



## P&I 特別回報

第 13-017 号  
2013 年 12 月 9 日

### 日本船主責任相互保険組合

外航組合員各位

#### 米国Vessels Response Plans（油濁事故対応計画書）－ 追加案内

##### **OSROとの契約**

米国に就航するNon-Tank Vesselの船主は2014年1月30日までにVessel Response Plansを手配する必要があります。2013年12月2日付特別回報第13-016号をご参照下さい。同回報にて、元々カリフォルニアに就航するNon-Tank Vesselの船主がカリフォルニア州法に基づくContingency Plan要求に対応できるよう導入されたMSRC及びNRCとの包括契約を国際P&Iグループ(IG)加盟クラブは継続せず、従って、Non-Tank Vesselの船主はMSRCもしくはNRCと直接契約することが必要になることをご案内しました。但し、スムーズな移行を確保するため、MSRC及びNRCとの包括契約は2014年1月30日まで継続されます。

IGガイドラインに沿っているMSRC及びNRCの契約書は以下の通りです。

MSRC: footer (September 27, 1996)  
NRC : header (September 15, 2004)

##### **Dispersants(分散剤の空中散布)**

分散剤の空中散布に関して、NRCは追加協定(DISPERSANT AMENDMENT RELEASE with footer DISPERSANT AMENDMENT RELEASE – December 2013)を導入しています。同協定書の内容はIGガイドラインに沿ったものになっています。

MSRCは、2011年8月に追加協定のなかで以下の条項を導入しています。

2.01(e) –Discharges Involving Dispersant Services. MSRC may offer from time to time to provide aircraft, vessels or other services or Resources in connection with the supply or application of dispersants for Spill events (“Dispersant Services”). Any additional or different terms and conditions applicable to the provision of Dispersant Services for such Spill Events will be set forth in an addendum to this Agreement executed by MSRC and the Company in advance or at the time of callout for the Spill Event. Dated: August 10, 2011.

同条項により、MSRCは分散剤散布サービスを提供する前に船主に不特定条件での追加協定にサインすることを求める権利を留保しています。同条項に同意することによって、分散剤散布サービスが提供される前に組合員はMSRCと追加協定を締結しなければならず、その協定は組合員をクラブのてん補対象にならない責任にさす可能性があることから、当該条項はIGガイドラインに沿ったものではありません。

しかしながら、今般MSRCは、追加協定の締結を求めず、船主に送付される契約書類一式の中に追加協定もSection 2.01 (e)も含めないことに同意しました。従いまして、船主はMSRCと契約する際に追加協定やSection 2.01 (e)に合意する必要はなく、クラブカバーに

沿った条件での契約が可能となります。なお、MSRCが空中散布サービスを提供する用意があることの証拠として、MSRCよりSection 2.01 (e)がなくても同サービスを提供することを約する書類が提出されます。

### **Frequently asked questions (FAQs)**

米国Coast GuardはNon-Tank Vessel Response Plansの最終規則に関するFAQsを添付の通り発行しています。

以上

添付1：MSRC契約書(September 27, 1996)

添付2：NRC契約書(September 15, 2004)

添付3：NRC Dispersant Amendment Release – December 2013

添付4：USCG FAQs

MARINE SPILL RESPONSE CORPORATION  
SERVICE AGREEMENT

STANDARD FORM OF SERVICE AGREEMENT

amended and restated as of September 27, 1996

between

the COMPANY

and

MARINE SPILL RESPONSE CORPORATION

a Tennessee nonprofit corporation

**MARINE SPILL RESPONSE CORPORATION  
SERVICE AGREEMENT**

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## **LIST OF SCHEDULES**

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Schedule 1	Defined Terms (9/27/96)
Schedule 2	Financial Responsibility (3/21/97)
Schedule 3	Resources and Rates (Parts I & II - (9/27/96), Part III - 1/1/97)
Schedule 4	Acceptable Responder Immunity States (8/15/97)
Schedule 5	Form of Contractor Indemnification Agreement (Schedule 5 - 9/27/96; Schedule 5A - 7/1/97)
Schedule 6	List of MSRC Integral Subcontractor Service Categories and Indemnified Integral Subcontractors (11/28/94)
Schedule 7	MSRC Insurance Coverage (7/29/96)
Schedule 8	List of P&I Clubs (11/28/94)
Schedule 9	Arbitration Provisions (9/27/96)

July 1, 1997

**MARINE SPILL RESPONSE  
CORPORATION  
SERVICE AGREEMENT**

**STANDARD FORM OF  
AGREEMENT**

***Parties and Background***

This is a **SERVICE AGREEMENT** with attached signature pages (the "Agreement") between the **COMPANY** 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. Response to Non-Covered Vessels and Facilities and Other Sources.** If **MSRC** is called to respond to a Vessel or Facility or other source of a Discharge for which the **COMPANY** has not demonstrated financial responsibility in accordance with Schedule 2 (including a Vessel or Facility for which **MSRC** is not cited in OPA Response Plans as a spill response contractor), the **COMPANY** must promptly furnish evidence of financial responsibility under Schedule 2 for that Vessel or Facility or source of Discharge.

