NATURAL RESOURCE DAMAGE FUNDING AND PARTICIPATION AGREEMENT FOR THE M/V SELENDANG AYU INCIDENT

I. PARTIES

This agreement is made between the Alaska Department of Environmental Conservation ("ADEC"), Alaska Department of Fish and Game ("ADF&G"), Alaska Department of Law ("ADOL"), Alaska Department of Natural Resources ("ADNR"), National Oceanic and Atmospheric Administration ("NOAA"), and the United States Department of Interior ("DOI"), acting through the United States Fish and Wildlife Service (collectively, the "Trustees"), Ayu Navigation ~~Shd~~, Bhd, and IMC Shipping ~~Pte,~~ Ltd. (collectively, the "Responsible Party"). The Trustees and the Responsible Party are collectively referred to as the "Parties."

Sdn

Co. Pte.

II. BACKGROUND AND PURPOSE

Following the December 8, 2004 wreck of the M/V *Selendang Ayu* off the coast of Unalaska Island in Alaska, natural resources were adversely affected by releases of oil from the vessel and activities in connection with responding to the oil releases (collectively, the "Incident"). As of the date of this Agreement, the Trustees for the Incident have completed the Preassessment Phase of the Natural Resource Damage Assessment ("NRDA") in accordance with 15 C.F.R. § 990.40, and are preparing to issue a Notice of Intent to Conduct Restoration Planning in accordance with 15 C.F.R. § 990.44.

The purpose of this Agreement is to set forth the nature and scope of cooperative activities to be performed by the Parties in the Restoration Planning and Restoration Implementation Phases, in accordance with the NRDA regulations, 15 C.F.R. § 990.14, *et seq*, and to establish procedures for the Responsible Party's payment to the Trustees of past and prospective reasonable assessment costs arising from the Incident, as defined in 15 C.F.R. § 990.30 ("Reasonable Assessment Costs").[1] The Parties believe that this Agreement is in their best interests, as it may facilitate expeditious and cost-effective restoration of the natural resources and services injured as a result of the Incident.

[1] "*Reasonable assessment costs* means, for assessments conducted under this part, assessment costs that are incurred by trustees in accordance with this part. In cases where assessment costs are incurred but trustees do not pursue restoration, trustees may recover their reasonable assessment costs provided they have determined that assessment actions undertaken were premised on the likelihood of injury and need for restoration. Reasonable assessment costs also include: administrative costs, legal costs, and other costs necessary to carry out this part; monitoring and oversight costs; costs associated with public participation; and indirect costs that are necessary to carry out this part." 15 C.F.R. § 990.30.

III. COOPERATIVE ASSESSMENT AND RESTORATION PLANNING

A. ***Cooperative Activities.*** The Parties agree that a cooperative effort to further determine the injuries to natural resources and services, quantify such injuries, and develop, evaluate and select projects to restore, rehabilitate, replace or acquire the equivalent of the injured resources and services may be cost-effective, avoid duplication of work, and effectively use limited personnel and other resources. Such cooperative efforts shall be referred to as "Cooperative Activities."

B. ***Scopes of Work.*** Each Cooperative Activity will be described in a detailed Scope of Work ("SOW") agreed to by the Parties. Each SOW will include a brief description of the work, objective, and product of the Cooperative Activity. As SOWs are executed by the Parties, they will become attachments to this Agreement, and their terms will form a part of this Agreement. The Responsible Party will fund the Trustees' Reasonable Assessment Costs incurred in implementing Cooperative Activities as set forth in SOWs pursuant to the terms of Section VI of this Agreement. If there are material changes in a SOW, the Parties may amend the SOW to reflect these changes.

IV. DATA AND REPORTS

A. ***Collection of Data.*** When undertaking Cooperative Activities, the Parties will cooperatively and collaboratively decide what data to collect and the procedures for such collection.

B. ***Exchange of Data and Reports.*** Unless subject to an alternative arrangement, the Parties agree to exchange data and reports pertaining to Cooperative Activities within two weeks after the data or reports become available, or within two weeks of the effective date of this Agreement, if such are already available upon the effective date. If a Cooperative Activity results in the preparation of a report, all Parties will be provided with a proposed final draft version of the report or written analysis and allowed a reasonable amount of time agreed upon by the Parties within which to review and comment on the document before it is issued in final form. Any such comments must be included as part of the final report or otherwise made a part of the Administrative Record maintained by the Trustees.

