

**ADDENDUM  
SERVICE AGREEMENT  
(DISPERSANTS)**

THIS ADDENDUM TO SERVICE AGREEMENT (this "Addendum"), entered into as of \_\_\_\_\_, 201\_, modifies and supplements the Service Agreement (the "Service Agreement") by and between Marine Spill Response Corporation ("**MSRC**") and \_\_\_\_\_ ("**COMPANY**"), as set forth below. Capitalized terms used but not defined herein shall have the meanings given to such terms in the Service Agreement.

In consideration of the promises and the mutual covenants of this Addendum, the parties agree as follows:

1. This Addendum shall apply to any Spill Event where the **COMPANY** requests **MSRC** to provide and/or apply dispersants, or to otherwise participate in or support the provision or application of dispersants ("Dispersant Services"), or to any Spill Event for which the **COMPANY** is a "Responsible Party" (as defined in OPA) and for which the USCG orders or directs **MSRC** to provide or support Dispersant Services. Without limitation, Dispersant Services shall include providing aircraft, vessels, and/or other Resources to apply dispersant, whether provided by **MSRC** or **MSRC** Subcontractors, along with any related or incidental Resources and services.
2. This Addendum amends and modifies the Service Agreement. It has been approved by MPA in accordance with Section 11.05(a) of the Service Agreement.
3. The parties acknowledge and agree that Dispersant Services potentially expose **MSRC** to additional legal and financial risks and liabilities, and that clarifications to existing indemnification provisions, as well as additional indemnification protections, are therefore appropriate. The parties further acknowledge and agree that, without these clarifications and additional indemnification protections, **MSRC** (and **MSRC** Subcontractors) could be unwilling to provide Dispersant Services to the **COMPANY**, or the delivery of Dispersant Services could be delayed or adversely affected.
4. Section 9.03(b) of the Service Agreement is hereby amended in its entirety as follows for all future Spill Events where Dispersant Services are provided (with changes underlined):

**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. WITHOUT LIMITATION, BUT ALSO SUBJECT TO 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 DISPERSANT SERVICES, OR ANY CLAIM FOR ALLEGED EXPOSURE TO DISPERSANTS OR OTHER ADVERSE HEALTH IMPACT AS A RESULT OF THE USE OR APPLICATION OF DISPERSANTS, 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".

5. Section 9.03(c) of the Service Agreement is hereby amended in its entirety as follows for all future Spill Events where Dispersant Services are provided (with changes underlined):

**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, INCLUDING, WITHOUT LIMITATION, DISPERSANT SERVICES;

(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;

(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;

(viii) ANY CLAIM FOR PERSONAL INJURY OR WRONGFUL DEATH OF ANY PERSONS, OR FOR HEALTH-RELATED CLAIMS OF ANY PERSONS, RELATING DIRECTLY OR INDIRECTLY TO THE DISPERSANT SERVICES, INCLUDING, WITHOUT LIMITATION, ANY CLAIMS FOR EXPOSURE TO DISPERSANTS, FOR ANY MEDICAL SCREENING, TREATMENT OR MONITORING ALLEGED TO BE REQUIRED AS A RESULT OF SUCH CLAIMED EXPOSURE, OR FOR ANY

OTHER ALLEGED ADVERSE EFFECTS ON PUBLIC HEALTH OR SAFETY; AND

(ix) ANY OTHER RISKS, LOSSES, LIABILITES, DAMAGES, COSTS OR EXPENSES RELATED TO ANY CLAIMS CONCERNING OR RELATING, DIRECTLY OR INDIRECTLY, TO THE DISPERSANT SERVICES, INCLUDING, WITHOUT LIMITATION, ANY CLAIMS FOR ENVIRONMENTAL EFFECTS OR DAMAGE, FOR MONITORING (ENVIRONMENTAL, WATER SUPPLY, FOOD SUPPLY, AIR OR OTHERWISE), FOR PROPERTY DAMAGE, OR FOR NATURAL RESOURCE DAMAGE.

6. Section 9.03(d) of the Service Agreement is hereby amended in its entirety as follows for all future Spill Events where Dispersant Services are provided (with changes underlined):

**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, other than personal injury or wrongful death Claims (or other health-related Claims) relating directly or indirectly to Dispersant Services or Claims for exposure to dispersants as a result of the use or application of dispersants (including, but not limited to, Claims for medical screening, treatment or monitoring as a result of such alleged exposure, or for any other alleged adverse health effects);
- (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 (A) the **COMPANY** or the Covered Entity has previously assumed the defense of such Claim under Section 9.03(e), or (B) the Claim relates, directly or indirectly, to Dispersant Services provided by **MSRC** or any **MSRC** Subcontractors, including, but not limited to, Claims such as those provided in Section 9.03(c)(vii) above; 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.