**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 MSRC's Operational Area.** For an Oil Spill Event occurring within U.S. Jurisdictional Waters but outside the Operational Area, **MSRC** will not provide any Resources whose movement is prohibited by law or order of the applicable Governmental Body, or if such movement would invalidate any Response Plan within the Operational Area. In such event, **MSRC** will coordinate with the Covered Entity to seek a waiver of any such prohibition, order or invalidation from the applicable Governmental Body in order to remove this restriction.

**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). Discharges of substances other than Oil or Discharges outside U.S. Jurisdictional Waters.** **MSRC** may offer from time to time to provide Resources under this Agreement to Spill Events involving substances other than Oil (including Hazardous Substances) or Spill Events outside U.S. Jurisdictional Waters as permitted and in accordance with **MSRC**'s policies and procedures adopted from time to time. Any additional or different terms and conditions applicable to the provision of Resources for such non-Oil and non-U.S. Spill Events will be set forth in an addendum to this Agreement executed by **MSRC** and the **COMPANY** in advance or at the time of callout for the Spill Event.

**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 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 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 pre-spill 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 any Response Plan as a contracted resource in MSRC's 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, without MSRC's prior written consent, as a primary response contractor for any location outside the 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. The Covered Entity is required to provide MSRC with a copy of each State Response Plan filed



by the Covered Entity with any Governmental Body which requires, as indicated in Schedule 4, by law or regulation that response contractors act consistently with Response Plans as a matter of law or as a condition to Responder Immunity. **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. Upon the **COMPANY's** execution of this Agreement and from time to time afterwards, each Covered Entity also will provide **MSRC** with a current list of Authorized Representatives for that Covered Entity, 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.** Either the **COMPANY** is an MPA Member in good standing or the **COMPANY** is an affiliate of an MPA Member in good standing 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 Indemnites.** 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 Indemnites 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 Indemnites other than the **MSRC** Integral Subcontractors (those Indemnites other than **MSRC** Integral Subcontractors are referred to in this Section as the "**MSRC** Indemnites") 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** Indemnites, that the **COMPANY** or the Covered Entity currently has or may have against the **MSRC** Indemnites 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** Indemnites 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 Indemnatee arising from or related to that breach, including without limitation any and all attorneys' fees and expenses incurred by an MSRC Indemnatee 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 Indemnatee 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 Indemnatee to seek recovery for that portion of the Claim from the insurer. **MSRC** and the Indemnatee 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 Indemnatee 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 on or after October 15, 1996, and it will continue until December 31, 1997, 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 three (3) years unless either party gives the other party notice of termination at least ninety (90) days before the date of expiration of the term.

**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 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 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). 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) other MPA Members or their affiliates only under this standard form of agreement, as it may be amended from time to time in accordance with Section 11.05(a), and

(ii) 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 the COMPANY, 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.

**NATIONAL RESPONSE CORPORATION**

AGREEMENT FOR  
PROVISION OF RESPONSE RESOURCES

BETWEEN

NATIONAL RESPONSE CORPORATION

AND

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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

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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](http://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:<sup>1</sup>

**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

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<sup>1</sup> 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.

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(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

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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

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ICW-Matagorda Bay

ICW-Matagorda Bay, Port O'Connor

ICW-Espiritu Santo Bay to Aransas Pass

ICW-Baffin Bay to Port Mansfield

### **Pacific Region<sup>2</sup>**

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.

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<sup>2</sup>In 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



## DISPERSANT AMENDMENT RELEASE

### ALTERNATIVE TECHNOLOGIES AMENDMENT TO AGREEMENT FOR PROVISION OF RESPONSE RESOURCES

THIS AMENDMENT (this "Amendment"), dated as of \_\_\_\_\_, 201X, and is made to that certain Agreement for the Provision of Response Resources (the "Agreement") for tank vessels, dated \_\_\_\_\_, between National Response Corporation, Inc., a Delaware corporation (the "Provider"), and \_\_\_\_\_ a \_\_\_\_\_ corporation (the "Client"). Separately, the Provider or the Client may be referred to as "Party" and together as "Parties".

