



## SERVICE AGREEMENT

STANDARD FORM OF WSMC MEMBER AGREEMENT  
AMENDED AND RESTATED  
AS OF  
JANUARY 1, 2021

This AMENDED AND RESTATED SERVICE AGREEMENT (the "Agreement") is entered into by and between the COMPANY identified on the Execution Instrument and the MARINE SPILL RESPONSE CORPORATION, a nonprofit corporation organized under the laws of Tennessee ("MSRC") or, effective as of January 1, 2021, amends and restates the Service Agreement previously entered into by and between the COMPANY and MSRC.

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

### ARTICLE I SERVICES AVAILABLE TO COMPANY AND ITS AFFILIATES

**1.1. Availability of MSRC Resources to the COMPANY and its Affiliates.** By becoming a member of the Washington State Maritime Cooperative ("WSMC") and entering into and complying with the terms and conditions of this Agreement, the COMPANY and each of its "Covered Entities" (as hereinafter defined) covered by the "WSMC Umbrella Plan" (as hereinafter defined) are eligible to call out MSRC in the event of an oil spill.

**1.2. Resources Available; Geographic Area Covered.** The MSRC and subcontractor equipment and personnel available hereunder include the MSRC response equipment and MSRC response personnel listed on Schedule 1 attached hereto as well as available MSRC subcontractor resources (collectively, the "Resources"). Resources are available in the waters of the State of Washington included in the "WSMC Operational Area" as defined by WSMC.

**1.3. Covered Entities.** For the purposes of this Agreement, "Covered Entity" has the same meaning as, and is one and the same as, the COMPANY.

**1.4. Covered Vessels.** A "Covered Vessel" is a vessel of a Covered Entity that is eligible, under the rules established by MPA, for coverage hereunder, and that is covered by the WSMC Umbrella Plan, a State of Washington oil spill contingency plan maintained by WSMC.

**1.5. Roles and Duties of the COMPANY, WSMC and its Covered Entities.** The COMPANY grants to WSMC, as well as each Covered Entity, the authority to designate Covered Vessels hereunder, to mobilize MSRC for a spill response or other emergency response and to perform the other obligations of the COMPANY hereunder during any such response, to receive and provide notices for the COMPANY hereunder, and to act for the COMPANY in all other respects hereunder. In the event of a conflict between the exercise of any rights under this Agreement by the COMPANY, WSMC or a Covered Entity, the exercise by the COMPANY controls.

1.6. **COMPANY Guarantee.** The COMPANY authorizes MSRC to act upon the requests, designations and other directions of WSMC or a Covered Entity, and unconditionally guarantees the performance of all obligations hereunder if MSRC is called out by WSMC or a Covered Entity. MSRC may enforce this guarantee without first pursuing any remedies for nonperformance against WSMC or the Covered Entity.

1.7. **Agreement References.** For simplicity throughout this Agreement, the term “COMPANY” will be used to reference the COMPANY, WSMC, or a Covered Entity, as the context requires. For example, in those provisions of this Agreement that pertain to the contractual obligations, rights, warranties, and representations of the parties to this Agreement, references to the “COMPANY” will usually mean the legal entity that is the signatory to this Agreement (unless otherwise specifically provided herein). In those provisions of this Agreement that pertain to the roles of the parties during a response activity, references to the “COMPANY” will mean the entity that actually called out MSRC for the response services, whether that entity is the actual signatory to this Agreement, or whether that entity is WSMC or a Covered Entity exercising the rights and obligations that the COMPANY granted it pursuant to this Article I.

## ARTICLE II CALL-OUT

2.1. **Call-Out.** The COMPANY (or WSMC, on the COMPANY’s behalf) may call out MSRC by calling 800-OIL-SPIL (800-645-7745), 800-259-6772 or (for international callers) 732-417-0175. MSRC is authorized to respond to a call-out initiated by any individual MSRC reasonably believes to be acting on behalf of the COMPANY, WSMC or a Covered Entity (including, without limitation, an employee or representative of the COMPANY, WSMC or a Covered Entity, a master or other officer of a vessel that MSRC reasonably believes to be a Covered Vessel, or a person that MSRC reasonably believes to be a “Qualified Individual” under the COMPANY’s or a Covered Entity’s response plan or other member of their spill management teams, or a person MSRC reasonably believes to be authorized under the WSMC Umbrella Plan).

2.2. **Confirmation of Call-Out.** The call out of MSRC shall be documented in writing as soon as reasonably practicable in an “Initial Call-Out Notice,” including identification of the specific Resources requested by the COMPANY and, if applicable, the COMPANY’s request for spill management support pursuant to Section 3.3 below.

2.3. **Changes in Resources Called Out.** The COMPANY may add to or discontinue use of any Resources at any time by notice to MSRC.

2.4. **First Come/First Served; Only for Oil Spill Responses within the WSMC Operational Area.** Except as otherwise directed by governmental authorities, agreed by mutual consent or as described below, Resources are provided to the COMPANY and others for spills of oil on a first-come/first-served basis. (For purposes of this Agreement, all references to “oil” shall refer to such term as it is defined in the Oil Pollution Act of 1990 (“OPA”); other terms, if not defined herein, shall also have the meanings set forth in OPA).

(a) **Responses Must be Within the WSMC Operational Area and For Vessels Covered by the WSMC Umbrella Plan.** This Service Agreement is only for oil spill events where the responsible party is a WSMC-covered vessel operating in the WSMC Operational Area and covered by the WSMC Umbrella Plan..

(b) RESERVED.

(c) RESERVED.

(d) RESERVED.

**2.5. Conflicting Requests in the Operational Area.** If the COMPANY and another MSRC customer both desire the same Resources or otherwise have conflicting requests for oil spill events in the WSMC Operational Area, MSRC will immediately notify and consult with each regarding the conflict. MSRC will continue to follow a first-come/first-served approach unless and until it receives timely non-conflicting directions to redirect Resources or activities. If, after such notice and consultation the conflicting parties still do not agree, MSRC will follow the non-conflicting directions of the Governmental Bod(ies) with jurisdiction, if any. This would include direction from a "Federal On-Scene Coordinator" ("FOSC") designated under the National Contingency Plan, 40 C.F.R. Part 300.

**2.6. Changes in Resources Offered by MSRC.** MSRC will periodically update Schedule 1 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 RESPONSIBILITIES DURING A RESPONSE**

**3.1. Mobilizing MSRC Response Resources.** As soon as reasonably practicable under the circumstances after MSRC receives an Initial Call-Out Notice or subsequent change to a call-out request, and subject to the COMPANY satisfying its obligations under Article VI with respect to Financial Responsibility (as hereinafter defined), payment security and/or working capital advances, MSRC will mobilize the requested Resources, along with the MSRC and subcontractor personnel that MSRC deems necessary or appropriate to deploy and operate the Resources.

