

NATIONAL RESPONSE CORPORATION

AGREEMENT FOR
PROVISION OF RESPONSE RESOURCES

BETWEEN

NATIONAL RESPONSE CORPORATION

AND

TABLE OF CONTENTS

1.	INTERPRETATION.....	3
2.	PROVIDER'S OBLIGATIONS.....	6
3.	CLIENT'S OBLIGATIONS.....	8
4.	COMPENSATION.....	9
5.	RESPONSE PROCEDURE.....	10
6.	LIMITATIONS ON PROVIDER'S OBLIGATIONS.....	11
7.	DISCLAIMERS AND LIABILITY.....	11
8.	INSURANCE.....	12
9.	INDEMNIFICATION.....	13
10.	EXCUSE OF PERFORMANCE.....	14
11.	TERMINATION.....	14
12.	LIENS.....	15
13.	CONFIDENTIALITY.....	15
14.	NON-ASSIGNMENT.....	16
15.	TERM.....	16
16.	WAIVER.....	16
17.	SEVERABILITY.....	16
18.	GOVERNING LAW AND JURISDICTION.....	16
19.	MISCELLANEOUS.....	17
20.	NOTICES.....	17
21.	WARRANTY OF AUTHORITY.....	18
22.	CHANGE OF VESSELS.....	18

September 15, 2004

THIS AGREEMENT is made as of the day of , 20 ,

BETWEEN:

- (1) NATIONAL RESPONSE CORPORATION, a corporation incorporated and existing under the laws of Delaware and having its principal office at 3500 Sunrise Highway, Suite T103, Great River, New York 11739 (the "Provider"); and
- (2) the entity or entities identified on Schedule 1 as the "Client".

WHEREAS:

- (A) The Client is entering into this Agreement in the capacity described in Schedule 1 with respect to the vessel(s) described in Schedule 1;
- (B) Pursuant to federal law of the United States or the laws of various states of the United States, the Client or the principals on whose behalf the Client is acting may be required to evidence preparedness to respond to discharges of oil from Vessel(s) in United States navigable waters, including precontracting to meet planning requirements;
- (C) The Provider has, or through a network of independent contractors has access to, resources to respond to discharges of oil from Vessel(s) as required under federal law in Section 4202 of the United States Oil Pollution Act of 1990 and under state laws and as denominated in vessel response plans;
- (D) The Provider and Client understand that the requirements for mobilization of response resources set forth under federal law, state laws or in vessel response plans are planning requirements and are not performance requirements;
- (E) The Client or the principals on whose behalf the Client is acting desire to name the Provider as its oil spill removal organization in the response plans for the Vessel(s) referred to herein;
- (F) The Client has agreed to appoint the Provider to act as an oil spill removal organization upon and subject to the terms and conditions of this Agreement; and
- (G) The Provider accepts such appointment and agrees to act as an oil spill removal organization upon and subject to the terms and conditions of this Agreement.

BY WHICH IT IS AGREED AS FOLLOWS:

1. INTERPRETATION

1.1 In this Agreement (including Schedules):

"Area of Service" means, the geographical area described in Schedule 2;

"Best Endeavors" means, with respect to either party, the performance in good faith to the extent of its total capabilities;

"Classification" means classification or other governmental approval required or available under Federal Law and State Law for an Oil Spill Removal Organization to be designated as such in the Response Plan;

"Discharge" means any emission (other than natural seepage), including, but not limited to, spilling, leaking, pumping, pouring, emitting, emptying or dumping of Oil;

"Drills" means any drills, exercises, practices or other preparatory or simulated activities in connection with which the Client has requested the Provider to mobilize or deploy Response Resources or to provide other services;

"Federal Law" means the United States Oil Pollution Act (33 U.S.C. 2701, et seq.) ("OPA") and the Federal Water Pollution Control Act (33 U.S.C. 1321, et seq.) ("FWPCA") and any other federal laws regarding a Discharge and Response Activities and regulations promulgated pursuant thereto;

"Hazardous Substances" means substances defined as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601, et seq.);

"Local Contractors" means independent oil spill removal companies located in the various states with whom the Provider has contracted to maintain and provide Response Resources in fulfillment of the Provider's obligations hereunder;

"Marine Oil Pollution Insurance" means enrollment of the Vessel in the protection and indemnity club named on Schedule 1 or another protection and indemnity club acceptable to the Provider providing indemnity cover for U.S. oil pollution liabilities, including removal costs, or such other form of insurance for oil pollution liabilities, including removal costs, as may be acceptable to the Provider;

"National Contingency Plan" means the National Contingency Plan prepared and published under Section 311 (d) of the FWPCA;

"Oil" means oil of any kind or in any form, including any and all substances defined or identified as oil under OPA, but shall not include substances defined or identified as Hazardous Substances;

"Oil Spill Removal Organization" means an entity established in a given geographic area to provide the personnel, equipment, supplies and other capability necessary to conduct response activities;

"Qualified Individual" means an English-speaking shore-based representative of the Client located in the United States, available on a 24-hour basis, familiar with implementation of the Response Plan and trained in his or her responsibilities under the plan, with full written authority to implement Response Activities and to engage the Provider for services hereunder;

"Removal Costs" means the charges of the Provider for deploying Response Resources to a Discharge or threatened Discharge, including the charges

for mobilization and demobilization of personnel, equipment and supplies; amounts reasonably paid to compensate third parties for property damaged or destroyed at the express instruction of the Client or Qualified Individual; and containment, removal and storage of discharged Oil;

"Responder Immunity Law" means Federal Law or applicable State Law which provides immunity from liability to those who respond to Discharges for the purpose of attempting to contain and remove Oil from the water, beaches or shoreline;

"Response Activities" means the action to contain and remove Oil from water, beaches and shorelines, the storage and disposal of recovered Oil, and other actions, including mobilization and demobilization of personnel, equipment, supplies and other capability as necessary to minimize or mitigate damage to the environment;

