

MSRC

MARINE SPILL RESPONSE CORPORATION  
SERVICE AGREEMENT

STANDARD FORM OF WSMC MEMBER MSRC SERVICE AGREEMENT

as of December 16, 2013

between

the COMPANY,

a WSMC Member

and

MARINE SPILL RESPONSE CORPORATION,

a Tennessee nonprofit corporation

**MARINE SPILL RESPONSE CORPORATION  
SERVICE AGREEMENT**

**TABLE OF CONTENTS**

	Page Number
<b>PARTIES AND BACKGROUND</b> .....	1
<b>ARTICLES</b> .....	1
<b>ARTICLE I. CALL-OUT</b> .....	1
1.01 Call-Out of Resources .....	1
1.01(a) Alert.....	1
1.01(b) Call-Out Process .....	1
1.02 Deleted .....	1
1.03 Mobilizing MSRC Response Resources .....	1
<b>ARTICLE II. CAPABILITIES</b> .....	1
2.01. Resource Availability.....	2
2.01(a) Oil Spill Event Outside WSMC Operational Area or Not Involving a Covered Facility or Covered Vessel .....	2
2.01(b) Responder Immunity .....	2
2.01(c) Deleted .....	2
2.01(d) Conflicting Requests .....	2
2.02 Changes in Resources Offered.....	2
<b>ARTICLE III. ROLES AND PROCEDURES FOR RESPONSE PERFORMANCE</b> .....	2
3.01 Responsibilities of COMPANY and Covered Entity.....	2
3.01(a) General Management and Overall Direction .....	2
3.01(b) Care of Resources .....	3

3.02	Responsibilities of MSRC .....	3
3.02(a)	Operational Supervision.....	3
3.02(b)	Initial Coordination and Communication .....	3
3.02(c)	Governmental Directions .....	3
3.03	Response Methods .....	3
3.04	Covered Entity Directions.....	3
3.05	Subcontractors.....	3
3.06	Safety .....	4
3.06(a)	MSRC and its Subcontractors .....	4
3.06(b)	Covered Entity and its Subcontractors.....	4
3.06(c)	Reasonable Interpretation.....	4
3.07	Recovered Product or Waste.....	4
3.07(a)	Definitions.....	4
3.07(b)	Allocation of Responsibility .....	5
3.07(c)	Covered Entity's Responsibility .....	5
3.07(d)	MSRC Actions .....	5
3.08	Information Coordination and Control .....	5
	<b>ARTICLE IV. LIMITS ON WHAT IS OFFERED .....</b>	<b>5</b>
4.01	Excluded Services .....	5
4.02	Limits on Use by Covered Entity.....	5
4.03	Personnel with Equipment .....	6
4.04	Acknowledgment of Representations and Conditions.....	6
4.04(a)	Representations and Warranties True and Correct.....	6
4.04(b)	Conditions to Response Satisfied .....	6
	<b>ARTICLE V. TERMINATION OR SUSPENSION OF</b>	
	<b>RESOURCES .....</b>	<b>6</b>
5.01	Suspension of MSRC's Obligation to Provide Resources .....	6
5.02	Return of Equipment.....	6

<b>ARTICLE VI. RESPONSE PREPARATION .....</b>	<b>7</b>
6.01 Readiness and Response Certification .....	7
6.02 Exercises and Response Plan Development by Covered Entity .....	7
6.02(a) Exercises .....	7
6.02(b) Response Plan Development.....	7
6.03 Operations and Authorized Representative .....	7
 <b>ARTICLE VII. COMPENSATION AND PAYMENT .....</b>	 <b>8</b>
7.01 Compensation and Payment.....	8
7.01(a) Invoicing .....	8
7.01(b) Invoice Disputes.....	8
7.01(c) Payment.....	8
7.02 Return of MSRC Response Equipment .....	8
7.03 Audit .....	9
 <b>ARTICLE VIII. REPRESENTATIONS, WARRANTIES, AND GENERAL TERMS AND CONDITIONS .....</b>	 <b>9</b>
8.01 Representations and Warranties.....	9
8.01(a) Validity and Enforceability .....	9
8.01(b) Capacity and Authority .....	9
8.01(c) No Restrictions.....	9
8.01(d) Due Organization .....	9
8.01(e) Financial Responsibility .....	9
8.01(f) MPA Membership .....	9
8.02 Independent Clean-up Operations.....	10
8.03 MSRC Employees.....	10
8.04 Compliance with Certain Executive Orders .....	10
8.05 Compliance with the Law for Subcontractors .....	10
8.06 Taxes .....	10

8.07 Maintenance of Records .....	10
<b>ARTICLE IX. ALLOCATION OF RISKS .....</b>	<b>10</b>
9.01 Standard of MSRC Performance .....	10
9.02 MSRC Status and Employees .....	11
9.03 Indemnification and Exclusive Remedy .....	11
9.03(a) Nature of Relationship .....	11
9.03(b) Cover Indemnification .....	11
9.03(c) Indemnified Claims .....	12
9.03(d) Excluded Obligations.....	12
9.03(e) Procedure for Indemnification With Respect to Third Party Claims .....	13
9.03(f) Procedure for Indemnification with Respect to Claims Other Than Third Party Claims.....	14
9.03(g) No Waiver .....	14
9.03(h) MSRC Integral Subcontractors as Indemnitees .....	14
9.03(i) Indemnity to MSRC Subcontractors .....	15
9.04 Covenant Not to Sue .....	15
9.04(a) Release of Liability .....	15
9.04(b) Other Claims .....	15
9.04(c) Exceptions .....	15
9.04(d) Breach .....	15
9.04(e) Full Force and Effect.....	15
9.05 Financial Responsibility.....	16
9.06 Insurance .....	16
9.06(a) MSRC Insurance .....	16
9.06(b) Subcontractor Insurance.....	16
9.06(c) Role of MSRC Insurance .....	16
9.07 No Third-Party Beneficiaries.....	16
<b>ARTICLE X. ARBITRATION AND DISPUTE RESOLUTION .....</b>	<b>16</b>
10.01 Inform and Negotiate .....	16
10.02 Arbitration.....	16

10.03	Continued Performance .....	16
10.04	Jurisdiction .....	17
10.05	Enforceable Award .....	17
10.06	Requirements for All Persons .....	17
<b>ARTICLE XI. TERM AND AMENDMENT OF AGREEMENT .....</b>		<b>17</b>
11.01	Full Termination by MSRC .....	17
11.01(a)	Events of Default.....	17
11.01(b)	MSRC Termination of Resources .....	17
11.01(c)	Reinstatement Option .....	17
11.02	Covered Entity Termination of Resources.....	17
11.03	Term of the Agreement .....	18
11.03(a)	Term .....	18
11.03(b)	MSRC Termination of Agreement.....	18
11.03(c)	COMPANY Termination of Agreement.....	18
11.03(d)	Provisions Surviving Termination .....	18
11.04	Successors and Assigns.....	18
11.05	Modification and Waiver .....	19
11.05(a)	Prior Understandings and Amendment .....	19
11.05(b)	Waiver.....	19
<b>ARTICLE XII. CONTRACT INTERPRETATION .....</b>		<b>19</b>
12.01	Notices .....	19
12.02	Counterparts and Severability .....	19
12.02(a)	Counterparts as Originals .....	19
12.02(b)	Enforceability not Impaired .....	19
12.03	Governing Law .....	19
12.04	Private Contract .....	19
12.05	Standard Contract.....	19

12.06 Usage.....	19
12.07 Definitions and Defined Terms.....	20
12.08 COMPANY and Covered Entity Obligations and Rights.....	20
12.08(a) Covered Entity Obligations.....	20
12.08(b) Company Performance of Covered Entity Obligations .....	20
12.08(c) Exercise of Rights .....	20
12.08(d) References, Employees and Contractors.....	20
12.08(e) No Rights to Enforce.....	20

## **LIST OF SCHEDULES**

<b>Schedule</b>	<b>Description (Date of Last Revision)</b>
Schedule 1	Defined Terms (12/16/13)
Schedule 2	Financial Responsibility (3/21/97)
Schedule 3	Resources and Rates (8/15/11)
Schedule 4	Acceptable Responder Immunity States (1/1/08)
Schedule 5	Form of Contractor Indemnification Agreement (Schedule 5 - 9/27/96; Schedule 5A -8/15/11)
Schedule 6	List of MSRC Integral Subcontractor Service Categories and Indemnified Integral Subcontractors (1/1/08)
Schedule 7	MSRC Insurance Coverage (1/1/08)
Schedule 8	List of P&I Clubs (1/1/08)
Schedule 9	Arbitration Provisions (1/1/08)



**MARINE SPILL RESPONSE  
CORPORATION  
SERVICE AGREEMENT**

**STANDARD FORM OF WSMC  
MEMBER MSRC SERVICE  
AGREEMENT**

*Parties and Background*

This is a **SERVICE AGREEMENT** with attached signature pages (the "Agreement") between the **COMPANY**, a WSMC member, and **MARINE SPILL RESPONSE CORPORATION**, a nonprofit corporation organized under the laws of Tennessee ("**MSRC**").

For convenience and simplicity, as between the **COMPANY** and Covered Entity (if any), references to the party for performance are made to a "Covered Entity," but the **COMPANY** can exercise the rights and will guarantee the performance of a Covered Entity as set forth more fully in this Agreement.

In consideration of the promises and the mutual covenants of this Agreement, **MSRC** and the **COMPANY** agree as follows:

*Articles*

**ARTICLE I CALLOUT**

**1.01. Call-Out of Resources**

**1.01(a). Alert.** A Covered Entity may alert **MSRC** of the possibility of a call-out under this Agreement. Upon receipt of an alert **MSRC** will review its readiness to respond in the event of a call-out under Section 1.01(b). Such alert does not (i) obligate the Covered Entity to pay **MSRC**'s rates or any costs incurred by **MSRC**, (ii) obligate **MSRC** to Mobilize any Resources, or (iii)

give the Covered Entity any rights to obtain any particular Resources, unless and until **MSRC** is called out in accordance with this Agreement.

**1.01(b). Call Out Process.** An Authorized Representative, or an individual **MSRC** reasonably believes is acting on behalf of a Covered Entity, may obtain and **MSRC** will provide any of the Resources available under this Agreement by calling an **MSRC** response manager through one of the telephone call-out numbers provided by **MSRC** from time to time by notice to the **COMPANY**. This Initial Callout Notice shall consist of a specific request for desired Resources to be provided from the list on Schedule 3 (or as otherwise made available by **MSRC** at the time of callout), in consultation with one of **MSRC**'s response managers. The Authorized Representative or the Incident Commander of a Covered Entity may add to or discontinue use of any Resources, in consultation with **MSRC**'s response manager, at any time. The Covered Entity and **MSRC** will document the Resources requested and provided. If **MSRC** Subcontractors are required to provide the requested Resources, **MSRC** will call out and supervise those **MSRC** Subcontractors, unless and until other arrangements are made as described in Section 3.04. Part II of Schedule 3 contains the special terms and conditions and call out procedures for **MSRC** support for transfer operations requiring "Average Most Probable Discharge" response capability under OPA.

**1.02. Deleted.**

**1.03. Mobilizing MSRC Response Resources.** As soon as practicable under the circumstances after **MSRC** receives an Initial Call-Out Notice or subsequent change to a request, **MSRC** will Mobilize the requested Resources including **MSRC** Subcontractors.

## **ARTICLE II. CAPABILITIES**

**2.01. Resource Availability.** Except as otherwise directed by governmental authorities, agreed by mutual consent or as described below, Resources are provided to the **COMPANY** and others on a first-come/first-served basis. Any of the Resources can be requested for any Spill Event, subject to the following restrictions and qualifications, as applicable:

**2.01(a). Oil Spill Event outside WSMC Operational Area or Not Involving a Covered Facility or Covered Vessel.**

This Service Agreement is for Spill Events where the responsible party is a WSMC-covered vessel operating in the WSMC Operational Area and covered by the WSMC Umbrella Plan. **MSRC** will not provide Resources under this Service Agreement for other Spill Events. However, if **MSRC** becomes involved in a response outside the WSMC Operational Area (due to spill migration or any other reason), or involving a non-Covered Facility or non-Covered Vessel, that response will be governed by the terms and conditions of this Agreement.

**2.01(b). Responder Immunity.** If at any time Responder Immunity is not available for a Spill Event, **MSRC** may withdraw, or decline to provide, **MSRC** Response Personnel or any Resources requiring such **MSRC** Response Personnel, unless other arrangements acceptable to **MSRC** in its sole discretion are made to offset any additional legal and financial risk that may result.

**2.01(c). Deleted.**

**2.01(d). Conflicting Requests.** If the Covered Entity and some other person with whom **MSRC** has a contract both desire the same Resources or otherwise have conflicting requests, **MSRC** will immediately notify and consult with each of the respective incident commanders regarding the conflict. **MSRC** will continue to follow a first-come/first-served approach unless and until it receives timely non-conflicting directions from the incident commanders to redirect Resources or activities. If, after such notice and consultation the conflicting parties still do not agree, **MSRC** will follow the relevant FOSC(s)' non-conflicting directions, if any.

**2.02. Changes in Resources Offered.**

**MSRC** will periodically update Schedule 3 to reflect changes in the Resources offered under this Agreement, and will give prompt notice to the **COMPANY** in advance where practicable of any significant reduction in response capability.

## **ARTICLE III ROLES AND PROCEDURES FOR RESPONSE PERFORMANCE**

**3.01 Responsibilities of the COMPANY and Covered Entity**

**3.01(a) General Management and Overall Direction.** Subject to the power and authority of Governmental Bodies, the Covered Entity will provide general management and overall direction and control of all Response Activities under this Agreement. The Covered Entity shall designate an Incident Commander, who shall initially be WSMC unless otherwise designated, and who shall be in frequent communication with **MSRC** while **MSRC** is providing Resources under this Agreement. The designated Incident Commander will advise **MSRC** in writing of any non-apparent limitations and restrictions

on the authority of the Covered Entity's employees, contractors, and agents to authorize and direct Response Activities of **MSRC** and **MSRC** Subcontractors. The Incident Commander will also advise **MSRC** of any directions or pertinent concerns of Governmental Bodies or the Unified Command that affect, or that may reasonably be expected to affect, any Resources or activities under this Agreement. All activities of **MSRC** under this Section 3.01(a) will be subject to the overall direction and control of the Covered Entity.

**3.01(b) Care of Resources.** The Covered Entity will use its best efforts to operate, maintain, and store any **MSRC** Response Equipment provided without associated **MSRC** Response Personnel in a careful and proper manner under the circumstances and in accordance with applicable law.

### **3.02 Responsibilities of MSRC**

**3.02(a) Operational Supervision.** **MSRC** will, within the limits of its available resources, at the Covered Entity's cost and expense, and in accordance with applicable law, provide operational supervision and coordination (i) for Resources, including any **MSRC** Subcontractor called out by **MSRC** prior to assignment under Section 3.04, and (ii) upon request of the Covered Entity, for any subcontractors called out by or assigned to the Covered Entity. Such supervision shall be in accordance with and subject to the overall direction and control of the Covered Entity's Incident Commander, as described in Section 3.01(a).

**3.02(b) Initial Coordination and Communication.** **MSRC** will, upon

request, provide an on-scene point of coordination and communication between the Covered Entity, **WSMC** or other designated Incident Commander and the **FOSC** and other response officials until the first to occur of: (i) 24 hours after initial callout; or (ii) the Covered Entity's response management team (as contemplated by 33 CFR 155.1035(d)) arrives on-scene and assumes direct management and control.

**3.02(c) Governmental Directions.** **MSRC** will immediately notify the Covered Entity's Incident Commander of any directions **MSRC** receives from any Governmental Body which **MSRC** believes may conflict with previous guidance or direction **MSRC** may have received from the Covered Entity. If the **FOSC** or **SOSC** gives directions to **MSRC** and **MSRC** does not receive timely directions from the Incident Commander, **MSRC** will follow those **FOSC** or **SOSC** directions. In any event, **MSRC** will immediately act on directions from any Governmental Body that relate to personnel safety, alleged violations of law or regulations, immediate endangerment of public health or the environment, or directions that constitute an order or command of a Governmental Body with apparent legal authority. **MSRC** will notify the Incident Commander of those directions and immediate actions as soon as practicable under the circumstances.

**3.03. Response Methods.** The Covered Entity will use its best efforts to direct Response Activities, and **MSRC** will provide Resources, in a manner that will (i) comply with all applicable law and (ii) maintain the applicable Responder Immunity of **MSRC** and **MSRC** Integral Subcontractors. Subject to the provisions of Section 3.02(c), **MSRC** will commit only those resources as are reasonably necessary to carry out the Response Activities or response objectives that **MSRC** has been

directed or authorized by the Covered Entity, an Authorized Representative, or Incident Commander to carry out, unless a specific resource(s) is requested by any one of the above-named entity or Persons.

### **3.04 Covered Entity Directions.**

When **MSRC** follows directions pursuant to the procedures of Section 3.02, those directions will be deemed to have been provided by the Covered Entity unless and until further or alternative directions are provided in accordance with the terms of this Agreement by the Covered Entity, its Authorized Representative, or Incident Commander.

**3.05 Subcontractors.** **MSRC** will retain **MSRC** Subcontractors under terms and conditions agreeable to the **MSRC** Subcontractors and **MSRC**. **MSRC** will provide to a Covered Entity, on request, a copy of **MSRC**'s contract with any **MSRC** Subcontractor (except for **MSRC** Integral Subcontractors). Upon request by a Covered Entity and consent of the **MSRC** Subcontractor, **MSRC** will assign the rights and obligations of **MSRC** under the subcontractor contract with respect to that Spill Event to the Covered Entity (except for **MSRC** Integral Subcontractors whose contracts are not assignable). Unless the Covered Entity directs otherwise, **MSRC** generally will provide, at the Covered Entity's expense in accordance with Schedule 3, support services necessary to sustain and support ongoing response operations of **MSRC** and **MSRC** Subcontractors, including food service, lodging, local transportation, safety and medical support, and other support for personnel, and fuel, docking, garage, hangar and similar support services for vessels,

aircraft, and vehicles. However, the Covered Entity must provide such support services if the response occurs outside **MSRC**'s Operational Area and **MSRC** does not have preexisting arrangements for such support services.

### **3.06 Safety**

**3.06(a) MSRC and its Subcontractors.** **MSRC** will observe and require its employees and **MSRC** Subcontractors to observe relevant safety laws and regulations and applicable **MSRC** safety policies and procedures. While on a Covered Entity's facilities or vessels, **MSRC** will comply and require its employees and **MSRC** Subcontractors to comply with the Covered Entity's specific instructions concerning safety policies and procedures provided to them by the Covered Entity. **MSRC** will report and require its employees and **MSRC** Subcontractors to report to the Covered Entity as promptly as practicable any accidents associated with the Resources resulting in or that reasonably could have resulted in serious personal injury, death, or material property damage or loss. At the completion of the applicable Response Activities by **MSRC** but in any event within the time required by law, **MSRC** will provide to the Covered Entity all Occupational Safety and Health Act (OSHA) injury and illness reports involving **MSRC** employees provided under this Agreement.

**3.06(b) Covered Entity and its subcontractors.** The Covered Entity will observe and require its employees and subcontractors to observe relevant safety laws and regulations and applicable Covered Entity safety policies and procedures. While on **MSRC**'s facilities or vessels, the Covered Entity will comply and require its employees and contractors to comply with **MSRC**'s specific instructions concerning safety

policies and procedures provided to them by **MSRC**. The Covered Entity will report and require its employees and subcontractors to report to **MSRC** as promptly as practicable any accidents associated with the Resources resulting in or that reasonably could have resulted in serious personal injury, death, or material property damage or loss. At the completion of the Response Activities by **MSRC** but in any event within the time required by law, the Covered Entity will provide to **MSRC** all OSHA injury or illness reports relating to the employees of the Covered Entity suffering injury or illness while on **MSRC's** facilities or vessels.