**3.2. Management and Direction by the COMPANY.** Subject to the power and authority of Governmental Bodies, the COMPANY (or WSMC, on the COMPANY's behalf) will provide general management and overall direction and control of all response activities under this Agreement. The COMPANY shall designate an individual or individuals to manage and supervise the response ("Incident Commander(s)"), who shall be in frequent communication with MSRC while MSRC is providing Resources under this Agreement. The Incident Commander shall initially be WSMC unless otherwise designated by the COMPANY. The Incident Commander(s) will also advise MSRC of any directions or pertinent concerns of Governmental Bodies or the "Unified Command" established for the spill response that affect, or that may reasonably be expected to affect, any Resources or activities under this Agreement.

**3.3. Initial Coordination and Spill Management Support.** If requested by the COMPANY in its initial call-out of MSRC, and until such time as the COMPANY's spill management team (as contemplated by 33 CFR 155.1035(d)) fully arrives on-scene and assumes direct management and control, MSRC may, in its discretion, assist in the initial coordination and management of the COMPANY's response. Such assistance is subject always to the availability of MSRC and subcontractor personnel, and subject to the COMPANY's obligation to provide an Incident Commander and to promptly mobilize its spill management team. In providing such initial support, MSRC is authorized and directed by the COMPANY to: (a) act as an on-scene point of coordination and communication between the COMPANY, WSMC or other designated Incident Commander and the FOSC (and other response officials); (b) follow the directions of such response officials and/or the guidance set forth in an Area Contingency Plan or other such plan; (c) fill any open positions in the COMPANY's spill management team until such time as the spill management team is fully staffed, other than Incident Commander; and (d) otherwise act as the representative of the COMPANY in mobilizing and directing Resources and in initiating and conducting response efforts on behalf of the COMPANY so long as such efforts are not inconsistent with any written direction from the COMPANY's Incident Commander.

**3.4. Operational Supervision of MSRC Resources.** MSRC will, within the limits of its available resources, and at the COMPANY's cost and expense, provide operational supervision and coordination for the Resources. Such supervision shall be in accordance with and subject to the overall direction and control of the COMPANY.

**3.5. Governmental Directions.** MSRC will immediately notify the COMPANY 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 COMPANY. If the FOSC (or a state counterpart, a “State On-Scene Coordinator” or “SOSC”) gives directions to MSRC and MSRC does not receive timely directions from the COMPANY, 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 COMPANY of those directions and immediate actions as soon as practicable under the circumstances.

**3.6. Compliance with Laws and Maintenance of Responder Immunity.** The COMPANY will direct all response activities, and MSRC provide Resources, in a manner that will: (a) comply with all applicable laws; and (b) maintain the applicable “Responder Immunity” of MSRC. “Responder Immunity” means the limited immunity from liability provided by Section 4201(a) of OPA (33 U.S.C. Section 1321(c)(4)), or any other similar limitation of liability with a similar effect and scope under any other form of international, foreign, Federal, state, local, or other law. In the case of the use of alternative response technologies, the COMPANY represents and warrants that it has complied and will continue to comply with all applicable laws relating to such use including, without limitation, obtaining all necessary approvals from Governmental Bodies for such use.

**3.7. Compliance with Response Plans.** The COMPANY will direct all response activities in compliance with the provisions of its Response Plans, and immediately advise MSRC if any activity is inconsistent with the provisions of any Response Plan.

**3.8. Safety.**

**(a) MSRC and its Subcontractors.** MSRC will observe and require its employees and subcontractors to observe relevant safety laws and regulations and applicable MSRC safety policies and procedures. While on a COMPANY’s facilities or vessels, MSRC will comply and require its employees and subcontractors to comply with the COMPANY’s specific instructions concerning safety policies and procedures provided to them by the COMPANY.

**(b) The COMPANY and its Subcontractors.** The COMPANY will observe and require its employees and subcontractors to observe relevant safety laws and regulations and applicable COMPANY safety policies and procedures. While on MSRC’s facilities or vessels, the COMPANY will comply and require its employees and subcontractors to comply with MSRC’s specific instructions concerning safety policies and procedures provided to them by MSRC.

**(c) Reasonable Interpretation.** The obligations of MSRC and the COMPANY under this Section 3.8 are not intended to hold the parties to a standard that would be unreasonable under the actual conditions of a particular response and the inherent difficulties and dangers of emergency response. All MSRC and COMPANY actions carried out consistently with the directions of the FOSC or SOSC, or with the approval of applicable safety officials, will be deemed to be in compliance with this Section 3.8.

**3.9. Responses Outside the United States.** This Agreement is only for responses to oil spills in the WSMC Operational Area. MSRC is not obligated to respond outside of the WSMC Operational Area or outside of the United States. Should MSRC agree to respond to spills outside the United States, it will be in accordance with MSRC’s policies and procedures as adopted from time to time. These policies and procedures shall take into account the safety, security and health of MSRC personnel, liability issues, additional costs or obligations imposed on MSRC, the response and planning needs of others within the Operational Area, and other appropriate matters. Should MSRC agree to a COMPANY request to respond outside the United States, the COMPANY shall cooperate with MSRC in addressing any such issues and be solely responsible, at its expense, for obtaining all governmental permits, approvals, waivers and consents relating to the import of the Resources into the country of use, the employment of the Resources while in

the country of use, the return of the Resources to the United States, and the payment of all costs and expenses related thereto. Without limitation, the COMPANY shall be responsible for: (a) any customs, immigration, employment or other such issues affecting the Resources imported to the country of use; (b) all permit fees, customs duties, and taxes (including any taxes on the employment of the Resources or any income derived therefrom); (c) travel and shipping costs; (d) incremental personnel costs; and (e) any other costs, expenses, duties and taxes incurred by or imposed on MSRC as a result of the international response activity. In addition, the COMPANY agrees to pay for any surcharges provided on Schedule 1 for international response, including any surcharge to compensate MSRC for the safety, security, logistical and other challenges associated with international responses, as well as any insurance surcharge to compensate MSRC for the incremental liabilities associated with international responses (provided, however, that in lieu of paying such insurance surcharge, the COMPANY may elect to enter into a supplemental indemnification agreement acceptable to MSRC).