"Response Plan" means any contingency plan or response plan regarding Discharges covering the Vessel prepared by or on behalf of the Client pursuant to Federal Law or State Law;

"Response Resources" means the trained personnel, equipment, supplies and other capability named in a Response Plan or mobilized to perform Response Activities pursuant to Federal Law and State Law, other than personnel, equipment, supplies and other capability required to be carried aboard the Vessel;

"State Law" means the laws and regulations, if any, of the various state and local governments of any relevant state of the United States within the Area of Service regarding Discharges into navigable waters and Response Activities;

"U.S. Waters" means the navigable waters of the United States, including the waters of the Exclusive Economic Zone and the territorial waters of the states of the United States, all within the Area of Service;

"Vessel(s)" means the vessel(s) identified in Schedule 1.

1.2 Clause headings and the table of contents are inserted for convenience of reference only and shall be ignored in the interpretation of this Agreement.

1.3 Reference to Client shall include the Client or authorized agent or representative of the Client, and where the Client is acting as agent it shall include the principal(s) on whose behalf the Client is acting. Where the Client is acting on behalf of more than one principal, the rights and obligations of each principal shall be limited to the Vessel(s) owned and/or operated by such principal.

1.4 In this Agreement, unless the context otherwise requires:

- (a) references to any law enactment or regulation shall be deemed to include references to such law, enactment or regulation as re-enacted, amended, extended, consolidated or replaced and any orders, decrees, proclamations,

regulations, instruments or other subordinate legislation made thereunder;

- (b) words importing the plural shall include the singular and vice versa;
- (c) the word "including" shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall it take effect as, limiting the generality of any foregoing words.

2. PROVIDER'S OBLIGATIONS

2.1 The Provider shall provide, or cause to be provided, the services set out below for the Client and the Vessel(s) within the Area of Service in exchange for the Basic Compensation provided in Clause 4:

- (a) sufficient Response Resources to enable the Client to meet the requirements of Federal Law and State Law for precontracting for availability of Response Resources, except as provided in 2.4;
- (b) the training of the Provider's and Local Contractors' response personnel, exclusive of Drills requested by the Client, in compliance with Federal Law and State Law requirements for Oil Spill Removal Organization Classification, and maintenance of records of such training;
- (c) compliance by the Provider and Local contractors with all applicable Federal Occupational Safety and Health Administration (OSHA) standards and similar State Laws and standards; and
- (d) all information regarding the Provider's and the Local Contractors' Response Resources which must be included in the Response Plan(s) of the Vessel or to be filed with the U.S. Coast Guard or appropriate State authorities to obtain Classification.

2.2 The Provider shall provide, or cause to be provided, the services set out below for the Client and the Vessel within the Area of Service, upon request from the Client in exchange for the Additional Compensation provided in Clause 4:

- (a) supply and deployment of Response Resources required by the Client to conduct Response Activities;
- (b) supervision and coordination of deployment and use of Response Resources in such manner as directed by the Client;
- (c) the training of personnel of the Client in Response Activities and maintenance of records of such training;

- (d) supply and deployment of Response Resources in connection with Drills and maintenance of records of such Drills;
 - (e) information concerning Response Resources, Response Activities and Removal Costs to assist the Client in connection with legal proceedings or for such other purposes as required by the Client.
- 2.3
 - (a) The Provider shall obtain and maintain Classification as an Oil Spill Removal Organization as provided under Federal Law and State Law;
 - (b) In the event Classification is not available, the Provider warrants that it shall have sufficient Response Resources to enable the Client to meet the mandated levels of response capacity under Federal Law and State Law.
- 2.4
 - (a) The Provider shall provide or cause to be provided Response Resources in accordance with U.S. Coast Guard average most probable discharge planning standards for transfer operations occurring more than twelve (12) nautical miles from the nearest coastline, provided the Client has been granted a waiver by the U.S. Coast Guard in respect of the Vessel to use the alternative planning factor of one (1) hour mobilization and a planned transit speed of five (5) knots in the Response Plan for such transfer operations and provided that the Client has determined that the Providers Response Resources can satisfy the requirements from their steady state locations.
 - (b) The Provider shall provide or cause to be provided the Response Resources required to meet U.S. Coast Guard planning standards for the average most probable discharge not included under clause 2.4 (a) on a voyage-by-voyage basis, provided the Client notifies the Provider in writing at least twenty-four hours prior to any cargo transfer activity that it desires such service. The notification of the need for average most probable discharge services and the request for such services must be made in accordance with the attached Schedule 6. The terms and conditions for this average most probable discharge service, including fees, may vary from port to port and, therefore, shall be agreed at the time services are rendered. In general, the terms and conditions, including fees, will be in accordance with the published time and material rates provided in Schedule 4.
- 2.5 The Provider shall (without prejudice to the generality of any of the obligations, duties, powers and discretion vested in the Provider under or pursuant to this Agreement) be entitled to:
 - (a) employ such agents as it deems necessary or expedient;
 - (b) employ or engage trained superintendents, surveyors, engineers, consultants and experts to supervise or advise in relation to the services provided hereunder; and

- (c) enter into subcontracts with related parties or independent contractors to perform any part of the services which Provider is obliged to perform under this Agreement.

The Provider shall be an independent contractor and not an agent of the Client except as provided in Clause 7.5.