**3.06(c) Reasonable Interpretation.**

The obligations of **MSRC** and Covered Entity under this Section 3.06 are not intended to hold the parties to a standard that would be unreasonable under the actual conditions of a particular Discharge or threat of Discharge and the inherent difficulties and danger of emergency response. All **MSRC** and Covered Entity actions carried out consistently with the directions of the FOSC or SOSC, or with approval of applicable safety officials, will be deemed to be in compliance with this Section 3.06.

**3.07. Recovered Product or Waste.**

**3.07(a) Definitions.** For purposes of this section:

(i) "Management" means generation, recovery, transportation, storage, treatment, handling, disposal, disposition, possession, control, operation, ownership, importation, or exportation.

(ii) "Recovered Product or Waste" means contained or recovered Oil, oily waste, Hazardous Substances, or mixtures thereof, including contaminated properties.

(iii) "Charges" means license fees, import or export duties, tariffs, taxes, tipping fees or other costs or charges imposed by any Governmental Body with respect to Recovered Product or Waste.

**3.07(b) Allocation of Responsibility.** As between **MSRC** and the Covered Entity, the Covered Entity bears all risk, liability, and responsibility for and will perform or otherwise satisfy all duties and obligations and pay all Charges associated with the Management of Recovered Product or Waste.

**3.07(c) Covered Entity's Responsibilities.** The Covered Entity will promptly provide to **MSRC**:

(i) the necessary documentation for **MSRC** to deliver Recovered Product or Waste for transportation by others to the selected facilities;

(ii) appropriate instructions (orally and promptly confirmed in writing) for the Management of Recovered Product or Waste;

(iii) access to facilities, vessels or other receptacles for receipt or disposal of Recovered Product or Waste.

**3.07(d) MSRC Actions.** If the Covered Entity fails to meet any of its obligations in (a) or (b) within a reasonable time after request by **MSRC**, **MSRC** can:

(i) discontinue operations that depend on the Covered Entity's actions; or

(ii) make the appropriate arrangements for Management of Recovered Product or Waste in the name, on behalf, and at the sole cost and expense of, the Covered Entity.

**3.08. Information Coordination and Control.** Except as provided below or as otherwise directed or permitted by the Covered Entity, **MSRC** will maintain as confidential all information that (i) **MSRC** obtains from any Covered Entity, **MSRC** Subcontractor or other subcontractor participating in the Spill Event on behalf of the Covered Entity and (ii) the Covered Entity reasonably designates as confidential. **MSRC** will coordinate all media and public responses by **MSRC** with the Covered Entity, in advance of the responses if feasible. The Covered Entity may provide **MSRC** with a Public Information Plan ("PIP") that identifies the Covered Entity's specific processes, policies, and guidelines with respect to interaction with the public and the media, which the Covered Entity may amend or supplement from time to time. **MSRC** will follow those policies and guidelines and may reference that guidance in responding to any media inquiries. If the Covered Entity has not provided **MSRC** with a PIP, **MSRC** will handle inquiries using its judgment considering **MSRC**'s view of the overall best interests of the Covered Entity, restricting its remarks to factual information about the activities of **MSRC** and **MSRC** Subcontractors. In any event, **MSRC**'s officers also may respond to unsolicited inquiries by giving factual information about the activities of **MSRC** and **MSRC** Subcontractors, but will avoid speculation or expression of opinion about the Spill Event or the conduct of

the Covered Entity in response to the Spill Event.

#### **ARTICLE IV. LIMITS ON WHAT IS OFFERED**

**4.01. Excluded Services.** **MSRC**'s services do not include: (1) Disposal of waste, including recovered Oil, oily waste, and any Hazardous Substances; (2) Source control; (3) Wreck removal; (4) Natural resource damage assessment; (5) Third-party damage claims evaluation or adjustment; (6) Acting as Incident Commander for the Covered Entity; (7) Development or preparation of Response Plans; or (8) shoreline remediation performed in conjunction with the Natural Resource Trustees to restore the shoreline to its prespill condition, rather than as part of the cleaning process carried out under the oversight of the FOSC. However, if **MSRC** becomes involved in any of these activities, these activities will be governed by the terms and conditions of this Agreement.

**4.02. Limits on Use by Covered Entity.** The Resources provided under this Agreement will be used only for the Spill Event or exercise for which they were requested.

**4.03. Personnel with Equipment.** The Covered Entity may obtain the requested **MSRC** Response Equipment with or without **MSRC** Response Personnel, at the option of the Covered Entity. However, if **MSRC** reasonably believes, under the circumstances of a given event or request, that **MSRC** Response Personnel are required to ensure proper care, operation, and maintenance of certain **MSRC** Response Equipment as indicated in Schedule 3, **MSRC** may require that the **MSRC** Response Equipment be obtained only with the appropriate **MSRC** Response Personnel.

**4.04. Acknowledgment of Representations and Conditions.** The Initial Call-Out Notice will constitute an acknowledgment to **MSRC** that:

**4.04(a). Representations and Warranties True and Correct.** To the best actual knowledge of the **COMPANY**, each of the representations and warranties of the **COMPANY** set forth in Section 8.01 is true and correct in all material respects at the time of the Initial Call-Out Notice.

**4.04(b). Conditions to Response Satisfied.** The Covered Entity has made a good faith determination (based on the information reasonably available to the Covered Entity at the time) that the Spill Event meets or will meet each of the applicable restrictions or qualifications under Article II relating to the requested Resources, and the following criteria:

- (i) No Event of Default exists at the time of the Initial Call-Out Notice;
- (ii) For response in U.S. Jurisdictional Waters to a Discharge or threat of Discharge that equals or exceeds 1200 barrels, the FOSC is either Directing or monitoring the Response Activities at the Discharge or threat of Discharge where the Resources are to be deployed; and
- (iii) The Covered Entity will be able to take, on a timely basis, all actions required in Article VII.

## **ARTICLE V. TERMINATION or SUSPENSION OF RESOURCES**

**5.01. Suspension of MSRC's Obligation to Provide Resources.** **MSRC** may suspend its obligation to

provide Resources in whole or in part under this Agreement for a Spill Event upon written notice to the Covered Entity if and to the extent **MSRC** reasonably determines such suspension is necessary to protect **MSRC**'s material interests as a result of the occurrence and continuation of any of the following:

- (a) a Covered Entity instructs **MSRC** to act under this Agreement in a manner which would be illegal, unsafe, or in violation of or breach this Agreement in any material respect,
- (b) a Force Majeure Event,
- (c) the unavailability of Responder Immunity,
- (d) the unavailability of subcontractors essential to enable **MSRC** to provide requested Resources, or
- (e) the existence of other similar circumstances beyond **MSRC**'s reasonable control that materially adversely affect **MSRC**'s ability to perform as contemplated under this Agreement and that **MSRC** is unable with reasonable diligence to timely resolve or overcome.

**MSRC**'s suspension under this Section 5.01 of its obligation to provide specific Resources will not affect **MSRC**'s obligation to provide any other Resources. To the maximum extent practicable, except as otherwise provided in Section 11.01, **MSRC** will provide the notice of suspension at least three (3) days' prior to the effective date of such suspension.

**5.02. Return of Resources.** The Covered Entity will return all Resources upon completion of the response or earlier as required under this Agreement (i.e., upon an Event of Default or other termination). If

the Covered Entity does not return any Resource when required, **MSRC** may demand and take immediate lawful possession of the Resource by any lawful means, wherever it may be found, even if it is not in the Covered Entity's possession.

## **ARTICLE VI. RESPONSE PREPARATION**

### **6.01. Readiness and Response Certification**

**MSRC's** Oil Spill Removal Organization (“OSRO”) Classification RRI lists **MSRC** Response Personnel and **MSRC** Response Equipment that are available as Resources. **MSRC** has obtained and will maintain contractor USCG classification as a Class B, C, D, and E OSRO for Rivers/ Canals Environments, Inland Environments, and Oceans Environments (as defined by the USCG at the time of execution of this Agreement) for the capabilities described in its OSRO Classification RRI throughout the Operational Area. **MSRC's** OSRO Classification RRI is available from **MSRC** upon request. Upon the Covered Entity’s request, **MSRC** also will arrange, as set forth in and in accordance with the requirements of Part II of Schedule 3, for Resources on a standby basis to provide the coverage required under OPA for “Average Most Probable Discharge.”

### **6.02. Exercises and Response Plan Development by Covered Entity.**

**6.02(a). Exercises.** If Resources are available, a Covered Entity may obtain **MSRC's** participation in exercises in accordance with the payment terms in Part III of Schedule 3.

### **6.02(b). Response Plan Development.**

Each Covered Entity will have the sole responsibility for the content, accuracy, and adequacy of its Response Plans. A Covered Entity may name **MSRC** in the WSMC Umbrella Plan as a contracted resource in the WSMC Operational Area for a Covered Facility or Covered Vessel (named in the most current list provided under Section 6.03) only for those capabilities under Section 6.01 and only for an Oil Spill Event under the conditions described in Section 2.01, as applicable.

**MSRC** may not be named, under this Agreement, without **MSRC's** prior written consent, as a primary response contractor in any other Response Plan, or for any location outside the WSMC Operational Area, or as a "non-cascadable resource" in any location (meaning where **MSRC** Response Equipment would be restricted as to location rather than available for cascading to other locations).

**MSRC** may notify applicable Governmental Bodies periodically of the (i) names of the Covered Entities entitled to name **MSRC** in their Response Plans, and (ii) the capabilities available under this Agreement for which **MSRC** may be cited and the terms, conditions, and limitations of this Agreement. **MSRC** will provide a copy of any notice to a Governmental Body promptly to the **COMPANY**.

**MSRC** will not give advice on or approve the adequacy of any Response Plans. **MSRC** will provide, at the Covered Entity’s request, information about the Resources to assist the Covered Entity in citing **MSRC** capabilities in its Response Plans. **MSRC** has no obligation to review any Response Plan, and **MSRC** is not responsible for any descriptions of **MSRC** that do not conform to the requirements of this Agreement.



**6.03. Operations and Authorized Representative.** Upon the COMPANY's execution of this Agreement and from time to time afterwards, the COMPANY will provide MSRC with an accurate list of all Covered Entities and their addresses, and all Covered Facilities and Covered Vessels of each Covered Entity that intend to identify Resources in their Response Plans. The COMPANY designates WSMC as its Authorized Representative along with any Qualified Individual(s) named in any other response plan (or an Authorised Individual in the event of spill migration into Canadian waters and MSRC agrees to respond). Upon the COMPANY's execution of this Agreement and from time to time afterwards, each Covered Entity may provide MSRC with a list of additional Authorized Representatives for that Covered Entity, along with their addresses, and telephone and telecopy numbers. MSRC may periodically provide to the COMPANY MSRC's current list of Covered Entities, Covered Facilities and Covered Vessels, and Authorized Representatives, which the COMPANY will review, correct, and return promptly to MSRC.

## **ARTICLE VII. COMPENSATION AND PAYMENT**

**7.01. Compensation and Payment.** The Covered Entity will pay MSRC for Resources provided under this Agreement in accordance with the rates and terms in Part III of Schedule 3, as amended from time to time by MSRC upon sixty (60) days' prior written notice to the COMPANY, and as provided in this Section 7.01.

**7.01(a) Invoicing.** MSRC will invoice the Covered Entity at the address provided by the Covered Entity for Resources provided under this Agreement periodically as appropriate under the circumstances. In addition, MSRC will provide to the Covered Entity periodically MSRC's good faith estimate of the total costs (including demobilization costs) of Resources being provided for a Spill Event under this Agreement.

**7.01(b) Invoice Disputes.** The Covered Entity will notify MSRC promptly and in reasonable detail of any objection by the Covered Entity to any item or statement on an invoice or the sufficiency of any supporting documentation. Any disputes that cannot be resolved by mutual agreement will be resolved by arbitration pursuant to Article X. The Covered Entity may withhold payment of any amount reasonably disputed by the Covered Entity, subject to MSRC's rights under Section 7.01(c) below to require payment security. The payment of any invoiced amounts will not prejudice the Covered Entity's right, within one year following the date of invoice, to object to or question any invoiced amount. Any disputed amount shall accrue interest at the rate specified in Part III of Schedule 3 from the due date until paid to MSRC or refunded to the Covered Entity. If a dispute is resolved in favor of MSRC and the Covered Entity has withheld payment of the disputed amount, the Covered Entity will promptly pay to MSRC the disputed amount plus interest. If a dispute is resolved in favor of the Covered Entity and the Covered Entity has previously paid the disputed amount to MSRC, MSRC will promptly refund to the Covered Entity the disputed amount plus interest.

**7.01(c) Payment.** The Covered Entity will pay invoiced amounts by wire transfer of immediately available funds to an account

designated by **MSRC** within ten (10) Business Days after presentment of the invoice. If at any time **MSRC** reasonably believes that it is at risk of not receiving payment in the amount and within the time required by this Agreement, **MSRC** may require the Covered Entity to provide a cash deposit, a parent guaranty or insurance letter of undertaking, or other form of payment security reasonably acceptable to **MSRC** in an amount equal to all invoiced amounts due but unpaid plus **MSRC**'s good faith estimate of the total cost of Resources for the following fourteen (14) days of Response Activities, including demobilization costs, as a condition to **MSRC** providing or continuing to provide Resources.

**7.02. Return of MSRC Response**

**Equipment.** The Covered Entity will arrange and pay for cleaning, repairing, and replacing, as necessary, all **MSRC** Response Equipment provided under this Agreement so that the equipment is free of Oil and Hazardous Substances and in as good a condition, operating order, and repair as when initially provided by **MSRC**, except for ordinary wear and tear. If practicable, the Covered Entity will arrange for the cleaning of the **MSRC** Response Equipment within the Response Area. **MSRC** may clean and repair or replace the **MSRC** Response Equipment at the Covered Entity's expense if the Covered Entity fails to timely perform its obligations under this Section 7.02 or upon agreement between the Covered Entity and **MSRC** in other circumstances as appropriate.

**7.03 Audit.** The Covered Entity, or any firm of auditors designated by the Covered Entity, will have reasonable access to and the right to reproduce the Records necessary to verify the accuracy

of **MSRC**'s invoices, at times and under circumstances mutually acceptable to the Covered Entity and **MSRC** and at the Covered Entity's expense.

**ARTICLE VIII. REPRESENTATIONS, WARRANTIES, AND GENERAL TERMS AND CONDITIONS**

**8.01. Representations and Warranties.**

The **COMPANY** and **MSRC** each agree to give the other party written notice promptly if that party obtains actual knowledge that any representation or warranty made by that party in this Article VIII proves to be untrue or incorrect in any material respect. The **COMPANY** and **MSRC** each hereby represents and warrants about itself to the other at all times during the term of this Agreement as follows:

**8. 01(a). Validity and Enforceability.**

This Agreement has been duly executed and delivered by and to the **COMPANY** and **MSRC**, respectively, and constitutes a valid and binding obligation of the **COMPANY** and **MSRC**, respectively, enforceable against each in accordance with the Agreement's terms except as limited by applicable bankruptcy, insolvency, liquidation, rehabilitation, reorganization, or similar laws of general application relating to or affecting the rights and remedies of creditors or by general equitable principles.

**8. 01(b). Capacity and Authority.** Each of the **COMPANY** and **MSRC**, respectively, has full capacity and authority under law to contract with the other and to perform its respective obligations under this Agreement.

**8. 01(c). No Restrictions.** The execution, delivery, and, to the best of the actual knowledge of the executive officers of the **COMPANY**, performance by the **COMPANY** of its obligations and the

consummation by the **COMPANY** of the Agreement's transactions will not violate any provision of any **COMPANY** charter or organizational documents and will not violate any statute, law, or regulation of any jurisdiction existing as of this date where that violation would have a material adverse effect on the ability of the **COMPANY** to fulfill its obligations under this Agreement.

The execution, delivery, and, to the best of the actual knowledge of the executive officers of **MSRC**, performance by **MSRC** of its obligations and the consummation by **MSRC** of the Agreement's transactions will not violate any provision of any charter or organizational documents of **MSRC** and will not violate any statute, law, or regulation of any jurisdiction existing as of this date where that violation would have a material adverse effect on the ability of **MSRC** to fulfill its obligations under this Agreement.

**8.01(d). Due Organization.** The **COMPANY** is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it was organized. **MSRC** is a duly organized nonprofit corporation, validly existing and in good standing under the laws of Tennessee, and is duly qualified as a foreign corporation in all jurisdictions where the property owned or business transacted by it makes that qualification necessary.

**8.01(e). Financial Responsibility.** The **COMPANY** is in compliance with all of its obligations under Section 9.05.

**8.01(f). MPA Membership.** WSMC is an MPA Member in good standing and the **COMPANY** is, as a member of

WSMC, an affiliate of WSMC entitled to the benefits of membership in MPA pursuant to the MPA By-Laws.

**8.02. Independent Clean-up Operations.**

The Covered Entity may obtain services, equipment, and personnel to substitute for or supplement the Resources available under this Agreement, at the Covered Entity's sole direction, cost, and expense.

**8.03. MSRC Employees.** The Covered Entity may not select, discharge, or, except as required under Sections 3.01(a) and 3.06, control **MSRC**'s employees, servants, or representatives. **MSRC** will not employ any Person under eighteen (18) years old to perform potentially dangerous Response Activities under this Agreement. Upon the reasonable request of the Covered Entity, **MSRC** will remove an employee of **MSRC** or an **MSRC** Integral Subcontractor from Response Activities under this Agreement. **MSRC** will implement and maintain a drug and alcohol policy for **MSRC** in compliance with the law of the jurisdiction where **MSRC** personnel are stationed permanently. **MSRC** will provide a copy of its drug and alcohol policy to the **COMPANY** upon request.

**8.04. Compliance with Certain Executive Orders.**

To the extent that there is a final, non-appealable order stating that any Executive Orders relating to Government subcontractors apply to **MSRC** because of the contractual relationship between **MSRC** and the **COMPANY**, **MSRC** will comply with that final order. **MSRC** will not discriminate unlawfully in its hiring practices on the basis of race, religion, color, national origin, age, sex, mental or physical handicap, or veteran status.

**8.05. Compliance with the Law for Subcontractors.** **MSRC** will include in its contracts with **MSRC** Subcontractors a

provision requiring those subcontractors to abide by and observe all applicable Federal, state, and local laws, rules, and regulations.

**8.06. Taxes.** MSRC will pay all valid taxes and fees owed due to providing MSRC Response Equipment or MSRC Response Personnel under this Agreement. The Covered Entity will reimburse MSRC for any taxes paid by MSRC that are directly attributable to Resources provided under this Agreement. MSRC will cooperate with the directions of the Covered Entity to take all reasonable actions, at the cost and expense of the Covered Entity, to contest any taxes reimbursable by the Covered Entity.

**8.07. Maintenance of Records.** MSRC will maintain for three (3) years (or longer as required by law) all Records acquired or produced by MSRC in connection with providing Resources under this Agreement. MSRC will continue to maintain Records beyond that three (3) year period upon the Covered Entity's agreement to pay all costs of doing so.

## **ARTICLE IX. ALLOCATION OF RISKS**

**9.01. Standard of MSRC Performance.** The parties agree that the standard governing each of MSRC's obligations under this Agreement will be to use commercially reasonable efforts consistent with applicable spill response industry practices considering available information and available resources under circumstances, conditions (including weather and sea conditions), and factors existing at any relevant time. MSRC will provide Resources requested

by a Covered Entity pursuant to this Agreement in a manner that attempts to mitigate, remove, or clean up the applicable Discharge as effectively as practicable under existing circumstances.

