

## Annex XI of the VAC

### Incident Response Contract-Vessel-Private entities

**Procurement procedure: EMSA/CPNEG/1/2022**

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

Phase II – Invitation to Tender

#### **PART I**

##### **0. DEFINITIONS**

1. **Contract Form:** The form attached to this Incident Response Contract (Part II).
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 C.1 jointly and severally liable vis-à-vis the Requesting Party for the performance of this Incident Response Contract-Vessel.
4. **Contractor's Response Co-ordinator (CRC):** Deck officer designated by the Contractor for the supervision of the deployment and operation of the OSR equipment and co-ordination of the pollution response activities on board the ship according to the Nominee's instructions.
5. **Day(s):** Calendar day(s) of 24 hours.
6. **Dispersant:** Approved oil dispersant<sup>1</sup> if so provided with the Vessel as per annex A "Vessel info sheet" and in the quantity indicated by the Requesting Party as per the option in Box B of the Contract Form. If the quantity of Dispersant required is left blank, the Contractor is not obliged to provide Dispersant. The Vessel shall carry the dispersant application system if part of the equipment package as per annex A "Vessel info sheet" and if so chosen by the Requesting Party as per the option in Box B.
7. **Equipment:** The oil pollution response equipment carried on board the Vessel as per the option chosen by the Requesting Party in Box B of the Contract Form. The Requesting Party should choose the Equipment option required through stating "yes" in front of the relevant response option in the Contract Form.
8. **Nominee:** Person designated by the Requesting Party to manage the oil or other pollutant response services.
9. **Notice of Arrival:** Notice sent by the Contractor to the Requesting Party when the Vessel arrives at the Place of Delivery as per Box D.2 and is fully ready to perform the contractually required Services and Duties.
10. **Notice of Ending Operational Activities:** Notice sent by the Requesting Party to the Contractor indicating the date in which the assistance of the Vessel for the oil or other pollutant response services shall cease.
11. **Notice of Readiness:** Notice sent by the Contractor to the Requesting Party confirming that the Vessel is equipped as per the option chosen by the Requesting Party in Box B and

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

indicating the earliest possible date and time for leaving the Port of Departure as per Box C.2 to go to the Place of Delivery as per Box D.2.

12. **Notice of Redelivery:** Notice sent by the Contractor to the Requesting Party indicating the date and time of the arrival in the Place of Redelivery as per Box C.2.
13. **Off-hire:** The period of time during which payments of the hire rates and charges by the Requesting Party to the Contractor are suspended until the vessel comes back on hire.
14. **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.
15. **Place of Delivery:** The place or port indicated in Box D.2, mostly but not always the designated oil spill location where the Vessel will report on arrival.
16. **Place of Redelivery:** Place stated in Box C.2 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.
17. **Requesting Party:** person or persons stated in Box D.1 to which the Contractor agrees to render the oil pollution response services.
18. **Termination** The contract is terminated at the date and time stated in the Notice of Redelivery and no further payment of hire rates or other charges are due to the Contractor from the Requesting Party from that time.
19. **Time:** UTC. Any reference to time in this contract should be understood as UTC.
20. **Vessel:** The Vessel used to perform this Contract as identified in Box A and with the characteristics stated in annex A "Vessel info sheet".

The person(s) of Box D.1 which is represented for the purposes of the signature of this Incident Response 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 C.1, 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 equipped as per the option chosen by the Requesting Party in Box B of the Contract Form for the purposes of pollution response services for oil or other pollutants under the terms and conditions of this Incident Response Contract, 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. 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 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, its Nominee, or its insurers for, at least, a period of three years after the signature of this Contract by the last contracting party.
- 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 or Dispersant spraying;
  - will load and discharge as may be required all oil or other pollutant or other recovered contaminants.

