



# RESPONSECON

## INTERNATIONAL SPILL RESPONSE CONTRACT

(FOR USE OUTSIDE THE UNITED STATES OF AMERICA)

### 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*  <i>*If option (b) is chosen, Clause 6, Subclause 7(b)(vi) and Subclause 8(e) will apply.</i>	6. Nature of services/scope of work (see Annex A)
7. Personnel rates (see Annex B)	8. Equipment rates and particulars (see Annex C)
9. Basis of hire (daily rate)	10. Frequency of invoicing
11. Payment details  Currency: Bank:  Address:  Account Number: Account Name: IBAN: BIC/Swift:	12. Expedited payment amount
	13. Interest rate
14. Dispute Resolution Clause (state alternative 15(a), (b) or (c); if (b) is agreed, state Singapore or English law; if (c) is agreed, state governing law and place of arbitration)	
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 and C. 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 and C 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 Rates). References to Personnel shall not be applicable if, in accordance with Box 5(b), the parties have agreed that the contract shall be for Equipment hire 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.
- (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 and the Requesting Party shall pay to the Contractor within three (3) working days of the date of commencement of services/mobilisation stated in Box 2, eighty per cent (80%) of the estimated mobilisation charges, with the final balance to be paid within three (3) working days of the agreement between the parties of the sums due as determined in accordance with Subclause 5(c).
- (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.

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- (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) Payment of demobilisation charges shall be made in accordance with Clause 4 (Invoicing).

**3. Warranty and Permits**

Save where in accordance with Box 5(b) and Clause 6 the contract is for Equipment hire only:

- (a) the Contractor shall deliver the Equipment in accordance with the description in Annex A (Scope of Work) and shall warrant its condition, quality and fitness for purpose; and
- (b) the Contractor shall be responsible for obtaining and maintaining at its own expense (subject to reimbursement by the Requesting Party) any licences, approvals, authorisations, permits or visas required for the Equipment and Personnel to be deployed to and/or employed for the services agreed. The Requesting Party shall provide the Contractor with all reasonable assistance in connection with the obtaining and maintaining of such licences, approvals, authorisations, permits or visas.

**4. Invoicing**

- (a) All invoices shall be issued at the frequency stated in Box 10 and in the currency stated in Box 11. In respect of reimbursable expenses incurred in currencies other than the contract currency, 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.
- (c) The Contractor shall issue invoices for payments due under this Contract as stated in Box 10 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 stated in Box 13 or, if left blank, at an annual rate of four per cent (4%) above the one month interbank offered rate in London (LIBOR) on the Due Date.
- (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.

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(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 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 and Personnel in respect of any subsequent late payment under this Contract.

## **5. Charges**

The Requesting Party agrees to pay the Contractor the following charges in consideration of the Contractor providing the Equipment and Personnel in accordance with Box 5(a) or Equipment only in accordance with Box 5(b):

- (a) Hire - The hire as stated in Box 9. Hire charges shall be calculated according to hire rates agreed between the Requesting Party and the Contractor and stated in Annex B (Personnel Rates) and Annex C (Equipment Rates and Particulars). Hire 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 includes reasonable personal protective equipment necessary to perform the services. Hire of Equipment includes normal wear and tear. Payment of hire for Equipment will, however, cease if it is lost or becomes a constructive total loss or if Clause 7 (Early Termination) applies.
- (b) 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 the reasonable replacement cost within five (5) days of presentation of invoice.
- (c) Mobilisation and demobilisation charges - Reasonable mobilisation and demobilisation charges will be paid to the Contractor by the Requesting Party in accordance with Subclause 2(a) upon presentation of full supporting documentation.
- (d) \*Standby rates - The standby rates agreed between the Requesting Party and the Contractor 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.
- (e) Cleaning and rehabilitation costs - The cost of cleaning and rehabilitating Equipment hired hereunder. For this purpose, third party materials and services will be charged at cost plus fifteen per cent (15%), and the Personnel involved shall be charged at the agreed rate in Annex B (Personnel Rates).
- (f) \*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, all transport/travel costs, reasonable accommodation and living expenses incurred in respect of the Personnel and 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. The Contractor shall be entitled to charge the Requesting Party for all such costs at cost plus fifteen per cent (15%).

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- (g) 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 and Personnel.
- (i) 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 provided under this Contract 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 a letter of undertaking executed by the Requesting Party's P&I Club or its financial security provider will be satisfactory as security for payment.

