

SUBSCRIBER AGREEMENT

THIS SUBSCRIBER AGREEMENT made as of the ____ day of _____, 20__.

BETWEEN:

WESTERN CANADA MARINE RESPONSE CORPORATION
206-3500 Gilmore Way, Burnaby, BC V5G 0B8
Emergency No.: (604) 294-9116
Facsimile No.: (604) 294-6003
Electronic mail: ap@wcmrc.com

(“WCMRC”)

- and -

(Name and address of entity)

WHEREAS:

- A. WCMRC is in the business of providing Marine Spill Response Services in respect of Oil spilled on or into water within its designated GAR;
- B. Subscriber wishes to enter into an agreement to permit it to call on WCMRC in the event that Subscriber requires Marine Spill Response Services in respect of Oil spilled on or into water in the designated geographic area of response within which WCMRC offers such services from time to time;
- C. The parties wish to set forth the terms on which such marine spill response services will be provided;

NOW THEREFORE in consideration of the mutual agreements and covenants set forth in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is mutually acknowledged) the parties covenant and agree as follows:

**ARTICLE 1
DEFINITIONS AND INTERPRETATIONS**

1.1 Definitions

For the purposes of this Agreement the following words and phrases have the following meanings:

“**Act**” means the *Canada Shipping Act, 2001*, S.C. 2001, c. 26, as amended;

“**Agreement**” means this agreement, all amendments and supplements to this agreement and all schedules to this agreement, including the following:

Schedule “A” – Subscriber Agreement Additional Arrangement Form Schedule

“A-1” – Definition of Oil

“**Best Efforts**” means all commercially reasonable efforts consistent with marine oil spill response industry practices considering available information and resources under circumstances, conditions (including weather and sea conditions) and factors existing at any relevant time;

“**Effective Date**” has the meaning ascribed to it in Section 9.1 of this Agreement;

“**GAR**” means the geographic area of response within which a response organization offers its services. See “WCMRC’s GAR” for additional information.

“Incident Action Plan” means the daily response plan issued by a Unified Command that details the day’s response activities. An Incident Action Plan may or may not replace the use of Work Orders if the response transitions to a Unified Command.

“Initial Request” has the meaning ascribed to it in Section 4.2 of this Agreement;

“Lead Agency” means the Canadian Coast Guard or other agency designated by statute, inter-agency agreement, cabinet decision and/or custom and precedent to lead the response to a marine spill on behalf of the Canadian government;

“Marine Spill Response Services” means marine spill response services, including equipment, personnel and operational management, for the containment, recovery and clean-up of Oil spilled on or into water or spilled on water in connection with the loading or unloading of oil from ships or any other activity that may result in the release of Oil into water, including preventative measures taken with respect thereto and, for greater certainty, does not include acting as on-scene commander, lightering of distressed vessels, involvement in third party damage claims or adjustments, or natural resource damage assessment. Certain response limitations may be placed on products such as gasoline due to safety issues.

“Spill” has the meaning ascribed to it in Section 4.1;

“Oil” means oil and those oil products described in Schedule “A-1” to this Agreement and Tallow and Tallow based substances. For avoidance of doubt, Oil does not include hazardous materials (HAZMAT) or NHS materials;

“**Subscriber Fee**” has the meaning set forth in Section 3.1 of this Agreement;

“**Taxes**” means the goods and services tax, or an equivalent or replacement thereof, payable by Subscriber and collectable by WCMRC under the *Excise Tax Act* (Canada), or by any other federal or any provincial legislation imposing a similar value-added or multi-stage tax, and any sales, use, or excise tax, duty, fee or levy, as applicable;

“**Term**” has the meaning ascribed to it in Section 2.1;

“**Unified Command**” means a joint command structure, possibly consisting of the Subscriber and other relevant persons including but not limited to: First Nations, Provincial authorities, Federal authorities and Municipal governments. Unified Command will issue Incident Action Plans that detail response activities, including that of Western Canada Marine Response.

“**Waters**” means all the areas in which Part 8 of the Act, as amended from time to time, applies, as set out in Section 166 of the Act;

“**WCMRC Fees**” has the meaning ascribed to it in Section 6.1 of this Agreement;

“**WCMRC’s GAR**” means, as of the date of this Agreement, the Waters bordering the Province of British Columbia (including the shorelines associated with such Waters) and excluding Waters north of the 60th parallel of latitude;

“**Work Order**” has the meaning ascribed to it in Section 4.2 of this Agreement.