- 2.6 Notwithstanding any provision of this Agreement to the contrary, the Provider may, in its discretion, cease to deploy Response Resources for Response Activities of the Client or to provide any other services provided hereunder, if the Client fails (i) to make or secure payment in accordance with, and within the time periods provided within this Agreement or (ii) to maintain adequate Marine Oil Pollution Insurance provided in Clause 3. The continuation of deployment of Response Resources after time periods for payment or security for payment have elapsed shall not be deemed a waiver of the Provider's rights under this Agreement. If the Provider ceases to deploy Response Resources or provide other services, or if the Client instructs the Provider to cease deployment of Response Resources or provide other services, the Provider shall be entitled to enter into an agreement with any other party, including governmental authorities, to deploy Response Resources or provide other services in connection with the same Discharge. If the Client instructs the Provider to cease deployment due to Federalizing of a spill or any other reason, the Client shall be responsible for the costs of reasonable and necessary measures taken by the Provider to demobilize, but not for costs incurred for the account of governmental authorities who may then engage the Provider.

3. CLIENT OBLIGATIONS

3.1 The Client shall:

- (a) designate a Qualified Individual and provide the Provider with the name, address, twenty four (24) hours-a-day telephone number and telefacsimile number of the Qualified Individual, and shall amend or update this information as necessary;
- (b) deliver, or caused to be delivered, to the Provider a copy of each Response Plan, including applicable waivers, and such other information concerning the Vessel as the Provider may reasonably request;
- (c) pay, or provide security for payment of, services and Removal Costs of the Provider in accordance with Clause 4;
- (d) be responsible for deciding which Response Resources shall be requested from the Provider to conduct Response Activities;
- (e) be responsible for coordinating and directing overall Response Activities;
- (f) be responsible for disposal of all oil and hazardous substances collected by the Provider;
- (g) give notice to the Provider of the scheduled arrival of any Vessel covered by this Agreement in U.S. Waters in accordance with the procedures set forth in Provider's Instructions to Vessel(s);

- (h) maintain in force at all times the Vessel is in U.S. Waters Marine Oil Pollution Insurance and furnish, whenever requested by the Provider, confirmation of such insurance;
 - (i) comply with the procedures set forth in Provider's voyage and oil spill notification procedures consistent with the Response Plan;
 - (j) obtain and provide Provider with the Client's Environmental Protection Agency identification number or other such authorization required by law for any Discharge or threatened Discharge classified as a Hazardous Substance, or similar designation, prior to the Provider providing services hereunder.
- 3.2 Notwithstanding Clause 3.1, the Client shall not be required to utilize the Provider to deploy Response Resources for Response Activities and may arrange for the supply and deployment of Response Resources for Response Activities in the Area of Service by any other person.

4. COMPENSATION

- 4.1 The Basic Compensation to be paid to the Provider in the form of annual retainer fee and voyage fees is set forth on Schedule 3.
- 4.2 The additional Compensation to be paid to the Provider is as follows:
- (a) Response Resources Use charges:

The Client shall pay the Provider for Response Resources deployed by the Provider or Local Contractors in connection with Response Activities taken in accordance with the time and material rates set out in Schedule 4.

The Provider alone is responsible for all payments due to the Provider's subcontractors, including Local Contractors, for services rendered.
 - (b) Other charges:
 - (i) The Client shall pay the Provider for other services requested by the Client in accordance with the time and materials rates specified in Schedule 4 or at such other rates as may be agreed at the time;
 - (ii) The Client shall pay the Provider for all reasonable costs of collection, litigation or settlement incurred by the Provider in order to collect unpaid fees for invoices, pursuant to this Agreement, including reasonable attorneys' fees.
- 4.3 The fees and charges referred to in this Clause shall be established annually and provided to the Client. The Provider's Basic Compensation shall remain fixed during each one year period of this contract. The Provider's Additional Compensation shall remain fixed during each one year period of this contract subject to adjustments noted on Schedule 4. The Client agrees to pay fees and charges in accordance with the fees and charges in effect at the time the services are rendered.

- 4.4 The method, terms and conditions of billing and payment are set forth in Schedules 3 and 4.
- 4.5 The Client shall provide security for payment of charges as follows:
- (a) In exchange for the Provider agreeing to immediately respond to the Client's request for deployment of Response Resources, the Client shall provide in favor of the Provider at the time of signing this Agreement, unless waived by the Provider security in the amount of One Hundred Thousand Dollars (U.S. \$100,000) for the payment of Response Resources Use charges set forth in Schedule 4 and any indemnity amount due hereunder. The security may be a credit arrangement, guarantee, standby letter of credit or other form of security acceptable to the Provider. The terms and conditions of the security shall be acceptable to the Provider in its sole discretion. Such security shall remain in place throughout the term, including renewals, of this Agreement.
 - (b) In order for deployment of Response Resources to continue after Response Resource Use charges have exceeded One Hundred Thousand Dollars (U.S. \$100,000) or after the expiry of the first forty-eight hours (48) following the Client's request for deployment, whichever occurs first, the Client shall arrange security for payment in one of the following forms:
 - (i) deposit funds in an escrow account with an escrow agent on such terms as are acceptable to the Provider;
 - (ii) a standby letter of credit in favor of the Provider issued on terms and by a commercial bank acceptable to Provider;
 - (iii) a guarantee in favor of the Provider issued on terms and by a bank or other party acceptable to the Provider;
 - (iv) an undertaking in favor of the Provider issued on terms and by a P&I Club or insurance underwriter acceptable to the Provider; or
 - (v) such other form of security, or Credit arrangement, and on such terms as may be agreed between the Provider and the Client.

The amount of such security shall be agreed by the parties at the time as appropriate to the circumstances, and shall be increased as required by the Provider.

- 4.6 Nothing herein shall be read to oblige the Provider to continue to deploy Response Resources when it has not been paid or provided with acceptable security for services rendered or services to be rendered.

5. RESPONSE PROCEDURE

- 5.1 The Client may initiate a request for the deployment of Response Resources for Response Activities by a direct telephone call to

the Provider at (631) 224-9141, and such telephone call shall be deemed a request for the deployment of Response Resources by the Client for purposes of this Agreement.