*\*Subclauses (d) and (f) do not apply if, in accordance with Box 5(b), the parties have agreed that the contract shall be for Equipment hire only.*

**\*6. Equipment Hire**

Where the Requesting Party requests the Contractor to provide equipment only, the following provisions will apply:

- (a) The Contractor shall deliver the Equipment in accordance with the description in Annex C (Equipment Rates 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. 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 and following which the Requesting Party's obligations for the Equipment under this Clause shall cease together with the payment of hire.
- (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;

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- (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;
- (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.

*\*Clause 6 shall apply if, in accordance with Box 5(b), the parties have agreed that the contract shall be for Equipment hire only.*

## **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.

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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;
- 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 – Where Box 5(b) (Equipment hire only) has been chosen and 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

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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 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.

*\*Subclause 8(e) shall apply if, in accordance with Box 5(b), the parties have agreed that the contract shall be for Equipment hire only.*

**9. Insurance**

- (a) The Requesting Party shall procure and maintain in effect for the contract period, with reputable insurers, adequate insurance to cover its liabilities hereunder. Reasonable deductibles are acceptable and shall be for the Requesting Party's account.
- (b) Where permissible under the terms of the Requesting Party's insurance policies, the Contractor shall be named as co-insured, and the Requesting Party shall cause the insurers to waive subrogation rights against the Contractor.
- (c) The Contractor shall procure and maintain in effect for the contract period, with reputable insurers, adequate insurance to cover its liabilities hereunder. Reasonable deductibles are acceptable and shall be for the Contractor's account.
- (d) Prior to delivery of the Equipment and Personnel, each party shall provide the other with copies of its certificates of insurance which provide sufficient information to verify that the parties have complied with the insurance requirements of this Contract.



**10. Health and Safety**

The Contractor's Group 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**

- (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. Dispute Resolution Clause**

- (a) \*This Contract shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Contract shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within fourteen (14) calendar days of that notice and stating that it will appoint its arbitrator

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as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the fourteen (14) days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if the arbitrator had been appointed by agreement.

Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of USD 100,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

- (b) \*This Contract shall be governed by and construed in accordance with Singapore/ English\*\* law.

Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Singapore International Arbitration Act (Chapter 143A) and any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

The arbitration shall be conducted in accordance with the Arbitration Rules of the Singapore Chamber of Maritime Arbitration (SCMA) current at the time when the arbitration proceedings are commenced.

The reference to arbitration of disputes under this Clause shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator and give notice that it has done so within fourteen (14) calendar days of that notice and stating that it will appoint its own arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) days specified. If the other party does not give notice that it has done so within the fourteen (14) days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if the arbitrator had been appointed by agreement.

Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of USD 75,000 (or such other sum as the parties may agree), the arbitration shall be conducted before a single arbitrator in accordance with the SCMA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

- (c) \*This Contract shall be governed by and construed in accordance with the laws of the place mutually agreed by the parties and any dispute arising out of or in connection with this Contract shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there.
- (d) In the case of any dispute in respect of which arbitration has been commenced under Subclause (a), Subclause (b) or Subclause (c), the following shall apply:

Notwithstanding the agreement to arbitrate, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Contract.

In the case of a dispute in respect of which arbitration has been commenced under the above, the following shall apply:

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(i) A party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the "Mediation Notice") calling on the other party to agree to mediation.

(ii) The other party shall thereupon within fourteen (14) calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further fourteen (14) calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.

(iii) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties.

(iv) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interests.

(v) A party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.

(vi) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator's costs and expenses.

(vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.

*(Note: The parties should be aware that the mediation process may not necessarily interrupt time limits.)*

*\* Subclauses (a), (b), and (c) are alternatives; indicate alternative agreed in Box 14. If Box 14 is not filled in, Subclause (a) of this clause shall apply.*

*\*\* Singapore and English law are alternatives; if Subclause (b) is agreed also indicate choice of Singapore or English law. If neither or both are indicated, then English law shall apply by default.*

ANNEX A

SCOPE OF WORK

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ANNEX B

PERSONNEL RATES

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ANNEX C

EQUIPMENT RATES AND PARTICULARS

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## Conditions of Use for RESPONSECON and US RESPONSECON

BIMCO and ISCO are the authors of and have copyright in RESPONSECON and US RESPONSECON and have exclusive worldwide distribution rights. Use of these contracts is free of charge but is subject to acceptance of and compliance with the following conditions:

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