Subject only to the first paragraph of this Section and Section 8.01, MSRC EXPRESSLY DISCLAIMS AND EXCLUDES, AND THE COMPANY ACKNOWLEDGES AND AGREES (ON BEHALF OF ITSELF AND EACH COVERED ENTITY), TO THIS DISCLAIMER AND EXCLUSION AND WAIVES (ON BEHALF OF ITSELF AND EACH COVERED ENTITY), ALL WARRANTIES, STANDARDS, AND GUARANTEES, WHETHER EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, WITH RESPECT TO ANY RESOURCES.

**9.02. MSRC Status and Employees.** Notwithstanding the Covered Entity's right to direct Resources under this Agreement, MSRC will be and will remain an independent contractor acting under the direction of the Covered Entity at all times during its provision of Resources under this Agreement. The parties do not intend this Agreement to create any other relationship between MSRC and the COMPANY or any Covered Entity, including that of master/servant, employer/employee, partners, or joint venturers.

### **9.03. INDEMNIFICATION AND EXCLUSIVE REMEDY.**

**9.03(a) Nature of Relationship.** MSRC and the COMPANY recognize and agree that, in connection with providing the Resources under this Agreement and in furtherance of the express public policy

goals underlying OPA and other laws to facilitate prompt and effective response to Spill Events: (a) **MSRC** is a nonprofit and tax-exempt corporation providing services to promote the welfare of the public; (b) any Resources provided under this Agreement are for the sole benefit of the **COMPANY** or the Covered Entity; (c) the extraordinary and emergency nature of providing Resources may require actions by **MSRC** and **MSRC** Integral Subcontractors that may give rise to a variety of Claims; (d) **MSRC** has based the charges for and availability of the Resources to be provided under this Agreement on the premise that the **COMPANY**, or anyone asserting rights on its behalf, will not challenge **MSRC**'s right to be indemnified as provided in this Section 9.03. Accordingly, **MSRC** and the **COMPANY** fully understand and recognize and agree that the nature of the Resources to be provided under the terms set forth in this Agreement make it appropriate, equitable and essential to provide for the allocation of the risks and liabilities, limitation of remedies, and the indemnification of **MSRC** and the **MSRC** Integral Subcontractors as set forth in this Section 9.03.

**THE COMPANY EXPRESSLY RECOGNIZES AND ACCEPTS ITS OBLIGATIONS ARISING UNDER SECTION 12.08 FOR INDEMNIFICATION AS SET FORTH IN THIS SECTION 9.03.**

**9.03(b) COVER INDEMNIFICATION.** SUBJECT TO THE PROVISIONS OF SECTIONS 9.03(d) AND (e) BELOW, IT IS AGREED THAT THE COVERED ENTITY WILL DEFEND, INDEMNIFY AND HOLD

HARMLESS THE INDEMNITEES AND EACH OF THEM, AGAINST AND FROM ANY AND ALL LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES OF ANY SUCH INDEMNITEES RELATED TO ANY CLAIM ARISING OUT OF, OR IN ANY MANNER CONNECTED WITH, **MSRC'S** PERFORMANCE OF OR ALLEGED FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT AS A RESULT OF A SPILL EVENT WHERE THE INDEMNITEE DEMONSTRATES THAT THE **COMPANY**, OR ANY APPLICABLE COVERED ENTITY, COULD HAVE BEEN LIABLE IF SUED DIRECTLY OR DID OR DOES HAVE A LIABILITY FOR OR WITH RESPECT TO SUCH CLAIM UNDER OPA OR ANY OTHER APPLICABLE FOREIGN, FEDERAL, STATE OR LOCAL LAW (WHETHER STATUTORY OR COMMON) AND IRRESPECTIVE AS TO WHETHER SUCH LIABILITY WOULD BE CONSIDERED DIRECT, INDIRECT, CONCURRENT, JOINT, PRIMARY, SECONDARY, VICARIOUS OR DERIVATIVE OF THE LIABILITY OF ANY INDEMNITEE WITH RESPECT TO SUCH CLAIM. IF THE COVERED ENTITY PROVIDING AN INITIAL CALL-OUT NOTICE IS NOT THE "RESPONSIBLE PARTY" FOR THE APPLICABLE DISCHARGE AS DEFINED IN OPA, THE LIABILITY OF THE COVERED ENTITY FOR THE PURPOSES OF THIS SECTION 9.03(b) SHALL INCLUDE THE LIABILITY OF SUCH "RESPONSIBLE PARTY".

**9.03(c) INDEMNIFIED CLAIMS.** UNLESS OTHERWISE SPECIFICALLY EXCLUDED BY SECTION 9.03(d), THE OBLIGATIONS OF THE COVERED ENTITY UNDER SECTION 9.03(b) SHALL INCLUDE, WITHOUT LIMITATION, ANY CLAIM ARISING

OUT OF, OR IN ANY MANNER DIRECTLY OR INDIRECTLY CONNECTED WITH, THE FOLLOWING:

(i) THE PROVISION, MOBILIZATION, DEPLOYMENT OR DEMOBILIZATION OF RESOURCES UNDER THIS AGREEMENT OR THE FAILURE TO PROVIDE, MOBILIZE, DEPLOY OR DEMOBILIZE SUCH RESOURCES;

(ii) THE PERMANENT OR TEMPORARY TERMINATION OR SUSPENSION OF **MSRC'S** PERFORMANCE OF OR PROVISION OF RESOURCES OR THE TERMINATION OF THIS AGREEMENT BY **MSRC**, PROVIDED THAT SUCH SUSPENSION OR TERMINATION IS IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT;

(iii) THE ASSERTION OF RESPONDER IMMUNITY BY **MSRC** OR ANY OTHER PERSON;

(iv) **THE NEGLIGENCE OF MSRC OR ANY INDEMNITEE, INCLUDING A NEGLIGENT DEFAULT OR BREACH BY MSRC OF ITS OBLIGATIONS UNDER THIS AGREEMENT;**

(v) ANY CLAIM FOR PERSONAL INJURY OR WRONGFUL DEATH OF PERSONS WHO ARE EMPLOYEES OR INVITEES OF THE **COMPANY**, OR ANY COVERED ENTITY, ON THE VESSEL OR FACILITY THAT IS THE SOURCE OF THE SPILL EVENT, OR ANY **MSRC** SUBCONTRACTORS (OTHER THAN **MSRC** INTEGRAL SUBCONTRACTORS) OR OTHER

SUBCONTRACTORS OF THE **COMPANY** OR ANY COVERED ENTITY;

(vi) ANY RISKS OR LIABILITIES CONCERNING OR RELATED TO THE TRANSPORTATION, STORAGE, TREATMENT OR DISPOSAL OF RECOVERED OIL, HAZARDOUS SUBSTANCES OR ANY WASTE WHEN COLLECTED, RECOVERED OR GENERATED AS A RESULT OF, OR WHEN USED IN, PROVIDING RESOURCES, OTHER THAN ANY GARBAGE OR REFUSE INCIDENTALLY GENERATED BY **MSRC** IN ITS OWN OPERATIONS; AND

(vii) INFRINGEMENT BY THE **COMPANY** OR BY A COVERED ENTITY (OR **MSRC** THROUGH THE USE OF EQUIPMENT, PROCESSES OR OTHER PROPERTY OWNED OR OPERATED BY OR PROVIDED BY OR ON BEHALF OF THE **COMPANY** OR A COVERED ENTITY BUT EXCLUDING **MSRC'S** OWN EQUIPMENT) OF ANY PATENT, COPYRIGHT, TRADEMARK, OR SERVICE MARK OR MISAPPROPRIATION OF ANY PROPRIETARY INFORMATION OR TRADE SECRETS.

**9.03(d) Excluded Obligations.** The obligations of the Covered Entity under Sections 9.03(b) and (c) shall not include and shall not apply to:

(i) the extent (but only to the extent) that applicable law would render such indemnity or hold harmless agreement void or unenforceable;

(ii) the extent that any Claim is caused by any Indemnitee's gross negligence or willful, reckless, or criminal misconduct;

(iii) the portion of any Claim for which an insurer of **MSRC** recognizes or otherwise has an obligation to pay under the applicable policy or cover;

(iv) any portion of a Claim arising from or related to services or equipment provided by **MSRC** to a Spill Event other than pursuant to this Agreement including services or equipment provided by **MSRC** to a Spill Event after the Covered Entity has, pursuant to this Agreement, terminated the services of **MSRC** under this Agreement at such Spill Event;

(v) any Claim for personal injury or wrongful death of Persons who are employees of **MSRC** or **MSRC** Integral Subcontractors;

(vi) any portion of a Claim with respect to a Spill Event where the payment of such portion of the Claim would cause the aggregate of (i) the amount of any payments actually made by or on behalf of the **COMPANY** or the Covered Entity to or on behalf of any Indemnitees under this Agreement or any **MSRC** Subcontractors pursuant to Section 9.03(i) with respect to such Spill Event and (ii) the amount of any payments made by or on behalf of the **COMPANY** or the Covered Entity for removal costs or damages under OPA with respect to such Spill Event, to exceed the Cap with respect to such Spill Event, whether or not under OPA or any other applicable law or regulation or in any proceeding the Cap can be maintained by the **COMPANY** or the Covered Entity; provided that the restrictions of this Section 9.03(d)(vi) shall not apply to any Claim for which the **COMPANY** or the Covered Entity has previously assumed the defense of such Claim under Section 9.03(e); or

(vii) any portion of a Claim with respect to which an Indemnitee has successfully maintained an immunity from liability under any applicable provision of OPA or other foreign, Federal or state law; provided, however, that the exclusion under this Section 9.03(d)(vii) shall not apply to costs (including attorneys' fees) incurred by the Indemnitee in asserting said immunity.

**9.03(e). Procedure for Indemnification with Respect to Third Party Claims.** The obligations and liabilities of the **COMPANY** or the Covered Entity with respect to Claims resulting from the assertion of liability by a Person other than an Indemnitee (a "Third Party") against such Indemnitee (for the purposes of this Section 9.03, "Third Party Claims") shall be subject to the following terms and conditions:

(i) The Indemnitee shall be obligated to give prompt (but in no event greater than sixty (60) days) written notice to the Covered Entity (and **MSRC** if the Indemnitee is not **MSRC**) of any Third Party Claim which is subject to the indemnification of the Covered Entity under this Section 9.03, stating the nature and basis of the Claim, and the amount thereof, to the extent known. Within thirty (30) days of the giving of such notice, the Covered Entity shall do one of the following: (a) satisfy the Claim, (b) assume the defense of such Claim by written notice to the Indemnitee (and **MSRC**, if the Indemnitee is not **MSRC**) and by executing a litigation indemnity in form and substance reasonably acceptable to the Indemnitee (including an acknowledgment of the waiver by the Covered Entity of the applicability of Sections 9.03(d)(vi) and (vii) with respect to such Claim), or (c) request by written notice to the Indemnitee (and **MSRC**, if the Indemnitee is not **MSRC**) that either **MSRC** or the Indemnitee assume the defense of the Claim; provided, however, that the Covered

Entity shall not have the right to assume the defense of a Third Party Claim if the Covered Entity does not perform the indemnification obligations under this Section 9.03 or the payment obligations under Section 7.01, and the **COMPANY** shall not have the right to assume the defense of a Third Party Claim in the event of a breach or anticipatory breach by the **COMPANY** of the indemnification obligations under this Section 9.03 or the payment obligations under Section 7.01.

(ii) If the Covered Entity has requested that **MSRC** or the Indemnitee assume the defense of a Third Party Claim, **MSRC** or the Indemnitee, as the case may be, shall be entitled to select its own counsel in connection with such Claim. If the Covered Entity elects to defend any such Claim, the Covered Entity shall make available to **MSRC** all reports or other documents relating to the defense of the Claim and allow **MSRC**, at its cost, to participate in meetings or conversations relating to the defense of the Claim; however, if **MSRC** or the Indemnitee should elect to have its own counsel in connection with monitoring the defense of any such Claim or otherwise to represent the interests of the Indemnitee, particularly with respect to the rights of the Indemnitee to be indemnified by the Covered Entity under this Section 9.03, the costs of such counsel shall be borne by the Indemnitee. If **MSRC** or the Indemnitee assumes the defense of a Third Party Claim, for so long as the **COMPANY** or the Covered Entity has an obligation to indemnify the Indemnitee, **MSRC** or the Indemnitee shall make available to the **COMPANY** or the Covered Entity, as the case may be, all reports or other documents relating to the defense of the Claim and allow the Covered Entity, at

its cost, to monitor meetings and conversations relating to the defense of the Claim. If there is more than one Indemnitee, the Indemnitees shall be entitled to have one joint counsel, at their cost, in connection with such Claim to monitor the defense or otherwise represent the interests of all such Indemnitees, which counsel shall be selected by **MSRC**. If **MSRC** assumes the defense of a Third Party Claim, the Covered Entity shall be obligated to pay the invoiced reasonable fees and expenses of counsel for **MSRC** or the Indemnitee, as the case may be, as such fees and expenses are incurred. Unless otherwise required to protect the right of the Indemnitee to be indemnified by the Covered Entity, the Indemnitee shall be obligated to cooperate fully in any defense to a Claim conducted by the Covered Entity. Any party defending any Claim shall assert any exemption or immunity from liability that may be available, including, without limitation, any Responder Immunity.

(iii) So long as the Covered Entity is defending, the Indemnitee shall not compromise or settle any such Claim without the prior written consent of the Covered Entity, and, if the Indemnitee should object to any compromise or settlement of such a Claim acceptable to the Covered Entity, such Indemnitee shall thereafter assume the costs of defending the Claim and the Covered Entity's obligations with respect to such Claim shall be limited to the compromise or settlement that was acceptable to the Covered Entity. If **MSRC** or the Indemnitee is defending such Claim, the party defending such Claim shall consult with the Covered Entity concerning any compromise or settlement but shall be entitled to compromise or settle such Claim without the prior consent of the Covered Entity, but if the Covered Entity objects to that compromise or settlement, the Covered Entity can assume the defense provided that the Covered Entity secures its obligation to



defend and pay such Claim in a manner satisfactory to **MSRC**, and Sections 9.03(d)(vi) and (vii) are no longer applicable to such Claim.

**9.03(f). Procedure for Indemnification with Respect to Claims other than Third Party Claims.**

Any judicial or non-judicial application or proceeding for indemnification from the **COMPANY** or the Covered Entity under this Section 9.03 for any Indemnitee for a Claim that is not a Third Party Claim can only be commenced, administered or processed by **MSRC**, for the account and benefit of the Indemnitee on whose behalf an application for indemnification under this Section 9.03 was submitted to the Covered Entity by **MSRC**; provided, however, that if **MSRC** is legally or otherwise unable to commence, administer or process such application or proceeding on behalf of an Indemnitee, such Indemnitee may commence and process such proceeding against the Covered Entity directly.

**9.03(g). No Waiver.** Nothing in this Agreement or this Section 9.03 shall constitute a waiver or limitation of the rights of **MSRC** with respect to Responder Immunity or any other statutory or common law defense to or limitation of liability of the **COMPANY** or Covered Entity resulting therefrom.

**9.03(h). MSRC Integral Subcontractors as Indemnitees.** Only **MSRC** Integral Subcontractors actually listed by name in Schedule 6, as such Schedule may be amended pursuant to Section 11.05 (but not any subcontractors not so listed by name even if such subcontractors provide services of the type provided by an **MSRC** Integral Subcontractor), are

entitled to the benefits provided to Indemnitees pursuant to Sections 9.03(a) through (g).

**9.03(i). Indemnity to MSRC**

**Subcontractors.** The **COMPANY** hereby irrevocably designates, appoints and authorizes **MSRC** as its agent to execute and deliver an indemnification agreement in the form of Schedule 5 hereto, as **MSRC**, with the concurrence of MPA may elect, on behalf of the **COMPANY** and the Covered Entity to any **MSRC** Subcontractor (other than an **MSRC** Integral Subcontractor). The **MSRC** Subcontractors to which **MSRC** is permitted to extend such indemnification are set forth in Schedule 5A, as such Schedule may be amended by **MSRC** with the concurrence of MPA and which amendment will be effective immediately upon written notice by **MSRC** to the **COMPANY**.

**9.04. Covenant Not to Sue.**

**9.04(a). Release of Liability.** The **COMPANY**, on behalf of itself and each Covered Entity, in recognition of the accommodation and special circumstances of **MSRC** described in Section 9.03(a), hereby irrevocably releases and forever discharges the Indemnitees other than the **MSRC** Integral Subcontractors (those Indemnitees other than **MSRC** Integral Subcontractors are referred to in this Section as the "MSRC Indemnitees") from liability for any and all Claims whatsoever, including but not limited to Claims for contribution, breach of contract, tort, or otherwise, or any Claims arising from the negligence or gross negligence of the **MSRC** Indemnitees, that the **COMPANY** or the Covered Entity currently has or may have against the **MSRC** Indemnitees arising from, related to, or in connection with this Agreement.

**9.04(b). Other Claims.** The **COMPANY**, on behalf of itself and each Covered Entity,

also covenants and agrees that neither the **COMPANY** nor any Covered Entity will (i) file a cross-claim or counter-claim against the MSRC Indemnitees or (ii) assert the legal liability of any MSRC Indemnitee as a defense in any formal pleadings in any legal proceeding arising from, related to, or in connection with this Agreement or concerning any Claim brought by any Person other than an Indemnitee against the **COMPANY** or the Covered Entity related to a Spill Event. This Section will not be construed in any way to limit, restrain, or prohibit the making of any factual statements by any Person in any pleading, argument, filing, affidavit, deposition, or testimony in any such legal proceeding.

**9.04(c). Exceptions.** Sections 9.04(a) and 9.04(b) will not preclude the **COMPANY** from pursuing Claims (i) - under the arbitration provisions of Article X regarding disputes related to payment for **MSRC**'s services under this Agreement, (ii) seeking injunctive relief or specific performance or (iii) under the arbitration provisions of Article X arising from the willful, reckless, or criminal misconduct of the MSRC Indemnitees.

**9.04(d). Breach.** If this Section 9.04 at any time is breached by the **COMPANY** or any Covered Entity (including a breach because an allegation of willful, reckless, or criminal misconduct is not ultimately determined by a final decision or order of the party adjudicating any dispute to have been correct), the **COMPANY** and Covered Entity will be jointly and severally liable for any incidental or consequential damages of an MSRC Indemnitee arising from or related to that breach, including without limitation any and all attorneys' fees and

expenses incurred by an MSRC Indemnitee in defending any litigation resulting from that breach. That liability will not be limited in amount by any other provision of this Agreement.

**9.04(e). Full Force and Effect.** This Section 9.04 will remain in full force and effect notwithstanding the existence of any breach or default by **MSRC** of its obligations under this Agreement, or the expiration or earlier termination of this Agreement.

**9.05. Financial Responsibility.** The **COMPANY** covenants and agrees to comply with the provisions of Schedule 2.

**9.06. Insurance.**

**9.06(a). MSRC Insurance.** **MSRC** will obtain and maintain at its sole cost during the term of this Agreement the insurance coverage described in Schedule 7, as such Schedule may be amended by **MSRC** with the concurrence of MPA and which amendment will be effective immediately upon written notice by **MSRC** to the **COMPANY**.

**9.06(b). Subcontractor Insurance.** **MSRC** will require in its contracts with all **MSRC** Subcontractors that all those subcontractors provide to **MSRC** evidence of insurance coverage maintained by each contractor that in the reasonable judgment of **MSRC** is customary in the industry of such subcontractor.