**WHEREAS**, in connection with the enforcement of the new Alternative Technology revisions to the Final Rule, 33 CFR parts 154 and 155, the Provider and the Client desire to amend the Agreement in order to account for the revisions and,

**WHEREAS**, the client desires to not sign the Alternatives Technology Amendment, but still wants dispersant services.

**NOW THEREFORE**, in consideration of the mutual agreements, representations, warranties, covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, the Parties hereto agree to the following modifications to the Agreement:

1. Interpretation. Clause 1.1 shall be amended by the inclusion of: Alternative Technology Services shall mean only the provision of the alternative response technologies of dispersants authorized for use pursuant to 40 CFR 300.910 and aerial tracking."
2. Provider's Obligations. Subsection 2.1(a) is amended by adding "including, the alternative response technologies authorized for use pursuant to 40 CFR 300.910 and aerial tracking" following the words "Response Resources."
4. Basic Compensation. Subsection 4.1 is amended by adding "amendment release premium," following the words "The Basic Compensation to be paid to the Provider in the form of"

**IN WITNESS WHEREOF**, the Parties hereto have duly executed this Amendment on the date first written above.

#### PROVIDER: NATIONAL RESPONSE CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

#### CLIENT:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Nontank Vessel Response Plans (NTVRP) – Frequently Asked Questions  
December 02, 2013**

*If there is a discrepancy between this document and the regulations, the regulations control.*

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***The current version of this document may be found on the Coast Guard’s Homepage website. It is located in Missions > Environmental > Vessel Response Plan Program > Nontank Vessel Response Plans > Important NTVRP Documents: “NTVRP Frequently Asked Questions”  
Relevant documents are available for review or download.***

## ANNUAL REVIEW OF NONTANK VESSEL RESPONSE PLANS

1. Please clarify the requirements for annual NTVRP reviews. Is there a requirement for the vessel owner or operator to submit a letter to the Commandant reporting that the annual review was accomplished?

Nontank vessel owners or operators are required to complete an oil spill response plan review annually, but it does not need to be reported to the Coast Guard. [33 CFR.155.5070(a)]

## APPLICABILITY OF NONTANK VESSEL RESPONSE PLAN REGULATIONS

1. Do the NTVRP regulations apply to a vessel that operates outside the 12 nm territorial sea?

If the nontank vessel is not operating on the navigable waters of the U.S., they do not need to comply with the nontank regulations until they are operating on the navigable waters of the U.S. Navigable waters of the U.S. includes the waters of the territorial sea, and all the water within the U.S. tributary thereto, out to 12 nm for both tank vessels and non-tank vessels insofar as the response plan requirements of 311(j)(5) are concerned.

2. How are we able to require a geographic specific appendix for nontank vessels out to 200 nm if the law and the regulations for nontank vessels only applies to those vessels when they're in "navigable waters"?

Tank and nontank vessel regulations are written in such a way as to require a geographic specific appendix for every Captain of the Port zone, some of which are defined as extending out 200 nm, through which the vessel operates. It can be required that the vessel must comply with our VRP regulations when operating in the navigable waters of the U.S. and entering or leaving a U.S. port, consistent with international law, as a matter of port entry jurisdiction.

3. Do the NTVRP regulations apply to a vessel that operates on inland waters?

Yes, NTVRP regulations apply to a vessel that operates on inland waters if the vessel is 400 GT or more, self-propelled, and a nontank vessel. The navigable waters of the U.S. includes the waters of the territorial sea, and all the water within the U.S. tributary thereto (inland waters), out to 12 nm for both tank vessels and non-tank vessels insofar as the response plan requirements of 311(j)(5) are concerned.

4. NTVRP requirements apply to vessels 400 gross tons or more. When a vessel is measured under both the convention and regulatory measurement systems, which prevails for applicability determination purposes?

The convention (international) measurement system takes precedence. The regulatory (domestic) measurement system is only to be used if the vessel is NOT measured under the convention system. [33 CFR 155.5015(a)(4)]

## AREA CONTINGENCY PLANS

1. Area Contingency Plans contain information about the places where my vessels go, including response resource provider information. Where can I locate these plans?

The Coast Guard's HOMEPORT website, <http://homeport.uscg.mil>, has a Port Directory link at the top left of the screen. When you open that link by double clicking it, you will see a "Select Coast Guard Unit" text box with a drop down arrow. Click on the arrow to reveal a unit list and select the one that is of interest to you. The "Safety and Security" section is midway down on right hand side of the screen contains an "Area Contingency Plan" folder containing the most recent Area Contingency Plan in a downloadable format.

Should you have an issue obtaining the most up to date version of a plan, contact the ACP Program Manager in the Office of Marine Environmental Response Policy.