7. The parties acknowledge that additional indemnification and protections may be required by certain subcontractors as a condition of providing or supporting Dispersant Services. Should the **COMPANY** require or request the services of such subcontractors, or should **MSRC** require (in **MSRC**'s reasonable discretion) the services of such subcontractors in order to provide the Dispersant Services, the **COMPANY** agrees to enter into such indemnification agreements as required by those subcontractors. If the **COMPANY** is unable to reach agreement with a subcontractor as to the terms of indemnification, then **MSRC** shall be excused from providing any services dependent upon the availability of that subcontractor.

In addition, the parties acknowledge that the dispersant manufacturer will require additional indemnification as a condition of supplying additional or replacement dispersant. The **COMPANY** agrees to enter into a purchase agreement with the dispersant manufacturer, in the form attached hereto as Attachment 1 (or such other form of purchase agreement as may be agreed upon by the **COMPANY** and the dispersant manufacturer at the time), and to provide indemnification to the dispersant manufacturer as set forth in that purchase agreement. The **COMPANY** further agrees to take such other steps as necessary to procure dispersant needed for the Response Activities and to replace all dispersant used from **MSRC** inventory. If the **COMPANY** fails to do so, then **MSRC** shall be excused from providing any services dependent upon the dispersant manufacturer's products.

8. The parties agree that all Dispersant Services shall be conducted under the supervision, direction and/or control of the USCG under OPA and the National Contingency Plan. The **COMPANY** agrees that it shall be responsible for obtaining, and has the obligation to obtain: (a) written approvals from the USCG specifying the Dispersant Services to be conducted by **MSRC** and **MSRC** Subcontractors on a daily

basis (or on such other regular basis customarily followed by the USCG and acceptable to **MSRC**); and (b) written confirmations from the USCG that **MSRC** is eligible for derivative immunities when acting in accordance with these approvals. **MSRC** and **MSRC** Subcontractors shall not be required to conduct any Dispersant Services unless and until such specific written approvals and confirmations are received.

9. In the event of a conflict between any provision of this Addendum and any other provision of the Service Agreement, this Addendum shall control.

10. Except as specifically provided herein, the terms and conditions of the Service Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the date first above written.

\_\_\_\_\_  
COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Its duly authorized representative

MARINE SPILL RESPONSE CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Its duly authorized representative

ATTACHMENT 1

PURCHASE AGREEMENT (WITH INDEMNIFICATION)  
TO BE ENTERED INTO BETWEEN COMPANY  
AND  
DISPERSANT MANUFACTURER

COREXIT CONTRACT (the "Contract")

Effective Date: \_\_\_\_\_, 2011 (the "Effective Date")

Parties: Nalco Company (the "Contractor"), a company formed under the laws of Delaware. Contractor's address and contact information is: 7705 Highway 90-A, Sugarland, TX 77478, Attention: Corexit Sales Manager - Energy Division.

And

\_\_\_\_\_ (the "Company"), a company formed under the laws of \_\_\_\_\_. Company's address and contact information is: \_\_\_\_\_, Attention: \_\_\_\_\_.

Product: Corexit® Brand dispersant.

Oil Spill Event for which the Product is deemed to have been purchased and/or used: \_\_\_\_\_ (the "Spill Event")

Quantity: As per accepted purchase order (the "Product")

Price: Per quotation given by Contractor at the time ordered (the "Price").

Delivery Term: Per quotation from Nalco at the time ordered, or ex-works Contractor's facility if no term is stated in the quote. Company acknowledges that the Product is not kept in stock by Contractor and is specially made to order. Contractor will use commercially reasonable efforts to deliver Product ordered and accepted by [INSERT DATE], subject to the availability of the relevant raw materials.

Invoice To: Same as Company address first written above.

Term: This Contract will run for the duration of the Spill Event (the "Term") or until terminated by Company or Contractor.

Price & Freight: The Price excludes any applicable sales, use, excise, VAT, export and import taxes, and similar fees. Risk of loss shall pass to Company in accordance with the INCOTERMS.