**9.06(c). Role of MSRC Insurance.** As set forth in Section 9.03(d)(iii), the recognition of its obligation to pay by an insurer of **MSRC** for any portion of a Claim relieves the Covered Entity of its indemnification obligation under Section 9.03(b) with respect to such portion of the Claim. However, if an Indemnitee does not

ultimately receive payment on an indemnified Claim from an insurer of **MSRC**, the Covered Entity will be obligated to pay that Claim in accordance with the terms of this Article IX. After the making of that payment, the Covered Entity will be subrogated to the rights of **MSRC** and the Indemnitee to seek recovery for that portion of the Claim from the insurer. **MSRC** and the Indemnitee will cooperate fully with the Covered Entity in seeking recovery from any such insurer. Any right of the Covered Entity to assume the defense of a Claim from **MSRC** or an Indemnitee pursuant to Section 9.03 will be subject to the rights and duties of an insurer of **MSRC** that has acknowledged coverage for that Claim to participate in or assume the defense of the Claim.

**9.07. No Third-Party Beneficiaries.**

This Agreement is solely for the benefit of **MSRC** and the **COMPANY**, and no third party will have any interest, Claim, or right to enforce any provision of this Agreement against either **MSRC** or the **COMPANY**, except for the rights of Indemnitees to enforce the Covered Entity's indemnity of those Indemnitees under Section 9.03.

**ARTICLE X. ARBITRATION AND DISPUTE RESOLUTION**

**10.01. Inform and Negotiate.** **MSRC** and the **COMPANY** will each use its best efforts to inform the other party by written notice promptly following the later of the occurrence or the discovery of any such occurrence of any issue or event that the party knows has raised a dispute under this Agreement. The **COMPANY** and **MSRC** will try to resolve any disputed matter by negotiation. If the dispute is not

resolved to the satisfaction of a party, that party will deliver a written notice of Claim to the other party.

**10.02. Arbitration.** If **MSRC** and the **COMPANY** are unable to agree upon a settlement of any matter, the matter will be subject to arbitration in accordance with the provisions of Schedule 9. If the arbitration could not timely achieve a requested injunctive remedy, or if the matter involves an issue where the only remedy under this Agreement is specific performance, either party may commence an action solely for preliminary injunctive relief. Any other dispute or Claim arising out of or relating to this Agreement will be settled exclusively and finally by arbitration. Any decision or award of the arbitral tribunal will be final and binding upon the parties to the arbitration proceeding.

**10.03. Continued Performance.** Each party will continue to perform its obligations under this Agreement without deduction, set-off, or any other charges of any nature whatsoever and without prejudice to its position in any pending dispute. Each party will retain its rights to terminate or suspend the provision of Resources under this Agreement.

**10.04. Jurisdiction.** Any judicial action or proceeding between the **COMPANY** and **MSRC** directly or indirectly connected with and permitted under this Agreement will be brought in the United States District Court for the Southern District of New York if that court has subject matter jurisdiction, and in all other cases in the Supreme Court of the State of New York, County of New York. The **COMPANY** and **MSRC** each consent to process being served in any manner permitted by law.

**10.05. Enforceable Award.** Any award in an arbitration may be enforced against the

parties to the arbitration or their assets, wherever found. Judgment upon an arbitration award may be entered in the United States District Court for the Southern District of New York.

**10.06. Requirements for All Persons.**

Indemnification under Section 9.03 is contingent on the Indemnitee abiding by the provisions of this Article X.

**ARTICLE XI. TERM AND AMENDMENT OF AGREEMENT**

**11.01. Full Termination by MSRC.**

**11.01(a). Events of Default.** If any of the following events occurs and is continuing, it is an "Event of Default":

(i) Any of the **COMPANY** representations and warranties in Section 8.01 prove to be untrue or incorrect in any material respect;

(ii) Any **COMPANY** Insolvency Event occurs;

(iii) The **COMPANY** fails to satisfy any of this Agreement's payment obligations (including the obligations in Article VII) in an aggregate amount in excess of \$100,000, fails to pay any disputed **MSRC** invoices in an aggregate amount **MSRC** reasonably considers to be a problem for the funding of **MSRC**'s operations or readiness, or fails to provide security for payment in accordance with Section 7.01;

(iv) The **COMPANY** or a Covered Entity engages in a pervasive pattern of illegal or knowingly unsafe practices in directing Response Activities performed or provided under this Agreement; or

(v) The **COMPANY** breaches its material obligations under this Agreement, other than the obligations under (i), (iii), and (iv) above, and that breach is not cured within thirty (30) days after written notice from **MSRC** specifying that breach.

**11.01(b) MSRC Termination of Resources.**

Upon an Event of Default **MSRC** may terminate Resources to the Covered Entity with at least twenty-four (24) hours (or 48 hours if the Event of Default is a failure to pay under Section 11.01(a)(iii)) prior notice to the Covered Entity and, if applicable, the FOSC. **MSRC** may withdraw all Resources from the Spill Event when the notice period expires. **MSRC** also may terminate Resources without any notice if any of the **COMPANY**'s representations or warranties in Section 8.01(e) or (f) prove to be materially untrue or incorrect or if it has an Insolvency Event (Section 11.01(a)(ii)).

The Covered Entity must pay **MSRC** costs incurred after termination only for demobilizing, on a reasonable schedule, **MSRC** Response Personnel, **MSRC** Response Equipment, and any (unassigned) **MSRC** Subcontractor from the Spill Event, and for any cleaning, repair, or maintenance of **MSRC** Response Equipment required under Section 7.02.

**11.01(c). Reinstatement Option. MSRC**

may, in its discretion after an Insolvency Event (Section 11.01(a)(ii)) reinstate Resources, upon the Covered Entity's compliance with **MSRC**'s request for payment security under Section 7.01(c).

**11.02. Covered Entity Termination of Resources.**

The Covered Entity may terminate, in whole or in part at any time, Resources being provided under this Agreement by written notice to **MSRC**.

### **11.03. Term of the Agreement.**

**11.03(a). Term.** This Agreement is effective upon the satisfaction of all of the following: (i) WSMC satisfies all steps in becoming an MPA Member of MPA, (ii) the **COMPANY** satisfies all steps in becoming a member of WSMC, and pays all required WSMC fees, and (iii) the **COMPANY** executes this Service Agreement. This Agreement will continue for one (1) year, or until the earlier termination pursuant to the provisions of Sections 11.03(b) or 11.03(c). This Agreement will continue automatically for successive periods of one (1) year provided (i) WSMC continues as an MPA Member for that successive one (1) year period, and (ii) the **COMPANY** continues as a member of WSMC, and pays all required WSMC fees, for that successive one (1) year period.

**11.03(b). MSRC Termination of Agreement.** If any Event of Default occurs and continues **MSRC** may, in addition to its right to terminate Resources pursuant to Section 11.01(b) and any other rights and remedies under this Agreement and at law or in equity, terminate this Agreement in its entirety by providing the **COMPANY** with at least ninety (90) days prior written notice.

**MSRC** is also entitled to terminate this Agreement upon thirty (30) days notice if

(i) **MSRC** has liquidated assets to pay Claims against **MSRC** and therefore cannot provide the contemplated level of Resources, or

(ii) **MSRC** has not received the required payments at the times required under the

Directors and Officers Indemnification Grant and Security Agreement, as amended (dated as of July 16, 1993 by and between **MSRC** and MPA concerning the indemnification of the executive officers and directors of **MSRC**); the **COMPANY** or a **COMPANY** affiliate (if so obligated) has not made the payments at the times required under the Supplemental Dues Call Agreement, as amended (by and between MPA and the **COMPANY** or a **COMPANY** affiliate, relating to supplemental dues calls by MPA to support MPA's obligations under the Directors and Officers Indemnification Grant and Security Agreement, as amended); or **MSRC** has not received the required payments at the times required under the Legal Costs Grant Agreement (dated July 9, 1993 by and between MPA and **MSRC**, as amended, relating to payment of certain legal defense costs), or

(iii) those agreements described in (ii) above are not in full force and effect and the **COMPANY** (if so obligated) and MPA are not in compliance in any material respect under those agreements.

**11.03(c). COMPANY Termination of Agreement.** In addition to the right of the Covered Entity to terminate the provision of Resources pursuant to Section 11.02, the **COMPANY** may terminate this Agreement in its entirety, including, as a consequence of such termination, the termination of all Resources then being provided to a Spill Event, at any time by providing **MSRC** with at least sixty (60) days written notice.

**11.03(d). Provisions Surviving Termination.** Upon termination of this Agreement, the provisions of Sections 3.05, 3.06, 3.07, 5.02, 8.07, 9.01, 9.03(a)-(h), 9.04, 9.07, 11.04, 12.01, 12.03, 12.04, and Articles VII and X will survive the termination of this Agreement in accordance

with its terms. The provisions of Section 9.05 will survive any termination until eighteen months after (A) all Covered Entity-required Article VII payments are made or (B) there is no unsatisfied pending Claim against MSRC related to this Agreement (other than Claims arising out of the execution and delivery of this Agreement) remaining outstanding, whichever date is later.

**11.04. Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the successors and assigns of this Agreement's parties. Any assignment by the COMPANY will be valid only if the assignee satisfies all of the COMPANY's obligations under this Agreement existing at the date of the assignment and if the assignee concurrently executes an agreement with MSRC assuming all obligations of the COMPANY under this Agreement.

**11.05. Modification and Waiver.**

**11.05(a). Prior Understandings and Amendment.** This Agreement supersedes all previous or contemporaneous agreements, understandings and correspondence between the parties regarding this Agreement's subject matter and, together with all exhibits, schedules, and addenda, constitutes the entire agreement.

This Agreement may be amended during its term by a written instrument approved by MPA according to the approval of amendments under the Grant Agreement (dated July 17, 1991, as amended, between MSRC and MPA). The COMPANY may terminate this Agreement pursuant to Section 11.03(c) if it objects to an amendment of this Agreement pursuant to these procedures.

**11.05(b). Waiver.** No benefit or right accruing to either party under this Agreement will be waived unless the written waiver is signed by both parties to this Agreement. A waiver in one instance of any act, condition, or requirement stipulated in this Agreement will not constitute a continuing waiver or a waiver of any other act, condition, or requirement, or a waiver of the same act, condition, or requirement in other instances, unless specifically so stated.

**ARTICLE XII. CONTRACT INTERPRETATION**

**12.01. Notices.** Any notice required or permitted to be delivered under this Agreement is deemed made upon acknowledgment of receipt when sent by United States mail, or facsimile, or when the notice is delivered in person to a party's contact by name, title, address or facsimile as set forth under the signature of the parties (or as expressly provided otherwise in this Agreement). MSRC may also provide notices to the COMPANY by providing such notice to WSMC, which COMPANY agrees is authorized to receive notices on its behalf, with an electronic copy to COMPANY using the email contact address provided during their enrollment in WSMC. Both the COMPANY and MSRC may designate additions or changes in contacts in writing as necessary. Oral notice will be sufficient if promptly confirmed in writing.

**12.02. Counterparts and Severability.**

**12.02(a). Counterparts as Originals.** The parties may execute this Agreement in any number of counterparts, intending each counterpart to serve as an original.

**12.02(b). Enforceability not Impaired.** If any provision of this Agreement is

determined to be invalid, illegal, or unenforceable, the validity, legality, or enforceability of the remaining provisions will not in any way be affected or impaired.

**12.03. GOVERNING LAW. THIS AGREEMENT WILL BE GOVERNED IN ALL RESPECTS BY THE LAWS OF THE STATE OF NEW YORK, INCLUDING THE CHOICE OF LAW RULES OF THE STATE OF NEW YORK.**

**12.04. Private Contract.** The COMPANY and MSRC agree that this Agreement is a private contract and should not be construed or interpreted to be a public contract or a private contract creating public duties.

**12.05. Standard Contract.** The terms and conditions of this Agreement are a standard form of agreement. MSRC will provide Resources for Oil Spill Events in U.S. Jurisdictional Waters to:

- (i) others covered under the WSMC Umbrella Plan only under this standard form of agreement, as it may be amended from time to time in accordance with 11.05(a),
- (ii) other MPA Members or their affiliates only under their standard form of agreement, as it may be amended from time to time in accordance with Section 11.05(a), and
- (iii) to non-MPA Members, other than the U.S. Government or a state government, only on applicable terms and conditions no more favorable to that non-MPA Member than this Agreement is to MPA Members, when judging the terms and conditions and this Agreement, each as a whole as opposed

to the relative merits of any particular provision.

**12.06. Usage.** In this Agreement, singular includes the plural and plural includes the singular; "President" means the President of the United States; "day" means a calendar day unless otherwise specified; references to articles, sections, exhibits, or schedules refer to the corresponding part of this Agreement unless otherwise specified; "state" includes any commonwealths, territories, possessions, districts, or other political subdivisions of the United States; references to a statute include all statutory provisions consolidating, amending, or replacing the statute referred to unless otherwise so stated; "including" means including without limitation and not as a limitation; and "writing" includes printing, typing, facsimile, lithography, and other means of reproducing words in a tangible visible form.

**12.07. Definitions and Defined Terms.** Capitalized terms used in this Agreement or in any of the Schedules, and not otherwise defined, have the meaning ascribed to them in Schedule 1.

**12.08. COMPANY and Covered Entity Obligations and Rights.**

**12.08(a) Covered Entity Obligations.** The COMPANY, as the Corporate Parent of the Covered Entity, unconditionally guarantees the performance of all obligations of the Covered Entity in accordance with this Agreement if the Covered Entity does not perform those obligations. If the Covered Entity does not elect to assume general management and overall direction and control of all Response Activities under this Agreement, the COMPANY will assume those functions. MSRC may enforce this guarantee without first pursuing any remedies for

nonperformance against the Covered Entity. Performance by **MSRC** to a Covered Entity in accordance with this Agreement discharges **MSRC**'s obligations for performance of the same obligations to the **COMPANY**. Performance by a Covered Entity in accordance with this Agreement discharges the **COMPANY**'s obligations for performance of the same obligations to **MSRC**. The **COMPANY** is not entitled to any extension of time for performance or any other concession or rights in addition to those set forth in this Agreement with respect to the performance of the Covered Entity's obligations.

**12.08(b) COMPANY Performance of Covered Entity Obligations.** The **COMPANY** undertakes the applicable obligations of the Covered Entity under this Agreement if no Covered Entity is identified under Section 6.03 or no Covered Entity is involved in the particular use of Resources.

**12.08(c) Exercise of Rights.** The **COMPANY**, at its election, may exercise any and all rights of the Covered Entity in this Agreement to the extent not already exercised in full by the Covered Entity. In the event of a conflict between the exercise of any rights under this Agreement by the **COMPANY** and the Covered Entity, the exercise by the **COMPANY** controls.

**12.08(d) References, Employees and Contractors.** If the **COMPANY** is required to perform any obligations or elects to exercise any rights of the Covered Entity, those particular rights and obligations and the corresponding references relating to the Covered Entity or its employees, contractors, facilities or vessels will apply and refer also to the

**COMPANY** and its employees, contractors, facilities and vessels.

**12.08(e) No Rights to Enforce.** A Covered Entity may exercise the rights set forth in regard to the Covered Entity in this Agreement, including the right to assume general management and overall direction and control of all Response Activities under this Agreement, but does not have or obtain any rights to enforce directly by arbitration or legal or administrative proceedings any provisions of this Agreement, including any obligations of **MSRC** under this Agreement. The **COMPANY** retains all rights to enforce this Agreement in accordance with its terms.



**SCHEDULE 1**  
**DEFINED TERMS**

As used in the Agreement, the following terms will have the following meanings:

"Authorized Representative" means any of the individuals or categories of individuals (e.g., by job title, such as "Plant Managers," "Terminal Operators," "Vessel Masters," "Qualified Individual," etc.) who are identified by written notice to **MSRC** as set forth in Section 6.03 for a Covered Entity, and their designees.

"Business Day" means a day of the year on which banks are not required or authorized to close in New York City, New York, Washington, D.C., or Nashville, Tennessee.

"Cap" means, with respect to a Discharge, the amount set forth below for the Facility or Vessel that is the source of the applicable Discharge; provided that if more than one(1) Facility or Vessel is the source of the Discharge, the amount will be the greatest amount set forth below for any of those Facilities or Vessels; and provided further that if a Person is the "responsible party" (as defined in OPA) for more than one (1) of those Facilities or Vessels involved in the Discharge, the Cap will be the sum of the amounts set forth below for each of those Facilities or Vessels:

(i) for a Vessel, the amount established for that particular Vessel that is derived from the computation applicable to that Vessel under the Vessel Responsibility Amount;

(ii) for an Offshore Facility other than a Deepwater Port, the sum of (x) all removal costs under OPA for the Discharge from that Facility or Vessel and (y) \$75million;

(iii) for a Deepwater Port or an Onshore Facility, \$350 million; and

(iv) for a MODU that is:

(A) not being used as an Offshore Facility, the amount established for that particular MODU that is derived from the computation applicable to Vessels other than a Tank Vessel under clause (ii) of the Vessel Responsibility Amount:

(B) being used as an Offshore Facility and deemed to be a Tank Vessel under OPA, the amount established for that particular MODU that is derived from the computation applicable to Tank Vessels under the Vessel Responsibility Amount; or

(C) deemed to be an Offshore Facility under OPA, the sum of (x) all removal costs under OPA for the Discharge from that MODU and (y) \$75 million, reduced by the amount established for that MODU under the immediately preceding clause (B).

Capitalized terms used in this definition and not defined in this Schedule 1 are defined in Schedule 2 (Financial Responsibility).

"Claims" means any claims; demands; causes of action (including enforcement actions); damages of any nature; costs (including costs of investigation); expenses (including reasonable attorneys'

fees and costs and allocated expenses for in-house legal services); judgments; fines; penalties; liabilities; obligations; and claims by third parties for death, personal injury or illness or for loss or damage to property; of every kind and nature whatsoever under any Federal, state, local, or other applicable law (statutory or common) including any claims for "removal costs" or "damages" as such terms are defined in OPA.

"**COMPANY**" means the Person identified as a party to the Agreement in the cover of the Agreement.

"Covered Entity" means any Person that is both (i)an affiliate of the **COMPANY** to whom the benefits of MPA membership are extended pursuant to the MPA By-Laws and (ii)identified by written notice to **MSRC** as set forth in Section 6.03.

"Covered Facility" or "Covered Vessel" means any Facility or Vessel for which the benefits of MPA membership have been extended by an MPA Member.

"Direct" or "Directing" means that the designee of the President is directing all Federal, state, and private actions to remove a Discharge or mitigate or prevent the threat of a Discharge, pursuant to Section 4201(a) of OPA (33 U.S.C. Section 1321(c)(1)(B)(ii) or (c)(2)(A)).

"Discharge" means any emission (other than natural seepage), intentional or unintentional, of Oil, Hazardous Substance, or a pollutant or contaminant, and includes spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

"Executive Order" means an order or regulation (i)issued by the President or

some administrative authority under the President's direction for the purpose of interpreting, implementing, or giving administrative effect to a provision of the United States Constitution or of some law or treaty and (ii)published in the Federal Register.

"Facility" or "Facilities" means any structure, group of structures, equipment, or device (other than a Vessel) that is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting Oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes.

"Federal On-Scene Coordinator" or "FOSC" means the Federal official predesignated to coordinate and Direct responses to a Spill Event under the National Contingency Plan, 40 C.F.R. Part 300, or a comparable official of a foreign Governmental Body.

"Force Majeure Event" means delays to, or impracticabilities or impossibilities of, performance by **MSRC** and **MSRC** Subcontractors under this Agreement caused by any of the following events: strikes, walkouts, riots, sabotage, enemy action, civil commotion, fire, unavoidable casualty, natural catastrophe, or any other cause beyond the reasonable control of **MSRC** or the **MSRC** Subcontractors.

"Governmental Body" means any government or its political subdivision, whether foreign, Federal, state, or local, or any agency or instrumentality of any such government or political subdivision.

"Hazardous Substances" means any substances or wastes other than Oil as defined in OPA, now or hereafter defined as "hazardous substances", "hazardous materials," "toxic substances," or "hazardous wastes" in any foreign, Federal, state, or local law, code, rule, regulation, order, or ordinance, presently in effect or enacted after the date of the Agreement, promulgated or implemented by any Governmental Body.

"Incident Commander" means the individual who has been designated pursuant to Section 3.01(a) to manage and supervise the Covered Entity's overall response operations at the site of the Discharge or that individual's designee. That individual may be the Authorized Representative.

"Indemnitees" means **MSRC**, its directors, executive officers, and employees and any MSRC Integral Subcontractors named in Schedule 6 but not any directors, executive officers, or employees of an MSRC Integral Subcontractor.

"Initial Call-Out Notice" means the notice given pursuant to Section 1.02 to **MSRC** of a Spill Event.

"Insolvency Event" means with respect to a Person that,

(i) a voluntary case or proceeding under any applicable bankruptcy, insolvency, or other similar law now or hereafter in effect is commenced by such Person, or that Person consents to the entry of an order for relief in an involuntary case or proceeding under any such law or against that Person, or that Person consents to the appointment of or taking possession by a receiver, liquidator,

assignee, trustee, custodian, sequestrator, conservator, supervisor, rehabilitator (or other similar official) of that Person or for any substantial part of its properties, or that Person makes a general assignment for the benefit of creditors, or that Person fails generally to pay its debts as they become due or takes any corporate action in furtherance of the foregoing; or

(ii) an involuntary case under any applicable bankruptcy, insolvency, or other similar law now or hereafter in effect is commenced against that Person, and that case or proceeding is not dismissed within sixty (60) days; or

(iii) a court or regulatory authority having jurisdiction over that Person enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator, conservator, supervisor, rehabilitator (or similar official) of that Person or for any substantial part of its properties, or ordering the winding-up, supervision, or liquidation of its affairs.

"Mobilize" and/or "Mobilization" means actions to call out personnel and to prepare and move personnel and equipment in connection with a Spill Event.

"MPA" means Marine Preservation Association, an Arizona nonprofit corporation, or any successor to it.

"MPA Member" means a Person who is a member of MPA.

"MSRC" means Marine Spill Response Corporation, a Tennessee nonprofit corporation, or any successor to it.

"MSRC Integral Subcontractor" means a subcontractor contractually obligated to **MSRC** to provide any of the services described on Schedule 6.

"MSRC Response Equipment" means equipment of **MSRC** and MSRC Integral Subcontractors available from time to time under this Agreement, including the equipment described in **MSRC**'s OSRO Certification RRI.

"MSRC Response Personnel" means personnel of **MSRC** and MSRC Integral Subcontractors available from time to time under this Agreement, including the positions generally described in **MSRC**'s OSRO Certification RRI.

"MSRC Subcontractor" means a contractor or subcontractor that is contractually obligated to **MSRC** to provide personnel, equipment, goods and/or services in connection with a Spill Event.

"National Contingency Plan" or "NCP" means the currently applicable National Contingency Plan prepared and published under Section 311(d) of the Federal Water Pollution Control Act (33 U.S.C. Section 1321(d)), as it may be amended by OPA, or revised under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9605).

"Oil" means oil of any kind or in any form, including but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil; but does not include petroleum, including crude oil or any fraction of crude oil, which is specifically listed or designated as a Hazardous Substance

under subparagraphs (A) through (F) of Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601) and which is subject to the provisions of that Act.

"Oil Spill Event" means any actual or threatened Discharge of Oil into or threatening waters or adjoining shorelines.

"Oil Spill Removal Organization (OSRO) Classification Response Resource Inventory" or "RRI" means the information filed by **MSRC** as it may be amended from time to time, used as a basis by the Coast Guard to classify **MSRC** as an OSRO.

"OPA" means the Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484 (1990) and, unless otherwise specified, all regulations promulgated under it.

"OPA Response Plan" means a Vessel or Facility response plan required to be filed under 33 U.S.C. Section 1321(j)(5) and its implementing regulations.

"Operational Area" means the waters described in the MPA October 30, 1992, Operations Area Binder, or any amendments to it consistent with the descriptions in the charter and By-Laws of **MSRC** and Exhibit 2 of the MPA Dues Procedures, copies of which are available for purchase from MPA.

"P&I Club" means any of the Protection and Indemnity Clubs listed on Schedule 8.

"Person" means any individual, corporation, partnership, limited liability company, joint venture, association, state,

county, municipality, interstate body, or any political subdivision of any of them.

"Permits" means licenses, permits, registrations, and qualifications with and under foreign, Federal or state laws.

"Records" means books; records; correspondence; instructions; plans; receipts; vouchers; timesheets; and documents produced, developed, or received by **MSRC** in providing Resources to a Spill Event for a Covered Entity that reflect, for that Spill Event, (i)- amounts invoiced under the Agreement, (ii)the disposition of material, tools, and equipment, and (iii)response activities carried out on behalf of the Covered Entity.

"Responder Immunity" means the limited immunity from liability provided by Section4201(a) of OPA (33 U.S.C. Section1321(c)(4)), or any other similar limitation of liability with a similar effect and scope under any other form of international, foreign, Federal, state, local, or other law (those jurisdictions **MSRC** has identified as having such a limitation of liability are identified on Schedule 4, as it may be amended by written notice from **MSRC** to the **COMPANY**).

"Response Activities" means the containment and removal of a Discharge from the waters and shorelines, the temporary storage of recovered substances, or the taking of other actions as necessary to minimize or mitigate damage to the environment from a Spill Event.

"Response Area" means the area or activities defined by law or by the FOSC

or SOSC, as applicable, for a particular Spill Events.

"Response Plan(s)" means the OPA Response Plan and/or State Response Plan.

"Resources" means MSRC Response Personnel (including the associated MSRC operations services provided by those MSRC Response Personnel under this Agreement), MSRC Response Equipment, and Subcontractor Resources, available from time to time under this Agreement.

"Spill Event" means any actual or threatened Discharge (whether of Oil, Hazardous Substances or other substances) into or threatening waters or adjoining shorelines, including requests to standby for transfer (i.e., "Average Most Probable Discharge") and other similar operations.

"State On-Scene Coordinator" or "SOSC" means a state official designated to coordinate and direct state responses to a Spill Event under state law.

"State Response Plan" means a Vessel or Facility Oil spill response or contingency plan required under the laws or regulations of any state of the United States with jurisdiction in the Operational Area.

"Subcontractor Resources" means the personnel, equipment, goods and/or services offered from time to time under this Agreement to be provided by MSRC Subcontractors.

"Unified Command" means the unified command for a Spill Event, as designated by the FOSC with jurisdiction over the clean-up activity.

"United States" includes the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession of the United States.

"USCG" means the United States Coast Guard.

"U.S. Jurisdictional Waters" means the navigable waters of the United States, including the territorial sea and the exclusive economic zone.

"Vessel" or "Vessels" means any and every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, other than a public vessel as defined in OPA.

"WSMC Operational Area" means the waters along the coastal portions of the State of Washington, south to North Head on Cape Disappointment and normally extending three (3) miles offshore, including the inland waters of the State known as Puget Sound, Hood Canal, Straits of Georgia, Haro, Rosario and Juan de Fuca, Admiralty Inlet, Lake Washington, Lake Union and their connecting waters, but excluding the waters of the Columbia River System.

## **SCHEDULE 2 FINANCIAL RESPONSIBILITY**

### **2.01 General Background**

**(a) Method Selection.** The **COMPANY** must establish financial responsibility for each Vessel and Facility owned or operated within the Operational Area by the **COMPANY** or its affiliates (unless that Vessel or Facility is identified to **MSRC** in determining the applicable Financial Responsibility Amount under a separate Service Agreement) in at least the required Financial Responsibility Amount through any one or a combination of the applicable methods set forth in Sections 2.02(a) through (d) below. The **COMPANY** must deliver to **MSRC** on or before January 1, 1997, a certificate of the **COMPANY** signed on behalf of the **COMPANY** by a duly authorized officer, stating to the best knowledge and belief of the officer, that the **COMPANY** meets the requirement of this Schedule 2 and identifying for each of those Vessels and Facilities the following: (i) the method relied on by the **COMPANY** to establish financial responsibility and (ii) the applicable Financial Responsibility Amount. If more than one of those Vessels or Facilities is covered by the same type and method of evidencing financial responsibility, the **COMPANY**'s demonstration of financial responsibility for the Vessel or Facility with the largest Financial Responsibility Amount will satisfy the demonstration requirement for all those Vessels and Facilities with lesser Financial Responsibility Amounts.

### **(b) Documentation and Notices**

**(1) Supporting Documentation on Request.** **MSRC** may request additional documentation from the **COMPANY** whenever **MSRC** has reason to believe that the **COMPANY** may not be meeting any of the applicable requirements of this Schedule 2. The **COMPANY** will provide to **MSRC**, by

no later than two (2) Business Days after **MSRC**'s request, the supporting documentation reasonably demonstrating how the **COMPANY** satisfies the financial responsibility requirements of this Schedule under the method selected as to each applicable Vessel and Facility.

**(2) Notice of Changed Circumstances.** The **COMPANY** will notify **MSRC** within two (2) Business Days of knowledge of any change in circumstances that would (A) result in non-compliance with or change in the method of demonstrating financial responsibility under this Schedule or (B) would constitute any other material change in any previous demonstration of compliance under this Schedule. Failure to provide such notice will constitute a material breach of the Agreement.

**2.02. Methods of Demonstrating Financial Responsibility.** The **COMPANY** may elect to demonstrate financial responsibility through any one or a combination of the following methods.

**(a) OPA COFR Method.** Under this method, the **COMPANY** must satisfy the requirements of the OPA EFR Regulations with respect to the Vessel or Facility. Upon request by **MSRC**, the **COMPANY** must provide to **MSRC** a copy of the certificate of financial responsibility (COFR) evidencing compliance with the OPA EFR Regulations with respect to the Vessel or Facility.

**(b) Investment Grade Rating Method.** Under this method, the **COMPANY** must have an Investment Grade Rating for its unsecured debt without the benefit of any third party credit support other than a throughput and deficiency agreement where the proceeds from the agreement are also available to the **COMPANY** to satisfy its financial obligations under the Agreement.

(c) **Insurance Method.** Under this method, the **COMPANY** must maintain in full force and effect P&I Club Coverage for those Vessels and Insurance Coverage for those Facilities.

(1) **Insured Vessel.** For Insured Vessels, upon request by **MSRC** the **COMPANY** must provide **MSRC** with a copy of a current certificate of entry with respect to the Vessels that are subject to P&I Club Coverage.

(2) **Insured Facility.** For Insured Facilities, upon request by **MSRC** the **COMPANY** must provide **MSRC** with a certificate of insurance issued by the insurer or by a broker in the standard form utilized in the commercial insurance industry to show Insurance Coverage with respect to the Insured Facilities.

(3) **Uninsured Amounts.** If the amount of P&I Club or Insurance Coverage is, for any reason, less than the applicable Vessel Responsibility Amount or Facility Responsibility Amount, respectively, for the Vessels and Facilities for which the particular insurance applies, the **COMPANY** must demonstrate the remainder of the required Financial Responsibility Amount by one of the other methods set forth in this Section 2.02. If any Insurance Coverage, which is provided by the **COMPANY** as permitted by this Schedule, has a deductible provision in an amount that exceeds five percent (5%) of any Financial Responsibility Amount that is applicable to the Insured Facility, the **COMPANY** must demonstrate financial responsibility in an amount not less than the full amount of any deductible provision by one of the other methods set forth in this Schedule.

(d) **Other Methods.** In addition to the methods in Section 2.02(a) through (c), the **COMPANY** may elect any form of financial

responsibility that (i) the **COMPANY** provides to **MSRC** in order to meet its financial responsibility obligations under this Schedule, (ii) is not otherwise provided for under this Schedule, and (iii) is acceptable to **MSRC** in its sole discretion.

**2.03 Definitions.** (All other terms have the meaning ascribed in Schedule 1.)

"**Deepwater Port**" means a deepwater port under OPA.

"**Deepwater Port Responsibility Amount**" means at any time \$350 million unless the limit of liability established under Section-1004(a)(4) of OPA for any Deepwater Port is less than \$350 million in which case the amount shall be the maximum amount of the limit of liability of any such Deepwater Port under OPA at such time.

"**Financial Responsibility Amount**" means, respectively, the dollar amounts that represent the Vessel Responsibility Amount, the Offshore Facility Responsibility Amount, the Deepwater Port Responsibility Amount, and the Onshore Facility Responsibility Amount.

"**Insurance Coverage**" means an insurance policy issued by a nationally or internationally recognized insurer acceptable to **MSRC**, as evidenced by a current certificate of insurance issued by the insurer or by a broker in the standard format utilized in the commercial insurance industry, insuring a Facility for any marine Oil pollution risks, having an aggregate limit of coverage not less than the Offshore Facility Responsibility Amount or the Onshore Facility Responsibility Amount that would be applicable to such Facility if it were not an Insured Facility.

"**Insured Facility**" means a Facility that has Insurance Coverage.

"**Insured Vessel**" means a Vessel that has P&I Club Coverage.



"Investment Grade Rating" means a current rating of the **COMPANY**'s most recent bond issue of AAA, AA, A, BBB or any variation thereof not lower than BBB-, or Aaa, Aa, A, Baa or any variation thereof not lower than Baa3, or a commercial paper rating of A1, A2 or Prime-1, Prime-2, or the equivalent as established by Standard and Poor's, Moody's, Duff and Phelps, or Fitch Investors Service.

"Maximum Responsibility Amount" means the highest of the Vessel Responsibility Amount, the Deepwater Port Responsibility Amount, the Offshore Responsibility Amount, or two times the Onshore Facility Responsibility Amount (but with respect to the Onshore Responsibility Amount, a minimum of \$20 million).

"Mobile Transfer Unit" means any mobile marine facility, including trucks and trailers, used for the transferring of Oil at a location where an Oil Spill Event could occur, including all hoses and piping connected thereto.

"MODU" means a mobile offshore drilling unit under OPA.

"Offshore Facility" means an offshore facility under OPA.

"Offshore Facility Responsibility Amount" means at any time the greatest amount established for any of the Offshore Facilities of the **COMPANY** or the Covered Entities under OPA, as amended by the Coast Guard Authorization Act of 1996, Pub. L. 104-324, 110 Stat. 3901, and all regulations promulgated thereunder.

"Onshore Facility" means an onshore facility under OPA.

"Onshore Facility Responsibility Amount" means, at any time the greatest amount

established for any of the Onshore Facilities of the **COMPANY** or any Covered Entity at such time by making the following computation with respect to each such Onshore Facility:

(A) (1) The product of \$12,500 multiplied by that portion of the Total Linefill Capacity in barrels which (based on a good faith estimate of the **COMPANY** reasonably acceptable to **MSRC**) could be lost during an Oil Spill Event, considering the availability and location of emergency shut-off controls; plus

(2) The amount of additional Discharge (based on a good faith estimate of the **COMPANY** reasonably acceptable to **MSRC**) that could reasonably be expected to enter the Operational Area during the emergency shut-off or transfer or pumping operations if a hose or pipeline were to rupture or become disconnected, or some other incident were to occur which could cause an Oil spill or Discharge, taking into consideration other safety devices, emergency reaction times and maximum transfer rates.

(B) Except as provided in clause (C) below, the amount determined pursuant to this calculation shall not be less than \$1 million or in excess of \$100 million;

(C) For a Mobile Transfer Unit, the amount determined pursuant to the preceding formula shall be not less than \$500,000;

"OPA EFR Regulations" means final or interim final regulations issued by an agency or instrumentality of the United States and currently in full force and effect implementing OPA's requirement for obtaining evidence of financial responsibility for any category of Vessels or Facilities. This term does not include financial responsibility regulations that were promulgated under other statutes (e.g., the Clean Water Act and the Outer

Continental Shelf Lands Act) that were in effect at the time OPA was enacted, and which OPA retained in force and effect pending promulgation of regulations implementing the new requirements under OPA.

"P&I Club" means any of the Protection and Indemnity Clubs listed on Schedule 10.

"P&I Club Coverage" means that a Vessel has been provided with cover for pollution risk by a P&I Club.

"Tank Vessel" means a tank vessel under OPA.

"Total Linefill Capacity" means the cross-sectional area of the inside of a pipeline multiplied by the length of the pipeline located in the Operational Area or where a Discharge could affect the Operational Area.

"Vessel Responsibility Amount" means at any time the greatest amount established for any Vessel of the COMPANY or any Covered Entity at such time by applying the following computation to each such Vessel: (i) for a Tank Vessel, the greater of (x) \$1,200 per gross ton of such Tank Vessel or (y) (1) if such Tank Vessel is greater than 3,000 gross tons, \$10-million or (2) if such Tank Vessel is less than or equal to 3,000 gross tons, \$2 million; (ii) for a Vessel other than a Tank Vessel or a MODU, the greater of (x) \$600 per gross ton of such Vessel or (y) \$500,000; (iii) for a MODU being used as an Offshore Facility, the amount derived in clause (i) above if such MODU were considered a Tank Vessel; (iv) for a MODU not being used as an Offshore Facility, the amount derived in clause (ii) above if such MODU were considered a Vessel; or (v) for a Vessel less than or equal to 300 tons or a Vessel that is non-self-propelled and that does not carry Oil as cargo or fuel, zero (0).

**SCHEDULE 3 - MPA MEMBER  
PART I  
RESOURCES  
AUGUST 15, 2011**

Resources for onwater containment and recovery, shoreline protection and other activities are available through selection of specific MSRC Response Equipment, MSRC Response Personnel and MSRC Subcontractors, as further described below.

**A. MSRC Response Resources (Equipment and Personnel):**

To provide the Covered Entity maximum flexibility in selecting what Resources are needed based on the unique circumstances of each Spill Event, MSRC offers MSRC Response Equipment and MSRC Response Personnel at the rates and terms set forth in Part III of this Schedule 3. Part III of this Schedule 3 will be effective from and after August 15, 2011.

**B. MSRC Subcontractors and Other Response Capabilities:**

Through MSRC Subcontractors and arrangements with other contractors, MSRC offers additional Resources and capabilities as follows:

1. **Onwater Resources and Other Support for Spill Response:** MSRC can assist the Covered Entity by calling out and supervising MSRC Subcontractors to provide various spill response equipment and personnel, response support, and specialized expertise to supplement MSRC Response Equipment and MSRC Response Personnel. Examples include: additional types or quantities of boom, skimmers, storage barges, vessels (for various tasks such as skimming platform, booming, personnel and/or supply transport, etc.), consumables, portable toilets, lighting, trailers/tractors for land transportation, safety supplies and services, security services, and material handling equipment.

2. **Shoreline Clean-up:** MSRC offers shoreline clean-up capabilities through MSRC Subcontractors.

3. **Firefighting (FI/FI), Salvage and Lightering Services:** MSRC can assist the Covered Entity in contracting for FI/FI, salvage and lightering services. The contract for such services will be between the FI/FI, salvage and lightering contractor and the Covered Entity.

4. **Average Most Probable Discharge (AMPD):** MSRC can arrange for resources to satisfy the planning requirements for AMPD in accordance with the procedures outlined in Part II of this Schedule 3.

5. **Wildlife Hazing, Rescue or Rehabilitation:** MSRC can assist in identifying an available contractor to provide resources necessary for wildlife hazing, rescue or rehabilitation.

**C. Non-Spill Event:**

MSRC can offer assistance with natural and manmade disasters other than Spill Events. MSRC services for a Non-Spill Event are provided at the rates (and other terms and conditions) set forth in this Schedule 3, and will require execution of a Non-Spill Event Addendum to this Service Agreement.