## CANCELLATION OF NVIC 01-05, CH-1

1. Our NTVRP was prepared according to NVIC 01-05, CH-1. Is that NVIC still in effect?

While Navigation and Vessel Inspection Circular (NVIC) No. 01-05, CH-1, "Interim Guidance for the Development and Review of Response Plans for Nontank Vessels" remains in effect until 30 January 2014, you must submit NTVRPs that comply with the requirements of the "Nontank Vessel Response Plans and Other Response Plan Requirements" final rule. The Coast Guard intends to cancel NVIC 01-05, CH-1 once the compliance deadline for submission of NTVRPs is reached on 30 January 2014.

## CERTIFICATION STATEMENTS

1. What is a certification statement?

When the vessel owner or operator submits a vessel response plan to the Coast Guard for review, the owner or operator shall include a statement certifying that the plan meets the applicable requirements of Title 33, Code of Federal Regulations, Part 155, Subparts D, E, F, G, and J. [33 CFR 155.1065(b); 33 CFR 155.5065(b)]

2. It appears that we can submit the certification statement on behalf of our vessel owner or operator client when they fill out and sign CG Form “Application for Approval/Revision of Vessel Pollution Response Plans” (CG-6083). Is this correct?

Yes. Certification statements may be submitted by cover letter or by using CG Form “Application for Approval/Revision of Vessel Pollution Response Plans” (CG-6083), in lieu of a cover letter. [33 CFR 155.1065(b); 33 CFR 155.5065(b)]

Form CG-6083 is located at: [http://www.uscg.mil/forms/CG/CG\\_6083.pdf](http://www.uscg.mil/forms/CG/CG_6083.pdf) or on the VRP Program’s Homeport site.

## DIFFERENCES BETWEEN THE NTVRP PROPOSED AND FINAL RULES

1. What are the differences between the proposed and final rules for NTVRPs?

The Coast Guard revised a number of sections to alleviate the burden of the rule in response to public comments or to clarify requirements. [NTVRP Final Rule, September 30, 2013. Page 60103, Preamble Section V, Summary of Changes]

1. Allows nontank owners or operators to submit their VRP electronically.
2. Removes the annual plan review reporting requirement.
3. Refers to additional oil spill planning standards found in 30 CFR Part 254 for nontank vessels that are mobile offshore drilling units.
4. Clarifies applicability for secondary carriers.
5. Clarifies requirements for onetime port waivers for remote areas.
6. Removes the revised definition “vessels carrying oil as secondary cargo” as previously proposed.
7. Revises the definition for “nontank vessels” for clarity and for purposes of consistency.
8. Allows vessels to carry electronic copies onboard.
9. Removes requirement for vessels to have original, notarized copies of the VRP onboard.
10. Allows vessels to identify their insurance provider instead of insurance representatives.
11. Adds the requirement that vessels must state their 24-hour point of contact/local agent before arriving in a port if they have not done so in their VRP.
12. Aligns the appeal procedures between Tank Vessel Response Plans for Oil and new Nontank Vessel Response Plans.
13. Clarifies salvage and marine firefighting applicability for nontank vessels.
14. Revises the definitions of “cargo” and “navigable waters of the United States.”
15. Added the definition of “transfer” to clarify that transfer means those that take place to and from vessels for the purposes of 33 CFR Part 155, Subpart J.
16. Revises the definition for “worst case discharge” (WCD) to maintain alignment between new Subpart J and tank regulations in 33 CFR Part 155, Subpart D. The Coast Guard may change these requirements in a future rulemaking.

17. Rewords sentences that might be confusing and broke up paragraphs into smaller paragraphs to make them easier to read and to improve clarity.
18. Allows vessel owners or operators to submit one plan to represent multiple vessels.
19. Vessels need only carry those VRP sections onboard their vessels the Coast Guard deemed necessary to initiate notifications and crew response.
20. Clarifies the new Alternative Training and Exercise Program.
21. Updates the Coast Guard Headquarters' mailing address.

## CONTRACTS FOR OSRO COVERAGE

1. With regard to OSRO contracts and NTVRPs, what must be submitted to the USCG for plan approval under 33 CFR 155, Subpart J - Nontank Vessel Response Plans?"

