or the Crew of the Vessel anything in excess of what is provided for in Chapter IV of this Contract.
- I.3. The Requesting Party shall furnish the Master with all instructions and sailing directions and the Master and Engineer shall keep full and correct logs accessible to the Requesting Party or its Nominee(s) for, at least, a period of three years after the signature of this Contract.
- I.4. The Vessel's Crew:
  - will connect and disconnect electric cables, fuel, water, pneumatic and oil or other pollutant hoses at sea or when in port;

- will operate all the machinery and equipment on board the Vessel including the equipment for oil or other pollutant recovery and the dispersant application system if this is part of the equipment package as per annex 3 "Vessel info sheet" and has been chosen by the Requesting Party as per the option in Box C.2.2;
- will load and discharge as may be required all oil or other pollutants or other recovered contaminants.

## II. PERIOD

**II.1.** The Services and Duties under this Contract shall have to be performed and Fees and Hire as per Box A.3 and Chapter IV shall be due as from the time and date indicated in the Notice of Readiness conditioned to the following:

- this IRC is signed by the Requesting Party,
- the Requesting Party has acknowledged receipt of the Notice of Readiness sent by the Contractor.

*[In case the Requesting State is a third country sharing a regional sea basin with the EU, the following text is added:*

*and*

- *"The Requesting Party has made an advance payment equal to 7 (seven) days of Daily Operational Hire to the Contractor's bank account as identified in Box B.4 within 3 working days following signature of the IRC. The Contractor is not obliged to engage into the services under the Contract, to send a Notice of Readiness to the Requesting Party and may terminate the Contract by written notice to the Requesting Party if an advance payment has not been made by the Requesting Party into its bank account within the above deadline."*

**II.2.** The Services and Duties shall be provided for a maximum period of 30 days. This maximum period of execution of the Services and Duties may be extended only with the express written agreement of both parties reached before the end of this 30 day period or, in case the period has already been extended, before the extended period elapses.

**II.3.** The providing of Services and Duties may at any time be ended by Notice of the Requesting Party, its nominee or the SOSC or its nominee. Upon receipt of the Notice of Ending Operational Activities the Vessel will end all its activities and with utmost despatch clean as per point (7) of Article IV.2 and proceed to the Place of Redelivery as per Box B.3. No more hire will be due as from the moment the Vessel reaches the Place of Redelivery indicated in Box B.3 without prejudice to point (7) of Article IV.2, the Vessel having to send a Notice of Redelivery once the Vessel is at the Place of Redelivery.

**II.4.** A Notice of Arrival shall only be sent by the Vessel once the fully fitted Vessel as per Box A.1 with all equipment and crew on board arrives at the Place of Delivery as indicated in Box D.4. The Notice of Arrival shall have to formally confirm that the Vessel is fully fitted as per Box A.1 with all equipment as per the option chosen by the Requesting Party in Box C and crew on board.

No oil or other pollutant recovery and/or dispersant application Services may be executed by the Vessel prior to the acceptance of the Notice of Arrival by the SOSC or her/his nominee.

## III. EXECUTION OF SERVICES AND DUTIES

**III.1.** The Requesting Party shall designate a Supreme On Scene Commander (SOSC) or equivalent who will be in charge of the at sea oil or other pollutant recovery operations.

**III.1.1.** The Vessel will not act against the orders of the SOSC or her/his nominee.

**III.1.2.** The Master of the Vessel shall at all times have the ultimate decision as to the use and safety of the Vessel, its Crew and eventual passengers. The Master may not follow orders of the SOSC and/or her/his nominee which in her/his opinion could endanger her/his Vessel, the Crew and/or passengers. In such case she/he has to inform the SOSC or her/his nominee on her/his decision, the reasons and the possible consequences.

**III.1.3.** If the flashpoint of the recovered oil is below 60°C, the Vessel is not obliged to engage with actual recovery, in which case the Vessel will be on stand-by.

**III.2.** The on board Coordinator for Pollution Response Activities, designated and paid by the Contractor, with knowledge of the English language, will coordinate the Pollution Response Activities onboard according the SOSC's instructions. The designated person shall be exclusively engaged in coordinating the Pollution Response Activities and shall not have any other responsibility on board of the Vessel.

**III.3.** The Vessel shall only give a valid Notice of Readiness and Notice of Arrival for the requested operation to the SOSC if a functioning Equipment as per the option chosen by the Requesting Party in Box C is on board, but is not obliged to provide additional skimmers, booms, hoses and lightering systems which do not belong to its equipment package as per the option chosen by the Requesting Party in Box C.