- 5.2 The person initiating Response Activities on behalf of the Client shall provide information to the Provider as indicated in the Provider's Instructions to Clients. This information shall include:
- (a) the name of the Client;
 - (b) the caller's name and title;
 - (c) the name, call sign and flag of the Vessel;
 - (d) the location of the spill including geographic coordinates;
 - (e) the nature and estimated quantity of the Oil discharged;
 - (f) the approximate time of the incident;
 - (g) the weather conditions on the scene and forecasted weather conditions, if known;
 - (h) the condition of Vessel;
 - (I) the name of the Qualified Individual and Federal On-Scene Coordinator (OSC), if known;
 - (j) the Response Resources required to be deployed at that time.
- 5.3 The Client shall be responsible to notify governmental authorities as required by Federal Law or State Law of the Discharge. The Provider, however, is not precluded from notifying governmental authorities if deemed appropriate.
- 5.4 Upon receipt of the request for the deployment of Response Resources by the Client, the Provider shall use Best Endeavors to deploy such Response Resources in accordance with response time requirements specified under Federal law and State Law. Upon the Provider's arrival at the scene of the Discharge, the Qualified Individual, or other authorized representative of the Client, shall give the Provider written authorization to proceed with deployment of Response Resources. The Provider thereafter shall continue to act in accordance with the instructions of the Qualified Individual, or other authorized representative of the Client, subject to the terms of this Agreement.
- 5.5 The Client shall give the Qualified Individual, or other authorized representative on scene, full authority to approve the daily worksheets submitted by the provider.

6. LIMITATIONS ON PROVIDER'S OBLIGATIONS

In the event the Provider is requested to deploy Response Resources for Response Activities for more than one Discharge within the Area of Service, the Provider and Client shall make good faith efforts to agree on allocation of Response Resources between the spills. In the absence of such agreement, the Provider shall allocate its Response Resources as directed by the OSCs or other U.S. Government representatives for the concurrent spills. In the absence of such direction the Provider shall not be obligated to remove or divert Response Resources from Response Activities in connection with another spill initiated prior to the request for deployment of Response Resources by the Client if the Provider deems that such Response Resources are necessary for proper completion of the previously initiated Response Activities. The Provider shall give notice to the Client if it will be unable to respond due to deployment of Response Resources for a discharge by another client.

7. DISCLAIMERS AND LIABILITY

- 7.1 THERE ARE NO WARRANTIES, INCLUDING A WARRANTY OF WORKMANLIKE SERVICE, WHICH EXTEND BEYOND THOSE EXPRESSLY SPECIFIED IN THIS AGREEMENT.
- 7.2 The Client acknowledges that Response Resources deployed by the Provider under this Agreement will be deployed on an emergency basis and that the purpose of Response Activities for which such Response Resources will be deployed is to remove, to the maximum extent practicable, Oil from a Discharge. The Provider does not warrant, by the terms of this Agreement or by undertaking, that Response Activities conducted with Response Resources will render the scene of the Discharge, or areas affected by the Discharge, safe for any form of human activity, or in compliance with any Federal law or State Law.
- 7.3 In no event shall the Provider, its affiliates, agents, employees or subcontractors be liable for or obliged in any manner for any loss of profits and loss of use to the Client.
- 7.4 The Provider, its affiliates, agents, directors, officers, employees or subcontractors shall be entitled to the protection of Responder Immunity Law and nothing herein shall be construed to allow the Client to recover by way of contribution, indemnity or otherwise from the Provider, its affiliates, agents, directors, officers employees or subcontractors, any amounts for which the Client is liable to or has paid to third parties and for which the Provider, its affiliates, agents, directors, officers, employees or subcontractors would have no liability under the Responder Immunity Law applicable in the jurisdiction where the Discharge and/or Response Activities have occurred. In no event shall the Provider, its affiliates, agents, directors, officers, employees or subcontractors be liable for or obliged in any manner for damages suffered by the Client arising from services hereunder whether damages to third parties or the Client directly, unless the damages were directly caused by the gross negligence or willful misconduct of the Provider, its affiliates, agents, directors, officers, employees or subcontractors.
- 7.5 At no time shall the Provider be considered to have title to, or otherwise own, any Oil or Hazardous Substances on the Vessel or being removed from the water, shoreline or elsewhere, or to be in possession or control of any such Oil or Hazardous Substances, except as the Client's agent.

8. INSURANCE

- 8.1 The Provider and its subcontractors shall, at their own cost and expense, procure and maintain in effect during the term of this Agreement the following insurances:

<u>Coverage</u>	<u>Limits</u>
Worker's Compensation	Statutory
Comprehensive General Liability (Bodily Injury/Property Damage)	\$1,000,000 (Basic)
Employer's Liability	\$1,000,000 (Basic)
Automobile Liability	\$1,000,000 (Basic)
Marine Liability	\$1,000,000 (Basic)

- 8.2 The Provider shall, at the request of the Client, acquire additional insurance or increased coverage at the cost and expense of the Client.
- 8.3 The Provider, upon request, shall furnish the Client insurance certificates reflecting the Provider's compliance with Clause 8 of this Agreement.
- 8.4 The Client shall be responsible for maintaining its own liability insurance