The OSRO services that must be planned for by contract or other approved means in NTVRPs are specified below by oil capacity:

- A. NONTANK VESSELS WITH 2,500 BARRELS CAPACITY OR GREATER require contracts or other approved means for response resources as follows:

Contract, per 33 CFR 155.5020, "Contract or other approved means," (1) – (4)  
[See also §§155.1050; 155.5050(h)]

<b><u>Resource Category</u></b>	<b><u>Regulatory Requirement</u></b>
• AMPD (vessel carries oil as cargo)	[§§155.5050(d)(1)]
• MMPD	[§§155.5050(e)(1)]
• WCD Tier 1	[§§155.5050(f) and (g)]
• Dispersant (pre-authorized area)	[§§155.5050(j)(1)]
• Aerial Tracking (not inland areas)	[§§155.5050(k)(1)(i), and (2)]
• Shoreline Protection	[§§155.5050(l)]
• Shoreline Cleanup	[§§155.5050(m)]

- B. NONTANK VESSELS WITH LESS THAN 2,500 BARRELS CAPACITY, BUT GREATER THAN OR EQUAL TO 250 BARRELS:

Contract, per 33 CFR 155.5020, "Contract or other approved means," (1) – (4)  
[See also §§155.1050; 155.5050(h)]

<b><u>Resource Category</u></b>	<b><u>Regulatory Requirement</u></b>
• MMPD	[§§155.5050(e)(1)]
• Shoreline Protection	[§§155.5050(l)]
• Shoreline Cleanup	[§§155.5050(m)]

Written Consent per 33 CFR 155.5020, “Contract or other approved means,” (5)

<b><u>Resource Category</u></b>	<b><u>Regulatory Requirement</u></b>
• AMPD (vessel carries oil as cargo)	[§§155.5050(d)(1)]
• Dispersant (pre-authorized area)	[§§155.5050(j)(2)]
• Aerial Tracking (not inland)	[§§155.5050(k)(1)(ii), and (2)]

C. NONTANK VESSELS WITH LESS THAN 250 BARRELS CAPACITY:

Written Consent per 33 CFR 155.5020, “Contract or other approved means,” (5)

<b><u>Resource Category</u></b>	<b><u>Regulatory Requirement</u></b>
• AMPD (vessel carries oil as cargo)	[§§155.5050(d)(1)]
• MMPD	[§§155.5050(e)(2)]

CONTRACTS AND FUNDING AGREEMENTS UNDER SUBPART I FOR  
SALVAGE AND MARINE FIREFIGHTING (SMFF) SERVICES

1. What nontank vessels are required to contract for salvage and marine firefighting in accordance with Subpart I?

Self propelled nontank vessels 400 gross tons or more with a capacity of 2,500 barrels or greater must meet the salvage, emergency lightering and marine firefighting requirements found in Subpart I.

2. Does the Coast Guard give SMFF providers salvage contract review letters for their Subpart I contracts?

No, there is no regulatory requirement for salvage and marine firefighting contract review letters.

3. What are the requirements for a salvage and marine firefighting contract under Subpart I?

Subpart I definitions of “contract or other approved means” and “funding agreement” provide salvage and marine firefighting contracting details. Contracts are expected to be in line with the following criteria:

- It is a written contractual agreement and funding agreement between a vessel owner or operator and resource provider and signed by both.
- The funding agreement identifies agreed upon rates for specific equipment and services to be made available by the resource provider under the agreement.
- Expressly provides that the resource provider "is capable of, and intends to commit to, meeting the plan requirements".
- States how long the agreement remains in effect.

- Contract and funding agreement ensure that salvage and marine firefighting are in place.
- Assures that responses are not delayed due to funding negotiations.
- Must be provided to the Coast Guard by the vessel owner / operator with the VRP for approval.

The VRP Program expects SMFF nontank contracts to adhere to these criteria. Where this is found not to be the case, the contracts will not be accepted. [33 CFR 155.4020]

4. Where can I find further information about Subpart I salvage and marine firefighting contracts?

Navigation and Vessel Inspection Circular 2-10 covers salvage and marine firefighting contracts in detail. NVIC 2-10 may be downloaded from the Coast Guard's Homeport website: <http://homeport.uscg.mil>  
>Missions > Environmental>Vessel Response Plan Program>Salvage and Marine Firefighting>Salvage and Marine Firefighting NVIC>NVIC 2-10.

## CONTRACTS - WRITTEN CONSENT REQUIREMENTS

1. What is "written consent"?

The vessel owner or operator may only list response resource providers in their response plan that have been arranged by contract or other approved means.

The vessel owner operator must obtain written consent from the resource provider stating that they agree to be listed in the vessel response plan.

- For salvage contracting, the consent must state that the resource provider agrees to provide the services that are listed in 33 CFR 155.4030(a) through (h) and that these services are capable of arriving within the response times listed in Table 155.4030(b).
  - For OSRO contracting, contract or other approved means includes, with the written consent of the OSRO, the identification of an OSRO with specified equipment, and personnel which are available within stipulated response times in the specified geographic areas.
2. A resource provider's written consent to be listed in an NTVRP is considered an "other approved means" instead of a contract for some NTVRP response resources. Which nontank vessels are only required to establish written consent to be listed in the NTVRP, and for which response resources?