**3.10. RESERVED.**

**3.11. RESERVED.**

**3.12. Responses Utilizing Alternative Response Technologies.** MSRC may, at the request of the COMPANY, provide or assist with the utilization of alternative response technologies, such as the use of dispersants or in situ burning. The COMPANY shall be responsible for obtaining all necessary permits and approvals, and for any additional costs incurred by or imposed on MSRC in providing or assisting with alternative response technologies; this includes, without limitation, paying any insurance surcharges provided on Schedule 1 for responses utilizing alternative response technologies or, in lieu of paying such surcharge, entering into a supplemental indemnification agreement acceptable to MSRC.

**3.13. Suspension of MSRC's Obligation to Provide Resources.** MSRC may suspend its obligation to provide Resources in whole or in part under this Agreement upon written notice to the COMPANY 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) safety, security or health issues arise which, in MSRC's sole discretion, raise concerns as to the safety, security or health of MSRC or subcontractor personnel or endanger MSRC or subcontractor equipment;

(b) the COMPANY instructs MSRC to act under this Agreement in a manner which would be illegal, unsafe, or in violation or breach of this Agreement in any material respect;

(c) the COMPANY fails to demonstrate Financial Responsibility under Section 6.1, provide payment security as requested pursuant to Section 6.2(d), or advance working capital as requested pursuant to Section 6.3;

(d) an "Event of Default" (as defined herein at Section 11.2(a));

(e) a Force Majeure Event (defined as delays to, or impracticabilities or impossibilities of, performance by MSRC or its subcontractors caused by: acts of God; any circumstances arising out of war, threatened act of war or warlike operations, acts of terrorism, sabotage or piracy, or the consequences thereof; riots, civil commotion, blockades or embargoes; epidemics; earthquakes, landslides, floods or other extraordinary weather conditions; strikes, lockouts or other industrial action (unless limited to the employees of the party seeking to invoke force majeure); fire, accident or explosion except where caused by the negligence of the party seeking to invoke force majeure; or any other similar cause beyond the reasonable control of the party seeking to invoke force majeure);

(f) the expiration or other unavailability of Responder Immunity protections that were available to MSRC at the time of the Initial Call-Out Notice;

(g) the unavailability of subcontractors essential to enable MSRC to provide a required Resource;

(h) in the case of a response outside the United States, the Resources are required for a subsequent response in the United States, or the Resources are required to return to maintain the validity of the Response Plan of another customer within the Operational Area, or the authorities in the country of use fail to provide appropriate oversight or direction of response activities;

(i) RESERved;

(j) RESERVED; or

(k) In the case of a response utilizing alternative response technologies (including, without limitation, the use of dispersants or in situ burning), the FOSC and any other applicable Governmental Bodies fail to continuously provide approval, oversight and direction for such use.

**3.14. Return of Resources from Responses Within the United States.** The COMPANY will return all Resources upon completion of the response or earlier as required under this Agreement (e.g., upon an Event of Default or other termination or suspension). If the COMPANY 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 COMPANY's possession.

**3.15. Return of Resources from Responses Outside the United States.** Should MSRC agree to a COMPANY request to respond outside the United States, the COMPANY shall return all Resources to MSRC upon completion of the response or earlier as required under this Agreement (e.g., upon an Event of Default or other termination or suspension). If for any reason the COMPANY is unable or unwilling to return the Resources when requested by MSRC, MSRC may demand and take immediate lawful possession of the Resources by any lawful means, wherever it may be found, even if it is not in the COMPANY's possession or, in MSRC's sole discretion, the COMPANY shall pay MSRC the replacement cost (as reasonably determined by MSRC) of the non-returned Resources.

**3.16. Maintenance of Spill Records.** MSRC will maintain for three (3) years all original documents received from the COMPANY or a Governmental Body, as well as all original documents generated by MSRC, relating to the response to an oil spill or other emergency incident and the performance of emergency response services by MSRC ("Spill Records"). Spill Records shall not include hard copies of internal MSRC documents unless directly related to Services being invoiced to the COMPANY, nor shall Spill Records include hard copies of documents related to non-emergency services such as AMPDs and exercises; provided, however, that MSRC agrees to maintain for three (3) years electronic copies of such documents. Spill Records shall also not include hard copies of documents generated by MSRC subcontractors and other third parties; provided, however, that MSRC agrees to maintain for three (3) years electronic copies of subcontractor and third party documentation received by MSRC and relating to the response to an oil spill or other emergency incident. MSRC agrees to maintain such records for longer than three (3) years, at COMPANY expense, upon notice from the COMPANY requesting a longer retention period due to litigation or other circumstances.

#### **ARTICLE IV RECOVERED PRODUCT OR WASTE**

**4.1. Definitions.** For purposes of this section, "Management" means generation, recovery, transportation, storage, treatment, handling, disposal, disposition, possession, control, operation, ownership, importation, or exportation. "Recovered Product or Waste" means contained or recovered oil, oily waste, Hazardous Substances, or mixtures thereof, including contaminated properties.

4.2. **Allocation of Responsibility.** As between MSRC and the COMPANY, the COMPANY bears all risk, liability, and responsibility for and will perform or otherwise satisfy all duties and obligations and pay all costs and charges associated with the Management of Recovered Product or Waste. If subcontractors are available, MSRC may assist the COMPANY in arranging the logistics for transport and/or disposal; provided, however, that the COMPANY retains all risk, liability, and responsibility for such transport and/or disposal.

4.3. **COMPANY's Responsibilities; Waste Manifests.** The COMPANY will promptly provide to MSRC: (a) the necessary documentation (including, without limitation, signed waste manifests) for MSRC to deliver Recovered Product or Waste for transportation by others to the selected facilities, (b) appropriate instructions (orally and promptly confirmed in writing) for the Management of Recovered Product or Waste, and (c) access to facilities, vessels or other receptacles for receipt or disposal of Recovered Product or Waste.

4.4. **MSRC Actions.** If the COMPANY fails to meet any of its obligations in Sections 4.2 and 4.3 within a reasonable time after request by MSRC, MSRC can (a) discontinue operations that depend on the COMPANY's actions, or (b) 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 COMPANY.

## ARTICLE V CONFIDENTIALITY

Except as provided below or as otherwise directed or permitted by the COMPANY, MSRC will maintain as confidential all information that: (i) MSRC obtains from the COMPANY relating to a response; and (ii) the COMPANY reasonably designates as confidential. MSRC will coordinate all media and public responses by MSRC with the COMPANY, in advance of the responses if reasonably possible. Absent other direction, MSRC will handle inquiries using its judgment considering MSRC's view of the overall best interests of the COMPANY, restricting its remarks to factual information about the activities of MSRC and its subcontractors, but avoiding speculation or expression of opinion about the cause of the spill event or other emergency incident, or the appropriateness of the COMPANY's response efforts.