## **II. PERIOD**

- II.1.** The Services and Duties under this Contract shall have to be performed and Fees, charges and Hire as per Chapter IV shall be due as from the time and date indicated in the Notice of Readiness conditioned to the following:
- a. this IRC is signed by the Contracting Parties, and
  - b. the Requesting Party has acknowledged receipt of the Notice of Readiness sent by the Contractor.
- II.2.** The Services and Duties shall be provided for a maximum period of 30 days exclusive of the time for cleaning the vessel. 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.** A Notice of Arrival shall only be sent by the Vessel once the fully fitted Vessel with all Equipment, where applicable Dispersant, and crew on board arrives at the Place of Delivery as indicated in Box D.2. The Notice of Arrival shall have to formally confirm that the Vessel is fully fitted with all Equipment and, where applicable Dispersant, as per the option chosen by the Requesting Party in Box B of the Contract Form and crew on board.  
No oil or other pollutant recovery or dispersant application services may be executed by the Vessel prior to the acceptance of the Notice of Arrival by the Requesting Party.
- II.4.** The providing of Services and Duties may at any time be ended by Notice of the Requesting Party. Upon receipt of the Notice of Ending Operational Activities the Vessel will end all its activities and with utmost despatch clean as per Article IV.2.7 and proceed to the Place of Redelivery as per Box C.2 and the Notice of Redelivery is sent by the Vessel.

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

- III.1.** The Requesting Party shall designate a Nominee who will be in charge of managing the oil or other pollutant response services.
- III.1.1.** The Contractor will follow the instructions of the Requesting Party or its Nominee and no action will be taken by the Contractor without the prior approval of the Requesting Party or its 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 Nominee which in its opinion could endanger its Vessel, the Crew and/or

passengers. In such case he has to inform the Nominee of its decision, the reasons and the possible consequences.

**III.1.3.** 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.1.4.** If the flashpoint of the oil to be recovered is below 60°C, the Vessel is not obliged to engage with actual recovery, in which case the Vessel will be on stand-by. If the Vessel and Equipment are however certified for recovery of oil with a flashpoint below 60° and, always subject to the decision of the Master as per article III.1.2, the Vessel should undertake to engage with actual recovery operations.

**III.2.** The CRC designated and paid by the Contractor, with knowledge of the English language, will coordinate the Pollution Response Activities on board according to the Nominee'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. The CRC shall regularly confer and consult with the Requesting Party designated Nominee concerning the nature of the incident, necessary response activities and progress of the response.

**III.3.** The Vessel shall only give a valid Notice of Readiness and Notice of Arrival for the requested operation to the Requesting Party if functioning Equipment and where applicable Dispersant is on board, but is not obliged to provide additional skimmers, booms, hoses and lightering systems which do not belong to its Equipment.

**III.4.** All damages or losses sustained by the Equipment will be for the sole account of the Contractor unless he can prove that the damages or losses are only a result of the direct instructions of the Requesting Party or its Nominee in which case 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 Requesting Party or its Nominee from the time of its arrival at the Place of Delivery as provided for in Box D.2 and after giving Notice of Arrival to the Requesting Party or its Nominee until the Vessel is relieved from its duties by the Requesting Party or its Nominee.

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

The Requesting Party and its Nominee shall ensure 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 or other pollutant as required under this Contract.

**III.7.** The Vessel shall inform the Requesting Party or its Nominee in case:

(a) the operational efficiency of the Vessel declines for whatever reason,

- (b) when services required by the Requesting Party or its Nominee do not correspond with the Vessel's capabilities,
- (c) when there is no any recoverable oil or other pollutant traceable or in the case of dispersant application, no longer any treatable oil or other pollutant.

After receipt of information referred to under subclauses a, b or c above, and without prejudice to Article II.4 the Requesting Party or its Nominee shall officially declare to the Contractor that at a defined date the assistance of the Vessel will end through a Notice of Ending Operational Activities, or will propose the prolongation of the Contract for other purposes within the scope of the relevant marine pollution response services where the Vessel could further be effectively utilised.

**III.8.** If the Vessel engaged in service under this Contract 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 from performing the service required by the Requesting Party or its Nominee, then the Vessel shall be off-hire as long as that situation persists without prejudice to the possibility of the Requesting Party or its Nominee to terminate the Contract as per article XVIII.1 (d).

**III.9.** The Contractor may at its cost and risk replace at any time the Vessel or an Equipment which cannot be repaired on board by any other Vessel which is suitable for the purpose of this Contract or like-for-like Equipment at a time and condition which is acceptable to the Requesting Party. Thereafter the replacement Vessel or like-for-like Equipment 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 substitute vessel or equipment. The time lost for replacing the Vessel or the Equipment will be time off-hire.

