



European Maritime Safety Agency

ANNEX VI to DRAFT FRAMEWORK SERVICE CONTRACT




Incident Response Contract-Equipment (IRC-E) - Private Entities

Enclosed to Procurement Procedure No EMSA/CPNEG/3/2021 - Service Contract for Equipment Assistance Service (EAS) – Black Sea

Competitive procedure with negotiation

Phase II – Invitation to Tender

N.B: Amendments and new wording added to the original wording of the RESPONSECON – BIMCO/ISCO International Spill Response Contract are shown in blue, italics and bold.

 		<h1>RESPONSECON</h1> <p>INTERNATIONAL SPILL RESPONSE CONTRACT</p>  <p>European Maritime Safety Agency</p> <p>(FOR USE OUTSIDE THE UNITED STATES OF AMERICA)</p>	
PART I			
1. Place and date of Contract		2. Date of commencement of services/mobilisation	
3. Requesting Party/place of business (full style, address, email and fax no.)		4. Contractor/place of business (full style, address, email and fax no.)	
5. This is a contract for <input type="checkbox"/> a) Equipment and Personnel services <input type="checkbox"/> b) Equipment hire only or for Dispersants purchase and Equipment hire <input type="checkbox"/> c) Dispersant only <input type="checkbox"/> d) Dispersant purchase, Equipment hire and Personnel Services		6. Nature of services/scope of work (see Annex A)	
7. Personnel rate and services (see Annex B)		8. Equipment rates and particulars (see Annex C)	
9. Dispersant charges and particulars (see Annex D)		10. Mobilisation lump sum	
11. Payment details Currency: Bank: Address: Account Number: Account Name: IBAN: BIC/Swift:		12. Expedited payment amount To be agreed between the parties depending on the size of the spill and equipment mobilised 13. Indicative transport costs Price per kilometre for a 20 feet truck: For a distance between 0 and 500 kilometres: EUR For a distance above 500 kilometres but below 2000 kilometres: EUR For a distance above 2000 kilometres: EUR Price per kilometre for a 40 feet truck: For a distance between 0 and 500 kilometres: EUR For a distance above 500 kilometres but below 2000 kilometres: EUR For a distance above 2000 kilometres: EUR	

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14. <i>Court for Disputes</i>
15. Additional clauses

It is mutually agreed that this Contract shall be performed subject to the conditions contained herein consisting of Part I, Part II, additional clauses stated in Box 15, if any, and, when they have been agreed, Annexes A, B, C and D. In the event of a conflict of conditions, the provisions of Part I and any additional clauses shall prevail over those of Part II and Annexes A, B, C and D to the extent of such conflict but no further.

Signature and company stamp (Requesting Party)	Signature and company stamp (Contractor)
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The International Spill Response Contract, as approved by BIMCO and ISCO, conforms with the International Group Guidelines on Vessel Response Plan Contracts outside the United States of America.

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Definitions

"Contractor" shall mean the party stated in Box 4.

"Contractor's Group" shall mean the Contractor, its affiliated and related companies and its respective contractors and subcontractors, and employees of any of the foregoing (including but not limited to any Personnel).

"Equipment" shall mean the equipment with particulars stated in Annex C (Equipment Rates and Particulars).

"Personnel" shall mean the personnel as stated in Annex B (Personnel *Services and Rate*). References to Personnel shall not be applicable if, in accordance with Box 5(b) *or (c)*, the parties have agreed that the contract shall be for Equipment hire only *or for Dispersants purchase and Equipment hire or for Dispersant only*.

"Requesting Party" shall mean the party stated in Box 3.

"Requesting Party's Group" shall mean the Requesting Party and its contractors, subcontractors, co-venturers, and employees of any of the foregoing.

1. Nature of Contract

- (a) By this Contract the Requesting Party hires the Contractor to perform the services summarised in Box 6 and set out in Annex A (Scope of Work).
- (b) Neither party shall assign or transfer this Contract or any part thereof to any other person or company without the prior written approval of the other party.
- (c) As between the Requesting Party and the Contractor, the Requesting Party shall have ultimate control of the spill response, provided that the Contractor or any of the Personnel may decline to carry out any instruction and take any action necessary in any situation where (in the sole discretion of the Contractor or its Personnel) a breach of applicable regulations may be committed or the safety of personnel is deemed to be at risk.