C. ***Interpretation of Data.***

1. The Parties will attempt to reach consensus on the interpretation of, and conclusions to be drawn from, data collected or generated pursuant to a Cooperative Activity. Any such consensus and/or conclusion may be memorialized as a stipulation to be agreed to by all Parties. Any Party may propose a stipulation at any time. A stipulation may address issues of fact or law or both. Such stipulations shall be attached to this Agreement, shall survive the termination of this Agreement, and shall not be challenged by any Party.

2. If the Parties are unable to reach consensus on the interpretation of data collected or generated pursuant to a Cooperative Activity, each Party reserves the right to disagree on the interpretation

of the data resulting from a Cooperative Activity and to develop separate and independent findings and conclusions, which will be included in the Administrative Record.

D. ***Access to Information.*** All Parties shall have access to all data, notes, logs, or other records of observations that are related to a Cooperative Activity. When the Parties retain an outside consultant as part of the SOW, all Parties shall have equal access to the consultant's work product, including access to any drafts, reports, or other documents prepared by the consultant, and records of communications between the consultant and any Party.

V. INDEPENDENT ACTIVITIES

The Parties reserve the right to perform NRDA studies or activities independent of the Cooperative Activities performed and funded in accordance with this Agreement. The Parties, however, may not introduce in a judicial or administrative proceeding related to natural resource liability arising from the Incident new or different data collected, generated by or resulting from independent activities to challenge the validity of the data collected or compiled pursuant to a Cooperative Activity.

VI. FINANCIAL RESPONSIBILITY

A. ***Scope.*** The Responsible Party agrees to pay all Reasonable Assessment Costs resulting from the Incident incurred by the Responsible Party, the Trustees, or their contractors to date, and prospectively.

B. ***Past Reasonable Assessment Costs.*** Each Trustee has incurred Reasonable Assessment Costs prior to the effective date of this Agreement. Pursuant to the procedures contained in Subpart D, "Invoices," of this Section, as soon as reasonably practicable after the effective date of this Agreement, the Trustees will submit invoices to the Responsible Party for Reasonable Assessment Costs incurred, and the Responsible Party will process payment of any undisputed amounts in accordance with Subpart D.

C. ***Advance Funding.*** To participate fully in this cooperative effort, DOI, ADF&G and ADNR require funding in advance. NOAA, ADOL and ADEC will seek reimbursement of costs incurred from the Responsible Party.

Within thirty (30) days of the effective date of this Agreement, the Responsible Party shall provide $135,000 (ONE HUNDRED THIRTY FIVE THOUSAND DOLLARS) in advance funding to DOI, as federal lead administrative trustee, through deposit in a reimbursable account. The funds will be divided for use as follows: $120,000 to DOI; $5,000 to ADF&G; and $10,000 to ADNR. Advance funding will allow DOI to avoid any potential for violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. The Responsible Party agrees to provide to DOI, ADF&G and ADNR further advance funding to fulfill their obligations under this Agreement upon request from these parties to replenish this reimbursable account.

D. ***Invoices.*** Each Trustee shall submit to the Responsible Party an accounting of Reasonable Assessment Costs incurred pursuant to this Agreement on a regular basis in order to

seek reimbursement or document the expenditure of advanced funding. This accounting shall consist of a summary of labor, travel, contract and supply costs, along with supporting documentation for those costs. The Responsible Party recognizes that each Trustee has different accounting processes and understands that the accounting from each Trustee may not be in the same format.

The Responsible Party agrees to review promptly the accounting provided by Trustees and shall process payment of undisputed amounts to the individual Trustee, or its contractors where direct payments are authorized, or to DOI's reimbursable account (for DOI, ADF&G and ADNR) within forty-five (45) days of receipt of the accounting. The Parties agree to attempt to resolve any disputed amounts within thirty (30) days after the initial response is received by the Trustees. If the dispute cannot be resolved, or if for any other reason the reimbursement has not been paid within seventy-five (75) days after receipt of the accounting, and should a Trustee subsequently prevail in any action to collect any disputed or other such unpaid amounts, the Responsible Party shall pay, in addition to the amount determined to be owed, interest on said amount calculated from the date that the reimbursement was payable under this Agreement. Any such interest payable to federal Trustees shall be calculated in accordance with the Debt Collection Act, 31 U.S.C. § 3717, and any such interest payable to state Trustees shall be calculated in accordance with AS 09.30.070.

Upon the agreement of the Parties, the Responsible Party may directly contract for goods or services as part of a Cooperative Activity when the cost of those goods or services is anticipated to exceed $5,000, and the Responsible Party may directly pay the provider of goods or services accordingly. In those instances, the Responsible Party agrees to make such payment within thirty (30) days of the receipt of an invoice. If the provider of goods or services sends its invoice to the Trustees, the Trustees will promptly forward such invoices to the Responsible Party for payment.