9. INDEMNIFICATION

- 9.1 The Provider agrees to indemnify, defend and hold harmless the Client from and against any and all costs, liabilities, claims, demands and causes of action which the Client may suffer, incur, or pay out to the extent caused by the gross negligence or willful misconduct of the Provider, its affiliates, officers, directors, employees or subcontractors except to the extent that such liabilities, claims, demands and causes of action occur as a result of the Client's failure to observe or comply with any applicable law, regulation or lawful authority, or its failure to observe or comply with and fulfill its obligations under this Agreement or as a result of the grossly negligent or wrongful acts of the Client, its employees or agents, or of third parties.
- 9.2 (a) The Client shall indemnify, defend and hold harmless the Provider, its affiliates, directors, officers, employees, agents and subcontractors from and against any and all costs, liabilities, claims, demands and causes of action to the extent caused by the Client's failure to observe or comply with any applicable law, regulation or lawful authority, or its failure to observe or comply with and fulfill its obligations under this Agreement or as a result of the gross negligence or willful misconduct of the Client, its employees or agents, except to the extent that such liabilities, claims, demands or causes of action occur as a result of the gross negligence or willful misconduct of the Provider, its affiliates, officers, directors, employees or subcontractors;
- (b) Notwithstanding Clause 9.2(a), the Client shall indemnify, defend and hold harmless the Provider, its affiliates, directors, officers, employees, agents and subcontractors from and against any and all costs, liabilities, claims demands and causes of action for Removal Costs and damages under OPA §1002 or corresponding State Law which result from actions taken or omitted to be taken in the course of rendering care, assistance or advice in connection with a Discharge or threatened Discharge from a Vessel consistent with the National Contingency Plan or as otherwise directed by the Client, the U.S. Coast Guard or other governmental authorities, which the Provider, its affiliates, directors, officers, employees, agents and subcontractors, individually or collectively, may suffer, incur, or pay out, except to the extent that:
 - (i) the Provider, its affiliates, officers, directors, employees or subcontractors is entitled to immunity from liability under Responder Immunity Law;

- (ii) such liabilities, claims, demands and causes of action arise out of the gross negligence or willful misconduct of the Provider, its affiliates, officers, directors, employees or subcontractors;
 - (iii) the Client would have been entitled to a complete defense to liability under Federal Law and any relevant State Law had such claim, demand or cause of action been made against the Client or the Vessel directly;
 - (iv) such payment or indemnification would result in a payment by the Client in excess of the amount to which the Client would have been entitled to limit its liability under Federal Law and any relevant State Law had such claim, demand or cause of action been made against the Client or the Vessel directly; or
 - (v) such liabilities, claims, demands and causes of action arise in respect of death or personal injury.
- 9.3 In the event the protection and indemnity club for a Vessel approves indemnification language in any other contract for the provision of similar services, the Provider shall have the option to adopt such indemnification language in substitution of Clause 9 or any part thereof.

10. EXCUSE OF PERFORMANCE

- 10.1 The performance of this Agreement, except for the payment of money for services already rendered and such further services as are necessary for standby or to demobilize following suspension, may be suspended by either party in the event performance of this Agreement is prevented by a cause or causes beyond the reasonable control of either party or force majeure and not contemplated as a circumstance in which services hereunder are to be performed. Such causes shall include, but not be limited to, acts of God, acts of public enemies, war, rebellion, sabotage, riot, fire, explosion, unavoidable accident, or flood; Governmental laws, regulations, requirements, orders or actions; national defense requirements, injunctions or restraining orders, labor trouble, strike, lockout or injunction. In such event, the parties agree to use their Best Endeavors to eliminate the above referenced causes (provided that neither party shall be required to settle a labor dispute against its own best judgment).
- 10.2 The party asserting a right to suspend performance under this Agreement must, within a reasonable time after it has knowledge of the effective cause, notify the other party of the cause for suspension, the performance suspended, and the anticipated duration of suspension. Upon receipt of such notice advising of a material or indefinite suspension of performance, and if such suspension substantially impairs the value of this Agreement to it, either party may terminate this Agreement on the number of days written notice set forth in Schedule 1, as provided in Clause 11.
- 10.3 The party asserting a right to suspend performance hereunder shall advise the other party when the suspending event has ended, and when performance will be resumed.
- 10.4 Nothing herein shall be construed to oblige the Provider to deploy Response Resources in connection with Response Activities where,

in the good faith judgment of the Provider's supervisory personnel on the scene and with the agreement of the Federal On Scene Coordinator, circumstances in which the Response Activities are to be conducted present an unreasonable risk to life or property.

11. TERMINATION

- 11.1 If the Provider is unable, for a period of more than forty-five (45) days, to obtain or maintain Classification as an Oil Spill Removal Organization when such Classification is available, this Agreement may be terminated upon notice from the Client. In such event the Provider shall pay to the Client in a form of liquidated damages an amount equal to the prorated portion of the annual retainer fee.
- 11.2 This Agreement may be terminated by the Provider upon forty-eight (48) hours notice to the Client in the event of the following:
- (a) with respect to a Vessel or Vessels, when the Client has failed to provide the Provider with proof of insurance in force at the time the Vessel or Vessels will be in U.S. Waters;
 - (b) with respect to a Vessel or Vessel(s), when the Client has failed to obtain a Certificate of Financial Responsibility from the appropriate Federal or State authorities;
 - (c) when the Client is not current with payment of any fees or charges under this Agreement.
- 11.3 In the event of termination, the Client shall compensate the Provider for all services performed prior to termination and for such post-termination efforts as are reasonably related to the services such as demobilization and storage and disposal of recovered Oil.
- 11.4 Should the Client default in the performance of its obligations under this Agreement, or cease doing business as a going concern, become insolvent, commit an act of bankruptcy, or become the subject of any proceeding under the Bankruptcy Act or other insolvency laws, or be seized or nationalized by a government or government instrumentality, then the Provider may, without notice and without relieving the Client of its obligations hereunder, terminate this Agreement, declare the balance of fees and charges to be due and payable, and assert maritime or other liens against the Vessel, wherever it may be found.

12. LIENS

The Client and the Provider agree that the services provided under this Agreement are necessities and that the Provider shall have a maritime lien under U.S. law against each Vessel for the fees and charges attributable to such Vessel under this Agreement.