## ARTICLE VI COMPENSATION AND PAYMENT

6.1. **Financial Responsibility.** The COMPANY has, and will maintain during the term of this Agreement, the financial ability to pay MSRC for the Resources ("Financial Responsibility") as required under Schedule 2.

(a) **RESERVED.**

(b) **Response Outside the United States.** If the COMPANY requests MSRC to respond to an oil spill outside of the United States, or to any other type of incident for which existing Financial Responsibility does not apply, the COMPANY shall provide evidence of Financial Responsibility applicable to such incident as a condition of MSRC agreeing to respond, or provide a cash deposit, a parent guaranty or insurance letter of undertaking reasonably acceptable to MSRC, or other form of payment security reasonably acceptable to MSRC pursuant to Section 6.2(d) below (such payment security to be provided in advance of MSRC initiating a response and providing Resources).

(c) **Continued Assurances of Financial Responsibility.** MSRC may review or reassess the COMPANY's Financial Responsibility at any time, before or during a spill response or response to other emergency incident, and request additional or replacement evidence of Financial Responsibility to demonstrate that the COMPANY continues to meet its obligations under Schedule 2. This includes, without limitation, alternative evidence of Financial Responsibility if the COMPANY's Investment Grade Rating falls below the minimums specified in Schedule 2. If the COMPANY fails to provide the requested evidence of Financial Responsibility, MSRC may exercise its rights under Sections 3.13(c), 6.2(d) and/or 6.3.

**6.2. Compensation and Payment.** The COMPANY will pay MSRC for Resources provided under this Agreement in accordance with this Article VI and the rates and terms in Schedule 1. Schedule 1 may be amended from time to time by MSRC upon sixty (60) days' prior written notice to the COMPANY.

(a) **Invoicing.** MSRC will invoice the COMPANY periodically as appropriate under the circumstances. Upon request, MSRC will provide MSRC's good faith estimate of the total costs (including demobilization costs) of Resources being provided under this Agreement.

(b) **Invoice Disputes.** The COMPANY will notify MSRC promptly and in reasonable detail of any objection by the COMPANY 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 pursuant to Article X. The COMPANY may withhold payment of any amount reasonably disputed by the COMPANY, subject to MSRC's rights under Section 6.2(d) below to require payment security. The payment of any invoiced amounts will not prejudice the COMPANY's right, within one (1) 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 Schedule 1 from the due date until paid to MSRC or refunded to the COMPANY. If a dispute is resolved in favor of MSRC and the COMPANY has withheld payment of the disputed amount, the COMPANY will promptly pay to MSRC the disputed amount plus interest. If a dispute is resolved in favor of the COMPANY and the COMPANY has previously paid the disputed amount to MSRC, MSRC will promptly refund to the COMPANY the disputed amount plus interest.

(c) **Payment.** The COMPANY will pay invoiced amounts by wire transfer of immediately available funds to an account designated by MSRC within fifteen (15) calendar days of the receipt of the invoice, or such other longer payment period provided in Schedule 1 for non-emergency services such as AMPDs or exercises.

(d) **Payment Security.** If, at any time before or during a spill response or response to other emergency incident, 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 COMPANY to provide a cash deposit, a parent guaranty or insurance letter of undertaking reasonably acceptable to MSRC, or other form of payment security reasonably acceptable to MSRC. This payment security shall be in an amount equal to MSRC's good faith estimate of the total cost of Resources (including subcontractor resources and other third party charges) for the next fourteen (14) days of response activities, plus estimated demobilization costs, plus any unpaid amounts already invoiced by MSRC for the response, as a condition to MSRC providing or continuing to provide Resources for that response. In addition, MSRC may require the COMPANY to pay subcontractor and third party charges directly in such circumstances as a condition for MSRC to continue to engage such subcontractors or third parties. The COMPANY will provide the requested payment security within three (3) business days of MSRC's request.

**6.3. Working Capital.** The COMPANY acknowledges that MSRC has limited working capital and that, depending on the services and Resources requested by the COMPANY, MSRC may ask the COMPANY to advance the funds needed by MSRC to initiate and sustain particular services and Resources. If MSRC and the COMPANY do not agree on an advance of working capital, MSRC may decline to provide those particular services or Resources. MSRC will return to the COMPANY the unused portion of any cash advance, after satisfaction of all MSRC invoices and after the COMPANY's satisfaction of its other obligations for the spill event or other emergency incident.

**6.4. Cleaning and Repair of MSRC Resources.** The COMPANY will arrange and pay for cleaning, repairing, and replacing, as necessary, all Resources provided under this Agreement so that all 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 COMPANY will arrange for the cleaning of the Resources within the "Response Area" as designated by law or the FOSC or SOSC. MSRC may clean and repair or replace the Resources at the COMPANY's expense if the COMPANY fails to timely



perform its obligations under this Section 6.4 or upon agreement between the COMPANY and MSRC in other circumstances as appropriate.

**6.5. Taxes.** The COMPANY 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 COMPANY to take all reasonable actions, at the cost and expense of the COMPANY, to contest any taxes reimbursable by the COMPANY.

**6.6. Audit.** The COMPANY, or any firm of auditors designated by the COMPANY, will have reasonable access to and the right to reproduce the billing records necessary to verify the accuracy of MSRC's invoices, at times and under circumstances mutually acceptable to the COMPANY and MSRC and at the COMPANY's expense.

## **ARTICLE VII RESPONSE PLAN CITATION**

**7.1. Citation.** Each Covered Entity and each of its Covered Vessels covered by the WSMC Umbrella Plan is eligible to cite MSRC in the WSMC Umbrella Plan in the WSMC Operational Area, subject to the terms and conditions of this Agreement. MSRC may be cited for the capabilities set forth in the U.S. Coast Guard ("USCG") Response Resource Inventory System ("RRI") or any replacement or successor USCG system. 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 Resources would be restricted as to location rather than available for cascading to other locations).

**7.2. OSRO Classification.** MSRC will maintain USCG Oil Spill Removal Organization ("OSRO") classification for MMPD, WCD1, WCD2 and WCD3 for River or Canal, Inland, Ocean, Near Shore and Offshore environments (as defined by the USCG at the time of execution of this Agreement) throughout the Operational Area.

**7.3. Average Most Probable Discharge Coverage.** Upon the COMPANY's request, MSRC will arrange, and may be cited for, Resources to assist in satisfying the coverage required under OPA for "Average Most Probable Discharge" or "AMPD." The COMPANY shall request AMPD coverage by following the AMPD instructions issued by MSRC from time to time. Advance notice will be required if the COMPANY requests Resources to be deployed to a transfer location. The COMPANY will pay for the requested Resources in accordance with Schedule 1.