E. Cost Documentation. The cost accounting shall include documentation of all Reasonable Assessment Costs pursuant to this Agreement, excluding confidential business information, information withheld under the federal Privacy Act, 5 U.S.C. § 552(a), and information otherwise privileged under state or federal law.

F. Commitment of Funds. Nothing herein shall be considered as obligating the Trustees to expend any funds in excess of appropriations authorized by law. The Responsible Party and the Trustees recognize and agree that DOI must operate within specific requirements of the Federal budget process and legal restrictions concerning the obligations of funds. No provision of this Agreement shall be construed to require DOI to obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, in any fiscal year for actions subject to this Agreement.

G. *Excess Funds.* Any excess funds in DOI's reimbursable account at the end of the restoration implementation phase shall be returned to the Responsible Party in accordance with applicable DOI procedures, or credited against Restoration Costs that the Responsible Party pays as part of any settlement or judgment in this matter.

VII. DISPUTE RESOLUTION

The Parties agree to attempt to resolve any disputes concerning the implementation of this Agreement, or arising from any of the provisions of this Agreement, through good faith negotiations between the individuals listed in Section XII (Notices) or their designees. Disputes that cannot be resolved at that level shall be elevated to appropriate officials of the Parties. In the event a dispute cannot be resolved within a reasonable time, the Parties reserve their rights and claims in accordance with Section IX of this Agreement, including, when applicable, the right to bring claims, seek declaratory relief, or seek review of any disputes arising under this Agreement in the United States District Court for District of Alaska. The Trustees or the Responsible Party may terminate this Agreement in its entirety or with respect to a particular Cooperative Activity that is the subject of the dispute, in accordance with Section XIII of this Agreement.

VIII. PUBLIC PARTICIPATION

The Parties recognize and agree that public participation during the restoration planning process is both desirable and necessary. The Parties recognize that the Trustees are required by law to give public notice of the intent to conduct restoration planning, and may solicit public review and comment during certain phases of the restoration planning process. The Trustees will provide for public participation as required by law and shall exercise their discretion to interact with the public as needed.

IX. RESERVATION OF RIGHTS AND CLAIMS

A. Except as otherwise stated herein, by entering into this Agreement the Parties make no admission of fact or law. The Agreement may be admissible in an action to enforce its terms, but execution of the Agreement itself shall not be evidence or proof of liability or non-liability. Nothing in the Agreement is to be construed to abrogate the right of any Party to pursue claims against, or contribution from, any other Party. Nothing in the Agreement is intended nor shall it be construed as a waiver by the Parties of defenses or affirmative claims in any proceedings relating to the Incident or of any other rights or remedies. Nothing in this Agreement is intended, nor shall be interpreted, to limit the scope of the NRDA or restoration appropriate for this Incident, or to otherwise restrict or abrogate the authority or discretion of the Trustees to determine the scope of that assessment.

B. By entering into this Agreement, the Responsible Party is not released from any potential liability arising from the Incident, including but not limited to claims for damage, injury, loss, or destruction of natural resources or their uses; claims for the costs of assessing damage, injury, loss, or destruction of natural resources or their uses; claims for restoration or replacement of natural resources or lost uses of these resources; claims, causes of action, or requests for relief in admiralty; or any other causes of action or requests for relief, either administrative or judicial, under either State or federal law. Notwithstanding the foregoing, although not admissible as evidence of liability, payments made by the Responsible Party under terms of this Agreement

may be admissible to reduce the amount of any claim asserted by a Trustee for natural resource damages allegedly arising from the Incident.

X. RETENTION OF PRIVILEGES

A. Any and all data, photographs, maps, or reports collected, developed, prepared or exchanged between Trustees and the Responsible Party, pursuant to Cooperative Activities under this Agreement shall not be considered work product, attorney-client or otherwise privileged, and the Parties shall not challenge admissibility of such items on privilege grounds in any administrative or judicial proceeding regarding natural resource damages liability arising from this Incident.

B. Paragraph X.A shall not be deemed a waiver of privilege or work product protection for internal deliberations, oral and written, among a Party's representatives or consultants, or between Trustees, regarding the data, reports, or other materials referred to in Paragraph X.A. Nothing in this Agreement is intended to waive any Party's privileges or protection from the disclosure of internal discussions or deliberations among its representatives and consultants.