**III.4.** All damages or losses sustained by the Equipment as per the option chosen by the Requesting Party in Box C will be for the sole account of the Contractor unless she/he can prove that the damages or losses are only a result of the direct instructions of the Requesting Party, the SOSC or her/his nominee in which case the Requesting State and/or the Requesting Party is liable for the damages or losses, normal wear & tear being for the account of the Contractor.

**III.5.** Without prejudice to Article III.1.2, the Vessel will act as said under Article I and elsewhere in this Contract, under the direction of the SOSC from the time of its arrival at the location provided for in Box D.4 and after giving Notice of Arrival to SOSC or her/his nominee until the Vessel is relieved from its duties by the SOSC or her/his nominee.

**III.6.** Upon request by the SOSC and/or considering the filling status of the Vessel's storage capacity for the recovered pollutant the Vessel shall approach to the selected reception facility provided for by the Requesting Party and/or the SOSC or their nominee and discharge as much as possible in as little time as possible all pumpable recovered pollutant at the reception facility. After finalisation of the discharge the Vessel will report its status to the SOSC, request new mission orders and proceeds with further recovery operations.

The Requesting State, represented by the Requesting Party will make certain that all licences, taxes, charges, duties required for delivering the recovered oil or other pollutant at the proper locations have been obtained in order for the Vessel being able to proceed with fast discharge without encumbrances or charges whatsoever arising out of the delivery of the recovered oil as required under this Contract.

**III.7.** The Vessel shall inform the SOSC or her/his nominee in case:

1. the operational efficiency of the Vessel declines for whatever reason,
2. when Services required by SOSC do not correspond with the Vessel's capabilities,
3. when there are no longer recoverable traceable.

**III.7.1.** After receipt of information referred to in Article III.6. and without prejudice to Article II.3 the SOSC or her/his nominee having the discretionary right to terminate, shall officially declare to the Contractor that at a defined date the assistance activities of the Contract will end, or will

propose the prolongation of the Contract for other purposes within the scope of the relevant marine pollution response activities where the Vessel could further be effectively utilised.

- III.8.** If the Vessel engaged in service under the Services of this Contract hereunder is prevented from working by reason of deficiency of crew, strikes of the officers or crew, breakdown of machinery, damage to hull or others, accident to the Vessel which prevents the Vessel performing the service required by the SOSC, then the Vessel shall be off-hire as long as that situation persists without prejudice to the possibility of the Requesting Party, the SOSC or their nominee to terminate the Incident Response Contract as per Article III.7.1., nor will it prevent the Requesting Party from recovering any damages or losses it might have suffered.
- III.9.** The Contractor may at her/his cost and risk replace at any time the Vessel by any other Vessel 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 Vessel shall be subject to all terms of this Contract. It is understood that the Contractor shall only claim costs as per Articles IV.1 and IV.2 for the Vessel. The time lost for replacing the Vessel will be time off-Hire.
- III.10.** The Requesting Party shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the Services are to be executed.
- III.11.** Should the Contractor fail to perform her/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.12. 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 D.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.

*[In case the Requesting State is a third country sharing a regional sea basin with the EU, this Article III.12 reads as follows:*

*“The 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 D.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.13.** 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.

*[In case the Requesting State is a third country sharing a regional sea basin with the EU, this Article III.13 reads as follows:*

*“The Contract is executed in English.”]*

- III.14.** In case the Vessel of the Contractor is not able to carry all mechanical recovery systems and/or the dispersant application system and dispersants at the same time, the Requesting State shall have the option of choosing which type of equipment shall be installed on board the Vessel.

Such an option must be declared in Box C. The Contractor cannot be held responsible for this choice.

#### **IV. PAYMENTS**

**IV.1.** The Contractor is entitled to receive the payment of the following daily hire-rates:

(a) Daily Operational Hire: The Contractor is entitled to receive the Daily Operational Hire provided for in Box A.3.1 from the time and date indicated in the Notice of Readiness, conditioned to the following:

- this IRC is signed by the Requesting Party, and
- the Requesting Party has acknowledged receipt of the Notice of Readiness sent by the Contractor,

until the Notice of Ending Operational Activities is sent by the Requesting Party to the Contractor, excluding the entire period as defined below in point (b);

(b) Daily Non-operational Hire: The Contractor will not be entitled to the Daily Operational Hire as per Box A.3.1 but will be only entitled to the Daily Non-operational Hire provided for in Box A.3.2 provided that:

- The Vessel is not able to perform at-sea oil recovery activities or any other mission assigned by the SOSC due to bad weather or any other circumstances, except break down or loss of the Vessel, but standing-by in the operation area, or
- Without prejudice of Article II.3, the Vessel is ordered by the SOSC or her/his nominee to remain on stand-by, to suspend performance for any reason or is prevented from performing the service safely by reason of adverse sea or weather conditions, lack of water, risk of damage or injury or by any other causes outside the contractor's control, or
- The Vessel deviates from performance of the service in order to take on bunkers, lubricant oils or other necessary supplies or personnel so as to enable that Vessel to continue service, or
- The Vessel, after completion of all the assigned missions from the Requesting Party within the time framework of this Contract, is under a cleaning process to bring her back into the original service. The Contractor is entitled to receive the Daily Non-operational Hire once the Notice of Ending Operational Activities is sent by the Requesting Party to the Contractor, until the Notice of Redelivery is sent by the Contractor to the Requesting Party.

**IV.2.** Besides the Daily Operational Hire and Daily Non-operational Hire, the Requesting Party will pay only for the following costs:

1. all fuel consumed during periods in which the Contractor is entitled for Daily Operational Hire and Daily Non-operational Hire, calculated on the basis of documented engine operating hours, based on the log book of the Vessel and on the average fuel consumption per operating hour, based on historical record. Indication of fuel consumption per 24 hours is stated in the Vessel Info Sheet (Annex 3). The fuel price per ton will be based on the market price of the Port of Departure at the time of departure;
2. all port charges, (un)berthing, lightening charges and agents charges during periods in which the Contractor is entitled for Daily Operational Hire and Daily Non-operational Hire;
3. all pilotage and boatmen and canal steersmen during periods in which the Contractor is entitled for Daily Operational Hire and Daily Non-operational Hire;
4. any tug assistance during periods in which the Contractor is entitled for Daily Operational Hire and Daily Non-operational Hire;
5. customs duties, all permits, import duties (including costs involved in establishing temporary or permanent importation bonds), and clearance expenses, both for the Vessel,

recovered oil, and/or oil pollution response equipment required for or arising out of the Contract.

6. consular charges appertaining to the Master, Officers and Crew of the Vessel;
7. costs linked to the cleaning of the Vessel and Oil Pollution Response Equipment caused by the Oil Recovery Operations carried out under the scope of this Contract. 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 Vessel and the Equipment back as soon as possible into the original service. It is also understood that the identity and the total costs of the cleaner(s) is proposed by the contractor but to be agreed by the Requesting Party. With respect to the quality of cleaning, the standard is "ready for paint".

**IV.3.** The Daily Operational Hire and Daily Non-operational Hire are earned per calendar day of 24 hours or pro-rata and may be invoiced every 7 days. Unless as otherwise provided for in Annex 1 and without prejudice to the relevant national regulation of the Requesting State, the Daily Operational Hire and Daily Non-operational Hire shall be paid 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. Nevertheless the original invoice will be provided before actual payment is made.

*[In case the Requesting State is a third country sharing a regional sea basin with the EU, the following paragraph is added to this Article IV.3:*

*"In case an advance payment has been made into the Contractor's bank account in accordance with article II.1, the invoice for payment of the balance has to indicate separately the amount of balance payment and the amount of advance payment made at the beginning of the Contract as per article II.1."]*

**IV.4.** Payments shall be deemed to have been made on the date on which the Requesting Party's bank account is debited.

**IV.5.** Payments shall be made to the Contractor's bank account denominated in Euro, identified as in Box B.4. Article XII.2 shall apply in case of late payments.

**IV.6.** 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 under this Contract 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 the Contract shall be made in writing by fax or as scanned copies attached to e-mails and shall be addressed according to Boxes B.2 and D.2 of the Contract Form. Electronic communication 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. CONDITION OF THE VESSEL**

**VI.1.** The Vessel shall, at the date of the signature of the Contract by the last Contracting party and throughout the Contract Period, be seaworthy, tight, staunch, strong in good order and condition

and, without prejudice to the generality of the foregoing, in every way fit to operate effectively at all times for the Services and Duties as stated in the Contract.

**VI.2.** The Requesting Party acknowledges that the Vessel is allowed to carry out Oil Pollution Response activities under national regulations.

**VI.3.** The Contractor shall provide on board of the vessel suitable accommodation, including meals and bedding, for one operations coordinator designated by the Requesting Party at her/his own cost.

## **VII. CREW**

**VII.1.** If the Requesting Party has reason to be dissatisfied with the conduct of the Master or any Officer, member of the Crew or the on-board Coordinator for Oil Pollution Response, the Contractor on receiving particulars of the complaint shall promptly investigate the matter and if the complaint proves to be well founded, the Contractor shall as soon as reasonably possible make appropriate changes in the employment.

**VII.2.** The vessel shall have a sufficient number of crew to carry out all required services during twenty four hours a day for the duration of this Contract.

## **VIII. SAVING OF LIFE AND SALVAGE**

**VIII.1** The Vessel shall be permitted to deviate for the purpose of saving life at sea without prior approval of or notice to the Requesting Party and without loss of Hire provided however that notice of such deviation is given as soon as possible.

**VIII.2** On the strict condition that the SOSC and the Master of the Vessel formally agree in writing, the Vessel shall be at liberty to undertake attempts at salvage, it being understood that the Vessel shall be off-hire and this Contract suspended from the time she leaves port or commences to deviate and the off-hire and suspension shall remain until she is again in every way ready to resume the Services and Duties at a position which is not less favourable to the Requesting Party than the position at the time of leaving port or deviating for the salvage services.

## **IX. COLLISION CLAUSE**

If, when performing activities under the scope of this Contract, the Vessel comes into collision with another ship and/or structure as a result of the negligence of the other ship and/or structure and/or any act, neglect or default of the Master, mariner, pilot or the servants of the Contractor in the navigation or the management of the Vessel, the Requesting State and/or the Requesting Party will not indemnify the Contractor against loss or liability. The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than or in addition to the colliding ships or objects are at fault in respect of a collision or contact.

## **X. WRECK REMOVAL**

If the Vessel sinks and becomes a wreck and an obstruction to navigation and has to be removed upon request by any compulsory law or authority having jurisdiction over the area where the wreck is placed, the Contractor shall be liable for any and all expenses in connection with the raising, removal, destruction, lighting or marking of the wreck and the Contractor shall indemnify, protect, defend and hold harmless the Requesting State and/or the Requesting Party from any and against all claims, costs, expenses, actions, proceedings, suits, demands and liabilities whatsoever arising out of or in connection with such raising, removal, destruction, lighting or marking.

## **XI. LIABILITY AND INDEMNITIES**

### **XI.1. THE REQUESTING STATE OR REQUESTING PARTY**

Unless there is wilful misconduct on the part of the Requesting Party and notwithstanding anything else contained in this Contract except as otherwise provided for in Article III.4, the Requesting State and/or the Requesting Party shall not be liable or responsible for loss of or damage sustained by the Contractor or of its property or of her/his contractors and subcontractors, including the Vessel, or for personal injury or death of the employees of the Contractor or of her/his contractors and subcontractors, arising out of or in any way connected with the performance of this Contract, even if such loss, damage, injury or death is caused wholly or partially by the act, neglect, omission or default of the Requesting State and/or the Requesting Party, its employees, contractor or sub-contractor, and even if such loss, damage, injury or death is caused wholly or partially by unseaworthiness of any Vessel, lack of safe ports or other places; and the Contractor shall indemnify, protect, defend and hold harmless the Requesting State and/or the Requesting Party from any and against all claims, costs, expenses, actions, proceedings, suits, demands and liabilities whatsoever arising out of or in connection with such loss, damage, personal injury or death.

### **XI.2. THE CONTRACTOR**

Unless there is wilful misconduct on the part of the Contractor and notwithstanding anything else contained in this Contract, the Contractor shall not be responsible for any liability arising out for personal injury or death of the employees of the Requesting State and/or the Requesting Party, even if injury or death is caused wholly or partially by the act, neglect or default of the Contractor, her/his employees, contractors and sub-contractors, and even if such injury or death is caused wholly or partially by the unseaworthiness of any Vessel lack of safe ports or other places; and the Requesting State and/or the Requesting Party shall indemnify, protect, defend and hold harmless the Contractor from any and against all claims, costs, expenses, actions, proceedings, suits, demands, and liabilities whatsoever arising out of or in connection with such personal injury or death.

### **XI.3. LIMITATIONS**

Nothing contained in this Contract shall be construed or held to deprive the Contractor, the Requesting State or 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 State and/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 State and/or the Requesting Party shall seek to limit their liability against such third party.

### **XI.4. HIMALAYA CLAUSE**

All exceptions, exemptions, defences, immunities, limitations of liability, indemnities, privileges and conditions granted or provided by this Contract or by any applicable statute, rule or regulation for the benefit of the Contractor shall also apply to and be for the benefit of the Contractor's parent, affiliated, related and subsidiary companies, the Contractor's sub-contractor, the Vessel, its Master, Officers and Crew, its registered owner, its operator, its demise charterer(s), their respective employees and their respective underwriters. The Contractor shall be deemed to be acting as agent or trustee of and for the benefit of all such persons and parties set forth above, but only for the limited purpose of contracting for the extension of such benefits to such persons and parties.

### **XI.5. POLLUTION**

Without prejudice of Article X of this Contract (Wreck Removal) the Requesting State and/or the Requesting Party shall be liable for, and agree to indemnify, defend and hold harmless the Contractor against all claims, costs, expenses, actions, proceedings, suits, demands and liabilities whatsoever arising out of actual or potential pollution damage and the cost of cleanup or control thereof arising from acts or omissions of the Contractor or their personnel which cause or allow discharge, spills or leaks from the Vessel of products linked to the Contract execution.

## **XI.6. MISCELLANEOUS**

No claims arising out of this Contract for loss or damage other than those provided for in this Contract shall be made against the Vessel, Master, Contractor and Crew even if caused by negligence except if caused by gross negligence or wilful misconduct of the aforesaid.

Should claims nevertheless be made notwithstanding the foregoing, the Requesting State and/or the Requesting Party shall indemnify and hold the Contractor free from such claims.

Without prejudice of Articles IX and X of this Contract, the Requesting State and/or the Requesting Party shall hold harmless and indemnify the Contractor, Master and Crew of the assisting Vessel against all other claims arising by reason of any incident occurring or any act, error or omission committed while operating under command of the SOSOC, even if arising from negligence except if caused by gross negligence or wilful misconduct of the Contractor or Master, Crew and other personnel, including claims for loss of life or personal injury of Master and Crew together with all costs charged and expenses suffered or incurred in connection with any such claims, and against all loss or damage suffered by the Contractor of the assisting Vessel.

## **XII. RECOVERY**

**XII.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 in euro on receipt of the debit note, in the manner and within the time limits set by the Requesting State and/or the Requesting Party.

**XII.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 eight 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.

## **XIII. PROPERTY, TAXES, DUTIES and CHARGES**

The Contractor has the obligation to deliver the recovered oil or other pollutant at the place and installation indicated by the Requesting Party, the SOSOC or their Nominee. The Contractor has no title whatsoever on the recovered oil or other pollutants and waives all liens, property rights or rights of securisation she/he may or may not have on whatever the Vessel recovered. All what is recovered belonging exclusively to the Requesting Party or the person it indicated. The Requesting Party or the person indicated being liable for all taxes, duties or charges of whatever kind that may be due because of the oil or other pollutant being delivered and discharged as instructed by the Requesting Party, the SOSOC or their Nominee.

## **XIV. CONFIDENTIALITY**

**XIV.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.

**XIV.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.

## **XV. FORCE MAJEURE**

- XV.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.
- XV.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.
- XV.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 or the time the Vessel was effectively available and the Requesting Party, the SOSOC or their nominee shall have the right to terminate the contract.
- XV.4.** The contracting parties shall take the necessary measures to reduce damage to a minimum.

## **XVI. WAR**

- XVI.1.** Unless the consent of the Contractor be first obtained, the Vessel shall not be ordered nor continue to any port or place or on any voyage nor be used on any service which will bring the Vessel within a zone which is dangerous as a result of any actual or threatened act of war, war, hostilities, warlike operations, acts of piracy or of hostility or malicious damage against this or any other Vessel or its cargo 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 her 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.
- XVI.2.** Should the Vessel approach or be brought or ordered within such zone, or be exposed in any way to the said risks, hire shall be payable for all time lost including any loss owing to loss of or injury to the Master, Officers, Crew or passengers or to refusal by any of them to proceed to such zone or to be exposed to such risks.
- XVI.3.** The Vessel shall have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, destination, delivery or in any other way whatsoever given by the government of the nation under whose flag the Vessel sails or any other government or any person (or body) acting or purporting to act with the authority of such government or by any committee or person having under the terms of the war risks insurance on the Vessel the right to give any such orders or directions.
- XVI.4.** In the event of the nation under whose flag the Vessel sails becoming involved in war (whether there be a declaration of war or not) either the Contractor or the Requesting Party may terminate this Contract.

## **XVII. SUBCONTRACTING**

- XVII.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.