1.2 Construction

In this Agreement, except as otherwise expressly provided or as the context otherwise requires:

- (a) a reference to a numbered or lettered article, section, paragraph or clause refers to the article, section, paragraph or clause bearing that number or letter in this Agreement;
- (b) the words “hereof”, “herein”, “hereunder” and similar expressions used in any provision of this Agreement will relate to the whole of this Agreement and not to that provision only, unless otherwise expressly provided; and (c) all references to money amounts are to Canadian currency.

ARTICLE 2 SUBSCRIBER PRIVILEGES 2.1 Subscriber Privileges

Upon payment of Subscriber Fees in accordance with the terms of this Agreement, Subscriber shall be entitled for a term of one (1) year (the “**Term**”) in accordance with the terms and conditions of this Agreement:

- (a) to identify WCMRC as a response organization with which Subscriber has an agreement to receive Marine Spill Response Services in WCMRC's GAR; and
- (b) upon the occurrence of a spill of oil on water within Western Canada Marine Responses's GAR, to request WCMRC to respond and provide Marine Spill Response Services.

2.2 Agreement not an Arrangement

This Agreement does not constitute an arrangement for purposes of the Act.

ARTICLE 3

SUBSCRIBER FEE 3.1 Subscriber Fee

Subject to Section 3.3, Subscriber shall pay to WCMRC the current annual subscriber fee as posted on WCMRC's website as of the Effective Date (the "**Subscriber Fee**") together with all applicable Taxes payable in connection with the Subscriber Fee in accordance with Section 3.2. The Subscriber Fee as of the Effective Date is: seven hundred seventy five Dollars (\$775.00).

3.2 Payment of Subscriber Fees

Subscriber shall pay the Subscriber Fee on or prior to the Effective Date for the Term.

3.3 Adjustment of Subscriber Fee

WCMRC shall be entitled to adjust the Subscriber Fee payable in respect of the following year from time to time. In the event WCMRC wishes to adjust the Subscriber Fee, WCMRC shall provide written notice of the proposed adjustment to Subscriber at least ninety (90) days prior to the end of the then-current term and the adjusted Subscriber Fee shall be payable on the first anniversary date of the Effective Date which follows the provision of such notice and thereafter until the Subscriber Fee is adjusted further.

ARTICLE 4

MARINE SPILL RESPONSE SERVICES 4.1 Management and Control of Spill

Upon the occurrence within WCMRC's GAR of a spill of Oil on water (each a "**Spill**"), Subscriber shall (where it has requested WCMRC to respond to such spill) be responsible for the management and control of all response activities.

4.2 Initial Request and Response

- (a) If Subscriber requests Western Canada Marine Response to respond to a spill of Oil on water in Western Canada Marine Response's GAR ("Initial Request"), Western Canada Marine Response shall use its Best Efforts to provide a response ("Initial Response"). The Initial Request shall specify the approximate location and size of the spill, that the individual contacting Western Canada Marine Response is the person authorized to implement the arrangement, the type of Oil involved, and the

nature and extent of the Marine Spill Response Services required. The Initial Request shall be documented by a Western Canada Marine Response Duty Officer and will be followed by a Work Order that the Subscriber shall approve before a response commences.

- (b) Upon receipt of each Work Order, Subscriber shall determine the extent to which it wishes Western Canada Marine Response to perform the Marine Spill Response Services set forth in the Work Order and the parties shall consult and agree on the Marine Spill Response Services which Western Canada Marine Response is to undertake and complete.
- (c) Upon being signed by both parties, a Work Order shall become an integral part of this Agreement.
- (d) Work orders shall be issued from time to time as the response changes, or until such time as overall command of the response is under a Unified Command structure. If the response is under Unified Command, response tasks relevant to Western Canada Marine Response detailed in the Incident Action Plan are considered approved by the Subscriber and Western Canada Marine Response may cease issuing Work Orders.
- (e) Western Canada Marine Response will invoice Subscriber for all response costs borne from approved Work Orders and Incident Action Plans.

4.3 No Further Western Canada Marine Response Services Required (f) If Subscriber has notified Western Canada Marine Response in writing that Subscriber does not want Western Canada Marine Response to continue to provide Marine Spill

Response Services beyond the Initial Response, then Western Canada Marine Response shall cease providing Marine Spill Response Services and Western Canada Marine Response shall in respect be under no obligation to provide further Marine Spill Response Services to Subscriber.