13. CONFIDENTIALITY

- 13.1 The Provider and the Client (including both party's principals, employees, officers, directors, and agents) shall treat as confidential and proprietary and not disclose to others during or subsequent to the term of this Agreement, except as is necessary to perform this Agreement (and then only on a confidential basis satisfactory to both parties), any information whether verbal or

written, or any description whatsoever (including any technical information, experience or data) regarding the terms of this Agreement or the Provider's Response Resources and Contractors without, in each instance, securing the prior written consent of the other party, except when both parties agree that the other may disclose that the Client has contracted with the Provider or such information is otherwise in the public domain.

- 13.2 In the event that either party shall be required by subpoena, court, or administrative order (hereinafter "The Order") to disclose any of the information deemed by this Agreement to be confidential and/or proprietary, that party shall give immediate written notice to the other party. Upon receipt of same, the party whose information may be the subject of The Order expressly reserves the right to interpose all objections it may have to the disclosure of its information. The foregoing shall survive the termination or expiration of this Agreement and shall continue until a specific written release is given by either party.

14. NON-ASSIGNMENT

Except to the extent of the Provider's right to subcontract for Response Resources and other services hereunder, this Agreement is personal to the parties, and neither rights nor obligations may be assigned by either party without the prior written consent of the other party.

15. TERM

This Agreement shall continue in full force and effect for the period of years as indicated on Schedule 1 and for successive periods of one year thereafter unless terminated by either party upon notice to the other party ninety (90) days or more before the next renewal date.

16. WAIVER

Any waiver by either party of any provision or condition of this Agreement shall not be construed or deemed to be a waiver of any other provision or condition of this Agreement, nor a waiver of a subsequent breach of the same provision or condition, unless such waiver be expressed in writing and signed by the party to be bound.

17. SEVERABILITY

If any section, subsection, clause or sentence of this Agreement shall be deemed illegal, invalid or unenforceable under any applicable law actually applied by any court of competent jurisdiction, such illegality, invalidity or unenforceability shall not affect the legality, validity and enforceability of this Agreement or any other section, subsection, clause or sentence thereof. Where, however, the provisions of any applicable law may be waived, they are hereby waived by the parties to the full extent permitted by such law to the end that this Agreement shall be a valid and binding agreement enforceable in accordance with its terms.

18. GOVERNING LAW AND JURISDICTION

- 18.1 This Agreement shall be governed by and construed in all respects in accordance with the law of the State of New York except to the extent that this Agreement entitles the Provider to the benefit of Responder Immunity Law applicable in the jurisdiction where the services are rendered in which case the Responder Immunity Law shall govern only the issue of the Provider's liability.

- 18.2 (a) In relation to any dispute arising out of or in relation to this Agreement, each of the Provider and the Client hereby irrevocably and unconditionally submits itself to the jurisdiction of the Supreme Court of the State of New York, New York County, the United States District Court for the Southern District of New York, and any other court of competent jurisdiction within the City of New York. Such courts within the City of New York shall have exclusive jurisdiction with relation to any dispute arising out of or in connection with this Agreement and for the benefit of the Client.
- (b) Each of the Provider and the Client hereby consents to service of process in any suit, action or other proceeding arising out of or in relation to this Agreement in such court within the City of New York, and agrees that service by mail shall constitute valid service upon the Provider and/or Client.
- (c) Nothing in this Clause shall affect the right of the Provider to serve process in any manner permitted by law, or limit the right of the Provider to take proceedings with respect to this Agreement against the Client in any jurisdiction. Nor shall the taking of any proceedings with respect to this Agreement in any jurisdiction preclude the Provider from taking proceedings with respect to this Agreement in any other jurisdiction, whether concurrently or not.
- (d) The Provider may claim execution of any judgment or order in any court of appropriate authority of any state or country where the Client has any assets.

19. MISCELLANEOUS

- 19.1 This Agreement and the Schedules to this Agreement represent the entire understanding and agreement between the Provider and the Client and supersede any and all prior agreements, whether written or oral, that may exist between the Provider and the Client regarding same. No terms, conditions, prior course of dealings, course of performance, usage or trade, understandings, purchase orders or agreements purporting to modify, vary, supplement or explain a provision of this Agreement shall be effective unless set forth in writing and signed by representative of each party authorized to amend this Agreement.
- 19.2 None of the provisions of this Agreement shall be deemed to constitute a partnership or joint venture between the parties for any purpose.
- 19.3 The Provider shall not be restricted (whether as Provider, agent, owner, operator, charterer or otherwise) from carrying on or being concerned or interested in any business or activity which is or may be similar to or competitive with the business or activities now or at any time hereafter carried on by the Client.

20. NOTICES

September 15, 2004

20.1 Unless otherwise expressly provided herein, all notices, requests, demands, consents or other communications to or upon the parties under or pursuant to this Agreement shall:

(a) be in English and in writing;

(b) be deemed to have been duly given or made if it is:

(i) delivered by hand by a third party at the address of the relevant party set out below (or at such other address as the relevant party may hereafter specify to the other party) on the day of delivery; or

(ii) sent by telex or facsimile to the telex number or facsimile number of the relevant party set out herein, or to such other number as either party may hereafter specify to the other party, when sent.

20.2 For the purpose of this Clause, all notices, requests, demands or other communications shall be given or made by being addressed as follows:

Provider: National Response Corporation
3500 Sunrise Highway
Suite T103
Great River, NY 11739

Telephone: (631) 224-9141
Telefacsimile: (631) 224-9082

Client:

Telephone:
Telefacsimile:
Telex:

21. WARRANTY OF AUTHORITY

The Client hereby warrants that it has full authority to act on behalf of its principals with respect to the Vessel(s) listed on Schedule 1 in respect of the matters addressed herein. The Client agrees to provide, if requested by the Provider, written confirmation of such authority.