C. The Parties intend that all discussions and negotiations, including written communications between the Parties' counsel concerning the scaling of restoration activities, to be in furtherance of settlement, and shall be subject to Federal Rule of Evidence 408 and/or Alaska Rule of Evidence 408, as applicable. Nothing in this Agreement is intended to imply otherwise.

D. Any Party wishing to assert a claim of privilege is responsible for asserting its own claim. Where a claim of privilege has been asserted, the written communication or document shall be considered to be privileged and confidential in accordance with Section XI (Confidentiality).

XI. CONFIDENTIALITY

A. Where a Party claims a written communication or other document to be confidential, it shall not be disclosed to anyone other than the Parties to this Agreement unless and until one of the following circumstances exists:

1. The prior written consent of the Party claiming it to be confidential has been provided.

2. Such document (including photographs) has been included in the Administrative Record.

3. Such document is determined by state and/or federal agencies to be subject to disclosure in accordance with AS 40.25.100-220 (Alaska Public Records Act) and/or the federal Freedom of Information Act, 5 U.S.C § 552; is required to be produced pursuant to any applicable federal or state law; or is ordered to be produced by a competent court of law.

B. With respect to Subpart 3 above, any Party who receives a request for documents pursuant to the Alaska Public Records Act or the federal Freedom of Information Act or who is served with a subpoena or discovery request for any document which a Party has claimed as confidential, shall provide notice to the other Parties at the earliest opportunity so as to allow any of them, if

they so choose, to assert a privilege or protection seeking to prevent the release of such documents.

XII. NOTICES

Unless otherwise indicated in this Agreement, all written communications, submission of data and notices shall be sent to the following designated representatives of the Parties:

RESPONSIBLE PARTY	Gary Mauseth Polaris Applied Sciences, Inc. 12525 131st CT NE Kirkland, WA 98034-7725 Tel: (425) 823-4841 Fax: (425) 823-3805	Herbert H. Ray, Jr. *Keesal, Young & Logan, Ste 650* *1029 W. Third Ave* *Anchorage, AK 99501-1954* *Tel: (907) 279-9696* *Fax: (907) 279-4239* Bert.Ray@kyl.com
DOI	Jenifer Kohout *Alaska Regional Office* *US Fish and Wildlife Service* *1101 E. Tudor Rd* *Anchorage, AK 99503* *Tel: (907) 786-3687* *Fax: (907) 786-3848* Jenifer_Kohout@fws.gov	Lisa Toussaint *Office of the Regional Solicitor* *4230 University Dr, Ste 300* *Anchorage, AK 99508* *Tel: (907) 271-4131* *Fax: (907) 271-4143*
NOAA	Norman Meade *Damage Assessment Center* *(N/ORR32)* *1305 East-West Hwy* *Silver Springs, MD 20910* *Tel: (301) 713-3038, ext. 201* Norman.Meade@NOAA.gov	Craig O'Connor *Tel: (206)526-4564* Craig.R.O'Connor@NOAA.gov
ADF&G	Mark Fink *Alaska Dept. Fish & Game* *333 Raspberry Road* *Anchorage, AK 99518* *Tel: (907) 267-2338* *Fax: (907) 267-2464* Mark_Fink@fishgame.state.ak.us	

ADNR	Carol Fries *Alaska Dept. Natural Resources* *550 West 7th Ave.* *Anchorage, AK 99501* *Tel: (907) 269-8425* *Fax: (907) 269-8913* Carol_Fries@dnr.state.ak.us	
ADEC	Dale Gardner *Alaska Dept of Envtl Conservation* *555 Cordova St.* *Anchorage, AK 99501* *Tel: (907) 269-7682* *Fax: (907) 269-7648* Dale_Gardner@dec.state.ak.us	
ADOL		Rita Lovett *Alaska Dept of Law* *1031 West 4th Ave* *Anchorage, AK 99501* *Tel: (907) 269-5283* *Fax: (907) 269-7022* Rita_Lovett@law.state.ak.us

Submittals may be electronic or via U.S. mail or other delivery service. A Party may change its designated representative by providing written notification to the remaining Parties.

XIII. MODIFICATION AND TERMINATION

A. Any modification of this Agreement must be in writing, and except for modifications to Section XII (Notices), must be executed by all of the Parties.

B. In the event that a dispute cannot be resolved by the Parties through the process described in Section VII, the Trustees jointly or the Responsible Party may withdraw from participation in the disputed Cooperative Activity. Any withdrawal is effective 48 hours after the withdrawing Parties provide written notification of the withdrawal to all Parties. Withdrawal from one or more Cooperative Activities shall not, by itself, void this Agreement as to the remaining Cooperative Activities and other provisions.