**D. Dispersant Resources:**

MSRC offers dispersant aircraft pursuant to a dedicated contract. These aircraft are available only for dispersant services. The dispersant aircraft may not be called out for other (non-dispersant-related) activities, nor may they be called out for dispersant services in advance of a Spill Event (unless the Spill Event is imminent, and the Covered Entity is requesting that MSRC commence flight operations). Dispersant aircraft are not subject to the 24 hour rule (see Part III, Section B).

**SCHEDULE 3 - MPA MEMBER  
PART II  
AVERAGE MOST PROBABLE DISCHARGE  
AUGUST 15, 2011**

MSRC offers Resources to satisfy the Average Most Probable Discharge ("AMPD") planning guidelines for purposes of citation in OPA Response Plans, when deemed appropriate by the Covered Entity (as the planholder), subject to the terms and conditions set forth below. Resources that satisfy this requirement may be either MSRC Response Equipment and MSRC Response Personnel, or MSRC Subcontractor Resources, or a combination, depending on various factors, including the time and location of the transfer requiring AMPD coverage and the availability of Resources within the required planning timeframes.

**Citation:**

Planholders may cite MSRC in OPA Response Plans, as ensuring by contract for AMPD. The appropriate citation is, "Arranged through MSRC as determined appropriate by the planholder."

**Operational Considerations:**

AMPD can be provided for the Oceans and Inland and/or Rivers/Canals operational environments as follows:

**(1) AMPD in Oceans Environment ("Oceans AMPD"):**

(a) The Resources needed to satisfy Oceans AMPD may consist, at the discretion of the Covered Entity, of either:

(i) MSRC Response Equipment and MSRC Response Personnel at their steady state locations, with transit time allowance in lieu of on-scene standby; or

(ii) deployment of appropriate stand-by Resources (provided by an MSRC Subcontractor or MSRC Response Equipment and MSRC Response Personnel, or any combination).

(b) If the Covered Entity determines that Oceans AMPD for a given transfer operation can be satisfied by paragraph (a)(i) above, no notice to MSRC is required and the Covered Entity will not incur any charges under Part III of this Schedule 3, as long as MSRC does not incur any additional costs to satisfy the Oceans AMPD.

(c) If the Covered Entity determines that Oceans AMPD for a given transfer operation requires deployment of stand-by Resources at the transfer location, the Authorized Representative must request such standby services by completing and submitting to MSRC an "AMPD REQUEST FORM" **no later than 24-hours** before the standby Oceans AMPD is required. MSRC will distribute to the COMPANY from time to time the necessary AMPD Request Form with instructions for completing and submitting a request for AMPD. The Covered Entity will pay the costs and charges for standby Oceans AMPD in accordance with Part III of this Schedule 3.

**SCHEDULE 3 - MPA MEMBER  
PART II  
AVERAGE MOST PROBABLE DISCHARGE  
AUGUST 15, 2011**

**(2) AMPD in Inland and/or Rivers/Canals Environment ("Inland/R&C AMPD"):**

MSRC will arrange, upon the request of the Covered Entity as provided below, deployment of appropriate standby Resources (provided by an MSRC Subcontractor or MSRC Response Equipment and MSRC Response Personnel, or any combination) for Inland/R&C AMPD. The Authorized Representative must request such standby services by completing and submitting to MSRC an "AMPD REQUEST FORM" no later than 24-hours before the Inland/R&C AMPD is required. MSRC will distribute to the COMPANY from time to time the necessary AMPD Request Form with instructions for completing and submitting a request for AMPD. The Covered Entity will pay the costs and charges for Inland/R&C AMPD in accordance with Part III of this Schedule 3.

**State AMPD-Type Requirements:**

Planholders desiring coverage for state AMPD-type planning requirements should contact MSRC for information regarding availability of Resources to satisfy these state planning requirements and the terms and conditions of citation. As with OPA AMPD arrangements, the determination of whether Resources are required on-scene at the transfer location, or whether regulatory requirements may be satisfied in other means, remains the sole responsibility of the Customer.

**SCHEDULE 3 - MPA MEMBER  
PART III  
RATE SCHEDULE FOR RESPONSE EQUIPMENT & PERSONNEL  
AUGUST 15, 2011**

ITEM	DESCRIPTION	DAILY RATE
<b>VESSELS AND BOATS -</b> Names of vessels have been included for reference purposes; however, vessel names may change.		
<b>Class I A - OSRV with homeports in states of TX, LA, MS, AL and FL, including but not limited to:</b>  Deep Blue Responder Florida Responder Gulf Coast Responder Louisiana Responder Mississippi Responder Southern Responder Texas Responder	208' to 210' OSRV. Includes two small RHIBs, Transrec 350 skimmer (or other skimmer with similar Effective Daily Recovery Capacity), support boat, and ancillary support items. Cost of any on-board boom, additional skimmers, or other equipment, and cost of satellite usage are not included in the daily rate. Costs for personnel functioning only as navigational crew and required to meet the COL, including their food and travel, are included in the daily rate. Additional labor onboard will be charged separately, including MSRC Marine Operations personnel on-board who are performing tasks such as backdeck work, operating RHIBs or support boats, etc. The daily rate includes fuel.	\$32,000
<b>Class I B - OSRV with homeports in locations other than TX, LA, MS, AL and FL, including but not limited to:</b>  California Responder Delaware Responder Hawaii Responder Maine Responder New Jersey Responder Oregon Responder Pacific Responder WC Park Responder	208' to 210' OSRV. Includes two small RHIBs, Transrec 350 skimmer (or other skimmer with similar Effective Daily Recovery Capacity), support boat, and ancillary support items. Cost of any on-board boom, additional skimmers, or other equipment, and cost of satellite usage are not included in the daily rate. Costs for personnel functioning only as navigational crew and required to meet the COL, including their food and travel, are included in the daily rate. Additional labor onboard will be charged separately, including MSRC Marine Operations personnel on-board who are performing tasks such as backdeck work, operating RHIBs or support boats, etc. The daily rate includes fuel.	\$28,000
<b>Class II - OSRV,</b> such as:  Ocean Liberty - 166' Sea Strike - 140'	140' to 166' OSRV. Includes two on-board skimmers, RHIB, small support boat and ancillary support items. Costs of boom or other on-board equipment are not included in the daily rate. Costs for personnel functioning only as navigational crew and required to meet the COL, including their food and travel, are included in the daily rate. Additional labor onboard will be charged separately. The daily rate includes fuel.	\$18,000
<b>Class III - OSRV,</b> such as:  Shearwater - 125' Recovery 1 - 100' Recovery 2 - 100'	100' to 125' OSRV. Includes on-board skimming system, support boat (if applicable), and ancillary support items. Use of fuel is included in the daily rate. Costs of boom or other on-board equipment are not included in the daily rate. Crew and other labor costs are additional.	\$11,900
<b>Class IV - Skimming vessel,</b> such as:  Royal Tern - 73' Western Gull - 73' Arctic Tern - 73'	Self propelled 73' skimming vessel includes skimming system with JBF 5001 6 ft belt skimmer, 276 to 286 bbl temporary storage and offloading capability. Use of fuel is included in the daily rate. Crew and other labor costs are additional.	\$9,350
<b>Class V - Skimming vessel,</b> such as:  MSRC Express - 57' Spill Spoiler I - 56' Spill Spoiler II - 56' Cormorant - 56' Sentinel - 48' MSRC Brisa Rapida - 47' MSRC Lightning - 47' MSRC Quick Strike - 47' MSRC Spill Chaser - 47' MSRC Relentless - 47' Aleutian Tern - 42' Plover - 42'	Self propelled skimming vessel 42' to 57', includes skimming system with built-in skimmers, 50 to 90 bbl temporary storage and offloading capability. Use of fuel is included in the daily rate. Crew and other labor costs are additional.	\$7,700

SCHEDULE 3 - MPA MEMBER  
PART III  
RATE SCHEDULE FOR RESPONSE EQUIPMENT & PERSONNEL  
AUGUST 15, 2011

ITEM	DESCRIPTION	DAILY RATE
<b>VESSELS AND BOATS - continued</b>		
<b>Class VI - Skimming vessel, such as:</b> Brant - 36' Pintail - 36' Grebe - 35.9' Widgeon - 35.9' Mini Spoiler I - 34' Mini Spoiler II - 34' Sandpiper - 33.5' Curlew - 31' Merlin - 28' Auklet - 28' Peregrine - 28'	Self propelled skimming vessel less than 42', includes built-in skimmer, temporary storage up to 50 bbls, and offloading capability. Use of fuel is included in the daily rate. Crew and other labor costs are additional.	<b>\$4,400</b>
<b>Utility Vessel - Class I, such as:</b> Casco Bay Responder - 46' Recon 3 - 43' Recon 4 - 43' Osprey - 42' Eagle - 42' Heron - 42' Recon 1 - 42' Recon 2 - 42'	Utility vessel greater than or equal to 42'. Use of fuel is included in the daily rate. Costs of any on-board equipment, including skimmers, pumps, boom, etc., are not included in the daily rate. Crew and other labor costs are additional.	<b>\$2,650</b>
<b>Utility Vessel - Class II, such as:</b> Raider IV - 38' Mallard - 38' Loon - 38' Teal - 36' Avocet - 36' Coot - 36' Bigelow Bight Responder - 35.5' Saco Bay Responder - 35.5' Response 1 - 34' Response 2 - 34' Response 3 - 34' Puffin - 33.3' Scoter - 32.5' Munson Support Boat-OSRV - 32' Raider I - 32' Raider III - 32' Diamond Pass Responder - 30' Fore River Responder - 30' RHIB-9m - 30'	30' to 38' Utility vessel. Use of fuel is included in the daily rate. Costs of any on-board equipment, including skimmers, pumps, boom, etc., are not included in the daily rate. Crew and other labor costs are additional.	<b>\$2,000</b>
<b>Utility Vessel - Class III, such as:</b> Push Boat - 27'-29' Munson Boats - 26'-28' Interceptor - 26' Tenacious - 26' Workboat - 24' Munson I - 21' Munson II - 21' Boston Whaler - 21' Skim Sled-alum workboat - 21'	21' to 29' Utility vessel. Use of fuel is included in the daily rate. Costs of any on-board equipment, including skimmers, pumps, boom, etc., are not included in the daily rate. Crew and other labor costs are additional.	<b>\$1,100</b>

SCHEDULE 3 - MPA MEMBER  
PART III  
RATE SCHEDULE FOR RESPONSE EQUIPMENT & PERSONNEL  
AUGUST 15, 2011

ITEM	DESCRIPTION	DAILY RATE
<b>VESSELS AND BOATS - continued</b>		
<u>Utility Vessel - Class IV</u> , such as: Various boats and RHIBs less than 21'	Utility vessel less than 21'. Use of fuel is included in the daily rate. Costs of any on-board equipment, including skimmers, pumps, boom, etc., are not included in the daily rate. Crew and other labor costs are additional.	<b>\$660</b>
<u>Platform or Multi-Purpose Supply Vessel (PSV/MPSV) OSRV Charter</u>	Provided by a third party through charter with MSRC. MSRC owned skimmer, MSRC owned boom, and MSRC owned support boat on-board are included in the \$15,000 daily rate. MSRC labor will be billed separately. The daily rate listed plus all third party PSV/MPSV charges, marked up 10%, will be billed to the Covered Entity. Third party PSV/MPSV charges include, but are not limited to, PSV/MPSV charter hire, fuel, backfill costs, cleaning and repairs, and Subcontractor personnel for backdeck support.	<b>\$15,000 per day per PSV/MPSV, plus all third party charges marked up 10%.</b>



SCHEDULE 3 - MPA MEMBER  
PART III  
RATE SCHEDULE FOR RESPONSE EQUIPMENT & PERSONNEL  
AUGUST 15, 2011

ITEM	DESCRIPTION	DAILY RATE
<b>BARGES/STORAGE</b>		
Oil Spill Response Barge (OSRB), such as MSRC 320, MSRC 380 MSRC 381, MSRC 400 MSRC 401, MSRC 404, MSRC 451, MSRC 520, MSRC 620	Includes normal outfitting, crane, hydraulic pumping system, and hoses. Cost of floating hotel, quarter barges or other similar accommodations are additional. Costs of skimming equipment, boom, tug, etc., are additional.	\$9,250
Oil Spill Response Barge (OSRB) with Crucial Skimmers, Transrec Skimmer or similar skimmer, such as: MSRC 350, MSRC 360, MSRC 402, MSRC 403, MSRC 452, MSRC 570, MSRC 680	Includes normal outfitting, crane, hydraulic pumping system, hoses, and on-board skimmer. Cost of floating hotel, quarter barges or other similar accommodations are additional. Costs of boom, tug, etc., are additional.	\$13,850
Barge 264' Kittiwake 200' Ibis 185' Pelican	Includes normal outfitting, crane, hydraulic pumping system, and hoses. Cost of skimming equipment, boom, tug, etc., are additional.	\$7,550
Shallow Water Barge - 48'	Includes 1 non-powered barge (comprised of 2 pontoons) with 400 bbl storage, boom arm and up to 100' of boom.	\$1,600
Propulsion Unit with Crane for Shallow Water Barge	Includes Thrustmaster propulsion unit with crane for Shallow Water Barge.	\$1,100
Storage Barge - 200 bbl	One non-powered, 36' aluminum towable storage barge.	\$1,050
Storage Barge - 100 to 110 bbl	One non-powered, 32'-40' aluminum towable storage barge.	\$690
Towable Storage Bladder System - 3,000 bbl	Includes fill/discharge hoses, stern marker buoy, tow line/bridle, and associated rigging.	\$8,700
Towable Storage Bladder System - 500 bbl	Includes fill/discharge hoses, stern marker buoy, tow line/bridle, and associated rigging.	\$4,500
Towable Storage Bladder System - 164 bbl (Lancer)	Inflatable, floating storage bladder with fill/discharge hoses, stern marker buoy, tow line/bridle, and associated rigging.	\$550
Towable Storage Bladder System - 50 bbl	Includes fill/discharge hoses, stern marker buoy, tow line/bridle, and associated rigging.	\$220
13,000 Gallon Containment Berm with Liner		\$390
2,400 Gallon Open Top Storage Tank		\$310
1,200 Gallon Open Top Storage Tank		\$220
1,200 Gallon Kepner Oil Storage Bag	Heavy duty sea bag with towing hose assemblies and fittings.	\$120
400 Gallon Open Top Storage Tank		\$190
500 Gallon Portable Fuel Tank		\$90
24 bbl Open Top Storage Container		\$220
7 bbl Portable Storage Tank		\$90

SCHEDULE 3 - MPA MEMBER  
PART III  
RATE SCHEDULE FOR RESPONSE EQUIPMENT & PERSONNEL  
AUGUST 15, 2011

ITEM	DESCRIPTION	DAILY RATE
<b>PORTABLE SKIMMER SYSTEMS</b>		
Unless otherwise noted, all skimmer systems include the skimmer with applicable pump, power pack, controller/air compressor, skimmer cradle, hoses, adapter reel, container, and/or pallet, and appurtenances.		
AARD Vac 800 Skimmer	Also includes vacuum/tank.	\$2,700
Aqua-Guard RBS5 Skimmer	Interchangeable brush, disk and drum cassettes. Also includes 24 bbl tank.	\$1,250
Desmi Ocean Weir Skimmer		\$2,750
Destroil 250 Skimmer	Includes skimmer with pump only.	\$1,600
Destroil DS-150 Skimmer	Includes skimmer with pump only.	\$1,250
DOP 250 Skimmer	DOP 250 pump with weir lip adaptor.	\$2,750
Elastec TDS 136 Drum		\$1,250
Foilex 200 Skimmer System	Also includes oily water separator with 100 bbl storage, approx. 300 feet of inflatable boom and crane.	\$3,700
Foilex 250 Skimmer System	Also includes oily water separator with 100 bbl storage, approx. 300 feet of inflatable boom and crane.	\$4,100
GT 260 Skimmer		\$2,750
GT 185 Weir Skimmer		\$2,750
LORI Brush Skimmer, 2 Chain Systems		\$2,100
Morris MI-11/24 Disk Skimmer		\$1,250
Morris MI-30 Disk Skimmer		\$2,000
Multi 24 Skimmer	Interchangeable brush, disk and drum cassettes.	\$2,750
Rope Mop Skimmer - 4"	Self contained skimmer with generator and up to 100 feet rope mop.	\$690
Rope Mop Skimmer - 6"	Self contained skimmer with generator and up to 100 feet rope mop. When applicable, 4 bbl storage tank is also included.	\$840
Poscon Model 150 Weir Skimmer		\$1,250
Queensboro Skimmer with DOP 160	Interchangeable brush and drum cassettes.	\$2,000
Seawoolf Skimmer		\$3,750
Skim Pac	Includes skimmer head and 100 feet of 2 inch rigid hose.	\$280
Slickbar-Sturp Weir Skimmer		\$1,050
STRESS 1 Weir Skimmer		\$3,450
STRESS 2 Weir Skimmer		\$2,750
Vikoma 12K Mark II Skimmer		\$1,250
Vikoma 3-Weir Skimmer	Also includes skimming barrier.	\$5,650
Vikoma Komara 30K Skimmer		\$2,000
Vikoma Komara Sea Devil		\$2,750
Walosep Mini Skimmer		\$1,250
Walosep W 1/2 Skimmer		\$2,750
Walosep W1 Skimmer		\$2,750
Walosep W2 Skimmer		\$2,750
Walosep W-4 Skimmer		\$2,750
WP-1 Skimmer		\$3,350

**SCHEDULE 3 - MPA MEMBER  
PART III  
RATE SCHEDULE FOR RESPONSE EQUIPMENT & PERSONNEL  
AUGUST 15, 2011**

ITEM	DESCRIPTION	DAILY RATE	
<b>BOOM SYSTEMS</b>			
All systems include tow bars and bridges, boom lights and anchors, container, box or pallet, and other appurtenances. When applicable, system also includes reels of rope and water pump/air inflators. Additional system information is noted below.			
Offshore Boom 50" or greater	Typically 110 foot sections of pressure-inflatable boom.	\$7.60/foot	Note (b)
Kepner Reel Pack Boom 43"	Typically provided in 200 foot sections of self-inflatable boom.	\$4.60/foot	Note (b)
Expandi 4300 Offshore Boom 43"	Typically provided in 50 foot sections of self-inflatable boom.	\$4.60/foot	Note (b)
Expandi 3000 Inland Boom 31"	Typically provided in 50 foot sections of self-inflatable boom.	\$3.50/foot	Note (b)
Intertidal Boom 26" Texaboom	Typically provided in 50 foot sections, includes beach stakes.	\$3.60/foot for first 28 days	Note (c)
Medium Fence Boom (24" Slickbar or 27" EFC)	Typically provided in 100 foot sections of boom.	\$2.60/foot for first 28 days	Note (c)
Foam Flotation Boom > 36"	Typically provided in 50 foot or 100 foot sections of boom.	\$4.60/foot for first 21 days	Note (c)
Foam Flotation Boom 30"-36"	Typically provided in 50 foot or 100 foot sections of boom.	\$3.50/foot for first 21 days	Note (c)
Foam Flotation Boom 24"-29"	Typically provided in 50 foot or 100 foot sections of boom.	\$2.60/foot for first 21 days	Note (c)
Foam Flotation Boom 18"-23"	Typically provided in 100 foot sections of boom.	\$2.00/foot for first 21 days	Note (c)
Foam Flotation Boom 16"	Typically provided in 50 foot sections of boom.	\$1.80/foot for first 21 days	Note (c)
Foam Flotation Boom < 16"	Typically provided in 50 foot sections of boom.	\$1.20/foot for first 14 days	Note (c)
Swamp Boom 6"	Typically provided in 100 foot sections of boom.	\$1.20/foot for first 14 days	Note (c)
<p>Note (a): Reserved.</p> <p>Note (b): The Covered Entity will pay the daily rate of boom for the boom until returned in accordance with Part III.A.8.</p> <p>Note (c): The Covered Entity will pay the daily rate of boom for the boom until returned in accordance with Part III.A.8, up to the specified maximum number of days (28, 21 or 14 days, as applicable) for any one event. After the maximum is reached, MSRC shall transfer and the Covered Entity shall accept and have all rights, title and interest in and to the boom ("AS IS"), as well as all obligations for the cleaning, disposition and/or storage of the boom (and related Waste, in accordance with Section 3.07 of this Agreement). Upon transfer, the Covered Entity agrees to immediately remove or deface the MSRC name, logo, and all other identifying marks on the transferred boom.</p>			