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- (d) If reasonably required by the Contractor a representative of the Requesting Party will be available during the performance of the services with the full authority to act on behalf of the Requesting Party.
- (e) The Contractor shall provide the Requesting Party with daily progress reports in writing.
- (f) The Requesting Party shall not sublet or loan the Equipment or any part thereof, or subcontract or assign any Personnel without the prior written approval of the Contractor. Notwithstanding any approval from the Contractor, the person or company taking such sublet, loan, subcontract or assignment (as the case may be) shall be deemed to be the agents of the Requesting Party for all the purposes of this Contract and the Requesting Party shall always remain responsible to the Contractor for due performance of this Contract.

2. Mobilisation and Demobilisation

- (a) The Contractor agrees to have the Equipment and Personnel mobilised *to the Place indicated by the Requesting Party in Annex A (Scope of Work) with easy access by trucks. The Requesting Party shall provide for labour and cargo handling equipment for the unloading of the Equipment and/or Dispersant upon delivery as well as for the loading of the Equipment and/or any remaining Dispersant redelivered in the original sealed IBC by the Requesting Party upon demobilisation.*
- (b) Demobilisation of Personnel shall be mutually agreed between the parties and the hire rate shall cease upon arrival back at the original place(s) of mobilisation.
- (c) Demobilisation of Equipment shall be mutually agreed between the parties and the hire rate shall cease upon arrival back at the original place(s) of mobilisation with (i) the Equipment in a clean and fit for purpose state, or (ii) at the Requesting Party's option, like for like replacement, both being at the Requesting Party's expense.
- (d) *Demobilisation of any unconsumed Dispersant remaining in its original sealed IBCs shall be mutually agreed between the parties and payment of charges shall be in accordance with Subclause 5(f).*

3. Warranty and Permits

- (a) The Contractor shall deliver the Equipment *and/or Dispersant* in accordance with the description in Annex C (Equipment *daily* rates and particulars) *and/or in Annex D (Dispersant charges and particulars)* and shall warrant its condition and quality but any other warranties as to fitness for purpose etc. (whether implied by law or otherwise) are hereby expressly excluded.
- (b) The *Requesting Party* shall be responsible for obtaining and maintaining any licences, approvals, authorisations, permits or visas required for the Equipment, *Dispersant* and Personnel to be deployed to and/or employed for the services agreed. The *Contractor* shall provide the *Requesting Party* with all reasonable assistance in connection with the obtaining and maintaining of such licences, approvals, authorisations, permits or visas.

4. Invoicing *and payment*

- (a) All invoices *may* be issued *weekly and in Euro*. In respect of reimbursable expenses incurred in currencies other than *in Euro*, the rate of exchange into the contract currency shall be that quoted by the Contractor's bank stated in Box 11, as at the date of the transaction.
- (b) For any invoices in excess of the amount stated in Box 12, the contractor may request an eighty per cent (80%) payment on account within ten (10) calendar days from the invoice date. Subject to Subclause (f), the twenty per cent (20%) balance shall be paid within thirty (30) calendar days from the date of the invoice.