C. Any Party may terminate its participation in this Agreement at any time by giving a thirty (30) day written notice to all other Parties. Termination by one or more Trustee(s) or by the Responsible Party shall not void the Agreement as to the remaining Parties.

D. Should the Responsible Party terminate this Agreement in its entirety or with respect to one or more Cooperative Activities, it shall remain responsible, under the terms of this Agreement,

for any Reasonable Assessment Costs related to the completion of Cooperative Activities, based on the agreed scope and budget of such Cooperative Activities at the time of termination or withdrawal.

E. The Parties agree, as to the Cooperative Activities terminated pursuant to this Section, to exchange all data, reports, analyses and other products resulting from those Cooperative Activities, in their state of completion at the time of termination, within thirty (30) days of termination.

F. Nothing in this Section is intended to limit the ability of the Trustees to recover from the Responsible Party any un-reimbursed Reasonable Assessment Costs.

G. Termination of this Agreement is prospective only. As such, data and reports generated pursuant to Cooperative Activities, and all Attachments and stipulations incorporated into this Agreement prior to the date of termination, survive and shall remain in effect following termination.

XIV. EFFECTIVE DATE

This Agreement shall be effective upon its execution by all of the Parties.

XV. DURATION

The term of this Agreement is from the effective date until the purposes set forth herein are accomplished unless the Parties agree otherwise or it is terminated pursuant to Section XIII.

XVI. LIMITATION

Nothing in this Agreement shall be construed as obligating the United States, the State of Alaska or any other public agency, their officers, agents or employees, to expend any funds in excess of appropriations authorized by law.

XVII. SEVERABILITY

The terms of this Agreement are severable. If any term, covenant or condition of this Agreement is determined by a court of competent jurisdiction to be invalid, it shall be considered deleted and shall not invalidate any of the remaining terms, covenants and conditions.

XVIII. EXECUTION

This Agreement may be executed in counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

SIGNATURES

IMC Shipping Co. Pte. Ltd.

By: Yuelin T. Yang

Title: _____

Date: _____

Ayu Navigation Sdn Bhd

By: SOFIAN BIN MOHD ARIFF

Title: DIRECTOR

Date: _____

United States Department of the Interior

By: _____

Title: _____

Date: _____

National Oceanic and Atmospheric Administration

By: _____

Title: _____

Date: _____

Department of Fish and Game, Alaska

By: _____

Title: _____

Date: _____

SIGNATURES

IMC Shipping, Pte, Ltd.

By: _____

Title: _____

Date: _____

Ayu Navigation Snd, Bhd

By: _____

Title: _____

Date: _____

United States Department of the Interior

By: Thomas O. Melius

Title: Regional Director - Alaska

Date: April 16, 2007

National Oceanic and Atmospheric Administration

By: _____

Title: _____

Date: _____

Department of Fish and Game, Alaska

By: _____

Title: _____

Date: _____

SIGNATURES

IMC Shipping, Pte, Ltd.

By: _____

Title: _____

Date: _____

Ayu Navigation Snd, Bhd

By: _____

Title: _____

Date: _____

United States Department of the Interior

By: _____

Title: _____

Date: _____

National Oceanic and Atmospheric Administration

By: _____

Title: Special Counsel

Date: 4/11/07

Department of Fish and Game, Alaska

By: _____

Title: _____

Date: _____

SIGNATURES

IMC Shipping, Pte, Ltd.

By: _____

Title: _____

Date: _____

Ayu Navigation Snd, Bhd

By: _____

Title: _____

Date: _____

United States Department of the Interior

By: _____

Title: _____

Date: _____

National Oceanic and Atmospheric Administration

By: _____

Title: _____

Date: _____

Department of Fish and Game, Alaska

By: Jon Larson

Title: Director

Date: 5/10/07

Department of Natural Resources, Alaska

By: _____

Title: Deputy Commissioner

Date: April 11, 2007

Department of Environmental Conservation, Alaska

By: _____

Title: _____

Date: _____

Department of Law, Alaska

By: _____

Title: _____

Date: _____

Department of Natural Resources, Alaska

By: _____

Title: _____

Date: _____

Department of Environmental Conservation, Alaska

By: Leslie D Pearson

Title: Env. Program Manager III

Date: May 23, 2007

Department of Law, Alaska

By: _____

Title: _____

Date: _____

Department of Natural Resources, Alaska

By: _____

Title: _____

Date: _____

Department of Environmental Conservation, Alaska

By: _____

Title: _____

Date: _____

Department of Law, Alaska

By: Rita Lovett

Title: Assistant Attorney General

Date: 05-01-07