SCHEDULE 3 - MPA MEMBER  
PART III  
RATE SCHEDULE FOR RESPONSE EQUIPMENT & PERSONNEL  
AUGUST 15, 2011

ITEM	DESCRIPTION	DAILY RATE
<b>PUMPS AND PUMP SYSTEMS</b>		
DOP 160 or DOP 250 Pump	Includes pump only.	\$1,600
DOP 250 Pumping System	Includes pump, power pack, controller, hose set, container, and appurtenances.	\$2,650
DPL40-D3 Pump	Includes pump only.	\$690
Eureka (CCN-150) Transfer Pump	Includes pump only.	\$2,100
Eureka (CCN-150) Transfer Pumping System	Includes pump, power pack, controller, hose set, container, and appurtenances.	\$3,350
FRAMO TK 150 Pump	Includes pump only.	\$2,100
Hydra Tech Pump	Includes pump only.	\$690
MPC (CCN-150) Transfer Pumping System	Includes pump, power pack, controller, hose set, container, and appurtenances.	\$3,350

<b>OTHER EQUIPMENT</b>		
Hydraulic Power Pack - Type 1 - 88 hp		\$910
Hydraulic Power Pack - Type 2 - 66 hp		\$690
Hydraulic Power Pack - Type 3 - 26 hp		\$260
Portable Air Compressor (Low Capacity)		\$180
6 kw Diesel Generator		\$150
30 kw Diesel Generator		\$290
80 kw Diesel Generator		\$580
Light Tower for 6 kw Diesel Generator		\$140
Mobile Light Plant with Generator		\$430
Welders, Air - Pack		\$130
High Pressure Washer		\$240
Low Pressure Washer		\$140
Small Pumps		\$130
Bird Scare Gun		\$45
Wildlife Trailer		\$4,000
Mobile Office Trailer		\$500

SCHEDULE 3 - MPA MEMBER  
PART III  
RATE SCHEDULE FOR RESPONSE EQUIPMENT & PERSONNEL  
AUGUST 15, 2011

ITEM	DESCRIPTION	DAILY RATE
<b>COMMUNICATIONS</b>		
Emergency Communications Package (a.k.a. Comm Suite)	A fully integrated communications suite on a 48 foot trailer with 45 kVA generator with VoIP/internet satellite package and radio package.	\$6,000
Small Satellite System	Provides access to the internet for data and voice trunking via a portable satellite system and associated equipment. Appropriate for small offices and staging sites.	\$1,500
Portable Base Stations and Repeaters	Includes 25-35 watt VHF or UHF base station or repeater, antenna, coaxial cable and associated equipment.	\$130
Handheld Radio Package	Each package includes 10 radios, 10 chargers and 20 batteries. Various frequency bands are available including VHF, VHF Marine, and UHF or combinations of all three.	\$250

<b>PERSONNEL</b>		
includes cost of MSRC personnel worked in a day as well as associated travel costs. Cost of floating hotel, quarter barges or other similar accommodations are additional.		
Exempt personnel	MSRC employees not eligible for overtime under MSRC's compensation program.	\$1,200
Non-exempt personnel	MSRC employees eligible for overtime under MSRC's compensation program.	\$900

<b>DISPERSANT RESOURCES</b>		
Dispersion Aircraft - C130A	Provided by a third party pursuant to a dedicated contract. Third party charges to be billed include hourly flying time fee (4 hour minimum charge per day), fuel, support service costs, etc.	\$25,000 per day per aircraft and third party charge plus 10%
Dispersion Spotter/Spray Aircraft - BE-90A	Provided by a third party pursuant to a dedicated contract. Third party charges to be billed include hourly flying time fee (4 hour minimum charge per day), fuel, support service costs, etc.	\$5,000 per day per aircraft and third party charge plus 10%
Dispersion	* The Covered Entity shall be obligated to purchase replacement dispersion (gallon for gallon) as soon as commercially practicable and transfer this replacement dispersion to MSRC. The replacement dispersion shall be of new manufacture and of a type acceptable to MSRC. In addition, the Covered Entity shall pay all third party charges incurred by MSRC, marked up 10%, to provide or re-stock the dispersions (e.g., transportation, inspection and packaging).	Replacement, gallon for gallon, with new dispersion as chosen by MSRC *

<b>MISCELLANEOUS</b>		
Fire Boom	includes fire boom and ancillary items.	Replacement cost plus 10% to replace fireboom and ancillary items. Replacement shall be of new manufacture and of a type acceptable to MSRC.
Resource Tracking System	Available through third party contractor.	Third party charge plus 10%

**SCHEDULE 3 - MPA MEMBER  
PART III  
RATE SCHEDULE FOR RESPONSE EQUIPMENT & PERSONNEL  
AUGUST 15, 2011**

**A. PRICE RATES AND AVAILABILITY**

1. Unless specified otherwise, rates do not include costs such as personnel, navigational crew, transportation, contractor support and other third party charges/out-of-pocket expenses.
2. Rates refer to vessels/equipment owned by MSRC and MSRC personnel. Alternative or additional terms may apply to Subcontractor Resources and other resources under charter, consignment, or contract (including but not limited to dispersant aircraft and PSV/MPSV); for such resources, the terms of such subcontract, charter or other contract shall apply.
3. Each vessel and piece of equipment listed in Part III of this Schedule 3 may not be available in all locations.
4. COMPANY may not call out more than one (1) Class I OSRV, one (1) Small Satellite System, and one (1) Emergency Communications Package unless a Spill Event is imminent (the "Reserve Rule"). For the purposes of the Reserve Rule, the term "COMPANY" includes all Covered Entities covered under this Service Agreement, as well as any other Affiliates (as defined in the MPA By-Laws) of the COMPANY covered under other Service Agreements. For example, the Reserve Rule would apply to call-outs occurring in advance of a tropical storm, where the tropical storm has not yet caused a Spill Event, or is not yet an immediate threat to cause a Spill Event, at a Covered Facility or Covered Vessel of the COMPANY.
5. Certain items listed in this Schedule are available only with personnel or may require MSRC Subcontractor support, in MSRC's discretion.
6. If a system or piece of equipment is operational/functional for any part of a day, the Covered Entity will be charged the full daily rate, unless otherwise noted in Section D below.
7. Charges for MSRC personnel will commence when time is charged to the event on the employee's timesheet. Charges for equipment and vessels will commence as of the time of the Initial Call-Out Notice for the specified resource subject to the initial 24 hour period described in Section B below.
8. With the exception of certain boom as noted elsewhere in this Part III, the Covered Entity will be charged the daily rate for a system or unit of equipment until the system or unit is returned to MSRC's inventory, clean and in as good repair as when first provided to the Covered Entity, normal wear and tear excepted. Also, the Covered Entity will be responsible for all costs for cleaning, repairing, and/or replacing equipment in order to meet this requirement. If inclement weather or other conditions outside MSRC's control limit the use of MSRC Resources, the Covered Entity will be charged the daily rate for equipment. As noted in A.2. above, for Subcontractor Resources and other resources under charter, consignment, or contract, additional portal-to-portal, minimums, or other provisions may apply.
9. Fuel costs have been included in the daily rate of the equipment, except as noted in Sections B and F below.
10. MSRC's published rates and invoiced amounts will not be discounted.
11. Daily rates are effective from 0000 to 2400 hours. The appropriate time zone to be used in calculating the daily rate will be the time zone where the Resources are used. If the Resources are used in more than one time zone, MSRC and the Covered Entity will agree on a standard time zone for calculating daily rates.
12. If Resources are provided by MSRC for which a rate is not specified in the Rate Schedule, MSRC will bill the rate consistent with MSRC's practice. Typically these rates will be reflected on job tickets, or in cost estimates, etc., as provided by MSRC to the Covered Entity.

**SCHEDULE 3 - MPA MEMBER  
PART III  
RATE SCHEDULE FOR RESPONSE EQUIPMENT & PERSONNEL  
AUGUST 15, 2011**

13. The MSRC rates listed are exclusive of taxes. The Covered Entity will be charged for all taxes incurred in providing Resources, excluding payroll taxes on MSRC employees. This includes sales and use taxes, excise taxes, personal property taxes, and other federal, state and local taxes and charges. There will not be a 10% mark-up on taxes separately listed on MSRC's invoice to the Covered Entity.

**B. PRICE DURING THE FIRST 24 HOURS FOLLOWING THE INITIAL CALL-OUT NOTICE**

1. During the first 24 hours of a Spill Event or Non-Spill Event, it may be difficult for the Covered Entity to determine the Resources desired. Therefore, to encourage early callout, MSRC offers special pricing (sometimes referred to as the "24 hour rule") if certain conditions are met.

2. Conditions for Eligibility: In order for Resources to be eligible for 24 hour rule pricing, all of the following conditions must be satisfied:

a. The applicable Resource must not have been used in the event. "Used" is defined as meeting one or more of the following conditions:

- 1) the Resource enters oil or begins oil recovery operations,
- 2) the Resource deploys a skimmer,
- 3) the Resource deploys boom,
- 4) the Resource sprays dispersants,
- 5) in the case of an OSRV, it launches a boat, or is used for a helicopter landing (other than boat launches or helicopter landings required to crew or supply the OSRV),
- 6) the Resource is used to transport personnel or supplies, other than as required to crew or supply other MSRC Resources,
- 7) the Resource is used to perform site characterization, air monitoring, or continuous air monitoring, at the request of the Covered Entity,
- 8) in the case of an OSRV, it is used to provide housing accommodations for personnel other than MSRC Response Personnel or MSRC Subcontractor personnel ("floatel"), or
- 9) in the case of Communications Resources, the Resource is deployed, set up on site, and available to provide communications services.

b. In addition, the Covered Entity must notify MSRC in writing (or notify MSRC orally, with prompt confirmation in writing) that the Response Equipment and Response Personnel are unconditionally released to MSRC, before the end of the first 24 hours following the Initial Call-Out Notice, for return to MSRC's inventory.

c. Finally, the Resources and services must not be of the types excluded under paragraph 6 below.

3. If all of the above conditions are met, the Resources will be charged to the Covered Entity as follows:

a. MSRC Equipment: the daily rate listed in Part III will not be charged; however, MSRC Personnel, Third Party Charges and Out-of-Pocket Expenses, and Fuel will be charged as specified below.

b. MSRC Personnel: in lieu of the daily rate listed in Part III, exempt employees will be charged at a rate of \$600 per employee and non-exempt employees will be charged at a rate of \$450 per employee. This rate covers MSRC's costs relating to compensation as well as employee's out-of-pocket travel expenses.

**SCHEDULE 3 - MPA MEMBER  
PART III  
RATE SCHEDULE FOR RESPONSE EQUIPMENT & PERSONNEL  
AUGUST 15, 2011**

c. Third Party Charges and Out-of-Pocket Expenses: The Covered Entity will pay all third party charges and out-of-pocket expenses associated with the Resources provided, other than MSRC personnel travel which is included in the daily labor rate. There will be a 10% mark-up on all third party charges and out-of-pocket expenses. Third party charges and out-of-pocket expenses are further described in Section E below.

d. Fuel: Fuel usage for the vessels and boats will be charged to the Covered Entity (as measured by the soundings taken) at the Low-Sulfur No. 2 Diesel Fuel price per gallon quoted on the website for the U. S. Energy Information Administration, for the applicable area, plus \$0.50 per gallon. The date used to determine the pricing will be the nearest business day to the date the vessel or boat was released by the Covered Entity.

4. If all of the conditions specified in paragraph 2 above are not met for a Resource, the Covered Entity will pay for such Resource at the daily rate specified in this Schedule 3 and in accordance with the other pricing terms and conditions contained in this Schedule 3, retroactive to the time of the Initial Call-Out Notice.

5. In addition, if the Covered Entity again requests the same (or similar) equipment and/or personnel within 24 hours after the Covered Entity gives the notice pursuant to (b) in paragraph 2 above, the Covered Entity will pay, retroactive to the time of the Initial Call-Out Notice, the costs and charges for such equipment and personnel in accordance with the daily rates specified in this Schedule 3 and in accordance with the other pricing terms and conditions of this Schedule 3.

6. Exclusions:

a. AMPD services are not eligible for 24 hour rule pricing. The Covered Entity will pay the costs and charges for AMPD services in accordance with the daily rates specified in this Schedule 3 and in accordance with the other pricing terms and conditions of this Schedule 3.

b. Dispersant resources are also not eligible for 24 hour rule pricing. The Covered Entity will pay the costs and charges for all dispersant resources in accordance with the daily rates specified in this Schedule 3 and in accordance with the other pricing terms and conditions of this Schedule 3.

c. PSVs/MPSVs are also not eligible for 24 hour rule pricing. The Covered Entity will pay the costs and charges for all PSV/MPSV resources in accordance with the daily rates specified in this Schedule 3 and in accordance with the other pricing terms and conditions of this Schedule 3.

**C. MSRC PERSONNEL**

1. All MSRC personnel will be billed if the employee (i) provides services requested, or supports those services, or is otherwise required to fulfill MSRC's obligation under this Agreement, or (ii) is specifically requested by the Covered Entity.

2. Billable rates (exempt or non-exempt classification) will be determined based on how the MSRC employee is classified for compensation purposes within MSRC's payroll system.

3. All travel time for employees required to mobilize and demobilize will be charged at the daily rates specified in this Rate Schedule.

4. If MSRC employees are engaged to clean or repair equipment or supervise the cleaning or repair of equipment, whether it is MSRC owned or third party owned equipment, their time is billable to the Covered Entity at the applicable exempt or non-exempt daily rates.



**SCHEDULE 3 - MPA MEMBER  
PART III  
RATE SCHEDULE FOR RESPONSE EQUIPMENT & PERSONNEL  
AUGUST 15, 2011**

5. Additional personnel (i.e., non-MSRC employees) brought in for purposes of response and contracted for by MSRC will be billed to the Covered Entity at cost plus 10%.

**D. COMPONENTS AND SYSTEMS**

1. Components of MSRC owned equipment systems cannot be leased separately, except as provided in paragraph 12 of Section A above.

2. If a unit of equipment, system, or component of a system is damaged, missing, lost or otherwise non-functioning and prevents the system from being substantially operable, then the daily charge of a system will cease when the system is prevented from being substantially operable and will resume when the system is operational. The Covered Entity will be responsible for costs to repair and/or replace the system or component of a system and return it back to operations or to MSRC inventory, as applicable. The Covered Entity will also be responsible for costs incurred to clean the non-functioning system or component of a system. As noted in Section A.2, however, the above may not apply to Subcontractor Resources and other resources under charter, consignment, or contract (e.g., dispersant aircraft or PSV/MPSVs); in such cases, the terms of the subcontract, charter, consignment, or other contract/agreement shall govern.

3. Any costs associated with replacing or repairing any system or unit of equipment, including the costs of placing the substitute item in service and taking the replaced item out of service, will be charged to the Covered Entity.

**SCHEDULE 3 - MPA MEMBER  
PART III  
RATE SCHEDULE FOR RESPONSE EQUIPMENT & PERSONNEL  
AUGUST 15, 2011**

**E. THIRD PARTY CHARGES AND OUT-OF-POCKET EXPENSES**

1. The Covered Entity will pay all third party charges and out-of-pocket expenses incurred by MSRC relating to services provided under this Agreement, plus a 10% mark up\*. Third party charges and out-of-pocket expenses include, but are not limited to:

- a. fees and costs relating to third party resources provided under charter, consignment, or contract with MSRC,
- b. transportation and freight charges,
- c. fuel for third party resources,
- d. resource monitoring costs,
- e. communication and telephone costs,
- f. satellite access and usage,
- g. consumables and replacement cost of expended supplies,
- h. equipment cleaning, replacement, repair and maintenance for MSRC and third party provided resources,
- i. labor provided by a third party,
- j. sales and use taxes,
- k. insurance deductibles (for equipment damage, personal injury, or other losses or liabilities),
- l. expenses incurred by MSRC in any litigation, arbitration, or other legal or investigatory proceeding including, but not limited to, responding to formal discovery requests (e.g., subpoena duces tecum), reasonable attorneys' fees and costs, document copying costs, travel expenses, etc., and
- m. other third party costs.

\* An exception to the 10% mark up applies to services provided under Part II, Average Most Probable Discharge ("AMPD"), whereby the mark up is 10% or \$500, whichever is greater.

**SCHEDULE 3 - MPA MEMBER  
PART III  
RATE SCHEDULE FOR RESPONSE EQUIPMENT & PERSONNEL  
AUGUST 15, 2011**

**F. EXERCISES/TRAINING ACTIVITIES**

1. When MSRC participates in exercises/training activities at the request of the Covered Entity, the Covered Entity will be charged as follows:
  - a. MSRC Personnel: MSRC personnel costs during exercises/training activities are charged at a daily rate of \$600 for each exempt employee and \$450 for each non-exempt employee. This daily rate covers MSRC's costs relating to compensation as well as the employee's out-of-pocket travel expenses.
  - b. MSRC Equipment: The Covered Entity will not be charged the daily rate for use of MSRC equipment in an exercise/training activity.
  - c. Third Party Charges and Out-of-Pocket Expenses: The Covered Entity will pay all third party charges and out-of-pocket expenses incurred by MSRC during or resulting from MSRC's participation in such exercises, other than MSRC personnel travel which is included in the daily labor rate. There will be a 10% mark-up on all third party charges and out-of-pocket expenses. Third party charges and out-of-pocket expenses are further described in Section E above.
  - d. Fuel: Fuel usage for the vessels and boats will be charged to the Covered Entity (as measured by the soundings taken) at the Low-Sulfur No. 2 Diesel Fuel price per gallon quoted on the website for the U. S. Energy Information Administration, for the applicable area, plus \$0.50 per gallon. The date used to determine the pricing will be the nearest business day to the date the vessel or boat was released by the Covered Entity.

**G. FEES FOR LATE PAYMENT OF INVOICES**

1. If invoices are not paid by their due date, MSRC will assess, and the Covered Entity will pay, a late payment charge of 18% per year (or the maximum rate allowed by law, whichever is less), prorated for the number of days the payment is past due.

**H. INTEREST AND FEES ON WORKING CAPITAL**

1. Interest and fees incurred by MSRC on borrowed funds to provide working capital during response activities will be charged to the Covered Entity.

## SCHEDULE 4

### States/Geographic Regions with Adequate Responder Immunity

1. Alabama
2. Alaska
3. American Samoa
4. California \*
5. Connecticut \*
6. Delaware
7. Florida
8. Georgia
9. Guam
10. Hawaii
11. Illinois
12. Indiana \*
13. Iowa \*
14. Kentucky \*
15. Louisiana \*
16. Maine
17. Maryland \*
18. Massachusetts \*
19. Michigan \*
20. Minnesota
21. Mississippi
22. Missouri \*
23. Nebraska
24. New Hampshire \*
25. New Jersey \*
26. New York \*
27. North Carolina \*
28. Northern Marianas Islands
29. Ohio \*
30. Oregon
31. Pennsylvania
32. Puerto Rico \*
33. Rhode Island \*
34. South Carolina
35. Tennessee \*
36. Texas \*
37. United States Virgin Islands
38. Virginia
39. Washington \*
40. West Virginia \*
41. Wisconsin \*

\* Indicates that, while State has responder immunity, it may not apply to all spills (due to geographic limitations, such as exclusions for spills on land or spills in inland/non-navigable waters - or due to other limitations, such as exclusions for spills of non-petroleum oils - or due to other ambiguities in the State/Territory law, such as in Puerto Rico). MSRC may require a "Non-Responder Immunity Addendum" in such cases. Contact MSRC for more information regarding limitations in a particular State.