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- (c) The Contractor may issue invoices for payments due under this Contract **weekly** and at the termination of this Contract.
- (d) Save where Subclause (b) applies and subject to the provisions of Subclause (f), the Requesting Party shall make payment within thirty (30) calendar days (the Due Date) from the date of each invoice, net of bank charges and withholding tax (which shall be for the Requesting Party's account), in the mode stated in Box 11. Any VAT, withholding tax or other taxes, as applicable, chargeable on payments due under this Contract shall be added to the relevant sums due hereunder.
- (e) If payment is not received by the Contractor within five (5) working days following the Due Date, the Contractor may charge interest from the day following the Due Date at the rate ***applied by the European Central Bank for its main refinancing operations in Euros (the reference rate) plus three and a half percentage points. The reference rate is the rate in force, as published in the C series of the Official Journal of the European Union, on the first day of the month in which the payment period ends.***
- (f) Where an invoice is disputed:
- (i)** The Requesting Party shall notify the Contractor before the Due Date. The undisputed portion of the invoice shall be paid in accordance with Subclause (c) and Subclause (d).
- (ii)** The Requesting Party shall be entitled to withhold payment of the disputed portion provided that such portion is reasonably disputed and the Requesting Party specifies such reason in writing. The disputed portion which may be withheld shall not be more than twenty per cent (20%) of the invoiced amount.
- (iii)** If the Contractor proves the validity of the disputed portion of the invoice, the balance shall be paid by the Requesting Party within three (3) working days of a demand to do so together with any interest payable in accordance with Subclause (e) until settlement has been made. Should the Requesting Party's claim be valid, a corrected invoice and credit note as applicable shall be issued by the Contractor.
- (g) Where the Requesting Party fails to make payment in accordance with this Clause or on demand where the validity of a disputed invoice is upheld, the Contractor shall notify the Requesting Party in writing. The Requesting Party shall have three (3) working days in which to effect payment. Should such payment remain outstanding after this time the Contractor shall be entitled to immediately terminate this Contract without further notice and withdraw the Equipment, **Dispersant** and Personnel without prejudice to any other rights that the Contractor may have.
- (h) Where the Contractor chooses not to exercise any of the rights afforded to it by this Contract in respect of any particular late payment or series of late payments, this shall not be construed as a waiver of its right to withdraw the Equipment, **Dispersant** and Personnel in respect of any subsequent late payment under this Contract.

5. *Rates and Charges*

The Requesting Party agrees to pay the Contractor the following **rates** and charges in consideration of the **services provided by the Contractor as per the option chosen by the Requesting Party in Box 5. The Requesting Party acknowledges and agrees that any sums due under this Clause 5 shall be deemed as being remuneration due under this Contract:**

- (a) Hire - ***The Equipment hire rate(s) as stated in Annex C (Equipment Rates and Particulars) for the Equipment mobilised and the Personnel Rate for the number of Personnel mobilised as stated in Annex B (Personnel rate and services). The Equipment and Personnel rates*** shall apply from the earliest time that the Equipment and Personnel are mobilised to the time that the Equipment and Personnel return or are repatriated to the original place(s) of mobilisation in accordance with this Contract. Hire of Personnel

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includes reasonable personal protective equipment necessary to perform the services. Hire of Equipment includes normal wear and tear.

The Requesting Party undertakes to maintain accurate records of when equipment is “in-use” or on “standby”. The frequency with which these records are made available to the Contractor to be agreed between the Parties.

- (b) Standby rates - The standby rates *as stated* in Annex C (Equipment Rates and Particulars) shall be charged when the Equipment is mobilised but is not actively engaged in the provision of the services including, but not limited to, when in transit, at a forward storage site, undergoing maintenance, repair and cleaning or tied up alongside.
- (c) Lost Equipment - Where Equipment is lost or becomes a constructive total loss (other than when caused by the fault or negligence of the Contractor) the Requesting Party shall pay the Contractor within five (5) days of presentation of invoice *the replacement cost on the basis of new for old with the most similar new item minus the hire rate already paid or due by the Requesting Party at the date when the Equipment was lost or, in the event of constructive loss, at the date of the event giving rise to such loss.*
- (d) *Equipment and/or Dispersant transportation costs - Maximum transport prices per kilometre for certain capacities of trucks and distances are stated in Box 13.*
- (e) *Mobilisation lump sum - The Requesting Party shall pay to the Contractor a mobilisation lump sum as stated in Box 10 for mobilisation and demobilisation of the Equipment and/or Dispersants. The mobilisation lump sum shall be invoiced and paid in accordance with clause 4 following mobilisation of the Equipment and/or Dispersant.*
- (f) *Dispersant charges - The Requesting Party shall pay the unit purchase cost stated in Annex D (Dispersants charges and particulars) per IBC mobilised and consumed. In addition, a fifteen per cent (15%) overhead will be charged. Dispersant purchase costs shall be invoiced and paid in accordance with clause 4 following mobilisation of the Dispersant. Where Dispersant mobilised under this Contract is not consumed and is demobilised in the original sealed IBC by the Requesting Party in accordance with Subclause 2 (d), the Requesting Party shall not be charged the unit purchase price of demobilised IBCs but the 15% overhead shall be due. If the Dispersant purchase costs for all IBCs mobilised have already been paid by the Requesting Party at the time of demobilisation, the Contractor shall reimburse the unit purchase price per IBC demobilised on receipt of the debit note, in the manner and within the time limits set by the Requesting Party. The Requesting Party will be charged the costs for the transport of the demobilised Dispersant IBCs back to the original place(s) of mobilisation.*
- (g) Other costs and disbursements - Any other out of pocket costs and third party expenses that the Contractor may incur in connection with the performance of this Contract *including, but not limited to:*
 - (i) *Travel costs, reasonable accommodation and living expenses incurred in respect of the Personnel;
 - (ii) All fuel and lubrication oils (if any) consumed by the Equipment throughout the duration of the Contract if purchased and/or provided by the Contractor;
 - (iii) *All costs related to the transportation of the Equipment and/or Dispersant such as tolls and ferry costs.*
- (h) Import/Export duties - The Requesting Party shall be liable for all customs duties, all permits, import/export duties or levies, clearance expenses, fees, taxes and other associated costs relating to the Equipment, *Dispersant* and Personnel.