With regard to self-propelled nontank vessels 400 gross tons or more:



- a. Those nontank vessels with an oil capacity of 250 to 2,500 barrels are required to establish written consent to be listed in the NTVRP from the providers of salvage, emergency lightering, firefighting, dispersant, and aerial tracking services.
- b. Those nontank vessels with an oil capacity below 250 barrels are required to establish written consent to be listed in the NTVRP from the providers of MMPD and salvage services.

Written consent is considered an acceptable “other approved means” for vessels with an oil capacity under 2,500 barrels. See 33 CFR 155.5020, paragraph (5) of the definition of “Contract or other approved means.”

3. Must written consent agreements be submitted with the VRP?

Written consent agreements must be submitted with the NTVRP for self-propelled nontank vessels 400 gross tons or more with less than 2,500 barrels oil capacity.

Please be advised that written consent agreements are required to be submitted with the NTVRP when the written consent functions as an “other approved means.” This means that nontank vessels with an oil capacity under 2,500 barrels as described in the answer to the previous question must submit written consent agreements with their NTVRP. [33 CFR 155.5050]

Written consent agreements need not be submitted with the NTVRP for self-propelled nontank vessels 400 gross tons or more with 2,500 barrels or greater oil capacity.

The written consent agreement is not required to be submitted with the NTVRP for vessels with an oil capacity of 2,500 barrels or above. For self-propelled nontank vessels of 400 gross tons or more with oil capacity of 2,500 barrels or greater, the written consent may be included with the contract with the resource provider or in a separate document. This written consent must be available to the Coast Guard for inspection. The response plan must identify the location of this written consent, which must be on board the vessel, or with a qualified individual located in the United States. [33 CFR 155.4045]

4. What other requirements must nontank vessels submitting only written consents plan for in their NTVRP ?

33 CFR 155.5050(p) requires nontank vessels with a oil capacity less than 2,500 barrels to only identify and plan for response resources, but does not require availability by contract. While the Coast Guard does not require contracts for these vessels, we believe that requiring these vessels to plan for and comply with all of the other requirements of Subpart I is sufficient.

## CONTRACT SIGNATURES

### 1. Will the Coast Guard accept signed contracts by third parties?

Yes, the Coast Guard will accept contracts signed on behalf of a vessel owner or operator by an authorized agent or power of attorney. The contract must still be between the vessel owner or operator and the resource provider rather than with a third party.

33 CFR 155.5035 requires the nontank vessel owner / operator (O/O) to identify in NTVRPs resource providers that are "ensured available" in the case of an actual or potential discharge, "through contract or other approved means." "Contract or other approved means" is defined in 33 CFR 155.5020 as including, among other things, written contractual agreements between the nontank vessel O/O and the resource provider. This definition does not prevent an agent of the nontank vessel O/O from arranging or entering into the contract on behalf of the nontank vessel O/O. Using a Power of Attorney, the contract is between the nontank vessel O/O and the resource provider, with the QI as agent. It is not the Coast Guard's intention to dictate the exact contractual arrangement that meets the intent of this regulation. The Coast Guard's purpose is to ensure the requirement of a contractual relationship between the nontank vessel O/O and the resource provider is present in the event of an actual or potential discharge.

### 2. Will the Coast Guard accept a QI's signature on a contract?

Yes, the Coast Guard will accept contracts signed on behalf of a vessel owner or operator by an authorized agent or power of attorney. The contract must still be between the vessel owner or operator and the resource provider rather than with a third party.

### 3. Will the Coast Guard accept electronic signatures on contracts?

Yes, use of authorized electronic signatures will be accepted.

## DAMAGE STABILITY AND ASSESSMENT OF STRUCTURAL STABILITY

### 1. What do damage stability services typically encompass?

Damage stability services typically encompass the following:

- a. A database of pertinent aspects of the vessel's structure, materials, machinery and equipment
- b. A computer model of the vessel that will allow for damage stability and residual strength analysis
- c. Evaluation of salvor's or operator's plans for off-loading, ballasting or cargo transfer sequences to improve residual stability and reduce hull girder stresses and ground force reaction

- d. Extensive calculation routines, which include:
- bending and shear stresses caused by pinnacle loads from grounding or stranding
  - residual hull girder strength based on the reported extent of damage
  - residual stability when the vessel's compartments are breached
  - hull girder strength in damaged condition with wave loading
  - hull girder ultimate strength
  - local strength in the damaged area
  - local buckling and ultimate strength

The above would all fall under "calculations", since the process involves only modeling, computing and information exchange. The salvor will then use the data provided (in consultation with the QI, master and operators) as part of the response effort.