**III.10.** Should the Contractor fail to perform its 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.

#### **IV. RATES, CHARGES, INVOICING AND PAYMENTS**

**IV.1.** The Contractor is entitled to receive payment of the following daily rates provided in Box B depending on the response options chosen by the Requesting Party. The daily rates are earned per calendar day of 24 hours or pro-rata:

(a) **Daily rate in use:** The Contractor is entitled to receive the Daily rate in use for the Vessel and the Equipment from the time and date indicated in the Notice of Readiness, provided the conditions under article II.1 have been fulfilled until the Notice of Ending Operational Activities is sent by the Requesting Party to the Contractor, excluding the entire period as defined in points (b) and (c) below. When several systems are part of the Equipment option chosen by the Requesting Party, the Equipment system is deemed in use in respect of any period during which it is actively engaged in the provision of the services that is: deployed in water for sweeping arms, booms and skimmers or engaged in the spraying of dispersant for dispersant application system.

(b) **Daily rate in stand-by<sup>2</sup>:** The Contractor will not be entitled to the Daily rate in use but will be entitled to the Daily rate in stand-by provided that:

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<sup>2</sup> As defined in Annex 2 and its footnotes of the Memorandum of Understanding relating to the hire rates and charges of EMSA Pollution Response Assets agreed between EMSA, the IG and the IOPC Funds dated 27 December 2018.

- The Vessel is not able to perform the oil or other pollutant response services or any other mission assigned by the Requesting Party or its Nominee 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 to Article II.4, the Vessel is ordered by the Requesting Party or its 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 is at the selected reception facility waiting for discharging the recovered oil or other pollutant, 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.

(c) **Daily rate while sailing:** where the Equipment is on stand-by and the Vessel in use. The Contractor will be entitled to the Daily rate while sailing for the period the Vessel is:

- Sailing to the Place of Delivery or to the spill site, or
- Sailing from the spill site to the selected reception facility for discharging the recovered oil or other pollutant, or
- At the selected reception facility discharging all recovered oil or other pollutant, or
- After having discharged all recovered oil or other pollutant sailing back from the selected reception facility to the spill site, or
- Sailing to the cleaning facilities after a Notice of Ending Operational Activities is sent by the Requesting Party to the Contractor, or
- Sailing from the cleaning facilities to the Place of Redelivery and until the Notice of Redelivery is sent by the Contractor to the Requesting Party.

(d) The Vessel should maintain accurate records of periods when the vessel is "in-use", "in stand-by" and "sailing". The frequency with which these records are made available to the Requesting Party should be agreed between the Parties.

**IV.2.** Besides the daily rates and where applicable the Dispersant purchase costs, the Requesting Party will pay only for the following costs:

1. all fuel and lubricants consumed during periods in which the Contractor is entitled for the Daily rates based on actual consumption and with respect to fuel oil, based on fuel oil tank soundings or tank level meter readings. Indication of fuel consumption per 24 hours is stated in the Vessel Info Sheet (Annex A);
2. all port charges, (un)berthing, lightening charges and agents charges during periods in which the Contractor is entitled for the Daily rates;
3. all pilotage and boatmen and canal steersmen during periods in which the Contractor is entitled for the Daily rates;
4. any tug assistance during periods in which the Contractor is entitled for the Daily rates;
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 the Equipment required for or arising out of the Contract;
6. consular charges appertaining to the Master, Officers and Crew of the Vessel;

7. costs arising from the cleaning of the Vessel and of the Equipment caused by the oil or other pollutant response services 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 is proposed by the contractor but to be agreed by the Requesting Party. With respect to the quality of cleaning, the Vessel hull should be cleaned to a level of cleanliness that would prevent contamination in future operations including oil spill drills, the Vessel tanks should be cleaned to a level of cleanliness that would prevent contamination of future cargoes. The level of effort to clean the Vessel should take account of the state of the Vessel at the point when the Notice of Arrival is issued.

**IV.3.** The Requesting Party shall pay Dispersant purchase costs for the quantity of Dispersant required by the Requesting Party as per Box B of the Contract Form. The full quantity of Dispersant required as per Box B transferred from IBCs to the Vessel portable tank will be considered as having been consumed and will be charged.

#### **IV.4. INVOICING**

**IV.4.1.** Invoices may be issued weekly or at the expiration or earlier termination of this Contract. Invoices shall be issued in Euro.