Contractor and Company (individually sometimes referred to as a "Party" and collectively as the "Parties") wish to respectively sell and buy the Product on the following terms and conditions. For that and other consideration, the Parties agree as follows:

1. **PRODUCT.** Contractor shall supply the Product in accordance with the terms of this Contract, but Contractor shall have no responsibility for or involvement in the application of the Product including but not limited to application to the Spill Event or any other treatment programs relating to the Spill Event. Company shall be solely responsible for application of the Product and all decisions relating to use and application of the Product. Product may be ordered from Contractor from time to time for the Spill Event by Company delivering to Contractor a requisition, release and/or purchase order which should incorporate the terms of the Contract ("Purchase Order"). Purchase Orders are considered accepted by Contractor when (i) the order is received by Contractor, and (ii) written confirmation has been sent from Contractor to Company. The Parties agree that the terms in the Contract are the sole and exclusive terms governing the relationship between Company and Contractor with respect to the Product. No terms and conditions contained in or referenced in or attached to any Purchase Order or otherwise shall be binding on the Parties with respect to the Product. The Parties expressly agree that any terms contained in the any document other than the Contract, including any Purchase Order, that are contrary to this Contract shall be null and void.
2. **PERFORMANCE.** Contractor shall pay its subcontractors and shall discharge all valid taxes, liens, claims, charges, or other impositions imposed by law on Contractor.
3. **COMPENSATION AND PAYMENT.** As compensation for the Product, Company shall pay Contractor the amounts set out in the Purchase Order which will be at the agreed Price. All applicable taxes, duties or other governmental charges relating to the Product shall be in addition to the Price and be paid by



Company. All payments are due within 30 days after receipt of invoice. Company shall be charged the greater of the amount permitted by law or one and a half percent (1.5%) percent per month on all amounts not received by the due date and shall pay all of Contractor's reasonable costs (including attorneys' fees) of collecting amounts due but unpaid. Any changes to the terms of the Contract or duration of Contract shall require both Parties' prior written approval and be in the form of an executed written amendment to the Contract. To be effective, such amendments must be executed by an authorized representative of Company and Contractor.

4. **TERM AND TERMINATION.** Either Contractor or Company may terminate with or without cause on 30 days prior written notice. If Company terminates, cancels or suspends the Contract or any Purchase Order for any reason, other than Contractor's uncured breach, or for convenience or no reason, Company shall have the obligation to pay Contractor for Product that Company ordered and any other costs incurred by Contractor as a result of such termination, cancellation or suspension. Such costs would include Contractor's cancellation fees with its subcontractors and/or raw material suppliers.
5. **WARRANTY OF PRODUCT.** Contractor warrants that: (i) the Product will at the time of shipment meet Contractor's specifications in effect at the time; and (ii) the Product shall be transferred with good title free of liens. Contractor's liability under this warranty is limited to replacement of non-conforming Product, or a refund of or invoice credit for the Product. Except as provided herein, **CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. FOR CLARITY, CONTRACTOR MAKES NO REPRESENTATION, WARRANTY, OR GUARANTEE WITH RESPECT TO THE RESULTS OBTAINED FROM APPLYING ANY PRODUCT IN ANY BODY OF WATER OR OTHERWISE.**
6. **CONFIDENTIALITY.** Each Party shall treat as confidential and proprietary all the terms of this Contract, all information regarding Company's response to the Spill Event, and pricing, technical, geologic, geophysical, business, or other information that is disclosed verbally or in writing by the other Party, whether or not it is identified as confidential by the other Party. Each Party shall maintain this information in strict confidence and shall not use or disclose it to third parties. Company consents to Contractor supplying information received from Company to Contractor's suppliers and/or subcontractors for purposes of assisting Company in complying with its obligations under this Contract; provided, that with respect to information that Company has identified as "Confidential" pursuant to the terms of this clause, Contractor will have executed a confidentiality agreement with such supplier or subcontractor. The Parties' obligations of confidentiality and non-use hereunder do not apply to information which the receiving party can show: (a) was in the public domain at the time of disclosure or subsequently became available to the public, other than due to a breach of this confidentiality provision; (b) by written record was in the receiving party's possession prior to the effective date of this Contract; (c) was disclosed to the receiving party by a third party with no obligation of confidentiality with respect to such information; (d) is required to be disclosed by an official process, order, or like demand, provided that the receiving party has given adequate prior notice to the disclosing party of the process, order, or demand to enable disclosing party a reasonable opportunity to oppose the same, (e) is independently developed by the receiving party, or (f) is used or disclosed after a period of twenty (20) years from the date of disclosure hereunder.
7. **INDEMNITY AND DAMAGES**
  - A. **(1)** Company hereby releases, and shall protect, indemnify, hold harmless and defend Contractor and its affiliates, parents, contractors, agents, subcontractors of any tier, joint venturers, and suppliers of any tier, and all of their respective officers, directors, employees, owners and agents ("Contractor Indemnified Parties"), from any and all Claims (as defined in 7.C below), directly or indirectly arising out of or in connection with the application or use of Corexit® Brand dispersant (including the Product) by COMPANY OR ANY THIRD PARTY IN RESPONSE TO THE SPILL EVENT. COMPANY'S OBLIGATIONS UNDER THIS SECTION SHALL APPLY REGARDLESS OF WHETHER THE CLAIMS ARE CAUSED OR CONTRIBUTED TO BY THE SOLE, JOINT, OR CONCURRENT NEGLIGENCE, STRICT LIABILITY, OR OTHER FAULT OF ANY OF THE CONTRACTOR INDEMNIFIED PARTIES, A PREEXISTING CONDITION, BLOWOUT, EXPLOSION, OR FIRE.
  - (2)** The provisions of this indemnity will apply notwithstanding any contrary provisions in the Contract. Nor shall any rule, statute, regulation, or law (including but not limited to the Oil Pollution Act of 1990, 33 U.S.C. 2701 et seq.) serve to limit Company's liability under this indemnity.