22. CHANGE OF VESSEL(S)

22.1 The Client may delete a vessel from Schedule 1 and coverage under this Agreement at any time prior to entry of such vessel in U.S. Waters upon seventy-two (72) hours notice to the Provider. Such vessel shall be deleted from coverage under the Agreement as of the time and date specified in the notice or if no time and date is specified, upon the end of the seventy-two (72) hours period, or entry into U.S. Waters, whichever occurs first.

22.2 The Client may add a vessel to Schedule 1 upon five (5) business days notice coupled with proof of Marine Oil Pollution Insurance and such other information as specified on Schedule 1 and as set forth in Provider's Instructions to Clients.

IN WITNESS whereof the parties have duly executed this Agreement as of the date first written above.

September 15, 2004

Name:
Position:
For and on behalf of
NATIONAL RESPONSE CORPORATION

Name:
Position:
For and on behalf of

SCHEDULES

1. Description of Client Vessel(s)
2. Description of Area of Service
3. Basic Compensation
4. Time and Material Rates

(Time & Material Rates can be accessed through NRC's website at www.nrcc.com. Client will need their Client Identification Number to access Time and Material Rates through the website.)

September 15, 2004

SCHEDULE 1

Client: Name:
 Type of entity:

 Existing under law of:

 Principal office:

 Capacity in which acting:
 If acting as agent,
 name(s) of principal(s):

Vessel(s)
covered: Name:

 Flag:

 P&I Club:

Terms of
Agreement: Years:

 Commencing:

 Days notice for termination (Clause 10.2):

SCHEDULE 2

DESCRIPTION OF SERVICE AREA

Provider spill response services will be provided in the following areas:

(1) The coastal and tidal waters, and the exclusive economic zone (as defined in the Oil Pollution Act of 1990 as "the zone established by Presidential Proclamation numbered 5030, dated March 10, 1983, including the ocean waters of the areas referred to as 'eastern special seas' in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the maritime boundary, signed June 1, 1990") of the United States East, West and Gulf Coasts; with the inland and tidal bodies of water contained in item (2) to be generally accepted as the inward boundary of the Area of Service.

(2) The following inland and tidal bodies of water are included within the Area of Service:¹

ATLANTIC REGION

Penobscot River to Bucksport/Indian Point
(44°34'48"N 68°48'36"W)

Fore River to Turning Basin @ Rt. 295 Bridge
(43°38'25"N 70°16'57"W)

Portsmouth Harbor

Piscataqua River to Turning Basin
(43°06'58"N 70°48'38"W)

Boston Harbor; including:

-Chelsea River to Turning Basin
(42°23'48"N 71°00'50"W)
-Mystic River to State Highway Rt. 99 Bridge
(42°23'22"N 71°04'16"W)
-Weymouth Fore River to Turning Basin Town
River Channel and to Pine Point
-Salem Sound to Power Plant Facility
(42°31'25"N 70°52'50"W)

Cape Cod Canal: channel entire length

Narragansett Bay; including:

-Providence River to India Point
-Taunton River to
(41°44'10"N 73°08'40"W)

Long Island Sound; including:

-Pegunnock River to Bridgeport
(Grand Street Overpass)
-Thames River to Lehigh Oil Co. Pier
-Connecticut River to East Hartford
(41°46'00"N 72°40'00"W)
-Quinnipiac River to Grand Ave. Overpass

New York Harbor; including:

-Arthur Kill
-East River to Long Island Sound
-Jamaica Bay
-Hackensack River to 40°45'N
-Hudson River to George Washington Bridge
-Kill Van Kull
-Newark Bay
-Passaic River to General Pulaski Skyway
-Raritan Bay/River

Upper Hudson River from:

-George Washington Bridge to Turning Basin

¹ These stated boundaries of service are provided for contractual purposes. Provider will review any interest in coverage outside of these areas on a case-by-case basis.

September 15, 2004

(42°43'42"N 73°41'48"W at
Albany/Troy)

Delaware Bay and River; including:

-Delaware River to Trenton (Federal
Bridge)
-Schuylkill River to University
Avenue Bridge

-Christina River to I-495 Bridge
(39°43'30"N 75°32'W)

Chesapeake and Delaware Canal
entirely

Chesapeake Bay; including:

-Elk River to Chesapeake & Delaware
Canal

-Patapsco River to:

• Spring Garden Channel Turning
Basin

• Fort McHenry Channel
N/W Branch Turning Basin

-Curtis Creek to I-695 Bridge

-Patuxent River to

(38°20'27"N 76°30'27"W)

-York River to Coleman Memorial
Bridge

(37°32'30"N 76°49'00"W)

-James River to Richmond

(37°32'00"N 77°26'00"W)

-Elizabeth River to Turning Basin
at Mains Creek

-Wicomico River to Salisbury

(38°22'30"N 75°36'00"W)

SOUTHEAST REGION

Cape Hatteras; including:

-Pamlico Sound

-Albemarle Sound

Cape Fear River to Turning Basin at
Wilmington

Charleston Harbor; including:

-Cooper River to Amoco Chemicals
Facility

-Ashley River to Southern Dredging
Co. Slip

-Wando River to O'Hare Point

Savannah, including Savannah River,
to Houlihan Bridge

St. John's River to Piney Point

Port Canaveral including barge
canal to
NASA Causeway

Palm Beach to Turning Basin

Port Everglades from:

-Brook Memorial Causeway to

-Dania Cut-Off Canal

Miami, including Government cut and
main channel to US 41

ICW-Key West to Old Rhodes Key

ICW-Old Rhodes Key to Turning Basin
(Miami)

ICW-Turning Basin (Miami) to
Southport Channel
(Port Everglades)

ICW-Brook Memorial Causeway to
Turning Basin (Palm Beach)

ICW-Turning Basin (Palm Beach) to
Canaveral Barge Canal

ICW-NASA Causeway to Ponce Inlet

Boca Grande Pass including Pine
Island Sound and ICW to
Caloosahatchee River to FPL
facility