It seems clear that an external provider capable of providing damage stability services must be identified in the NTVRPs. Few, if any, operators could provide such a service in-house, since a typical vessel's stability-calculating equipment is designed to calculate static intact stability data (while fully afloat, with a watertight hull). Such equipment would be incapable of calculating the vessel's dynamic stability which is necessary after an incident involving loss of watertight integrity and/or a ground reaction.

2. Given the above, what damage stability calculation services from Subpart I must nontank vessels plan for and identify in their VRPs?

"Damage stability calculation" service is not a defined service within Subpart I.

33 CFR 155 Subpart I requires the vessel owner or operator to identify "Assessment of Structural Stability" services by contract or other approved means. "Assessment of structural stability" means completion of a vessel's stability and structural integrity assessment through the use of a salvage software program. The data used for the calculations would include information collected by the on-scene salvage professional. The assessment is intended to allow sound decisions to be made for subsequent salvage efforts." [33 CFR 155.4025]

Pre-planning for the "assessment of structural stability" is intended to facilitate rapid response by salvage providers who are able to accomplish the defined services within specified timeframes in the event of an incident. Timeframes for "assessment of structural stability" are either 12 or 18 hours, depending upon the operating area of the vessel. The timeframe starts when anyone in the vessel owner or operator's response organization receives notification of a potential or actual incident. The response timeframe ends for "assessment of structural stability" when the initial analysis is completed. "Assessment of structural stability" is a continual process, but by the end of the specified timeframe an analysis needs to be completed. [33 CFR 155.4040]

The decision whether or not adequate planning for “assessment of structural stability” includes arranging to pre-load a computer model with relevant vessel-specific data prior to an incident is the responsibility of the vessel owner or operator. The vessel owner or operator is responsible for determining the adequacy of the resource providers included in their plan. [33 CFR 155.4050]

3. Are nontank vessels required to contract for damage stability services?

No. “Damage Stability Services” are not defined in Subpart I. Nontank vessels are required to contract for “assessment of structural stability” services, as defined in 33 CFR 155.4025.

4. The definition of “assessment of structural stability” in Subpart I refers to 33 CFR 155.240 and .245. These regulations discuss damage stability and residual strength computer calculation requirements for tank vessels? Do these parts apply to nontank vessels?

33 CFR 155.240 and .245 do not apply to nontank vessels.

The definition of “assessment of structural stability” in Subpart I (salvage and marine firefighting) addresses both Subpart D (tank vessel response plans) and Subpart J (nontank vessel response plans). The references in the definition of “assessment of structural stability” to 33 CFR 155.240 and .245 are clearly applicable only to tank vessels regulated under Subpart D.

5. Must nontank vessel data be pre-entered into computer models for damage stability calculations?

No, pre-entry of vessel data into computer models is an option, but it is not mandated in all cases by the regulations. Although the “assessment of structural stability” service provider must be able to complete a vessel's stability and structural integrity assessment within timeframes through the use of a salvage software program, regulations do not specifically require pre-entry of vessel data into a computerized model for nontank vessels.

## DATES FOR NONTANK VESSEL COMPLIANCE

1. What is the effective date of the NTVRP final rule?

The NTVRP final rule has both an effective date and implementation (compliance) date. The effective date of October 30, 2013 is when the final rule enters into force. The effective date is generally the compliance date unless a separate compliance date is designated, as established for NTVRP submissions in this final rule.

2. What is the compliance date for the Notice of Arrival requirements?

The compliance date for some Notice of Arrival requirements that are part of the NTVRP final rule is October 30, 2013.

This final rule requires the submission of VRP Control Numbers for both tank and nontank vessels as part of already required notice of arrival information listed in 33 CFR 160.206(a). The Coast Guard's electronic notice of arrival (eNOA) online form already requires a submitter to check a box when they have a nontank (*emphasis added*) VRP and provides a control number entry field when the box is checked in the affirmative. Nontank vessels should continue to submit their VRP Control Number in this manner. At this time, no such prompt or entry field exists for tank vessels. Therefore, until an entry field is added to the eNOA submission form for tank vessels, the Coast Guard advises tank vessel owner or operators to list their tank VRP Control Numbers in the eNOA comments field.

Since the October 30, 2013 effective date of this requirement does not align with the January 30, 2014 compliance date for submission of nontank VRPs, and to ensure consistency with our previous enforcement policy for nontank vessels 1,600 gross tons and above, the Coast Guard will enforce this new notice of arrival submission requirement by the following eNOA submission timelines:

1. October 30, 2013 – Tank Vessels
  2. October 30, 2013 – Nontank Vessels (1,600 gross tons or greater; use VRP Control Number listed in existing IOAs)
  3. January 30, 2014 – Nontank Vessels (400 – less than 1,600 gross tons)
3. Is the NTVRP compliance date January 30, 2014, per 33 CFR 155.4020?