- B. Notwithstanding any other provision, Contractor's liability under the Contract or for any claims (whether in tort, contract or otherwise) relating to the performance under the Contract, including, without limitation, all warranties, or otherwise relating to the Product shall be limited to an amount equal to the price Company has paid to Contractor for the Product.
- C. "Claim" shall mean all claims, liabilities, costs, demands, causes of action, suits, damages, losses, fines, penalties, orders, sanctions and expenses, including court costs and attorneys' fees, of every kind and nature howsoever arising, arising out of or in connection with the use, presence, or performance of Corexit® Brand dispersant (including the Product) in response to the Spill Event, including but not limited to: (i) loss of or damage to oil or gas production facilities or equipment and/or pipelines owned or operated by the Company or its affiliates, its co-working interest owners, and any of their contractors or any third parties, including but not limited to any consequential losses arising therefrom; and (ii) any and all effects that the Product have on the environment, including but not limited to effects or results following application of Product including but not limited to bodies of water, and any adverse impact resulting therefrom at any time, including but not limited to effects or concerns regarding any water, wild life, fish, marine vegetation or animals, shore line effects or damages, natural resource damages of any kind or nature whatsoever, or effects on or relating to any other person, property, or living creature in, under, adjacent or relating to the location of the application of the Product.
- D. Contractor shall give the Company notice of the incurring of any Claims that will result in a claim of indemnity pursuant to this Contract. The notice shall describe with reasonable detail the nature of such Claim or Claims to the extent known, and shall include copies of any written documentation from the party asserting such claim. Company shall promptly notify Contractor as to whether Company elects to reimburse Contractor for its reasonable defense costs or whether Company will assume the defense of any such Claim. In either case, Contractor shall have the right to participate in its defense, and shall be obligated to cooperate with Company in its defense. Each party shall keep the other reasonably informed of the status of such matter. Company shall not have the right to compromise and settle any such Claim without Contractor's prior written consent.
- E. The provisions of this Section as well as any other terms of this Contract that by their nature survive termination of this Contract shall survive any expiration or termination of this Contract.
- F. **NOTWITHSTANDING ANY OTHER PROVISION, IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR CONSEQUENTIAL, INDIRECT, SPECIAL, EXEMPLARY, OR LIQUIDATED DAMAGES OF ANY KIND WHATSOEVER, INCLUDING BUT NOT LIMITED TO DAMAGES MEASURED BY DIRECT OR INDIRECT LOSS OF REVENUE, LOST PROFITS, LOSS OF USE, PRODUCTION DOWN TIME, BUSINESS INTERRUPTION, OR LOSS OF GOODWILL. For the avoidance of doubt, this Section 7.F does not diminish or otherwise affect the Contractor's rights and obligations to be indemnified against, and Company's obligation to provide indemnity for, Claims under any indemnities in the Contract.**
8. ASSIGNMENT OR SUBCONTRACT. Contractor may assign, sublet, or subcontract obligations with respect to the manufacture and sale of Product without the written consent of Company. Contractor may assign its rights and obligations under the Contract to any affiliate of Contractor without Company's consent. The Contract will inure to the benefit of and be binding upon the successors and permitted assigns of the Parties.
9. COMPLIANCE WITH LAWS. Contractor shall comply with all relevant laws, rules, regulations, and decrees, federal, state and local, applicable to the Contractor (the "Laws"), including those pertaining to health, safety, security, and environmental protection.
10. APPLICABLE LAW AND RESOLUTION OF DISPUTES. To the maximum extent permissible, the laws of the state of Texas will govern this Contract, exclusive of any principles of conflicts of laws. Any disputes arising in connection with this Contract or the Product may be brought before the competent court in Texas. The United Nations Convention on Contracts for the International Sale of Goods is inapplicable to this Contract.
11. MISCELLANEOUS.
- A. Severability. If any court of competent jurisdiction holds any provision, or portions or applications thereof, of this Contract to be unenforceable, invalid or void, this Contract will be