**7.4. Responsibility for Response Plan Development.** The COMPANY has the sole responsibility for the content, accuracy, and adequacy of its Response Plans. MSRC will not give advice on or approve the adequacy of any Response Plan. MSRC will provide, at the COMPANY's request, information about MSRC and the Resources to assist the COMPANY in citing MSRC capabilities in its Response Plans.

**7.5. Exercises.** If Resources are available, the COMPANY may obtain MSRC's participation in exercises in accordance with the terms of Schedule 1.

## **ARTICLE VIII REPRESENTATIONS AND WARRANTIES**

**8.1. Mutual 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:

(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.

(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.

(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.

(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 MSRC has permanently located MSRC response equipment or personnel.

**8.2. COMPANY Representations and Warranties.** The COMPANY hereby represents and warrants that, at all times during the term of this Agreement:

(a) **Financial Responsibility.** The COMPANY is in compliance with all of its obligations under Section 6.1 and with all Financial Responsibility obligations to Governmental Bodies.

(b) **WSMC and MPA Memberships.** The COMPANY is a member in good standing of WSMC, WSMC is an MPA Member in good standing, and the COMPANY is (as a member of WSMC) an affiliate of WSMC entitled to the benefits of membership in MPA.

(c) **Alternative Response Technologies.** The COMPANY has obtained, and is in compliance with, all required approvals for the use of any alternative response technologies it has requested from MSRC.

**8.3. Acknowledgment of Representations and Conditions.** The Initial Call-Out Notice will constitute an acknowledgment by the COMPANY to MSRC that, to the best actual knowledge of the COMPANY, each of the representations and warranties of the COMPANY set forth above is true and correct in all material respects at the time of the Initial Call-Out Notice.

## ARTICLE IX ALLOCATION OF RISKS

**9.1. 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 (or, in the case of a non-spill emergency incident, consistent with applicable

emergency 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 the COMPANY pursuant to this Agreement in a manner that attempts to mitigate, remove, or clean up the applicable spill event or other emergency incident as effectively as practicable under existing circumstances.

Subject only to the first paragraph of this Section and Section 8.1, MSRC EXPRESSLY DISCLAIMS AND EXCLUDES, AND THE COMPANY (ON BEHALF OF ITSELF AND EACH COVERED ENTITY) ACKNOWLEDGES AND AGREES TO THIS DISCLAIMER AND EXCLUSION AND WAIVES, 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.

**9.2. MSRC Status and Employees.** Notwithstanding the COMPANY's right to direct Resources under this Agreement, MSRC will be and will remain an independent contractor acting under the direction of the COMPANY 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 employer/employee, partners, or joint venturers.

**9.3. INDEMNIFICATION AND EXCLUSIVE REMEDY.**

**(a) Definitions.** As used in this Section 9.3 and elsewhere in the Agreement:

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

(ii) "Indemnitees" means MSRC, its directors, executive officers, and employees and any MSRC Integral Subcontractors (as defined below), but not any directors, executive officers, or employees of an MSRC Integral Subcontractor.

(iii) "MSRC Integral Subcontractor" means a subcontractor contractually obligated to MSRC to provide any of the following services: vessel crew providers, augment crew or personnel providers, tug boat operators, boom boat and support boat providers, dispersant aircraft providers, and other providers of OSRO services or support deemed essential or integral by MSRC.

**(b) 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 applicable laws to facilitate prompt and effective response to oil spills and other emergency incidents: (i) MSRC is a nonprofit and tax-exempt corporation providing services to promote the welfare of the public; (ii) any Resources provided under this Agreement are for the sole benefit of the COMPANY or the Covered Entity; (iii) 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; and (iv) 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 9.3. 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 9.3.

**THE COMPANY EXPRESSLY RECOGNIZES AND ACCEPTS ITS OBLIGATIONS ARISING UNDER SECTION 1.6 FOR INDEMNIFICATION AS SET FORTH IN THIS SECTION 9.3.**

(c) **COVER INDEMNIFICATION.** SUBJECT TO THE PROVISIONS OF SECTIONS 9.3(e) AND (f) BELOW, IT IS AGREED THAT THE COMPANY 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 AN OIL SPILL OR OTHER EMERGENCY INCIDENT 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 COMPANY OR 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 COMPANY FOR THE PURPOSES OF THIS SECTION 9.3(c) SHALL INCLUDE THE LIABILITY OF SUCH "RESPONSIBLE PARTY".

(d) **INDEMNIFIED CLAIMS.** UNLESS OTHERWISE SPECIFICALLY EXCLUDED BY SECTION 9.3(e), THE OBLIGATIONS OF THE COMPANY UNDER SECTION 9.3(c) 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 OIL SPILL OR OTHER EMERGENCY INCIDENT, 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.

**(e) Excluded Obligations.** The obligations of the COMPANY under Sections 9.3(c) and (d) 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 an oil spill or other emergency incident other than pursuant to this Agreement, including services or equipment provided by MSRC to an oil spill or other emergency incident after the COMPANY has, pursuant to this Agreement, terminated the services of MSRC under this Agreement at such oil spill or other emergency incident;

(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 an oil spill event where the payment of such portion of the Claim would cause the aggregate of: (A) 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; and (B) 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 oil spill event, to exceed the COMPANY's OPA limit of liability with respect to such oil spill event; provided that the restrictions of this Section 9.3(e)(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 9.3(f); 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 9.3(e)(vii) shall not apply to costs (including attorneys' fees) incurred by the Indemnitee in asserting said immunity.

**(f) 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 an individual or entity other than an Indemnitee (a "Third Party") against such Indemnitee (for the purposes of this Section 9.3, "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 COMPANY (and MSRC if the Indemnitee is not MSRC) of any Third Party Claim which is subject to the indemnification of the COMPANY under this Section 9.3, stating the nature and basis of the Claim, and the amount thereof, to the extent known. Within thirty (30) days of the giving of such notice, the COMPANY shall do one of the following: (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 COMPANY of the applicability of Sections 9.3(e)(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 COMPANY shall not have the right to assume the defense of a Third Party Claim in the event MSRC has notified the COMPANY of a breach or anticipatory breach by the COMPANY of the indemnification obligations under this Section 9.3 or the payment obligations under Section 6.2.

(ii) If the COMPANY 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 COMPANY elects to defend any such Claim, the COMPANY shall make available to MSRC and the Indemnitee all reports or other documents relating to the defense of the Claim and allow MSRC and the Indemnitee, at their 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 COMPANY under this Section 9.3, 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 all reports or other documents relating to the defense of the Claim and allow the COMPANY, 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 or the Indemnitee assumes the defense of a Third Party Claim, the COMPANY 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 COMPANY, the Indemnitee shall be obligated to cooperate fully in any defense to a Claim conducted by the COMPANY. Any party defending any Claim shall assert any exemption or immunity from liability that may be available, including, without limitation, any Responder Immunity.