- (b) If Subscriber has failed to notify Western, and Western Canada Marine Response has been unable to obtain signed Work Orders, then Western Canada Marine Response shall be deemed to have been notified and requested to cease providing Marine Spill Response Services at the conclusion of activities detailed in the last approved work order.

4.4 Competing Requests for Services

- (a) Notwithstanding any other provision of this Agreement, unless otherwise directed by the appropriate governmental Lead Agency, WCMRC shall have no obligation to make Marine Spill Response Services available to Subscriber if the resources associated with the provision of such Marine Spill Response Services are already being provided to another person, organization or entity or are otherwise not available.

- (b) In the event of contemporaneous or overlapping requests for Marine Spill Response Services, Subscriber acknowledges that WCMRC shall have discretion as to which requests it responds and for avoidance of doubt WCMRC shall respond to the competing requests as directed by the appropriate governmental Lead Agency. The parties acknowledge and agree that contemporaneous or overlapping requests for Marine Spill Response Services may occur both before or after WCMRC has commenced to provide services or responded to Subscriber hereunder.
- (c) Where for any reason WCMRC is unable to make available to Subscriber the resources associated with the provision of Marine Spill Response Services required by Subscriber, WCMRC agrees that it will make reasonable efforts to assist Subscriber in establishing arrangements with regard to the provision of such required resources.

4.5 Spills Other Than Oil

Notwithstanding anything else in this Agreement, if a Spill includes substances other than Oil the parties agree that WCMRC is not obligated to provide Marine Spill Response Services in respect of such Spill and will only be required to respond if WCMRC determines, in its sole discretion, that the provision of Marine Spill Response Services in respect of such Spill is within its mandate. For avoidance of doubt, if WCMRC commences a response to a Spill and determines that the Spill includes substances other than Oil, WCMRC may cease providing such Marine Spill Response Services in respect of that Spill and the provisions of Section 4.7 will apply.

4.6 Territory

The parties acknowledge and agree that WCMRC will only provide Marine Spill Response Services in WCMRC's GAR.

4.7 Termination of Work

Notwithstanding any other term of this Agreement, each of the parties shall be entitled at any time to terminate the Marine Spill Response Services, or any portion thereof, being provided under this Agreement in any given case by giving notice to the other. Upon such notice being provided, WCMRC shall cease to provide the Marine Spill Response Services or any portion thereof, and shall carry out any required demobilization activities, at Subscriber's cost, and Subscriber shall pay all outstanding WCMRC Fees (including all demobilization activity costs) and Taxes.

ARTICLE 5

PERFORMANCE OF SERVICES 5.1 Standard of WCMRC Performance

Subject to the other terms and conditions of this Agreement, WCMRC will use its Best Efforts to provide any Marine Spill Response Services required by Subscriber pursuant to this Agreement in a manner which attempts to mitigate, remove or clean up the applicable Spill as effectively as practicable under the existing circumstances.

5.2 WCMRC Safety Obligations

- (a) WCMRC shall observe, and shall require, to the extent of its authority, its employees, agents, contractors, and subcontractors to observe applicable safety laws and regulations and applicable WCMRC safety policies and procedures (a copy of which policies and procedures WCMRC shall make available to Subscriber upon request). However, WCMRC and Subscriber each acknowledge and agree that:
 - (ii) actions carried out in a response to an Oil spill environment may be inherently dangerous and difficult; and
 - (iii) rules and requirements that may be appropriate and applicable under normal circumstances may not be appropriate or applicable in a particular response situation.

Accordingly, the provisions of this Section will not be interpreted in a manner that would hold WCMRC to a standard that would be unreasonable under the actual conditions of a particular spill (whether a Spill or otherwise), and all WCMRC actions carried out in a manner that is consistent with the express or implied directions of Subscriber, pursuant to a Work Order, or with the express or implied approval of applicable safety officials will be deemed to be in compliance with this Section.

- (b) WCMRC shall, upon Subscriber's request, report to Subscriber as promptly as practicable under the circumstances any accidents associated with the performance of the Marine Spill Response Services resulting in or in WCMRC's reasonable judgment possibly causing personal injury or death or property damage or loss. WCMRC shall, at Subscriber's expense, furnish Subscriber with copies of any final written reports and other factual information related to such accidents prepared by or for WCMRC so long as WCMRC will not be required to disclose anything to Subscriber that would or may be consider a waiver of solicitor-client privilege.