**IV.4.2.** In respect of reimbursable expenses incurred in currencies other than Euro, the rate of exchange into Euro shall be the monthly accounting exchange rate, established by the Commission and published on the website: [http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/inforeuro/inforeuro\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm), applicable on the date of the Contractor's invoice.

#### **IV.5. PAYMENTS**

**IV.5.1.** The Requesting Party must pay within 30 days from receipt of the invoice. Invoices shall be transmitted to the Requesting Party in accordance with article V.

**IV.5.2.** Payments shall be deemed to have been made on the date on which the Requesting Party's bank account is debited.

**IV.5.3.** Payments shall be made to the Contractor's bank account denominated in Euro, identified as in Box C.3. Article XII.2 shall apply in case of late payments.

**IV.5.4.** Where an invoice is disputed:

- (a) The Requesting Party shall notify the Contractor before the due payment date and pay the undisputed portion of the invoice.
- (b) When notifying the Contractor, the Requesting Party shall specify the reason for withholding payment of the disputed portion of the invoice. The disputed portion which may be withheld shall not be more than twenty per cent (20%) of the invoiced amount.
- (c) Interest will be chargeable on the disputed portion of the invoice where resolved in favour of the Contractor as per article XII.2 for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment.
- (d) Should the Contractor prove the validity of the disputed portion of the invoice, balance payment together with any interest payable shall be paid by the Requesting Party within three (3) working days of a demand to do so.
- (e) Should the Requesting Party prove the validity of its claim, a credit note shall be issued by the Contractor. As applicable, in case of overpayment by the Requesting

Party, a debit note shall be issued by the Requesting Party. The debit note shall be paid within three (3) working days of its receipt by the Contractor. If payment has not been made by the due date, the Requesting Party may after informing the Contractor in writing recover the amounts due by offsetting them against any amounts owed to the Contractor by the Requesting Party.

#### **IV.6. FINANCIAL SECURITY**

The Contractor may request adequate security for payment from the Requesting Party of the reasonably anticipated charges which may be incurred by the Contractor once a response has been activated which guarantees payment by the Requesting Party of invoices relating to the Contractor's services under this Contract in accordance with the Contract terms. Such financial security will be provided in a form acceptable to both parties within a reasonable time after request and may be subject to a fixed Euro amount and a fixed time limit for services. The Contractor agrees that a Letter of Undertaking executed by the Requesting Party's P&I Club will be satisfactory as security for payment provided however that the P&I Club is a member of the International Group of P&I Clubs.

#### **IV.7. ASSIGNMENT**

Neither party shall assign the rights and obligations arising from the contract without prior written approval of the other party, which approval shall not be unreasonably withheld or delayed.

#### **V. ADMINISTRATIVE PROVISIONS**

Any communication relating to the Contract shall be:

- (a) in writing in paper or electronic format in the language of the Contract;
- (b) addressed according to Boxes C.1 and D.1 of the Contract Form;
- (c) be sent by mail, fax or e-mail.

If a party requests written confirmation of an email within a reasonable time, the other party must provide an original signed paper version of the communication as soon as possible.

The parties agree that any communication made by email has full legal effect and is admissible as evidence in judicial proceedings provided that the receiving party has acknowledged receipt of the e-mail.

#### **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.

The Requesting Party and/or his Nominee should be afforded the opportunity to undertake on hire/off hire surveys. Any audit/check should not delay the mobilisation process.

**VI.2.** The Requesting Party will make certain that all authorisations required have been obtained in order for the Vessel to be allowed to carry out oil or other pollutant recovery and storage and discharging and, where applicable, Dispersant application services under national regulations without encumbrances.

**VI.3.** The Contractor shall provide on board of the vessel suitable accommodation, including meals and bedding for one Nominee designated by the Requesting Party at 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 CRC, 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 in compliance with all applicable international, Union and flag State labour and health and safety regulations.

## **VIII. SALVAGE**

On the strict condition that the Requesting Party 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 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 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 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 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 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 Party shall not be liable or responsible for loss of or damage to the property of the Contractor or of its contractors, including the Vessel, or for personal injury or death of the employees of the Contractor or of its 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 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 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 of personal injury or death of the employees of the Requesting Party, even if injury or death is

caused wholly or partially by the act, neglect or default of the Contractor, its employees, 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 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 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.