**XVII.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.

#### **XVIII. TERMINATION BY THE REQUESTING PARTY**

**XVIII.1.** The Requesting Party shall pay no hire and may terminate the Contract in the following circumstances:

- a. where execution of the Services has not actually commenced within two days of the date foreseen in Box B.3, 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. If the government of the state of registry and/or the flag of the Vessel, or any agency thereof, requisitions for hire or title or otherwise takes possession of the Vessel during the Contract;
- d. If any government, individual or group, whether or not purporting to act as a government or on behalf of any government, confiscates, requisitions, expropriates, seizes or otherwise takes possession of the Vessel during the Contract;
- e. If the Vessel is lost, actually or constructively, or missing. In the case of termination, hire shall cease from the date the Vessel was lost or, in the event of a constructive total loss, from the date of the event giving rise to such loss. If the date of loss cannot be ascertained or the Vessel is missing, payment of Hire shall cease from the date the Vessel was last reported;
- f. If, at any time during the term of this Contract, a breakdown of the Contractor' equipment or Vessel, results in the Contractor being unable to perform their obligations hereunder for a period exceeding three days;
- g. 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.

**XVIII.2.** In case of force majeure, notified in accordance with Article XV.2, either contracting party may terminate the Contract, where performance thereof cannot be ensured for a period corresponding to at least to one fifth of the period laid down in Article II.2.

**XVIII.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.

#### **XVIII.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.

**XIX. 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**

<b>INCIDENT RESPONSE CONTRACT (IRC) - VESSEL FORM</b>			
<b>A. Vessel Information</b>			
<b>A.1. General Information</b>			
Name:		IMO Number:	
Flag:		Place of Registry:	
Registered Owner (Name & IMO Number):		ISM Technical Manager (Company Name & IMO Number)	
<b>A.3. Financial Information</b>			
A.3.1. Daily Operational Hire:		A.3.2. Daily Non-operational Hire:	
<b>B. Contractor</b>			
Name:			
<b>B.1. Operational Contact Details</b>		<b>B. 2. Administrative Contact Details</b> <i>(Notices, Invoices, other)</i>	
Name:		Name:	
Full Address:		Full Address:	
Tel.:		Tel.:	
Fax:		Fax:	
E-mail:		E-mail:	
Mobile of onshore responsible person:		Mobile of onshore responsible person:	
<b>B.3. Operational Details</b>		<b>B.4. Financial Details: Bank Account</b>	
Port of Departure:		Bank Name:	
Estimated Time to be Ready to Sail:		Account Holder:	
Place of Redelivery:		Full Account Number including codes (IBAN):	
		Address of the branch in full	

<b>C. Equipment</b>	
<b>C.1. Mechanical Recovery</b>	
I - Two rigid sweeping arms; II - Boom; III - Offshore skimmer.	
<b>C.2. <del>Combined Mechanical Recovery and Dispersants</del> NOT APPLICABLE TO THIS ARRANGEMENT</b>	
<del>I - Two rigid sweeping arms;</del> <del>II - Dispersant application system and Tank containers [min.30 m<sup>3</sup>]</del>	
<b>Option C.2.1</b> <input type="checkbox"/> <del>-Equipment I&amp;II included-</del> <del>III - Dispersants supplied by EMSA-</del>	<b>Option C.2.2</b> <input type="checkbox"/> <del>-Equipment I&amp;II included-</del> <del>III - No dispersants supplied-</del>
Oil Pollution Response Equipment and Crew on board (24h)	

<b>D. Requesting Party</b>	
Requesting State:	
<b>D.1. General Contact Details</b>	<b>D.2. Administrative Contact Details</b> <i>(Notices, Invoices, other)</i>
Government body representing requesting state:	Name:
Full Address:	Full Address:
Tel. (24/7):	Tel. (24/7):
Fax:	Fax:
E-mail:	E-mail:
Mobile :	Mobile :
<b>D.3. Contact Details Supreme on Scene Commander (SOSC) or equivalent</b>	<b>D.4. Other Details</b>
Name :	Place of Delivery:
Tel:	Court for Disputes:
Fax:	
E-mail:	

<b>E. Signature</b>	
<b>E.1. Contractor's Representative Signature:</b>	<b>E.2. Requesting State's Representative Signature:</b>
Name, Position & Signature:	Name, Position & Signature:
Place, Date & Time (UTC)	Place, Date & Time (UTC)

**ANNEX 3**  
**Vessel Info Sheet (Ad hoc Vessel info sheet to be added)**