5.3 Subscriber Safety Obligations

- (a) Subscriber shall observe, and shall require, to the extent of its authority, its employees, agents, contractors and subcontractors to observe applicable safety laws and regulations and (except in the case of WCMRC which shall follow its own safety policies and procedures) applicable Subscriber safety policies and procedures (a copy of which policies and procedures Subscriber shall make available to WCMRC upon request).
- (b) Subscriber will report to WCMRC as promptly as practicable under the circumstances any accidents associated with or caused as the result of the performance of the Marine Spill Response Services resulting in or in Subscriber's reasonable judgment possibly causing personal injury or death or property damage

or loss. Subscriber will, at WCMRC's expense, furnish WCMRC with copies of any final written reports and other factual information related to such accidents prepared by or for Subscriber so long as Subscriber will not be required to disclose anything to WCMRC that would or may be consider a waiver of solicitor-client privilege.

5.4 Illegal, Unsafe or Improper Instructions

If Subscriber instructs WCMRC to take any action under this Agreement in a manner which would, based on the reasonable judgment of WCMRC:

- (a) be illegal (including an action that is illegal because it is fraudulent or deceptive);
- (b) endanger the safety of any employee, agent, contractor or subcontractor of WCMRC or any third party or jeopardize the safety of any WCMRC equipment in a manner not reasonable given the nature of the oil spill response injury; or
- (c) be in violation of or breach this Agreement in any material respect;

then WCMRC may refuse to follow such specific instruction by giving Subscriber oral (promptly confirmed in writing) or written notice of such refusal specifying in reasonable detail the specific reason for such refusal.

ARTICLE 6

WCMRC FEES AND PAYMENT 6.1 WCMRC Fees

- (a) WCMRC Fees means all fees charged by WCMRC for carrying out Marine Spill Response Services including, but not limited to, equipment (owned, non-owned or leased) costs, overhead costs, salaries, wages and benefits paid to personnel, food, lodging and travel costs for personnel, fees paid to contractors, fees paid to mutual aid partners or any other parties, and the costs of demobilization.
- (b) Without limiting the foregoing, where WCMRC has published a schedule of fees in respect of any of the items referred to in Section 6.1(a), the costs associated with those items will be in accordance with the most currently published schedule.
- (c) Schedules of WCMRC Fees are subject to change from time to time and the current WCMRC Fees are available upon request. Subscriber acknowledges and agrees that it has had the opportunity to request and review the current fee schedules and agrees that same are fair and reasonable.

6.2 Payment of WCMRC Fees

- (a) Subscriber shall pay all reasonable WCMRC Fees which are due and payable. Subscriber shall also be liable for and shall pay to WCMRC an amount equal to any Taxes.

- (b) WCMRC shall submit an invoice to Subscriber for the WCMRC Fees and Taxes incurred. Any invoice submitted by WCMRC pursuant to this Section shall be due and payable by Subscriber by the end of the tenth (10th) business day following receipt of the invoice by Subscriber and, subject to the terms of Section 6.5 of this Agreement, any invoice not paid in full by the end of the tenth (10th) business day following receipt of the invoice by Subscriber will be charged interest on the outstanding amount calculated at a rate based on 1%, or 12.6825% per year, commencing on the eleventh (11th) business day after the date of the invoice.
- (c) Invoices may be submitted by facsimile and a facsimile copy of an invoice shall be deemed to be received by Subscriber at such time as is indicated on the receipt of confirmation notice received by WCMRC for such facsimile.

6.3 Funding for Response Beyond 24 Hours

- (a) WCMRC may, when reasonably practical, as determined by WCMRC in its sole discretion, submit an invoice or invoices to Subscriber for the Marine Spill Response Services that have been provided during the first twenty-four (24) hours following the Initial Request. Unless the parties otherwise agree, such invoice(s) shall be paid by Subscriber by the end of the tenth (10th) business day following Subscriber's receipt of the invoice.
- (b) After WCMRC has submitted the initial invoice(s), Subscriber and WCMRC shall agree on how Subscriber will fund the remainder of response. In reaching such agreement, Subscriber shall be required to satisfy WCMRC that any method of funding will, when implemented, permit all invoices rendered by WCMRC during the relevant period to be paid in full on such terms as are acceptable to WCMRC under the circumstances. Any decision to accept any particular method of funding shall be solely within the discretion of WCMRC. If the parties are unable to agree on a method of funding acceptable to WCMRC, WCMRC will require cash. Notwithstanding the foregoing, WCMRC will, in its discretion, submit invoices from time to time for any services rendered under this Agreement that have not yet been paid for and Subscriber will pay the amounts due under such invoices by the end of the tenth (10th) business day following Subscriber's receipt of such invoices.
- (c) Unless otherwise agreed by the parties in writing, the parties shall set forth in each Work Order, or any amendment of a Work Order, their agreement as to funding and, in the event of any inconsistency between the provisions of a Work Order or any amendment thereof and this Agreement, the provisions of the Work Order or any amendment thereof shall govern.
- (d) In the event that the parties are unable to agree on an acceptable means by which Marine Spill Response Services are to be funded, WCMRC shall cease to provide Marine Spill Response Services and shall carry out any required demobilization

activities, and Subscriber shall pay all outstanding WCMRC Fees and Taxes, including all WCMRC Fees and Taxes set forth on any final invoice submitted by WCMRC.

6.4 Payments in Good Standing

Marine Spill Response Services shall only be provided by WCMRC if Subscriber has paid all outstanding Subscriber Fees, WCMRC Fees and Taxes.

6.5 Disputed Invoices

- (a) If Subscriber objects to any item or statement shown on an invoice, Subscriber shall promptly notify WCMRC of the dispute in writing, specifying in reasonable detail the item or statement objected to and the factual basis for the objection, and Subscriber shall pay to WCMRC in accordance with the terms of this Agreement eighty per cent (80%) of the disputed invoiced amounts within thirty (30) days following the date of the invoice, or the date on which the last invoice under a Work Order is rendered, whichever is later. The payment of eighty per cent (80%) of any invoiced amounts shall not prejudice Subscriber's right to object to or question such invoice, and such invoice shall be subject to adjustment for amounts included in the invoice which are ultimately determined not to be amounts for which Subscriber was obligated to pay WCMRC under the terms of this Agreement. Subscriber shall be entitled to object to or question all invoices or matters related to it within thirty (30) days following the date of the invoice, or the date on which the last invoice under a Work Order is rendered, whichever is later. In the event of a dispute regarding an invoiced amount the parties shall use reasonable efforts to resolve such dispute.
- (b) If after Subscriber has given WCMRC notice of a dispute in respect of a particular invoice and paid eighty per cent (80%) of the disputed invoice amounts, the parties fail to resolve a dispute within a thirty (30) day period following receipt by WCMRC of the notice, the dispute shall be referred to arbitration at Vancouver, Canada for final determination in accordance with the Rules of the Vancouver Maritime Arbitrators Association. The parties agree that any decision of any arbitrator appointed under the Rules of the Vancouver Maritime Arbitrators Association shall be final and binding.
- (c) If Subscriber does not within the time period set out in Section 6.5(a), specify in reasonable detail the item or statement objected to and the factual basis for the objection in accordance with Section 6.5(a), then Subscriber is deemed to have withdrawn its objection and Subscriber agrees and acknowledges that all WCMRC invoices for which the time period set out in Section 6.5(a) has elapsed are debts properly due and payable by Subscriber to WCMRC.

6.6 Reviews

Subject to Subscriber's prior payment of WCMRC Fees and Taxes in accordance with this Agreement, or alternatively Subscriber's prior payment to WCMRC of eighty per cent (80%) of disputed invoice amounts in accordance with Section 6.5(a), Subscriber shall have the right at its sole cost and expense at all reasonable times and intervals to make such reasonable inspection or review of such portion of the books and records maintained by WCMRC as relate to the invoices submitted in respect of Marine Spill Response Services performed under the terms of this Agreement so long as such inspection or review has been initiated within six (6) months of the delivery of the invoice. Where this right is available to Subscriber, WCMRC shall upon written request make available to Subscriber such information and materials (including time sheets for personnel and equipment) as Subscriber may reasonably require to verify and substantiate the invoices provided by WCMRC under this Agreement provided that WCMRC shall be reimbursed by Subscriber for any costs incurred by WCMRC in assisting Subscriber with such review. The parties agree that the underlying rates for WCMRC Fees shall themselves not be subject to review under the terms of this Agreement; but, in the event a review indicates an error in the prior calculation of WCMRC Fees or any portion of the WCMRC Fees charged to Subscriber, WCMRC shall promptly make the appropriate corrections and adjustments (including but not limited to reimbursing Subscriber for any over-paid amounts) notwithstanding that Subscriber did not dispute relevant invoices in accordance with Section 6.5(a).

6.7 Fees Remain Payable

Subscriber's obligation to pay the fees payable under this Agreement is absolute and not subject to set-off, deduction or other reduction or counterclaim by reason of the non-availability of Marine Spill Response Services, force majeure described in Section 11.1, or any other event or circumstance which would otherwise effect a suspension or termination of the obligations of WCMRC.

6.8 Currency

All fees payable under this Agreement shall be paid in Canadian currency.

ARTICLE 7

FINANCIAL CAPABILITY AND SECURITY 7.1 Financial Capability

Subscriber represents and warrants to WCMRC that Subscriber has the financial capability to pay the Subscriber Fees, as well as any WCMRC Fees and Taxes which may accrue in the course of carrying out Marine Spill Response Services under the terms of this Agreement.

7.2 Security

Notwithstanding anything else in this Agreement, at any time during the Term, WCMRC may request, as security for Subscriber's obligations hereunder (including without limitation payment of WCMRC Fees), a deposit or other collateral or security as WCMRC, in its sole discretion, may require.

ARTICLE 8
ALLOCATION OF RISK 8.1 Nature of Relationship

WCMRC and Subscriber recognize and agree that, in connection with providing the Marine Spill Response Services under this Agreement:

- (a) any Marine Spill Response Services provided under this Agreement are for the sole benefit of the Subscriber;
- (b) the extraordinary and emergency nature of the Marine Spill Response Services may require actions by WCMRC that may give rise to a variety of claims;
- (c) WCMRC has based the charges for and availability of the Marine Spill Response Services to be provided under this Agreement on the premise that the Subscriber, or anyone asserting rights on its behalf, will not challenge WCMRC's right to be indemnified as provided in this Article 8.

Accordingly, WCMRC and Subscriber fully understand and recognize and agree that the nature of the Marine Spill Response Services 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 WCMRC and Subscriber as set forth in this Article 8.

8.2 Liability Between WCMRC and Subscriber

- (a) WCMRC and its directors, officers, agents, contractors and employees shall have no liability to Subscriber for:
 - (i) any loss or damage caused to any person, property or the environment, of any nature or any kind;
 - (ii) any liability arising as the result of the breach of any statute, regulation, rule, court order or other governmental or administrative decree having the force of law,caused by any act or omission of Subscriber or any of Subscriber's directors, officers, contractors, agents or employees.
- (b) WCMRC and its directors, officers, agents, contractors and employees shall have no liability to Subscriber for:
 - (i) any loss or damage caused to any persons, property or the environment, of any nature or kind;
 - (ii) any liability arising as the result of the breach of any statute, regulation, rule, court order or other governmental or administrative decree having the force of law,

caused by the act or omission of WCMRC or any of its directors, officers, agents, contractors or employees or equipment unless such act or omission is the result of gross negligence or the willful misconduct of WCMRC or any of its directors, officers, agents, contractors or employees.

- (c) Subscriber shall indemnify, defend and hold harmless WCMRC, its directors, officers, employees, contractors and agents from and against all claims, losses, damages, costs, expenses and other liabilities, incurred by WCMRC, its directors, officers, employees, contractors or agents as a result of WCMRC's entering into of, or carrying out any obligations under, this Agreement, except where such claims, losses, damages, costs, expenses and other liabilities are incurred by WCMRC, its directors, officers, employees, contractors or agents as a result of WCMRC's own gross negligence or willful misconduct, or the gross negligence or willful misconduct of WCMRC's directors, officers, agents, contractors or employees. Subscriber acknowledges that WCMRC shall not be required to exhaust its recourses against any third party as a condition precedent to claiming indemnification under this Section.
- (d) WCMRC shall indemnify, defend and hold harmless Subscriber and its directors, officers, employees and agents from and against all claims, losses, damages, costs, expenses and other liabilities incurred by Subscriber and its directors, officers, employees and agents as a result of the gross negligence or willful misconduct of WCMRC, its directors, officers, agents, contractors or employees.

8.3 Insurance

Subscriber shall carry and maintain in force during the term of this Agreement such insurance as is necessary to enable Subscriber to carry out its obligations under this Agreement. Upon WCMRC's request, Subscriber shall furnish WCMRC either with copies, certified by Subscriber's insurers, of such insurance policies or a certificate of insurance with respect to such insurance policies. Subscriber shall provide notice to WCMRC forthwith in the event that Subscriber's insurance coverage is amended, or any portion thereof terminated or cancelled.

ARTICLE 9

TERM 9.1 Term

This Agreement shall come into force and effect as of the date indicated on the first page of this Agreement (the "**Effective Date**") and shall continue for a period of one year.

9.2 No Automatic Renewal

The Term of this Agreement will not automatically renew. Upon the expiry of the Term the parties agree that this Agreement will terminate and, except as set out in this Agreement or as otherwise agreed by the parties in writing, the parties will have no further obligations to each other under this Agreement.

ARTICLE 10

TERMINATION 10.1 Termination by Either Party

This Agreement may be terminated by either party upon the provision of at least sixty (60) days prior written notice to the other party.

10.2 Termination by WCMRC

This Agreement may be terminated by WCMRC effective immediately upon notice to Subscriber:

- (a) if Subscriber has failed to pay any Subscriber Fees or any WCMRC Fees or Taxes in accordance with the terms of this Agreement;
- (b) if Subscriber has become insolvent, commenced an act of bankruptcy, suspended business operations or has bankruptcy, dissolution, liquidation or winding-up proceedings commenced against it (unless such proceedings are actively and diligently contested in good faith on a timely basis); or
- (c) if Subscriber has breached any other term of this Agreement and failed to cure such breach within five (5) days after Subscriber received written notice from WCMRC advising of such breach.

This right of termination is in addition to any of WCMRC's rights and remedies under this Agreement and at law or in equity.

10.3 Consequences of Termination

Upon the termination of this Agreement:

- (a) all obligations of WCMRC under this Agreement shall cease;
- (b) WCMRC shall cease to perform any Marine Spill Response Services; and
- (c) Subject to Section 6.5 Subscriber shall pay to WCMRC any outstanding Subscriber Fees and WCMRC Fees and Taxes.

10.4 No Reimbursement of Subscriber Fees

Subscriber shall not be entitled to receive a full refund of all or any portion of the Subscriber Fees paid by Subscriber in the event of a termination pursuant to Section 10.1 or Section 10.2.

10.5 Survival

Notwithstanding the termination of this Agreement pursuant to this Article, the provisions of this Section, Section 10.3 and Articles 6 and 8 shall survive any such termination.

ARTICLE 11

FORCE MAJEURE 11.1 Force Majeure

If during the term of this Agreement there should arise or occur any event or circumstance beyond the reasonable control of WCMRC or Subscriber, including without limiting the generality of the foregoing, the action of government, flood, fire, strike, lock-out or other labour unrest, riot, civil unrest, terrorism, war (whether declared or undeclared), or an act of God, (but for greater certainty not including a shortage or lack of financing) which prevents, restricts or delays WCMRC or Subscriber from duly performing any of its obligations under this Agreement, other than payment of the Subscriber Fee or the WCMRC Fees by Subscriber, then during the period that such event or circumstance, or the effect thereof, continues, performance by such party of such obligation will be suspended and excused to the extent that such party is so prevented, restricted or delayed.

11.2 Exception for Failure by Either Party

Neither party will be entitled to the benefits of the provisions of Section 11.1 if and to the extent that its inability to duly perform any obligation hereunder was caused or contributed to by its failure to act in a reasonable and prudent manner under the circumstances.

11.3 Other Aspects of Force Majeure

The obligations of the party relying on Section 11.1 shall be suspended during any period of force majeure. The performance of this Agreement shall be resumed as soon as practicable after force majeure has ceased.

ARTICLE 12

GENERAL PROVISIONS 12.1 Time

Time is of the essence of this Agreement.

12.2 Notices

All notices required or permitted to be given to a party under this Agreement shall be in writing and delivered by hand, mailed by registered first-class airmail postage prepaid, or sent by facsimile or electronic mail to the party's address shown on page one (1) of this Agreement.