### **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 contractors and sub-contractors, 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 to Article X of this Contract (Wreck Removal) 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 resulting from the pollution response services executed under this contract and the cost of clean-up or control thereof except where such claims, costs, expenses, actions, proceedings, suits, demands and liabilities are caused wholly or partially by the negligence of the Contractor.

### **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 Party shall indemnify and hold the Contractor free from such claims.

## **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 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 three and a half percentage points 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 or its Nominee. The Contractor has no title whatsoever on the recovered oil or other pollutants and waives all liens, property rights or rights of securitisation 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 or its Nominee.

### **XIV. CONFIDENTIALITY**

**XIV.1.** Unless required by the applicable law or judicial order, 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 its 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, 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 its contractual obligations owing to force majeure, the Contractor shall have the right to remuneration only for services actually executed or the time the Vessel was effectively available and the Requesting Party or its Nominee shall have the right to terminate the contract as per article XVIII.3.

**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, he shall none the less remain bound by his obligations to the Requesting Party under the Contract and shall bear exclusive liability for proper performance of the Contract.

## **XVIII EARLY TERMINATION**

### **XVIII.1. For cause**

Either Party may terminate the Contract in the following circumstances:

- (a) 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;
- (b) 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;
- (c) 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;
- (d) If, at any time during the term of this Contract, a breakdown of the Equipment or Vessel, results in the Contractor being unable to perform their obligations hereunder for a period exceeding three days and the Contractor is not able to provide a substitute Vessel or Equipment in accordance with article III.9;
- (e) Where either party is being wound up, is having its 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. Default**

If either party is in breach of its obligations under this Contract, the other party shall have the right to terminate this Contract.

**XVIII.3.** 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 one fifth of the period laid down in Article II.2.

**XVIII.4.** Termination shall take effect on the date and time stated in the Notice of Redelivery. Termination shall not relieve the Requesting Party of any obligation for payments due up to the date of termination including payment of the costs arising from the cleaning of the Vessel and of the Equipment in accordance with article IV.2 (7) and any applicable terms of this Contract shall continue until such redelivery has been completed.

On receipt of the termination notice, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce its commitments.

**XIX. APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

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.



## INCIDENT RESPONSE CONTRACT (IRC) - VESSEL FORM (PART II)

### A. VESSEL

*for vessel, equipment and dispersant specifications see Annex A*

<b>Name:</b>	
<b>Flag:</b>	
<b>IMO Number:</b>	
<b>Place of Registry:</b>	
<b>Registered Owner (Name / IMO Number):</b>	
<b>ISM Technical Manager (Name / IMO Number):</b>	

### B. RESPONSE OPTIONS AND HIRE RATES

Mechanical recovery			Daily Rate (EUR per day pro rata)		
			In use	Sailing	Stand-by
Vessel manned and equipped with:  I - Rigid sweeping arms  II - Offshore boom (2 x 250m) & Skimmer		<b>I - in use</b> II - in stand-by 			
		I - in stand-by <b>II - in use</b> 			

### C. CONTRACTOR

#### C.1. Contact Details *for Notices, Invoices and other communications required to be given to the Contractor*

<b>Name:</b>	
<b>Full Address:</b>	
<b>Tel.:</b>	
<b>Fax:</b>	
<b>Email:</b>	
<b>Mobile responsible person:</b>	

#### C.2. Operational Details

<b>Port of Departure:</b>	
<b>Estimated Date and Time to be Ready to Sail:</b>	
<b>Place of Redelivery:</b>	

#### C.3. Financial Details: Bank Account

<b>Bank Name:</b>	
<b>Account Holder:</b>	
<b>Full IBAN:</b>	
<b>Address of the branch:</b>	

#### C.4. Court for Disputes

<b>Court:</b>	
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D. REQUESTING PARTY	
<b>D.1. Contact Details</b> <i>for Notices, Invoices and other communications required to be given to the Requesting Party</i>	
Name:	
Full Address:	
Tel. (24/7):	
Fax:	
E-mail:	
Mobile:	
<b>D.2. Place of Delivery</b>	
Place:	

E. SIGNATURES			
<b>E.1. Contractor Representative:</b>		<b>E.2. Requesting Party Representative:</b>	
Name:		Name:	
Position:		Position:	
Place:		Place:	
Date:		Date:	
Time (UTC):		Time (UTC):	
Signature:		Signature:	

## **ANNEX A**

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