(iii) So long as the COMPANY is defending, the Indemnitee shall not compromise or settle any such Claim without the prior written consent of the COMPANY, and, if the Indemnitee should object to any compromise or settlement of such a Claim acceptable to the COMPANY, such Indemnitee shall thereafter assume the costs of defending the Claim, and the COMPANY's obligations with respect to such Claim shall be limited to the compromise or settlement that was acceptable to the COMPANY. If MSRC or the Indemnitee is defending such Claim, the party defending such Claim shall consult with the COMPANY concerning any compromise or settlement but shall be entitled to compromise or settle such Claim without the prior consent of the COMPANY, but if the COMPANY objects to that compromise or settlement, the COMPANY can assume the defense, provided that the COMPANY secures its obligation to defend and pay such Claim in a manner satisfactory to MSRC, and Sections 9.3(e)(vi) and (vii) are no longer applicable to such Claim.

**(g) 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 under this Section 9.3 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 9.3 was submitted to the COMPANY 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 COMPANY or the Covered Entity directly.

**(h) No Waiver.** Nothing in this Agreement or this Section 9.3 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 the Covered Entity resulting therefrom.

(i) **MSRC Integral Subcontractors as Indemnitees.** Only MSRC Integral Subcontractors providing the categories of services listed in Section 9.3(a)(iii) are entitled to the benefits provided to Indemnitees pursuant to Sections 9.3(a) through (h).

#### 9.4. **Covenant Not to Sue.**

(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 9.3(b), hereby irrevocably releases and forever discharges the Indemnitees from liability for any and all Claims whatsoever, including but not limited to Claims for contribution, breach of contract, tort, or otherwise, or any Claims arising from the negligence or gross negligence of the Indemnitees, that the COMPANY or the Covered Entity currently has or may have against the Indemnitees arising from, related to, or in connection with this Agreement.

(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 Indemnitees; or (ii) assert the legal liability of any 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 or entity other than an Indemnitee against the COMPANY or the Covered Entity related to an oil spill or other emergency incident or the services provided by MSRC and its subcontractors. 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.

(c) **Exceptions.** Sections 9.4(a) and 9.4(b) will not preclude the COMPANY from pursuing Claims: (i) under the 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 provisions of Article X arising from the willful, reckless, or criminal misconduct of the Indemnitees.

(d) **Breach.** If this Section 9.4 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 the Covered Entity will be jointly and severally liable for any incidental or consequential damages of an Indemnitee arising from or related to that breach, including without limitation any and all attorneys' fees and expenses incurred by an Indemnitee in defending any litigation resulting from that breach. That liability will not be limited in amount by any other provision of this Agreement.

(e) **Full Force and Effect.** This Section 9.4 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.

#### 9.5. **Insurance.**

(a) **MSRC Insurance.** MSRC will obtain and maintain at its sole cost during the term of this Agreement the insurance coverage described in Schedule 3, 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.

(b) **Role of MSRC Insurance.** As set forth in Section 9.3(e)(iii), the recognition of its obligation to pay by an insurer of MSRC for any portion of a Claim conditionally relieves the COMPANY of its indemnification obligation under Section 9.3(c) with respect to such portion of the Claim. However, if an Indemnitee does not ultimately receive payment on an indemnified Claim from an insurer of MSRC, the COMPANY will be obligated to pay that Claim in accordance with the terms of this Article IX. After the making of that payment, the COMPANY will be subrogated to the rights of MSRC and the Indemnitee to

seek recovery for that portion of the Claim from the insurer. MSRC and the Indemnitee will cooperate fully with the COMPANY in seeking recovery from any such insurer. Any right of the COMPANY to assume the defense of a Claim from MSRC or an Indemnitee pursuant to Section 9.3 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.

**9.6. 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 COMPANY's indemnity of those Indemnitees under Section 9.3.

## ARTICLE X DISPUTE RESOLUTION

**10.1. 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.

**10.2. Arbitration Upon Election of the COMPANY.** If MSRC and the COMPANY are unable to agree upon a settlement of any matter, the COMPANY may require that the matter be arbitrated in accordance with the provisions of this Section 10.2. In such case, the dispute or Claim will be referred to three (3) arbitrators, one to be appointed by each of the parties hereto, and the third by the two so chosen. The majority decision of the arbitrators shall be final and binding on the parties. The proceedings shall be conducted in Houston, Texas under the rules of the Houston Maritime Arbitrator's Association. Judgment upon an arbitration award may be entered in the courts referenced in Section 10.3.

**10.3 Jurisdiction.** If the COMPANY does not elect arbitration, or 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 a judicial action. The parties agree that any judicial action or proceeding will be brought in the United States District Court for the Southern District of Texas, Houston Division if that court has subject matter jurisdiction, and in all other cases in the District Court of the State of Texas, County of Harris. The COMPANY and MSRC each consent to process being served in any manner permitted by law.

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

**10.5. 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.

**10.6. Requirements for All Persons.** Indemnification under Section 9.3 is contingent on the Indemnitee abiding by the provisions of this Article X.

## ARTICLE XI TERM AND TERMINATION



**11.1. Term of the Agreement.** This Agreement is effective upon execution and will continue until December 31<sup>st</sup> of the calendar year of execution. Provided WSMC remains a member of MPA in good standing, and the COMPANY remains a member of WSMC in good standing, this Agreement will continue automatically for successive periods of one (1) year thereafter unless either party gives the other party notice of termination at least ninety (90) days before the date of expiration of the term.

**11.2. Termination.**

**(a) For Default.** If any "Event of Default" (as herein defined) occurs and continues MSRC may, in addition to its right to suspend Resources pursuant to Section 3.13 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. If any of the following events occurs and is continuing with respect to the COMPANY (which, for the purposes of this Section 11.2, includes any Covered Entity which has called out MSRC for a particular response), it is an "Event of Default":

- (i) any of the COMPANY representations and warranties in Article VIII (other than under Section 8.2(b)) prove to be untrue or incorrect in any material respect;
- (ii) a voluntary case or proceeding under any applicable bankruptcy, insolvency, or other similar law now or hereafter in effect is commenced by the COMPANY;
- (iii) the COMPANY consents to the entry of an order for relief in an involuntary case or proceeding under any such law or against the COMPANY;
- (iv) the COMPANY consents to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator, conservator, supervisor, or rehabilitator (or other similar official) of the COMPANY or a substantial part of its properties;
- (v) the COMPANY makes a general assignment for the benefit of creditors;
- (vi) the COMPANY fails generally to pay its debts as they become due or takes any corporate action in furtherance of the foregoing;
- (vii) an involuntary case under any applicable bankruptcy, insolvency, or other similar law now or hereafter in effect is commenced against the COMPANY, and that case or proceeding is not dismissed within sixty (60) days;
- (viii) a court or regulatory authority having jurisdiction over the COMPANY enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator, conservator, supervisor, or rehabilitator (or similar official) of the COMPANY or for any substantial part of its properties, or ordering the winding-up, supervision, or liquidation of its affairs;
- (ix) the COMPANY fails to satisfy any of this Agreement's payment obligations (including the obligations in Article VI) 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 6.2 or advance working capital as requested pursuant to Section 6.3;
- (x) The COMPANY engages in a pervasive pattern of illegal or knowingly unsafe practices in directing response activities performed or provided under this Agreement; or

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

(b) **Due to Failure to Maintain MPA and WSMC Memberships.** If WSMC is no longer an MPA Member in good standing, or if the COMPANY is no longer a member of WSMC in good standing, then this Agreement shall immediately and automatically terminate.

(c) **Due to MPA Breach.** MSRC is also entitled to terminate this Agreement upon thirty (30) days notice if MPA fails to provide required funding to MSRC under the terms and conditions of the grant letters and agreements between MPA and MSRC (or any supplement or replacement thereto) or breaches other material contractual obligations to MSRC.

(d) **For Convenience.** The COMPANY may terminate this Agreement at any time by providing MSRC with at least thirty (30) days written notice.

**11.3. Provisions Surviving Termination.** Those provisions that by their nature are intended to survive termination including, without limitation, Sections 1.6, 3.8, 3.14, 3.15, 3.16, 12.1, 12.4, 12.5, 12.6, 12.7, 12.8 and 12.9, and Articles IV, V, VI, IX and X, will survive the termination of this Agreement. The provisions of Section 6.1 will survive any termination until eighteen (18) months after: (a) all COMPANY-required Article VI 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), whichever date is later.

## ARTICLE XII GENERAL TERMS AND CONDITIONS

**12.1. Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the successors and assigns of the 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.

**12.2. Entire Agreement.** 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.

**12.3. Modification and Waiver.**

(a) **Amendment.** This Agreement may be amended during its term by a written instrument approved by MPA. The COMPANY may terminate this Agreement pursuant to Section 11.2(d) if it objects to an amendment of this Agreement pursuant to these procedures.

(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.

**12.4. Notices.** Any notice required or permitted under this Agreement shall be made in writing and in English, and shall be deemed effectively given: (a) upon personal delivery to the party to be notified; (b) when sent by electronic mail, when the recipient acknowledges receipt, and if receipt is not so confirmed, then on the next business day after the notice was sent; (c) five (5) calendar days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) one (1) calendar day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification

of receipt. Notices shall be sent to the party's designated contact (name, title, mailing address or email address) as set forth under the signature of the parties on the Execution Instrument (or as expressly provided otherwise in this Agreement). MSRC may also provide notices to the COMPANY by providing such notice to WSMC, which COMPANY agrees is authorized to receive notices on its behalf. Both the COMPANY and MSRC may designate additions or changes in contacts in writing as necessary by providing notice in accordance with this Section.

**12.5. Electronic Signatures.** Each party agrees that the electronic signatures, whether digital or encrypted, of the parties are intended to authenticate this writing and to have the same force and effect as manual signatures and shall be effective to bind such party to this Agreement. Delivery of a copy of this Agreement or any other document contemplated hereby bearing an original or electronic signature by electronic mail in portable document format (.pdf) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, shall be deemed to be "written" or "in writing," deemed to have been signed, and have the same effect as physical delivery of a paper document bearing an original or electronic signature.

**12.6. Counterparts.** The parties may execute this Agreement in any number of counterparts, intending each counterpart to serve as an original.

**12.7. Severability.** 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.

**12.8. GOVERNING LAW.** THIS AGREEMENT WILL BE GOVERNED IN ALL RESPECTS BY, AND ALL CLAIMS RELATING TO OR ARISING OUT OF THIS AGREEMENT OR THE BREACH THEREOF, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, SHALL BE GOVERNED BY, THE GENERAL MARITIME LAWS OF THE UNITED STATES, OR WHERE THE GENERAL MARITIME LAW IS NOT APPLICABLE OR WHERE THERE IS NO GENERAL MARITIME LAW ON POINT, BY THE LAWS OF THE STATE OF TEXAS, EXCLUDING ANY CONFLICTS OR CHOICE OF LAW PRINCIPLES THAT WOULD DIRECT THE SUBSTANTIVE LAW OF ANOTHER JURISDICTION TO APPLY.

**12.9. 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.

**12.10. Standard Contract.** The terms and conditions of this Agreement are a standard form of agreement. MSRC will provide Resources to:

(a) others covered under the WSMC Umbrella Plan only under this standard form of agreement, as it may be amended from time to time in accordance with Section 12.3(a); and

(b) to other MPA Members or their affiliates only under their standard form of agreement, and 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 the standard form of MPA Member, when judging the terms and conditions and this Agreement, each as a whole as opposed to the relative merits of any particular provision.

If the COMPANY requests that MSRC perform any additional services not specifically provided in this Agreement or for which MPA has not provided funding, MSRC may in its sole discretion agree to perform such services subject always to the availability of MSRC personnel, the COMPANY's obligation to reimburse MSRC for any incremental costs incurred by MSRC, and to such other reasonable conditions as imposed by MSRC.

If the COMPANY requests that MSRC perform any additional contract administration tasks not specifically provided in this Agreement, such as participation in a COMPANY or third party safety review or vetting program, MSRC may in its sole discretion agree to perform such contract administration tasks subject always

to the availability of MSRC personnel, the COMPANY's obligation to reimburse MSRC for any incremental costs incurred by MSRC, and to such other reasonable conditions as imposed by MSRC.

**12.11. MSRC Employees.** The COMPANY may not select, discharge, or, except as required under Sections 3.2 and 3.8, control MSRC's employees or other representatives. Upon the reasonable request of the COMPANY, MSRC will remove an employee of MSRC 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.

**12.12. Compliance with Certain Executive Orders.** To the extent that there is a final, non-appealable order stating that any "Executive Orders" (as herein defined) relating to government subcontractors apply to MSRC because of the contractual relationship between MSRC and the COMPANY, MSRC will comply with that final order.