1/1/08

## SCHEDULE 5

### FORM OF CONTRACTOR INDEMNIFICATION AGREEMENT

**Section 1. Nature of Relationship.** \_\_\_\_\_, a \_\_\_\_\_ with its principal offices located at \_\_\_\_\_ (the "COMPANY") and \_\_\_\_\_, a \_\_\_\_\_ (the "Contractor"), recognize and agree that, in connection with the Company's agreement with Marine Spill Response Corporation ("MSRC") under which MSRC is providing response services, the risks and liabilities, limitation of remedies, and the indemnification of the Contractor will be allocated as set forth in this Agreement.

**Section 2. Defined Terms.** As used in this Agreement, the following terms shall have the following meanings:

"Cap" means, with respect to an Oil Spill Event, the amount set forth below for the Facility or Vessel that is the source of the applicable Discharge; provided that if more than one (1) Facility or Vessel is the source of the Discharge, the amount shall be the greatest amount set forth below for any of such Facilities or Vessels; and provided further that if a Person is the "responsible party" (as defined in OPA) for more than one (1) such Facility or Vessel involved in the Discharge, the Cap shall be the sum of the amounts set forth below for each such Facility or Vessel:

- (i) for a Vessel Responsibility Amount with respect to such Vessel;
- (ii) for an Offshore Facility other than a Deepwater Port, the sum of (x) all removal costs under OPA for the Discharge from such Facility or Vessel and (y) \$75 million; and
- (iii) for a Deepwater Port or an Onshore Facility, \$350 million.

"Claims" means any claims, demands, causes of action (including enforcement actions), damages of any nature, costs (including costs of investigation), expenses (including reasonable attorneys' fees and costs and allocated expenses for in-house legal services), judgments, fines, penalties, liabilities, obligations, claims by third parties for death, personal injury or illness or for loss or damage to property, of every kind and nature whatsoever under any Federal, state, local or other applicable law (statutory or common), including any claims for "removal costs" or "damages" as such terms are defined in OPA.

"Covered Entity" means the COMPANY or any other Person which is both (i) an affiliate of the COMPANY to whom the benefits of membership in MPA are extended pursuant to the MPA By-Laws and (ii) identified by the COMPANY to MSRC.

"Deepwater Port" means a deepwater port under OPA.

"Discharge" means any emission (other than natural seepage), intentional or unintentional, and includes spilling, leaking, pumping, pouring, emitting, emptying or dumping.

"MSRC Subcontractor Contract" shall mean a contractor service agreement between Contractor and MSRC pursuant to which Contractor is to provide certain services, equipment, goods and/or personnel.

"Facility" or "Facilities" means any structure, group of structures, equipment, or device (other than a Vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting Oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes.

"MODU" means a mobile offshore drilling unit under OPA.

"MPA" means Marine Preservation Association, an Arizona nonprofit corporation, or any successor thereto.

"MPA Member" means a Person that is a member of MPA.

"MSRC" means Marine Spill Response Corporation, a Tennessee nonprofit corporation, or any successor theretot.

"Offshore Facility" means an offshore facility under OPA.

"Oil Spill Event" means any actual or threatened Discharge of oil into or threatening waters or adjoining shorelines.

"Onshore Facility" means an onshore facility under OPA.

"OPA" means the Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484 (1990) and, unless otherwise specified, all regulations promulgated thereunder.

"Person" means any individual, corporation, partnership, limited liability company, joint venture, association, state, county, municipality, interstate body, or any political subdivision thereof.

"Responder Immunity" means the limited immunity from liability provided by Section 4201(a) of OPA (33 U.S.C. Section 1321(c)(4)), or any other similar limitation of liability with a similar effect and scope under any other form of Federal, state, local, foreign or other law.

"Tank Vessel" means a tank vessel under OPA.

"Vessel" or "Vessels" means any and every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, other than a public vessel as defined in OPA.

"Vessel Responsibility Amount" means at any time the greatest amount established for any Vessel of any Covered Entity at such time by applying the following computation to each such Vessel: (i) for a Tank Vessel, the greater of (x) \$1,200 per gross ton of such Tank Vessel or (y) (1) if such Tank Vessel is greater than 3,000 gross tons, \$10 million or (2) if such Tank Vessel is less than or equal to 3,000 gross tons, \$2 million; (ii) for a Vessel other than a Tank Vessel or a MODU, the greater of (x) \$600 per gross ton of such Vessel or (y) \$500,000; (iii) for a MODU being used as an Offshore Facility, the amount derived in clause (i) above if such MODU were considered a Tank Vessel; (iv) for a MODU not being used as an Offshore Facility, the amount derived in clause (ii) above if such MODU were considered a Vessel; or (v) for a Vessel less than or equal to 300 tons or a Vessel that is non-self-propelled and that does not carry oil as cargo or fuel, zero (0).

**Section 3. Cover Indemnification.** The COMPANY hereby agrees to defend, indemnify and hold harmless the Contractor against and from any and all Claims for "removal costs" or "damages" (as such terms are defined in OPA) that

- (a) result from the Contractor's actions taken or omitted to be taken in the course of rendering care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed by the President of the United States or his designee; and
- (b) arise out of, or are in any manner connected with, the Contractor's performance of or alleged failure to perform its obligations under the MSRC Subcontractor Contract as a result of an Oil Spill Event.

**Section 4. Excluded Obligations.** The obligations of the COMPANY under Sections 2 and 3 shall not include and shall not apply to:

- (a) the extent (but only to the extent) that applicable law would render such indemnity agreement void or unenforceable;
- (b) any portion of a Claim where the liability was caused by the Contractor's gross negligence or willful, reckless, or criminal misconduct;
- (c) any portion of a Claim arising from or related to services or equipment that were not provided by the Contractor pursuant to the MSRC Subcontractor Contract, including services or equipment provided by the Contractor to the COMPANY, a Covered Entity or some other Person after the COMPANY has, pursuant to the MSRC Subcontractor Contract, terminated the services of the Contractor at an Oil Spill Event;
- (d) any Claim for personal injury or wrongful death;

(e) any portion of a Claim with respect to an Oil Spill Event where the payment of such portion of the Claim would cause the aggregate of (i) the amount of any out-of-pocket payments actually made by or on behalf of the COMPANY to or on behalf of the Contractor, any other contractor, MSRC or any indemnitees under this Agreement, or any similar agreement with a subcontractor with respect to such Oil Spill Event and (ii) the amount of any out-of-pocket payments made by the COMPANY for removal costs or damages under OPA with respect to such Oil Spill Event, to exceed the Cap with respect to such Oil Spill Event, irrespective as to whether the Cap can be maintained in any proceeding; provided that the restrictions of this Section 3(e) shall not apply to any Claim for which the COMPANY has previously assumed the defense of such Claim under Section 5(a);

(f) any Claim where the Contractor is a "responsible party" as defined in OPA in connection with the applicable Oil Spill Event; or

(g) any response under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

**Section 5. Procedure for Indemnification with Respect to Claims.** The obligations and liabilities of the COMPANY with respect to Claims against the Contractor shall be subject to the following terms and conditions:

(a) The Contractor shall be obligated to give prompt (but in no event greater than sixty (60) days) written notice to the COMPANY of any Claim which is subject to the indemnification of the COMPANY under this Agreement, stating the nature and basis of the Claim, and the amount thereof, to the extent known. Within thirty (30) days of the giving of such notice, the COMPANY shall do one of the following: (i) satisfy the Claim, (ii) assume the defense of such Claim by written notice to the Contractor and by executing a litigation indemnity in form and substance reasonably acceptable to the Contractor (including an acknowledgment of the waiver by the COMPANY of the applicability of Sections 3(e) and (g) with respect to such Claim), or (iii) request by written notice to the Contractor that the Contractor assume the defense of the Claim; provided, however, that, in the event of a breach or anticipatory breach by the COMPANY of its indemnification obligations under this Agreement or the payment obligations under the MSRC Subcontractor Contract, the COMPANY shall not have the right to assume the defense of a Claim.

(b) If the COMPANY has requested that the Contractor assume the defense of a Claim, the Contractor shall be entitled to select its own counsel in connection with such Claim. If the COMPANY elects to defend any such Claim, the COMPANY shall make available to the Contractor all reports or other documents relating to the defense of the Claim and allow the Contractor, at its cost, to participate in meetings or conversations relating to the defense of the Claim; however, if the Contractor should elect to have its own counsel in connection with monitoring the defense of any such Claim or otherwise to represent the interests of the Contractor, particularly with respect to the rights of the Contractor to be indemnified by the COMPANY under this Agreement, the costs of such counsel shall be borne by the Contractor. If the Contractor assumes the defense of a Claim, the COMPANY shall be obligated to pay the invoiced reasonable fees and expenses of counsel for the Contractor, as the case may



be, as such fees and expenses are incurred. Unless otherwise required to protect the right of the Contractor to be indemnified by the COMPANY, the Contractor shall be obligated to cooperate fully in any defense to a Claim conducted by the COMPANY. Any party defending any Claim shall assert any exemption or immunity from liability that may be available, including, without limitation, any Responder Immunity.

(c) So long as the COMPANY is defending, the Contractor shall not compromise or settle any such Claim without the prior written consent of the COMPANY, and, if the Contractor should object to any compromise or settlement of such a Claim acceptable to the COMPANY, the Contractor shall thereafter assume the costs of defending the Claim and the COMPANY's obligations with respect to such Claim shall be limited to the compromise or settlement that was acceptable to the COMPANY. If the Contractor is defending such Claim, the Contractor shall consult with the COMPANY concerning any compromise or settlement but shall be entitled to compromise or settle such Claim without the prior consent of the COMPANY, but if the COMPANY objects to that compromise or settlement the COMPANY can assume the defense provided that the COMPANY secures its obligation to defend and pay such Claim in a manner satisfactory to the Contractor, and Section 3(e) is no longer applicable to such Claim.

**Section 6. No Waiver.** Nothing in this Agreement shall constitute a waiver or limitation of the rights of the Contractor with respect to Responder Immunity or any other statutory or common law defense to or limitation of liability of the COMPANY or Covered Entity resulting therefrom.

**Section 7. Governing Law.** This Agreement shall be governed by the laws of the State in which the services under the MSRC Subcontractor Contract primarily are performed.

**Section 8. MSRC.** MSRC shall not at any time be deemed to have any liability or obligation of any nature with respect to the obligations of the COMPANY under this Agreement.

**Section 9. Disputes.** Any disputes between the parties to this Agreement shall be resolved pursuant to the provisions contained in Section 10 - Arbitration set forth in the MSRC Subcontractor Contract.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the later date set forth below.

\_\_\_\_\_  
[Contractor Name]  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Its duly authorized representative

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Telecopy: \_\_\_\_\_

Taxpayer ID# \_\_\_\_\_

Date: \_\_\_\_\_

[THE COMPANY]

By: MARINE SPILL RESPONSE CORPORATION  
As Agent for the Company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Its duly authorized representative

220 Spring Street, Suite 500

Herndon, VA 20170

Attention: Scott M. Morris

Telephone: (703) 326-5615

Telecopy: (703) 326-5660

Date: \_\_\_\_\_

## SCHEDULE 5A

as of August 15, 2011

1. Crowley Marine Services, Inc.
2. Delaware Bay & River Cooperative (DBRC)
3. Foss Maritime Company
4. Barge/Storage Providers (as in future designated by MSRC)\*
5. Tug Operators as needed to tow MSRC barges (such as McAllister, Moran, Dann Marine, Constellation/Foss, Savannah Marine – may include other providers as in future designated by MSRC)\*
6. Augment & Other Crew Providers (such as Global, Clean Harbors, etc.; may include other providers as in future designated by MSRC)
7. Other OSROs (e.g., if engaged under a mutual aid or other arrangement) and where the other OSRO requires such indemnification\*
8. Edison Chouest Offshore and Hornbeck Offshore Services (and their affiliates and subsidiaries, as well as any similar vessel companies) contracted to provide specially modified vessels to serve as supplemental OSRVs

\* May be so designated if MSRC must put under contract directly with MSRC to ensure availability on short notice, or if otherwise needed for response/readiness.

8/15/2011

## **SCHEDULE 6**

### **MSRC INTEGRAL SUBCONTRACTOR SERVICE CATEGORIES AND INDEMNIFIED INTEGRAL SUBCONTRACTORS**

MSRC Integral Subcontractors: The following list of services constitute the current best information as to the categories of services which will be required.

1. Vessel Crew providers (have included Dyn Marine Service, Inc. and Metson Marine Services, Inc.; may include other providers as in future designated by MSRC)\*
2. Augment and Other Crew Providers (such as Global, Clean Harbors, etc.; may include other providers as in future designated by MSRC)
3. Tug Boats Operators to Tow MSRC Barges (such as McAllister, Moran, Dann Marine, Constellation/Foss, Savannah Marine -- may include other providers as in future designated by MSRC)\*
4. Boom Boat & Other Support Boat Operators (as in future designated by MSRC)\*
5. Dispersant Aircraft Providers (including International Air Response and Dynamic Aviation; may include other providers as in future designated by MSRC)
6. Temporary Contracted Personnel/Services in such disciplines as accounting, industrial hygiene, aircraft brokerage, and secretarial.
7. Other support supplies, equipment, material and services not otherwise provided by MSRC Subcontractors or subcontractors of the Covered Entity

\* May be so designated if MSRC must put under contract directly with MSRC to ensure availability on short notice, or if otherwise needed for response/readiness.

**SCHEDULE 7  
MSRC INSURANCE COVERAGE**

<u>Coverage</u>	<u>Limit and Deductible</u>
Comprehensive General Liability (CGL)	\$1,000,000 limit with \$250,000 deductible.
Automobile Liability	\$2,000,000 limit with \$0 deductible. Lesser coverage in Puerto Rico and USVI. Coverage and deductibles subject to change based on market conditions.
Workers' Compensation / Employer's Liability	Workers' Compensation: Statutory. Employer's Liability: \$1,000,000. Currently \$0 deductible (subject to change based on market conditions).
Non-Owned Aircraft Liability	\$10,000,000 limit. \$0 deductible.
Hull and Machinery (H&M)	Coverage varies by type of vessel: Large OSRVs insured up to \$10,000,000 each; OSRBs up to \$5,000,000 each; for other vessels coverage depends on declared value of vessel. Deductibles range from \$1,000,000 for OSRVs and OSRBs to \$25,000 for small vessels.
Primary Marine Liability	\$50,000,000 limit with \$25,000 deductible.
Primary Non-Marine Liabilities	\$50,000,000 limit. Provides coverage for (a) Products and Completed Operations Liability, (b) Employer's Liability, (c) all other liabilities (i.e., general liability, automobile, workers' compensation, non-owned aircraft). Deductible varies (i.e., coverage generally applies after policy limits for underlying policy - CGL, worker's compensation, automobile, non-owned aircraft -- have been exceeded).
Excess Marine Liability	\$50,000,000 in excess of the Primary Marine Liabilities coverage. Coverage generally applies after primary policy limit has been exceeded.
Excess Non-Marine Liabilities	\$50,000,000 in excess of the Primary Non-Marine Liabilities coverage. Coverage generally applies after primary policy limit has been exceeded.
Protection & Indemnity (P&I)	As per Club Rules except Pollution which has a \$1,000,000,000 limit and Specialist Operations which has a \$5,000,000 limit. All coverages subject to \$25,000 deductible.
Directors and Officers Liability / EPL	\$50,000,000 limit. Coverage includes Employment Practice Liability (EPL). Deductible varies from \$0 to \$100,000 depending on type of claim.
Property / Equipment Insurance	Limits of up to \$20,000,000 depending on the property/facility being insured and the type of loss or damage. Deductibles of up to \$750,000, again depending on the property/facility being insured and the type of loss or damage.
Vessel of Opportunity	Provides H&M coverage of up to \$2,500,000 per vessel subject to deductible of 1% of hull value per claim. Provides P&I coverage of up to \$5,000,000 with deductible ranging from \$5,000 to \$100,000.
Contractor's Pollution Liability	\$30,000,000 limit with \$100,000 deductible.

Note: All insurance coverages, limits and deductibles subject to change without notice due to coverage availability, premium cost, and other market circumstances.

## SCHEDULE 8

### P&I CLUBS

The Britannia Steam Ship  
Insurance Association Limited

The London Steam-Ship Owners'  
Mutual Insurance Association Limited

The North of England  
Protection & Indemnity  
Association

The Standard Steamship Owners'  
Protection & Indemnity  
Association (Bermuda) Limited

Sveriges Angfartygs Assurans  
Forening (The Swedish Club)

The Shipowners' Mutual  
Protection & Indemnity  
Association (Luxembourg)

The Steamship Mutual  
Underwriting Association  
(Bermuda) Limited

United Kingdom Mutual  
Steam Ship Assurance  
Association (Bermuda) Limited

The West of England  
Ship Owners Mutual Insurance  
Association (Luxembourg)

Assuranceforeningen Gard-  
gjensidig

Assuranceforeningen Skuld  
(Gjensidig)

The Japan Ship Owners' Mutual  
Protection & Indemnity  
Association

American Steamship Owners  
Mutual Protection and  
Indemnity Association, Inc.

## **SCHEDULE 9**

### **PROVISIONS GOVERNING ARBITRATION**

**1.1 Arbitration Rules.** Arbitration shall be conducted in accordance with the Commercial Arbitration Rules (the "Rules") of the American Arbitration Association (the "AAA") in effect at the time of arbitration in the absence of a mutual agreement by the parties to conduct the arbitration in accordance with different rules.

**1.2 Administration.** Any arbitration shall be administered by the AAA based on the fee schedule provided for in the Rules.

**1.3 Number of Arbitrators, Appointment.** The arbitral tribunal shall consist of one (1) arbitrator with at least ten (10) years of applicable experience, unless the amount in dispute exceeds Five Hundred Thousand Dollars (\$500,000). For such larger disputes, the arbitral tribunal shall consist of three (3) arbitrators of similar experience, unless the parties agree to have only one (1) arbitrator. In selecting the arbitral tribunal, each of the Company and MSRC acknowledges and agrees to utilize the Rules governing appointment, specifically Rule R-11.

**1.4 Place of Arbitration.** The arbitration shall be conducted in Washington, D.C. or in such other location as the parties to the dispute may designate by mutual consent.

**1.5 Cost of Arbitration.** Costs and expenses relating to any arbitration, including the reasonable attorney's fees and arbitration proceeding, shall be paid by the non-prevailing party or parties in the arbitration proceeding. In the event that no party prevails in the arbitration proceeding, the costs and expenses of such proceeding (other than the attorney's fees of each party which shall be borne by such party) shall be borne in equal amounts by the parties to the arbitration proceeding.

**1.6 Federal Arbitration Act.** This arbitration provision shall be governed by the Federal Arbitration Act ("FAA"), 9 U.S.C Section 1 et seq. The arbitrator(s) shall apply applicable substantive law consistent with the FAA and shall honor

claims of privilege recognized by law. The arbitrator(s) shall render a reasoned award. Any decision or award of the arbitrator(s) shall be final and binding upon the parties to the arbitration except for any right of appeal available under the FAA.