Any such notice shall be deemed to have been given and received:

- (a) if delivered, on the date on which it was delivered;
- (b) if mailed, on the fifth (5th) business day following the day it was posted; or
- (c) if given by facsimile or electronic mail, on the date and at the time indicated on the receipt of confirmation form received for such facsimile.

No party shall mail any notice during any period when postal workers are on strike or if a strike is imminent. Either party may change its address by giving notice of the change to the other party. The parties agree that e-mail shall be considered a form of notice for the purpose of this Agreement.

12.3 Amendments to Agreement

Subject to Sections 3.3 and 12.4, this Agreement may not be amended except in writing executed by all parties.

12.4 Amendments to Schedules

The Schedules to this Agreement form an integral part of this Agreement. The Schedules may be amended or replaced from time to time by the parties who will evidence their approval thereof by initialing a new Schedule dated as of the effective date of such amendment or replacements.

12.5 Independent Contractor

WCMRC is an independent contractor in the performance of its obligations under this Agreement and neither WCMRC nor WCMRC's employees, agents, contractors or subcontractors shall be considered employees of Subscriber.

12.6 Further Assurances

Each party will, at its own expense and without expense to any other party, execute and deliver such further agreements, deeds, instruments and documents, and do such further acts as the other party reasonably requests for the purpose of evidencing, carrying out and giving full force and effect to the intent of this Agreement.

12.7 Benefit of Agreement

This Agreement will enure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

12.8 Entire Agreement

The provisions of this Agreement, including the Schedules to this Agreement and all Work Orders executed pursuant and in accordance with this Agreement, constitute the entire agreement between the parties respecting the subject matter of this Agreement and supersede all previous understandings and agreements, whether verbal or written, between the parties with respect thereto.

12.9 Governing Law

This Agreement shall be interpreted in accordance with and governed by the laws of the Province of British Columbia and the laws of Canada applicable therein.

12.10 Assignment

This Agreement shall not be assigned by Subscriber without the prior written consent of WCMRC, and any attempt to so assign it shall be null and void.

12.11 Execution in Counterparts

This Agreement may be executed in one or more counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same Agreement and notwithstanding their date of execution shall be deemed to be executed on the Effective Date.

12.12 Severability

Each provision of this Agreement is intended to be severable and accordingly the invalidity or unenforceability of any particular provision will not affect the validity or enforceability of any other provision except that if, on the reasonable construction of this Agreement as a whole, the applicability of the other provision is expressly stated, or by reasonable implication intended by the parties, to be dependant on the validity and enforceability of the particular provision, the other provision will be deemed also to be invalid or unenforceable.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date first written above.

**WESTERN CANADA MARINE
RESPONSE CORPORATION**

(Subscriber)

(Authorized Signatory)

(Authorized Signatory)

(Print Name)

(Print Name)

(Date)

(Date)

SCHEDULE "A-1" **DEFINITION OF OIL**

FOR THE PURPOSE OF THIS AGREEMENT THE DEFINITION OF OIL WILL BE THAT AS DEFINED BY THE MARPOLE 73/78 ANNEX 1:

"OIL" means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products (other than petrochemicals which are subject to the provisions of Annex II of the present Convention) and, without limiting the generality of the foregoing includes the substances listed:

LIST OF OILS

Asphalt solutions

Blending stocks
Roofers flux
Straight run residue

Oils

Clarified
Crude Oil
Mixtures containing crude oil
Diesel oil
Fuel oil no. 4
Fuel oil no. 5
Fuel oil no. 6
Residual fuel oil

Road oil

Transformer oil

Aromatic oil (excluding vegetable oil)

Lubricating oils and blending stock

Mineral oil

Motor oil

Penetrating oil

Spindle oil

Turbine oil

Distillates

Straight run
Flashed feed stocks

Gas Oil

Cracked

Gasoline Blending Stocks

Alkylates – fuel
Reformats
Polymer – fuel

Gasolines

Casinghead (natural)

Automotive

Aviation

Straight run

Fuel oil no. 1 (Kerosene)

Fuel oil no. 1-D

Fuel oil no. 2

Fuel oil no. 2-D

Jet Fuels

JP-1 (Kerosene)

JP-3

JP-4

JP-5 (Kerosene, heavy)

Turbo fuel

Kerosene

Mineral spirit

Naphtha

Solvent

Petroleum

Heartcut distillate oil

Other

Tallow

Canola