"Executive Order" means an order or regulation: (a) issued by the President of the United States (or some administrative authority under the President's direction) for the purpose of interpreting, implementing, or giving administrative effect to a provision of the United States Constitution or of some law or treaty; and (b) published in the Federal Register.

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.

**12.13. Compliance with the Law for Subcontractors.** MSRC will include in its contracts with subcontractors a provision requiring those subcontractors to abide by and observe all applicable Federal, state, and local laws, rules, and regulations.

**SCHEDULE 1**  
**RESOURCES AND RATES**

## SCHEDULE 2

### FINANCIAL RESPONSIBILITY

The COMPANY has, and will maintain during the term of this Agreement, Financial Responsibility for each Covered Vessel.

If more than one Covered Vessel is covered by the same method of Financial Responsibility, the COMPANY's demonstration of Financial Responsibility for the Covered Vessel with the largest limit of liability under OPA will satisfy the demonstration requirement for all Covered Vessels with lesser limits of liability.

**The COMPANY must notify MSRC within thirty (30) calendar days of knowledge of any change in circumstances that would result in non-compliance with or change in the method of demonstrating Financial Responsibility under this Schedule. Failure to provide such notice will constitute a material breach of the Agreement.**

The COMPANY may demonstrate Financial Responsibility by the following methods:

- 1. Investment Grade Rating.** The COMPANY maintains an Investment Grade Rating of AAA, AA, A, BBB or any variation thereof not lower than BBB-, or Aaa, Aa, A, Baa or any variation thereof not lower than Baa3, or a commercial paper rating of A1, A2 or Prime-1, Prime-2, or the equivalent as established by Standard and Poor's, Moody's, Duff and Phelps, or Fitch Investors Service.
- 2. Evidence of Financial Responsibility Issued by a Federal or State Governmental Body.** The COMPANY provides MSRC with a certificate of financial responsibility ("COFR"), evidence of its oil spill financial responsibility ("OSFR") or other such evidence of Financial Responsibility issued by the Federal or State Governmental Body. The COMPANY will provide copies of its COFRs or other evidence of its Financial Responsibility to MSRC upon execution of this Agreement and annually thereafter.
- 3. Insurance.** If the the COMPANY does not satisfy the Investment Grade requirements for Financial Responsibility, and does not provide MSRC with COFRs, OSFRs or other evidence of Financial Responsibility issued by a Federal or State Governmental Body, the COMPANY may provide evidence of pollution insurance to demonstrate its Financial Responsibility. Such evidence must be satisfactory to MSRC to demonstrate coverage for pollution response costs for each Covered Vessel, and must be an insurance policy issued by a nationally or internationally recognized insurer evidenced by a current certificate of insurance issued by the insurer or by a broker in the standard format utilized in the commercial insurance industry, or a Certificate of Entry with a Protection & Indemnity ("P&I") Club belonging to the International Group of P&I Clubs. The insurance must meet the minimum coverage limits provided below, must be in the name of the COMPANY or the applicable Covered Entity that owns or operates the Covered Vessel, and must provide for thirty (30) days' advance written notice to MSRC prior to policy cancellation. The COMPANY must provide this evidence of pollution insurance to MSRC upon execution of this Agreement and annually thereafter.

**Tank Vessel:** The COMPANY must provide MSRC with a Certificate of Entry with a P&I Club in the International Group of P&I Clubs.

**Non-Tank Vessel:** The COMPANY must provide MSRC with a Certificate of Entry with a P&I Club in the International Group of P&I Clubs.

- 4. Cash Advance or Other Payment Security.** If the COMPANY is unable or unwilling to demonstrate Financial Responsibility under the above methods, it must provide MSRC with a cash advance, a parent guaranty or insurance letter of undertaking reasonably acceptable to MSRC, or other form of payment

security reasonably acceptable to MSRC pursuant to Section 6.2(d), Payment Security, as a condition of MSRC responding. Such payment security must be provided prior to MSRC initiating a response and providing Resources.

### SCHEDULE 3

#### INSURANCE

| <u>Coverage</u>                                  | <u>Limit and Deductible</u>  |
|--|--|
| Comprehensive General Liability (CGL)            | \$1,000,000 limit with \$25,000 deductible.  |
| Automobile Liability                             | \$2,000,000 limit with \$0 deductible. Lesser coverage in Puerto Rico and USVI.  |
| Workers' Compensation / Employer's Liability:    | Workers' Compensation: Statutory.<br>\$1,000,000. \$0 deductible.  |
| Non-Owned Aircraft Liability                     | \$10,000,000 limit. \$0 deductible.  |
| Hull and Machinery (H&M)                         | Coverage varies by type of vessel: Large OSRVs insured up to \$10,000,000 each; OSRBs up to \$5,000,000 each; for other vessels the coverage depends on declared value of vessel. Deductibles range from \$250,000 for OSRVs and OSRBs to \$25,000 for small vessels.  |
| Primary Marine Liability                         | \$100,000,000 limit with \$25,000 deductible.  |
| Primary Non-Marine Liabilities                   | \$50,000,000 limit. Provides coverage for (a) Products and Completed Operations Liability, (b) Employer's Liability, (c) all other liabilities (i.e., general liability, automobile, workers' compensation, non-owned aircraft). Deductible varies (i.e., coverage generally applies after policy limits for underlying policy -- CGL, worker's compensation, automobile, non-owned aircraft -- have been exceeded). |
| Excess Marine Liability                          | \$100,000,000 in excess of the Primary Marine Liabilities coverage. Coverage generally applies after primary policy limit has been exceeded.   |
| Excess Non-Marine Liabilities                    | \$50,000,000 in excess of the Primary Non-Marine Liabilities coverage. Coverage generally applies after primary policy limit has been exceeded.  |
| Protection & Indemnity (P&I)                     | As per Club Rules except Pollution which has a \$1,000,000,000 limit. All coverages subject to \$100,000 deductible.   |
| Directors and Officers Liability / EPL<br>\$0 to | \$50,000,000 limit. Coverage includes Employment Practice Liability (EPL). Deductible varies from \$150,000 depending on type of claim.  |



**Coverage**

**Limit and Deductible**

Property / Equipment Insurance

Limits of up to \$20,000,000 depending on the property/facility being insured and the type of loss or damage. Deductibles of up to \$250,000, again depending on the property/facility being insured and the type of loss or damage.

Vessel of Opportunity

Provides H&M coverage of up to \$2,500,000 per vessel subject to deductible of 1% of hull value per claim. Provides P&I coverage of up to \$5,000,000 with deductible ranging from \$5,000 to \$100,000.

Contractor's Pollution Liability

\$30,000,000 limit with \$100,000 deductible.

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