Yes. The final rule establishes January 30, 2014 as the date of compliance by which a vessel owner or operator is required to submit and operate under a vessel response plan that meets the new regulatory requirements of 33 CFR 155, Subpart J. As a result, existing Interim Operating Authorizations (IOAs) will remain valid until the compliance date of January 30, 2014, or until they are replaced with an approval letter or new IOA that specifically refers to compliance with "Title 33, Code of Federal Regulations, Part 155, Subpart J."

Nontank vessels with existing IOAs must resubmit their plan, with required revisions, for approval before the January 30, 2014, compliance date in order to receive a Subpart J compliant approval letter or new IOA.

4. Plans must be submitted to the Coast Guard by January 30, 2014 but the regulations do not state whether or not a vessel can operate in U.S. waters while the plan is under review. Please advise the plan review process and under what approval instrument nontank vessels will be allowed to operate after January 30, 2014.

The VRP Program will issue plan approval letters after a comprehensive VRP review for compliance with the Nontank Vessel Final Rule is completed. Given the short four month compliance date, and in anticipation of the high volume of expected plan submissions that may make it difficult to complete comprehensive VRP reviews in a

timely manner, abbreviated VRP reviews may be conducted. In this case, new IOA letters will be issued for those nontank vessel response plans that meet minimum certification requirements. These new IOA letters will specifically reference “Title 33, Code of Federal Regulations, Part 155, Subpart J” and be valid for up to 2 years or until replaced by a plan approval letter issued by the VRP Program.

5. NTVRP approvals are for 5 years. Is there any way we can stagger approval dates so there is not a huge renewal effort in 5 years?

Approved NTVRPs will be given a 5 year renewal date. However, the VRP Program will accept early NTVRP submissions for 5 year renewals if it will help a plan preparer level out their NTVRP workload over the 5 year period between 2014 and 2019.

6. What do I submit if the NTVRP Interim Operating Authorization (IOA) for the plan that complies with NVIC 01-05, CH-1 expires before January 30, 2014?

You can either submit a plan written to NVIC 01-05, CH-1 or 33 CFR 155 Subpart J.

An expiration date of January 30, 2014, will be approved for those NTVRPs that expire before that date and requesting recertification under the NVIC 01-05, CH1 guidance. NTVRPs expiring after January 30, 2014 will not be reviewed for recertification under NVIC 01-05, CH-1 guidance. NTVRPs expiring after January 30, 2014, must comply with the requirements of Subpart J.

NTVRPs that are submitted for compliance with 33 CFR 155 Subpart J will be reviewed for full 5-year approval.

## PREFIRE PLANS

1. Do all regulated nontank vessels require pre-fire plans as described in 33 CFR 155.4035(b)?

No. Pre-fire plans are required of nontank vessels with a carrying capacity of 250 barrels or more. Nontank vessels with a worst case discharge of less than 250 barrels of oil are not required to have pre-fire plans because they are not required to plan for firefighting services in their vessel response plans. [33 CFR 155.5050(i)(3)]

## SALVAGE AND MARINE FIREFIGHTING (SMFF) REQUIREMENTS

1. Where can I find more information about SMFF requirements?

SMFF requirements have been in place for tank vessels since February, 2011. Please refer to 33 CFR 155.4010-4055 and information contained on the Coast Guard’s Homeport website at <http://homeport.uscg.mil>.

2. Homeport shows SMFF resource providers with the versions and dates of their most recently accepted SMFF core Geographic Specific Appendices (GSAs). What does Coast Guard acceptance of these documents mean?

The listed versions of SMFF GSAs have been reviewed by the Coast Guard and are accepted for incorporating into VRP GSAs by reference as posted on <http://homeport.uscg.mil> [Missions > Environmental > Vessel Response Plan Program > Salvage and Marine Fire Fighting > Important Documents > Current Core SMFF GSAs].

Acceptable SMFF resource information consists of core GSAs that are submitted to the Coast Guard by SMFF resource providers and are periodically updated, augmented by up-to-date resource listings readily available by electronic means. Prior to approving a Vessel Response Plan that incorporates by reference the SMFF resource provider GSA information, the Coast Guard must first review and accept core GSAs provided by the SMFF resource provider. Conditional acceptance of a core GSA indicates that acceptance is conditioned on correction of errors and omissions found during the review of the listed version, and proper identification of gaps, waiver requests, and approved waivers or approved alternative planning compliance.

Coast Guard acceptance of core GSAs for incorporation into NTVRPs by reference in no way relieves the vessel owner or operator of the requirement to select adequate resources.