Tampa Bay; including:

-Egmont Channel into Tampa Bay

-Ship Channel to Port Manatee
Turning Basin

-Old Tampa Bay South and North of
Gandy Bridge

-Hillsborough Bay to

• End of Ybor Channel

• Hillsborough River to Tampa
Expressway,

• including McKay Bay

GULF REGION

St. Marks River to

(30°08'48"N 84°11'48"W)

Apalachicola Bay to US 98 Bridge

(29°44'N 84°55'W)

St. Andrews Bay and Channel to
Panama City

Choctawhatchee Bay to the northern
point of the ICW

(30°26'24"N 86°14'24"W)

Pensacola Bay to Bayou Chico
Turning Basin

September 15, 2004

Mobile Bay; including:
-Chickasaw Creek to Highway 43
-Mobile River, 9' Navigation
Channel approximately
3.0 miles North of Chickasaw Creek
Junction

Pascagoula Bay; including
Pascagoula River Channel to Marsh
Lake Junction

Bayou Casotte to Turning Basin

Gulfport Channel to Turning Basin

Bay St. Louis to
(30°21'24"N 89°20'00"W)

Biloxi Bay to Industrial Seaway
Turning Basin
(approximately mile 15.0)

Mississippi River to US 190 Bridge
at Baton Rouge

Atchafalaya River South of US 190
Bridge
at Krotz Springs

Calcasieu River (including
Industrial Canal, Rose Bluff Cutoff
and Clooney Island Loop) to and
including Old Town Bay

Sabine & Neches Rivers:
-Neches River (including Brakes
Bayou) to I-10
overpass
-Sabine River to Port of Orange
including Cow Bayou

Sabine Pass/Sabine Lake; including
Taylor Bayou

Galveston Bay, East Bay

Galveston Bay, Trinity Bay, Houston
Ship Channel

Houston Ship Channel to Turning
Basin, including Buffalo Bayou to
Turkey Bay

Galveston Bay, West Bay

Chocolate Bayou to approximately
mile 9.5

Brazos River to Freeport, including
Dow Chemical USA Barge Canal

Matagorda Bay; including:

-Lavaca Bay, including Port Lavaca
to Tres Palacios
-Colorado River to Turning Basin
-Port Comfort to Turning Basin
(inclusive barge
channel)

Corpus Christi Bay; including:
-Industrial Canal to Viola Turning
Basin
-Lydia Ann Channel
-Aransas Channel and Bay
-Redfish Bay
-La Quinta Channel

Brownsville, including:
-Ship Channel to Turning Basin
-Port Isabel Channel to Turning
Basin

ICW-St. Joe Pass (Mississippi
Sound) to Rigolets

ICW-Rigolets to Michoud

ICW-Michoud to Harvey Canal

ICW-Harvey Canal to Catahoula Bay

ICW-Catahoula Bay to Wax Lake
Outlet

ICW-Wax Lake Outlet (Houma)-Houma
Navigation Canal

ICW-Lake Cocodrie/Bayou Black/Bayou
Chene/Bayou Boeuf

ICW-Bayou Boeuf to Wax Lake Outlet
(Morgan City/Berwick)

ICW-Point Au Fer to Marsh Island

ICW-Grand Lake to Gibbstown

ICW-Grand Lake to Lake Calcasieu

ICW-Ellender to Port Arthur

ICW-Orange to Mud Bayou

ICW-Mud Bayou to East Bay
(Galveston Bay)

ICW-East Bay to Galveston Bay
Intersection

ICW-Cedar Lakes to Matagorda
Peninsula East (Matagorda Bay)

ICW-East Matagorda Bay to Matagorda
Bay

September 15, 2004

ICW-Matagorda Bay

ICW-Matagorda Bay, Port O'Connor

ICW-Espiritu Santo Bay to Aransas Pass

ICW-Baffin Bay to Port Mansfield

Pacific Region²

Humboldt Bay, Eureka

San Francisco Bay, CA
Hunters Pt. Mooring
(37° 42'N, 122°19'W)

San Pablo Bay

Suisun Bay to Pittsburg
(38° 02'35"N, 121°53'30"W)

Ports of Los Angeles and Long Beach

Port of San Diego

Strait of Juan De Fuca, WA

Northern Puget Sound

Southern Puget Sound to Tacoma
(47°15'06"N, 122°23'00"W)

Rosario Strait, WA to U.S./Canada Border
(49° 00'N, 123°19'18"W)

Grays Harbor, WA to Aberdeen, WA
(46°58'N, 120° 46'39"W)

Columbia River to U.S. Route #205 Bridge, Portland, OR
Harrington Pt, Crims Island, St. Helens,
Vancouver to U.S. Route #205 Bridge
(45°35'00'N, 122°33'00"W)

Willamette River, OR From Junction with

Columbia River to RT, 405 Bridge, Portland, OR
(45°32'18"N, 122°40'55"W)

Hawaii

U.S. CARIBBEAN

North Coast of Puerto Rico, including San Juan and Arecibo

San Juan Entrance and Harbor

West and Southwest Coast of Mona Island, including Mayaguez/Guanica

South Coast of Puerto Rico including Guanica, Guayanilla, Ponce and Guayama

Guanica Bay (South Coast of Puerto Rico)

Eastern Puerto Rico and the Islands of Vieques, Culebra, and St. Thomas (USVI)

Virgin Islands (USVI) St. Thomas, St. John, St. Croix

INLAND WATERWAYS

Coverage is extended to the following COTP zones:

Mobile
Memphis
New Orleans
St. Louis
Huntington
Pittsburgh
Chicago
Duluth
Paducah
Louisville

Provider's Area of Service extends to all COTP zones in the Great Lakes.

²In this region, if necessary the Client shall also maintain an agreement with a local oil spill removal organization to satisfy the requirements of State Law.

September 15, 2004