

## THIRD PARTY INCIDENT SPECIFIC AGREEMENT

This THIRD PARTY AGREEMENT is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

### **B E T W E E N:**

**WESTERN CANADA MARINE RESPONSE CORPORATION**

206 3500 Gilmore Way, Burnaby B.C.

Emergency No.: (604) 294-9116

- and -

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**[Name, Address and Facsimile Number of Requesting Party]**  
("Requesting Party")

**WHEREAS** Western Canada Marine Response Corporation ("WCMRC") is in the business of providing Marine Spill Response Services in respect of Oil (as more fully described in Schedule "A")

**AND WHEREAS** Requesting Party requires the Marine Spill Response Services of Western Canada Marine Response and Western Canada Marine Response is willing to provide such Marine Spill Response Services to Requesting Party on the terms set forth below;

**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 agrees as follows:

### **1. DEFINITIONS AND INTERPRETATIONS**

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" - 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;

**"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 (a) 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;

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

**"Reasonable Efforts"** means the provision of Marine Spill Response Services in a manner which attempts to mitigate, remove or clean up the applicable Spill as effectively as practicable under the existing circumstances, according to practices common to the spill response industry;

**"Spill"** means the release, or potential release, of Oil or any other such product to which WCMRC agrees to respond, into the waters of WCMRC's GAR;

**"Taxes"** means the goods and services tax, or an equivalent or replacement thereof, payable by Requesting Party 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;

**"Unified Command"** means a joint command structure, possibly consisting of the Requesting Party 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 7 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**" means the agreement between the Requesting Party and WCMRC for the specifics of assets and personnel being assigned to the Spill. Given the changing nature of Spills, not all of the billable assets used in an incident may be included in each Work Order, rather the general scope of the response is to be communicated and agreed to.

## **2. Execution of Agreement and Work Order**

Prior to Western Canada Marine Response commencing to provide Marine Spill Response Services, the parties shall complete and sign this Agreement. In addition, the parties shall also complete and sign a Work Order substantially on the terms set forth in Schedule "B" to this Agreement ("Work Order") which shall identify the type of Oil in respect of which the Marine Spill Response Services are required, the location of the spill site, the particular Marine Spill Response Services to be provided, potentially an estimate of the fees payable in connection with the Marine Spill Response Services, an e-mail address to which invoices may be sent to Requesting Party, and any other relevant information required by Western Canada Marine Response.

## **3. Performance of Work**

Western Canada Marine Response agrees to use Reasonable Efforts to provide to Requesting Party in accordance with the terms of this Agreement and the Marine Spill Response Services described in the Work Order. Notwithstanding any efforts taken by Western Canada Marine Response, Requesting Party shall at all times be responsible for the management and control of all response activities.

## **4 Initial Request and Response**

- (a) If Requesting Party 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 agreement, 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 Requesting Party shall approve before a response commences.
- (b) Upon receipt of each Work Order, Requesting Party 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 Requesting Party and Western Canada Marine Response may cease issuing Work Orders.
- (e) Western Canada Marine Response will invoice Requesting Party for all response costs borne from approved Work Orders and Incident Action Plans

## 5. 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 Requesting Party 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, Requesting Party 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 Requesting Party hereunder.
- (c) Where for any reason WCMRC is unable to make available to Requesting Party the resources associated with the provision of Marine Spill Response Services required by Requesting Party, WCMRC agrees that it will make reasonable efforts to assist Requesting Party in establishing arrangements with regard to the provision of such required resources.

## 6. Right to Subcontract

Western Canada Marine Response shall have the right without obtaining the consent of Requesting Party to subcontract all or any portion of the Marine Spill Response Services to be provided under this Agreement.

## 7. Western Canada Marine Response Fees

- (a) Requesting Party shall pay all Western Canada Marine Response Fees which are due and payable. Requesting Party shall also be liable for and shall pay to Western Canada Marine Response an amount equal to any Taxes. “**Western Canada Marine Response Fees**” means all fees together with all reasonable costs and expenses charged by Western Canada Marine Response for providing Marine Spill Response Services pursuant to this Agreement including, but not limited to, equipment charges (for owned, non-owned or leased equipment), overhead costs, repairs and replacement of equipment, 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. “**Taxes**” means the goods and services tax, or any equivalent or replacement thereof, payable by Requesting Party and collectable by Western Canada Marine Response under the *Excise Tax Act* (Canada), or 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. “**Demobilization**” means actions associated with the termination of Marine Spill Response Services including the clean-up and repair of equipment to a condition comparable to the level of cleanliness and repair (reasonable wear and tear excepted) of the equipment at the commencement of the Marine Spill Response Services, and the movement of response personnel and equipment to locations from which they were originally dispatched.

- (b) Western Canada Marine Response shall submit an invoice to Requesting Party for the Western Canada Marine Response Fees and Taxes incurred. Except as otherwise agreed to in writing by the parties, any invoice submitted by Western Canada Marine Response pursuant to this Section shall be due and payable by Requesting Party by the end of the tenth (10th) business day following receipt of the invoice by Requesting Party and any invoice not paid in full by the end of the tenth (10th) business day following receipt of the invoice by Requesting Party will be charged interest on the outstanding amount at the rate of one per cent (1%) per month, 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 Requesting Party at such time as is indicated on the receipt of confirmation notice received by Western Canada Marine Response for such facsimile.

## **8. Disputed Invoices**

If Requesting Party objects to any item or statement shown on an invoice, Requesting Party shall promptly notify Western Canada Marine Response of the dispute, specifying in reasonable detail the factual basis for the dispute and Requesting Party shall pay to Western Canada Marine Response in accordance with the terms of this Agreement ninety per cent (90%) of the disputed invoiced amounts. The payment of ninety per cent (90%) of any invoiced amounts shall not prejudice Requesting Party’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 Requesting Party was obligated to pay Western Canada Marine Response under the terms of this Agreement. Requesting Party 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. In the event of a dispute regarding an invoiced amount, the parties shall use reasonable efforts to resolve such dispute but if the parties fail to resolve such dispute within a thirty (30) day period following receipt by Western Canada Marine Response of notice of a dispute in respect of any particular invoice, the dispute shall be referred to arbitration at Vancouver, Canada for final determination in accordance with the Rules of the Vancouver Maritime Arbitrators Association.

## **9. Audits**

Requesting Party shall have the right at all reasonable times and intervals to make such reasonable inspection or audit of such portion of the books and records maintained by Western Canada Marine

Response as relate to the invoices submitted in respect of Marine Spill Response Services performed under the terms of this Agreement. Western Canada Marine Response shall make available to Requesting Party such information and materials (including time sheets for personnel and equipment) as Requesting Party may reasonably require to verify and substantiate the invoices provided by Western Canada Marine Response under this Agreement provided that Western Canada Marine Response shall be reimbursed by Requesting Party for any costs incurred by Western Canada Marine Response in assisting Requesting Party and Western Canada Marine Response Fees shall themselves not be subject to audit under the terms of this Agreement. In the event an audit indicates an error in the prior calculation of Western Canada Marine Response Fees or any portion of the Western Canada Marine Response Fees payable by Requesting Party, Western Canada Marine Response shall promptly make the appropriate corrections and adjustments.

#### **10. Fees Remain Payable**

Requesting Party'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 15, or any other event or circumstance which would otherwise effect a suspension or termination of the obligations of Western Canada Marine Response.

#### **11. Currency**

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

#### **12. Illegal, Unsafe or Improper Instructions**

If Requesting Party instructs Western Canada Marine Response to take any action under this Agreement in a manner which would, based on the reasonable judgment of Western Canada Marine Response (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 Western Canada Marine Response, or any third party or jeopardize the safety of any Western Canada Marine Response equipment in a manner not reasonable given the nature of the oil spill response industry; or (c) be in violation of or breach this Agreement in any material respect; then Western Canada Marine Response may refuse to follow such specific instruction by giving Requesting Party oral (promptly confirmed in writing) or written notice of such refusal (specifying in reasonable detail the specific reason for such refusal). Any refusal under this Section of any obligation of Western Canada Marine Response to take any instructed action shall not affect any obligation of Western Canada Marine Response to take instructed actions under circumstances that would not result in the happening of the events specified in the preceding Subsections (a)-(c).

#### **13. 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 by giving notice to the other. Upon such notice being provided, Western Canada Marine Response shall cease to provide the Marine Spill Response Services or any portion thereof, and shall, within a reasonable period of time, carry out any required Demobilization activities. Requesting Party shall pay all outstanding Western Canada Marine Response Fees and Taxes, including those charged in connection with Demobilization.

#### **14. Recovered Oil and Waste**

The parties acknowledge that, notwithstanding any assistance which Western Canada Marine Response provides to Requesting Party, Western Canada Marine Response shall not be responsible for the disposal of recovered Oil or waste products.

#### **15. Liability Between Western Canada Marine Response and Requesting Party**

- (a) Western Canada Marine Response and its directors, officers, agents, contractors, and employees shall have no liability to Requesting Party, for (i) any loss or damage caused to any person, property or the environment, of any nature or kind; or (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 Requesting Party or any of Requesting Party's directors, officers, contractors, agents or employees, or caused by the act or omission of Western Canada Marine Response or any of its directors, officers, agents, contractors or employees or equipment unless such act or omission is a result of the gross negligence or the willful misconduct of Western Canada Marine Response or any of its directors, officers, agents, contractors or employees.
- (b) Requesting Party shall indemnify, defend and hold harmless Western Canada Marine Response, its directors, officers, employees, contractors and agents from and against all claims, losses, damages, costs, expenses and other liabilities (including, without limitation, strict and absolute liability) demands, fees, penalties, actions, suits and other proceedings incurred or suffered by Western Canada Marine Response, its directors, officers, employees, contractors or agents as a result of Western Canada Marine Response'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 Western Canada Marine Response, its directors, officers, employees, contractors or agents as a result of Western Canada Marine Response's own gross negligence or willful misconduct, or the gross negligence or willful misconduct of Western Canada Marine Response's directors, officers, agents, contractors or employees. Requesting Party acknowledges that Western Canada Marine Response shall not be required to exhaust its recourses against any third party as a condition precedent to claiming indemnification under this Section.

#### **16. Insurance**

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

## **17. Force Majeure**

If during the term of this Agreement there should arise or occur any event or circumstance beyond the reasonable control of Western Canada Marine Response or Requesting Party, 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 Western Canada Marine Response or Requesting Party from duly performing any of its obligations under this Agreement, 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. Neither party will be entitled to the benefits of the provisions of this Section 15 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. The obligations of the party relying on this Section 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.

## **18. Time**

Time is of the essence of this Agreement.

## **19. 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 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, 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.

## **20. Independent Contractor**

Western Canada Marine Response is an independent contractor in the performance of its obligations under this Agreement and neither Western Canada Marine Response nor Western Canada Marine Response's employees, agents, contractors or subcontractors shall be considered employees of Requesting Party.

## **21. 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.



**22. Benefit of Agreement**

This Agreement will enure to the benefit of and be binding upon the respective successors and permitted assigns of the parties. This Agreement may not be amended except in writing executed by all parties.

**23. Entire Agreement**

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

**24. 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.

**25. Assignment**

This Agreement shall not be assigned by the Requesting Party without the prior written consent of Western Canada Marine Response, and any attempt to so assign it shall be null and void.

**26. Agreement not an Arrangement**

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

**27. 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 day first above written.

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

**WESTERN CANADA MARINE  
RESPONSE CORPORATION**

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Name of Requesting Party)

\_\_\_\_\_  
(Authorized Signature)

## SCHEDULE A DEFINITION OF OIL

FOR THE PURPOSE OF THIS AGREEMENT THE DEFINITION OF OIL WILL BE THAT AS DEFINED BY THE MARPOL 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

<b>Asphalt solutions</b>	<b>Distillates</b>	<b>Jet Fuels</b>
Blending stocks	Straight run	JP-1 (Kerosene)
Roofers flux	Flashed feed stocks	JP-3
Straight run residue		JP-4
		JP-5 (Kerosene, Heavy)
		Turbo fuel
<b>Oils</b>	<b>Gas Oil</b>	Kerosene
Clarified	Cracked	Mineral spirit
Crude Oil		
Mixtures containing crude oil		
Diesel Oil	<b>Gasoline Blending Stocks</b>	<b>Naphtha</b>
Fuel oil no. 4	Alkylates – fuel	Solvent
Fuel oil no. 5	Reformates	Petroleum
Fuel oil no. 6	Polymer – fuel	Heartcut distillate oil
Residual fuel oil		
Road oil	<b>Gasolines</b>	<b>Other</b>
Transformer oil	Casinghead (natural)	Tallow and Tallow based substances
Aromatic Oil (excluding vegetable oil)	Automotive	
Lubricating oils and blending stock	Aviation	
Mineral oil	Straight run	
Motor oil	Fuel oil no. 1 (Kerosene)	
Penetrating oil	Fuel oil no. 1 – D	
Spindle oil	Fuel oil no. 2	
Turbine oil	Fuel oil no. 2 – D	



# SCHEDULE B- WORK ORDER

W105

WORK ORDER No.	DATE AND TIME PERIOD	WCMRC INCIDENT No.
<b>Requesting Representative</b>		<b>Western Canada Marine Response Corporation Representative</b>
(Name of Authorized Representative)		(Name of Authorized Representative)
(Organization)		(Cellphone Number)
(Cellphone Number)		(Email Address)
(Address)		(Address) 206-3500 Gilmore Way Burnaby B.C. V5G 0B8
(Office Number)		(Office Number) Corporate Office: 604-294-6001
(Fax Number)		<b>Emergency Line: 604-294-9116</b>
(Other Contact Information)		Burnaby Fax: 604-294-6003
		Duncan Fax: 250-746-9447
		Prince Rupert Fax: 250-624-5166
<b>Description of Marine Spill Response Services to be provided, but not limited to:</b>		
<p>Revised or additional Work Orders will be sent when any of WCMRC or contracted resources are either escalated or de-escalated from the response. For WCMRC rates please refer to <a href="#">WCMRC Schedule-of-Personnel-Equipment-Rates</a> .</p>		
<b>The Requesting Representative authorizes WCMRC to proceed with the work outlined in this Work Order.</b>		<b>WCMRC agrees to carry out the work outlined and approved by the terms of this Work Order.</b>
(Signature of Authorized Representative)		(Signature of Authorized Representative)
(Position)		(Position)
(Date mm/dd/yyyy and time)		(Date mm/dd/yyyy and time)