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- (i) *Equipment purchase option - The Equipment hire rate will be capped at the cost of replacement of the Equipment by the most similar new equipment item (new for old at manufacturer's recommended retail price on the date of contract as stated in Box 1). Once the capped value has been reached, the Requesting Party may exercise the option to purchase the Equipment, terms for which will be agreed at the time.*

**Subclause 5(g)(i) does not apply if, in accordance with Box 5(b) or 5(c), the parties have agreed that the contract shall be for Equipment hire only or for Dispersants purchase and Equipment hire or for Dispersant only.*

6. Equipment Hire

- (a) Upon delivery the Requesting Party shall fully inspect the Equipment and immediately notify the Contractor in writing of any defects in the Equipment, failing which the Requesting Party shall be deemed to have accepted the Equipment in good working condition subject to the extent of the warranties.
- (b) The Requesting Party undertakes to redeliver the Equipment in the same good condition. Should the Equipment be lost or damaged (save for loss or damage caused by normal wear and tear or by the Contractor's negligence), the Requesting Party shall, at its own expense, replace or reinstate the Equipment to its original condition and the Equipment shall remain on hire until such replacement or reinstatement is complete. The Requesting Party shall however have the option of paying to the Contractor the value of the Equipment *as per Subclause 5(c)* and following which the Requesting Party's obligations for the Equipment under this Clause shall cease together with the payment of hire. *The Requesting Party acknowledges and agrees that any sums due to the Contractor under this Clause 6(b) shall be deemed as being remuneration due under this contract.*
- (c) The Requesting Party undertakes that the Equipment shall never be used, whether in a training exercise or otherwise:
- (i) recklessly, or without due regard for the safety of any person or property, or with deliberate intent to cause injury, loss or damage;
 - (ii) without adequate training;
 - (iii) without adequate or suitable personal protection equipment; and
 - (iv) otherwise than in accordance with any instructions or recommendations given by the manufacturers and/or the Contractor.
- (d) The Requesting Party undertakes to:
- (i) take all necessary steps to protect and preserve the Equipment in good condition and working order;
 - (ii) provide all fuel and lubricating oil for use of any motorised Equipment;
 - (iii) check the quality and amount of lubricating oil and diesel in any of the motorised Equipment at appropriate intervals and maintain them as recommended in the Equipment manufacturer's specifications;
 - (iv) keep the Contractor fully informed of the location of the Equipment and of any malfunctioning, loss or damage thereof;
 - (v) not part with possession of the Equipment without the Contractor's prior written consent;

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- (vi) permit the Contractor or its agents or employees access to the Equipment as may be reasonably requested;
- (vii) take all necessary steps to keep the Equipment free from all liens, charges and encumbrances, and prevent such Equipment from becoming the property of any person other than the Contractor;
- (viii) not make or permit any modification or alteration to any Equipment without the Contractor's prior written consent; and
- (ix) comply with, obtain and maintain any necessary permissions under any applicable laws in any country in which the Equipment may be during the hire period and deal with any customs formalities, entry permits or other matters in connection with the operation of Equipment and the transportation/redelivery of Equipment hereunder;

7. Early Termination

- (a) **At Requesting Party's Convenience** - The Requesting Party may terminate this Contract at any time by giving the Contractor no less than 24 hours' written notice of termination upon expiry of which this Contract will terminate. Upon such termination, the Contractor shall immediately start to demobilise the Equipment and Personnel in accordance with Clause 2 (Mobilisation and Demobilisation), and any applicable terms of this Contract shall continue until such demobilisation has been completed.
- (b) **For Cause** - If either party becomes aware of the occurrence of any event described in this Clause 7(b), that party shall so notify the other party promptly in writing and in any case within three (3) days after such information is received. If the occurrence has not ceased within three (3) days after such notification has been given, this Contract may be terminated by either party, without prejudice to any other rights which either party may have, under any of the following circumstances:
 - (i) **Requisition** - If any government or state agency requisitions for hire or title or otherwise takes possession of the Equipment.
 - (ii) **Confiscation** - 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 Equipment (other than by way of arrest for the purpose of obtaining security).
 - (iii) **Bankruptcy** - In the event of an order being made or resolution passed for the winding up, dissolution, liquidation or bankruptcy of either party (otherwise than for the purpose of reconstruction or amalgamation) or if a receiver is appointed or if it suspends payment or ceases to carry on business.
 - (iv) **Force Majeure** - If a force majeure condition prevents or hinders the performance of the Contract for a period exceeding fifteen (15) consecutive days from the time at which the impediment causes the failure to perform if notice is given without delay or, if notice is not given without delay, from the time at which notice thereof reaches the other party.

For the avoidance of doubt, neither party shall be liable for any loss, damage or delay due to any of the following force majeure conditions to the extent that the party invoking force majeure is prevented or hindered from performing any or all of its obligations under this Contract, provided it has made all reasonable efforts to avoid or minimise the effect of such conditions:

- acts of God;
- any circumstances arising out of war, threatened act of war or warlike operations, acts of terrorism, sabotage or piracy, or the consequences thereof;

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- riots, civil commotion, blockades or embargoes;
- epidemics;
- earthquakes, landslides, floods or other extraordinary weather conditions;
- strikes, lockouts or other industrial action (unless limited to the employees of the party seeking to invoke force majeure);
- fire, accident or explosion except where caused by the negligence of the party seeking to invoke force majeure;
- any other similar cause beyond the reasonable control of the party seeking to invoke force majeure.

(v) Default - If either party is in repudiatory breach of its obligations hereunder.

(vi) Loss of Equipment – *subject to the provisions of Subclause 6(b)*, if the Equipment is lost or becomes a constructive total loss.

Termination as a result of any of the abovementioned causes shall not relieve the Requesting Party of any obligation for hire and any other payments incurred in accordance with this Contract up to the time of termination, including demobilisation charges in accordance with Clause 2 (Mobilisation and Demobilisation).

8. Liabilities and Indemnities

- (a) The Contractor and Contractor's Group shall have no liability to the Requesting Party or Requesting Party's Group 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 Requesting Party's Group, or
- caused by an act or omission of the Contractor or Contractor's Group unless such act or omission is a result of the negligence of the Contractor or Contractor's Group and the Contractor or Contractor's Group are unable to rely on their rights, defences and immunities provided by this Contract or applicable law.
- (b) The Requesting Party shall indemnify, defend and hold harmless the Contractor and Contractor's Group from and against all claims, losses, damages, costs, expenses, and other liabilities incurred by the Contractor and Contractor's Group as a result of the Contractor entering into or carrying out any obligations under this Contract, except where such claims, losses, damages, costs, expenses and other liabilities are incurred by the Contractor and Contractor's Group as a result of the Contractor's own negligence or the negligence of the Contractor's Group, and except to the extent that the Contractor and Contractor's Group are able to rely on their rights, defences and immunities provided by this Contract or applicable law. The Requesting Party and Requesting Party's Group acknowledge that the Contractor and Contractor's Group shall not be required to exhaust their resources against any third party as a condition precedent to claiming indemnification under this Clause.
- (c) Except to the extent that the Contractor and the Contractor's Group are able to rely on their rights, defences and immunities, the Contractor shall indemnify, defend and hold harmless the Requesting Party and the Requesting Party's Group from and against all claims, losses, damages, costs, expenses and other liabilities

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incurred by the Requesting Party or Requesting Party's Group as a result of the negligence of the Contractor or Contractor's Group.

- (d) Notwithstanding any other provision contained in this Contract to the contrary, neither party shall be liable to the other party for, and each party expressly waives and releases the other party and its subcontractors from and against, any punitive, indirect, special, exemplary or consequential damages of any kind including, without limitation, lost profits or loss of use, regardless of the cause and legal theory of recovery, including negligence, gross negligence or wilful misconduct of the party being released, even if the parties hereto have been advised of the possibility of such damages or loss or the damages were within the contemplation of, foreseen by or reasonably foreseeable by the parties.
- (e) The Contractor's liability for any loss, damage or delay sustained by the Requesting Party as a result of the Equipment being prevented from working shall be limited to suspension of hire, except where such loss, damage or delay has been caused solely by an act or omission of the Contractor or the Contractor's Group.
- (f) The Requesting Party shall be responsible for disposal of all oil and hazardous substances collected by the Contractor, 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, except as the Requesting Party's agent.
- (g) Nothing in this Contract shall prevent either party from limiting its liability at law.

9. Security

The Contractor may request adequate security which guarantees payment by the Requesting Party of *any sums, rates, charges due and any liabilities on the part of the Requesting Party to pay costs arising during the course of this contract which would be the responsibility of the Requesting Party* in accordance with the Contract terms. Such guarantee will be provided in a form acceptable to both parties within a reasonable time after the incident and may be subject to a fixed amount (where appropriate) and a fixed time limit for services. The Contractor agrees that *either* a letter of undertaking executed by the Requesting Party's P&I Club, *provided however that the P&I Club is a member of the International Group of P&I Clubs, or a guarantee from a bank or a financial institution* will be satisfactory as security for payment.

10. Health and Safety

The Contractor shall comply with and adhere to all applicable international, national and local regulations pertaining to health and safety.

11. Media and Confidentiality

- (a) The Requesting Party shall have exclusive responsibility for all media and press communications in connection with the incident. The Contractor shall refer all media and press enquiries to the Requesting Party and shall use reasonable efforts to try to prevent anybody connected with or purporting to represent the Contractor's Group from communicating - whether orally, in writing or by electronic means - any data, information, opinions or any other information of any kind whatsoever to any third party without the prior written approval of the Requesting Party.
- (b) The Requesting Party and the Contractor shall treat all non-public information and data generated as a result of the incident as confidential and shall not disclose such information or data to any third party without the prior written approval of the other, except as necessary for the performance of this contract (including the Requesting Party's exclusive responsibility for all media and press communications) and for the purposes of consultation with their respective insurers or as may be required by law or for the purposes of legal disclosure.

12. Notices

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- (a) All notices given by either party or their agents to the other party or their agents in accordance with the provisions of this Contract shall be in writing.
- (b) For the purposes of this Contract, "in writing" shall mean any method of legible communication. A notice may be given by any effective means including, but not limited to, cable, telex, fax, e-mail, registered or recorded mail, or by personal service.

13. Severance

If by reason of any enactment or judgment any provision of this Contract shall be deemed or held to be illegal, void or unenforceable in whole or in part, all other provisions of this Contract shall be unaffected thereby and shall remain in full force and effect.

14. Entire Agreement

This Contract, including all annexes referenced herein and attached hereto, is the entire agreement of the parties, which supersedes all previous written or oral understandings and which may not be modified except by a written amendment signed by both parties.

15. Applicable law and settlement of dispute

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 14.

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ANNEX A

SCOPE OF WORK

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ANNEX B

PERSONNEL RATE AND SERVICES

ANNEX C

EQUIPMENT RATES AND PARTICULARS

ANNEX D

DISPERSANT CHARGES AND PARTICULARS

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