deemed to be amended to modify such provision or portion thereof partially or completely to the extent necessary to make it enforceable. If necessary, this Contract will be deemed to be amended to delete the unenforceable, invalid or void provision or portion thereof, in which event the validity and enforceability of the remaining provisions, or portions or application thereof, will not be affected.

- B. Waiver. None of the requirements of this Contract will be considered as waived by either Party unless the waiver is made in writing. Either Party's failure to enforce any rights will not waive those or other rights under this Contract.
- C. Entire Contract. This Contract contains the full understanding of the Parties, and is a complete and an exclusive statement of the terms of their agreement, and will exclusively control and govern the supply of Product to Company. This Contract merges all representations, offers, and undertakings of the Parties with respect to the Product made before the date first above written.
- D. Electronic Transactions. The parties encourage the conduct of transactions related to this Contract by electronic means, including by email, scanned images, and facsimile. Facsimile or scanned copies of signatures on this Contract shall have binding effect, the same as if they were originals.
- E. Notices. Notices shall be in writing and delivered to the Parties at the address given above.
- F. Force Majeure. For the purposes of the Contract and each Purchase Order, "Force Majeure" means any event beyond the reasonable control and without fault or negligence of the party claiming inability to perform its obligations, including but not limited to: inability to obtain raw materials or intermediate materials on reasonable terms, acts of God or public enemy; expropriation or condemnation of facilities; changes in applicable law and directives of any government body, war, civil disturbance, floods, unusually severe weather that could not reasonably have been anticipated; fires, explosions or other catastrophes; and strikes. Inability to pay moneys shall not, however, constitute events of Force Majeure. Nor shall "Force Majeure" under any circumstance constitute a basis for Company to fail to comply with its indemnification responsibilities. No delay or failure in performance by Company or Contractor shall constitute default under the Contract or any Purchase Order if, and to the extent, the delay or failure is caused by Force Majeure. If performance is delayed by reason of Force Majeure, the affected Party shall notify the other Party. The affected Party shall do all things reasonably possible to mitigate and remove the Force Majeure event, except a strike, and shall resume performance under this Contract and the Purchase Order as soon as possible.
- G. Ownership of Materials. All devices, designs (including drawings, plans and specifications), estimates, prices, notes, electronic data and other documents or information prepared, developed or disclosed by Contractor, and all related intellectual property rights, shall remain Contractor's property.
- H. Swaps and Resale. Other than using the Product for the Spill Event, or to replenish the inventory of Marine Spill Response Corporation (or others who contributed dispersants that were used in response to the Spill Event), Company may not give, sell, swap, share or otherwise dispose of the Product without Contractor's prior written consent. Notwithstanding anything to the contrary herein, the indemnity set forth in Section 7 above shall NOT apply to Product that is purchased as replenishment and is NOT used in response to the Spill Event, it being the intent of the Parties that the indemnity of Section 7 shall only apply to Claims relating to Corexit® Brand dispersants actually used in the Spill Event.

\*\*\* SIGNATURE PAGE FOLLOWS \*\*\*

This Contract is signed in duplicate originals by authorized representatives of the Parties.

CONTRACTOR

COMPANY

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

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

Title:

Title:

Date:

Date: