

# OIL HANDLING FACILITY MEMBERSHIP AGREEMENT

THIS MEMBERSHIP 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

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Website: <https://wcmrc.com>

(“WCMRC”)

- and -

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**Name and address of Member (“Operator”)**

# OIL HANDLING FACILITY MEMBERSHIP AGREEMENT TERMS AND CONDITIONS

## WHEREAS:

- A. The Act requires that operators of certain oil handling facilities have an arrangement with a certified response organization in respect of any quantity of oil that is, at any time, involved in being loaded or unloaded to or from a vessel at the oil handling facility, to a prescribed maximum quantity;
- B. WCMRC has obtained certification as a response organization with response capability for spills up to 10,000 Tonnes within WCMRC's GAR and, as one or more of Operator's oil handling facilities is located within WCMRC's GAR, WCMRC is able to provide an arrangement to Operator in respect of such facilities;
- C. WCMRC is willing to provide an arrangement to Operator for each of Operator's oil handling facilities which it operates in WCMRC's GAR;
- D. WCMRC is also willing to provide to Operator marine spill response services which Operator may require from time to time;

**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 INTERPRETATION

### 1.1 Definitions

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

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

“**Advance Quarterly Payments**” has the meaning ascribed to it in Section 4.1 of this Agreement;

“**Agreement**” means this agreement, all amendments and supplements to this agreement and all schedules to this agreement;

“**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;

“**Bulk Oil Cargo**” means Oil which is carried as cargo in a hold or tank that is part of the structure of a ship (which, for greater certainty, shall include a barge) without any intermediate form of containment;

“**Bulk Oil Cargo Fee**” has the meaning ascribed to it in Section 3.1 of this Agreement;

“**Bulk Oil Cargo Fee Rate**” means the rate which is used to establish the Bulk Oil Cargo Fee;

“**Capital Asset/Loan Fee**” has the meaning ascribed to it in Section 3.1 of this Agreement;

“**Capital Asset/Loan Fee Rate**” means the rate which is used to establish the Capital Asset/Loan Fee;

**“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.

**“Difference”** has the meaning ascribed to it in Section 4.3 of this Agreement;

**“Effective Date”** has the meaning ascribed to it in Section 12.1;

**“Handled”** has the meaning ascribed to it in Section 3.1 of this Agreement;

**“HNS materials”** means hazardous and noxious substances as defined in the International Maritime Organization’s Protocol on Preparedness, Response and Co-operation to pollution Incidents by Hazardous and Noxious Substances, 2000 (OPRC-HNS Protocol);

**“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 5.2 of this Agreement;

**“Initial Response”** has the meaning ascribed to it in Section 5.2 of this Agreement;

**“Lead Agency”** means the Canadian Coast Guard or other agency that is 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;

**“Member Oil Handling Facility”** means an oil handling facility operated by Operator within WCMRC’s GAR or on lands adjacent thereto, and in respect of which an arrangement has been granted by WCMRC to Operator under this Agreement;

**“Membership Fees”** has the meaning ascribed to it in Section 2.2 of this Agreement;

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

**“Payment Period”** has the meaning ascribed to it in Section 4.2 of this Agreement;

**“Plan of Action”** has the meaning ascribed to it in Section 5.5 of this Agreement;

**“Quarter”** means the three-month periods ending March 31, June 30, September 30 and December 31 in any year;

**“Registration Fee”** means the most current published rate in the Canada Gazette for WCMRC's provision of an arrangement as required by the Act;

**“Taxes”** means the goods and services tax, or any equivalent or replacement thereof, payable by Operator and

collectable by WCMRC 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;

“**Threshold**” means Three Hundred Thousand (300,000) Tonnes;

“**Tonne**” means one thousand (1000) kilograms or two thousand, two hundred and four and six-tenths (2204.6) pounds;

“**Unified Command**” means a joint command structure in respect of Marine Spill Response Services, possibly consisting of the Operator 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 WCMRC;

“**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 7.1 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; and

“**Work Order**” has the meaning ascribed to it in Section 5.2 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 MEMBERSHIP**

### **2.1 Membership Privileges**

Upon payment of Membership Fees in accordance with the terms of this Agreement, Operator shall be entitled for a period of one (1) year from the Effective Date:

- (a) for purposes of an oil pollution emergency plan (as referred to in the Act), to identify WCMRC as the response organization with which Operator has an arrangement for its Member Oil Handling Facilities in WCMRC’s GAR; and
- (b) upon the occurrence of a spill of Oil on water within WCMRC’s GAR, to request WCMRC to respond and provide Marine Spill Response Services.

## **2.2 Membership Fees**

The Membership Fees are comprised of the Registration Fee, the Bulk Oil Cargo Fees and the Capital Asset/Loan Fees payable by Operator in respect of each Member Oil Handling Facility.

## **2.3 More than One Facility**

Where Operator owns or operates more than one oil handling facility in WCMRC's GAR and for which Operator wishes to obtain an arrangement from WCMRC, Operator shall pay WCMRC Membership Fees in respect of each such facility, and the parties shall complete an Arrangement Form substantially in the form as set forth in Schedule "A" to this Agreement, which identifies the additional facilities in respect of which an arrangement is to be provided under this Agreement.

# **ARTICLE 3 BULK OIL CARGO FEES AND CAPITAL ASSET/LOAN FEES**

## **3.1 Bulk Oil Cargo Fees and Capital Asset/Loan Fees**

Operator shall pay to WCMRC a bulk oil cargo fee (the "**Bulk Oil Cargo Fee**") and a capital asset/loan fee (the "**Capital Asset/Loan Fee**") in respect of all Bulk Oil Cargo which is unloaded or (in the case of Bulk Oil Cargo intended for international destinations) loaded ("**Handled**") at each of Operator's Member Oil Handling Facilities. The Bulk Oil Cargo Fee and Capital Asset/Loan Fee shall be calculated by obtaining the product of the number of Tonnes of Bulk Oil Cargo Handled at Operator's Member Oil Handling Facilities and the Bulk Oil Cargo Fee Rate and Capital Asset/Loan Fee Rate, plus all applicable Taxes payable in connection with the Bulk Oil Cargo Fees and Capital Asset/Loan Fees.

## **3.2 Calculation of Volume**

The volume of Bulk Oil Cargo Handled at Operator's Member Oil Handling Facility shall for greater certainty mean:

- (a) the volume of Bulk Oil Cargo measured in Tonnes at the shore side of the dock flange at Operator's Member Oil Handling Facility, without regard to title, unloaded from a ship to Operator's Member Oil Handling Facility; and
- (b) the volume of Bulk Oil Cargo measured in Tonnes at the shore side of the dock flange at Operator's Member Oil Handling Facility, without regard to title, loaded onto a ship from Operator's Member Oil Handling Facility if such volume is intended for movement to an international destination.

## **3.3 Adjustments**

The Bulk Oil Cargo Fee Rate and Capital Asset/Loan Fee Rate and the calculation of volumes set forth in Section 3.2 of this Agreement, shall be determined, and from time to time amended, in accordance with the provisions of the Act.

## **3.4 Payment of Bulk Oil Cargo Fees and Capital Asset/Loan Fees**

Bulk Oil Cargo Fees and Capital Asset/Loan Fees shall be payable by Operator forthwith upon Bulk Oil Cargo being Handled at Operator's Member Oil Handling Facility, and any Bulk Oil Cargo Fees and Capital Asset/Loan Fees not paid forthwith 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 first (1st) day following the date on which the Bulk Oil Cargo was Handled.

### 3.5 Reporting Requirements

In addition to the requirements of Section 3.4 of this Agreement, Operator shall within ten (10) days following each occasion when Operator Handled Bulk Oil Cargo, provide WCMRC with a report containing the total volumes of Bulk Oil Cargo Handled at each of Operator's Member Oil Handling Facilities during the preceding month. WCMRC agrees that the information provided to WCMRC in respect of volumes of Bulk Oil Cargo shall remain confidential and will not be disclosed by WCMRC, its directors, officers, agents or employees (including disclosure to any director, officer, agent or employee of WCMRC not directly requiring such information to carry out his or her duties to WCMRC) other than as part of the aggregate volumes of Bulk Oil Cargo of all members of WCMRC.

## ARTICLE 4 ADVANCE PAYMENT PROVISIONS

### 4.1 Payments in Advance

- (a) Bulk Oil Cargo Fees and Capital Asset/Loan Fees shall be payable by Operator in respect of each Member Oil Handling Facility in advance in four (4) equal quarterly instalments (each an "**Advance Quarterly Payments**") in those cases where the aggregate volumes of Bulk Oil Cargo Handled at Operator's Member Oil Handling Facilities in the preceding calendar year exceed the Threshold, except where there has been a significant change affecting Operator's business which in WCMRC's view is likely to reduce to below Threshold levels the volumes of Bulk Oil Cargo Handled at Operator's Member Oil Handling Facilities in the subsequent year.
- (b) Notwithstanding the provisions of Section 4.1(a), where volumes are not available for the preceding calendar year but the aggregate volumes of Bulk Oil Cargo forecast to be Handled at Operator's Member Oil Handling Facilities for the forthcoming year exceed the Threshold, Operator shall be required to make Advance Quarterly Payments and comply with the provisions of Section 4.1(a) in all respects as though such volumes were available.
- (c) The following provisions of this Article shall apply to Operator for each year in which the aggregate volumes of Bulk Oil Cargo Handled at Operator's Member Oil Handling Facilities in a preceding calendar year exceed the Threshold.

### 4.2 Information Regarding Volumes of Oil

On or before February 15th of each year Operator shall provide to WCMRC the total volumes (on a facility by facility basis) of Bulk Oil Cargo Handled by Operator at Operator's Member Oil Handling Facilities in the preceding calendar year. WCMRC shall use this information for the following purposes:

- (a) to calculate the Advance Quarterly Payments which will be payable by Operator for each of the Quarters in the following period commencing April 1 in any year and ending on March 31 of the next year (the "**Payment Period**"), each Advance Quarterly Payment to be payable on the first business day of the Quarter in respect of which the Advance Quarterly Payment is being made;
- (b) to determine the actual Bulk Oil Cargo Fees and Capital Asset/Loan Fees payable by Operator in respect of any Payment Period.

### 4.3 Differences Between Advance Payments and Actual Volumes

Where there is a difference between the sum of the Advance Quarterly Payments paid by Operator in respect of a preceding Payment Period and the actual Bulk Oil Cargo Fees and Capital Asset/Loan Fees calculated for the preceding calendar year (the "**Difference**"), the Difference shall be added or subtracted, as the case may be, to or

from the sum of the Advance Quarterly Payments otherwise payable by Operator for the next Payment Period with the effect that each of the Advance Quarterly Payments in the next Payment Period shall be increased or decreased, as the case may be, by a quarter of the Difference. Unless otherwise agreed between the parties, no interest or carrying charges shall be payable by either party in respect of the Difference.

#### **4.4 Start-Up Period**

Notwithstanding the foregoing provisions, where the Effective Date of this Agreement is a date other than April 1 in any year, the portion of the first Payment Period in respect of which advance payments are payable shall be the period commencing on the Effective Date and ending on the first March 31 which follows the Effective Date. The portion of the preceding calendar year which shall be used as a measure for determining the advance payments to be made shall be the portion of the preceding calendar year which corresponds in number of days, and dates to the period between the Effective Date and the first March 31 which follows the Effective Date. Volumes of Oil Handled by Operator at Operator's Member Oil Handling Facility during such portion of the preceding year shall be provided to WCMRC on or before the Effective Date. Advance payments will be payable by Operator on the Effective Date and on any of July 1, October 1 and January 1 (or, if such days are not business days, then on the first business day following such date) as fall within the period between the Effective Date and the first March 31 which follows the Effective Date. In all other respects, the provisions of Sections 4.1, 4.2 and 4.3 of this Agreement shall apply.

#### **4.5 Interest**

Subject always to Section 4.3, any Advance Quarterly Payment or other amount under this Article 4 which is not paid on or prior to its due date shall bear interest at the rate of one per cent (1%) per month, or 12.6825% per year, from the due date until paid.

## **ARTICLE 5 MARINE SPILL RESPONSE SERVICES**

### **5.1 Management and Control of Spill**

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

### **5.2 Initial Request and Response**

- (a) If Operator requests WCMRC to respond to a spill of Oil on water in WCMRC's GAR ("**Initial Request**"), WCMRC 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 WCMRC is authorized by Operator to request Marine Spill Response Services under this Agreement, the name of the ship (if applicable), the type of Oil involved, the contract number assigned to this Agreement and the nature and extent of the Marine Spill Response Services required. The Initial Request shall be documented by a WCMRC Duty Officer and will be followed by a draft work order.
- (b) Upon receipt of each draft work order, Operator shall determine the extent to which it requests WCMRC to perform the Marine Spill Response Services set forth in the draft work order and the parties shall consult and agree on the Marine Spill Response Services which WCMRC is to undertake and complete.
- (c) The parties shall evidence their agreement by signing a Work Order (each a "**Work Order**"). WCMRC will not commence any Marine Spill Response Services until the parties have agreed on the terms of a Work Order and both parties have signed same.
- (d) Upon being signed by both parties, a Work Order shall become an integral part of this Agreement.

- (e) Each Work Order shall include a description of the Marine Spill Response Services to be performed by WCMRC and may, in WCMRC's sole discretion, provide an estimate of WCMRC Fees payable in connection with the Marine Spill Response Services.
- (f) 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 a Unified Command, response tasks relevant to WCMRC that are detailed in the Incident Action Plan are deemed to have been approved by Operator. WCMRC may or may not cease issuing individual Work Orders once a Unified Command begins issuing Incident Action Plans.
- (g) WCMRC will invoice Operator for all WCMRC Fees and Taxes borne from approved Work Orders and Incident Action Plans.

### **5.3 No Further WCMRC Services Required**

- (a) If Operator has notified WCMRC in writing that Operator does not want WCMRC to continue to provide Marine Spill Response Services beyond the Initial Response, then WCMRC shall cease providing Marine Spill Response Services and WCMRC shall in respect be under no obligation to provide further Marine Spill Response Services to Operator.
- (b) If Operator does not notify WCMRC in writing that Operator does not want WCMRC to continue to provide Marine Spill Response Services, but WCMRC has been unable to obtain signed Work Orders for further Marine Spill Response Services, then WCMRC 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.

### **5.4 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 Operator 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, Operator 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 Operator the resources associated with the provision of Marine Spill Response Services required by Operator, WCMRC agrees that it will make reasonable efforts to assist Operator in establishing arrangements with regard to the provision of such required resources.

### **5.5 Territory**

WCMRC agrees to provide Marine Spill Response Services in WCMRC's GAR only.

### **5.6 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, WCMRC 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, and Operator shall pay all outstanding WCMRC Fees and Taxes, including those charged in connection with Demobilization.

#### **5.7 Right to Subcontract**

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

#### **5.8 Recovered Oil and Waste**

The parties acknowledge that, notwithstanding any assistance which WCMRC provides to Operator, WCMRC shall not be responsible for the disposal of waste products.

## **ARTICLE 6 PERFORMANCE OF SERVICES**

#### **6.1 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 requested by Operator 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.

#### **6.2 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 Operator upon request). However, WCMRC and Operator understand that:
  - (i) actions carried out in a response in an Oil spill environment may be inherently dangerous and difficult; and
  - (ii) 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, and all WCMRC actions carried out consistently with the directions of Operator or with approval of applicable safety officials will be deemed to be in compliance with this Section.

- (b) WCMRC shall, upon Operator's request, report to Operator 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 Operator's expense, furnish Operator 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 Operator that would be or may be considered a waiver of privilege.

### 6.3 Operator Safety Obligations

- (a) Operator 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 Operator safety policies and procedures (a copy of which policies and procedures Operator will make available to WCMRC upon request).
- (b) Operator shall 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 Operator's reasonable judgment possibly causing any personal injury or death or property damage or loss. Operator shall, 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 Operator so long as Operator will not be required to disclose anything to WCMRC that would be or may be considered a waiver of privilege.

### 6.4 Illegal, Unsafe or Improper Instructions

If Operator 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 industry; 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 Operator 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 WCMRC to take any instructed action shall not affect any obligation of WCMRC to take instructed actions under circumstances that would not result in the happening of the events specified in the preceding Subsections (a)-(c).

## ARTICLE 7 WCMRC FEES AND PAYMENT

### 7.1 WCMRC Fees

- (a) "WCMRC Fees" means all fees charged by WCMRC for providing Marine Spill Response Services including, but not limited to, equipment charges (for owned, non-owned or leased equipment including for repair and replacement of equipment), overhead costs, salaries, wages and benefits paid to personnel, food, lodging and travel costs for personnel, fees paid to contractors or subcontractors, 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, 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 fee schedules are available upon request and posted on WCMRC's website. Operator 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.

## **7.2 Payment of WCMRC Fees**

- (a) Operator shall pay all reasonable WCMRC Fees which are due and payable. Operator shall also be liable for and shall pay to WCMRC an amount equal to any Taxes.
- (b) WCMRC shall submit an invoice to Operator for the WCMRC Fees and Taxes incurred. Any invoice submitted by WCMRC pursuant to this Section shall be due and payable by Operator by the end of the tenth (10th) business day following receipt of the invoice by Operator and, subject to the terms of Section 7.5 of this Agreement, any invoice not paid in full by the end of the tenth (10th) business day following receipt of the invoice by Operator 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 (11<sup>th</sup>) business day after the date of the invoice.
- (c) Invoices may be submitted by facsimile or electronic mail and a copy of an invoice shall be deemed to be received by Operator at such time as is indicated on the receipt of confirmation notice received by WCMRC for such facsimile or electronic mail.
- (d) Marine Spill Response Services shall only be provided by WCMRC if Operator has paid all WCMRC Fees and Taxes which are due and payable.

## **7.3 Funding for Response Beyond 48 Hours**

- (a) WCMRC may, when reasonably practicable, as determined by WCMRC in its sole discretion, submit an invoice to Operator 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 Operator by the end of the tenth (10th) business day following Operator's receipt of the invoice.
- (b) After WCMRC has submitted the initial invoice(s), Operator and WCMRC shall agree on how Operator will fund the remainder of the response. In reaching such agreement, Operator 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 Operator will pay the amounts due under such invoices by the end of the tenth (10<sup>th</sup>) business day following Operator'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 the 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 Operator shall pay all outstanding WCMRC Fees and Taxes, including all WCMRC Fees and Taxes set forth in any final invoice submitted by WCMRC.

#### **7.4 Payments in Good Standing**

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

#### **7.5 Disputed Invoices**

- (a) If Operator objects to any item or statement shown on an invoice, Operator 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 Operator shall pay to WCMRC in accordance with the terms of this Agreement eighty percent (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 percent (80%) of any invoiced amounts shall not prejudice Operator's right to object to or question such invoice, and such invoice shall be subject to adjustment for amounts for which Operator was obligated to pay WCMRC under the terms of this Agreement. Operator 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 Operator has given WCMRC notice of a dispute in respect of a particular invoice and paid eighty percent (80%) of the disputed invoice amounts, and 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 Operator does not within the time period set out in Section 7.5(a), specify in reasonable detail the item or statement objected to and the factual basis for the objection in accordance with Section 7.5(a), then Operator is deemed to have withdrawn its objection and Operator agrees and acknowledges that all WCMRC invoices for which the time period set out in Section 7.5(a) has elapsed are debts properly due and payable by Operator to WCMRC.

#### **7.6 Reviews**

Subject to Operator's prior payment of WCMRC Fees and Taxes in accordance with this Agreement, or alternatively Operator's prior payment to WCMRC of eighty percent (80%) of disputed invoice amounts in accordance with Section 6.5(a), Operator shall have the right at its sole cost and expense at all reasonable times and intervals to make such reasonable inspection or audit 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 Operator, WCMRC shall upon written request make available to Operator such information and materials (including time sheets for personnel and equipment) as Operator may reasonably require to verify and substantiate the invoices provided by WCMRC under this Agreement. Operator shall reimburse WCMRC for any costs incurred by WCMRC in assisting Operator with such review. The parties agree that the underlying rates for the 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 Operator, WCMRC shall promptly make the appropriate corrections and adjustments (including but not limited to reimbursing Operator for any over-paid amounts) notwithstanding that Operator did not dispute relevant invoices in accordance with Section 7.5(a).

## **7.7 Fees Remain Payable**

Operator'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 13.1, or any other event or circumstance which would otherwise affect a suspension or termination of the obligations of WCMRC.

## **7.8 Currency**

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

# **ARTICLE 8 REPRESENTATIONS AND WARRANTIES**

## **8.1 Operator's Representations and Warranties**

Operator represents and warrants to WCMRC, with the intent that WCMRC will rely upon such representations and warranties in entering into this Agreement, that:

- (a) If the Operator is not a natural person, the Operator is duly formed and validly existing under the laws of the jurisdiction of its formation and has all necessary power, authority and capacity to enter into and carry out its obligations under this Agreement, and the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary actions on the part of Operator;
- (b) Operator is not party to, bound or affected by or subject to any indenture, mortgage, lease, agreement, obligation, instrument, charter or by-law provision, statute, regulation, order, judgment, decree, license, permit or law which would be violated, contravened, breached by, or under which default would occur as a result of the execution and delivery of this Agreement, or the performance by Operator of any of its obligations provided under this Agreement;
- (c) this Agreement is a valid and binding obligation of Operator, enforceable against it in accordance with its terms subject, however, to limitations with respect to enforcement imposed by law in connection with bankruptcy or similar proceedings and to the extent that equitable remedies such as specific performance and injunction are in the discretion of the court from which they are sought;
- (d) Operator has the financial capability to pay the Membership 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.

# **ARTICLE 9 BOOKS AND RECORDS**

## **9.1 Books and Records**

Operator shall retain in accordance with generally accepted accounting practices, all books, records and accounts pertaining to Operator's obligations under this Agreement as may be necessary to conduct an audit to verify that the Membership Fees, WCMRC Fees and Taxes were properly charged in accordance with the terms of this Agreement, and to verify Operator's compliance with this Agreement.

## **9.2 Audits**

WCMRC shall have the right at all reasonable times and intervals to cause its auditors to make such inspection or audit of the books and records maintained by Operator in respect of the Member Oil Handling Facilities as may be reasonable under the circumstances. Operator shall make available to WCMRC's auditors such information and material as may be required by WCMRC's auditors for the purposes of such audit. It is acknowledged that, in connection with such audit, the WCMRC auditors may require the assistance of the accounting and clerical staff of Operator and Operator agrees to allow reasonable access to its books, records and premises by representatives of the WCMRC auditors for the purposes of conducting such audits and, subject to staff availability, to cause Operator's staff to perform any functions reasonably required by the WCMRC auditors in connection with such audit.

## **9.3 Adjustments**

In the event an audit indicates a discrepancy between the actual volumes of Bulk Oil Cargo Handled at Operator's Member Oil Handling Facilities on any particular occasion and Operator's reported volumes of Bulk Oil Cargo Handled at Operator's Member Oil Handling Facilities in respect of the same occasion, Operator shall make the appropriate corrections and adjustments and, if necessary, promptly make any additional payments to reflect such correction, and interest shall be payable in respect of such corrected amount at a rate of one per cent (1%) per month, or 12.6825% per year, commencing on the date the discrepancy occurred.

# **ARTICLE 10 ALLOCATION OF RISK**

## **10.1 Nature of Relationship**

WCMRC and Operator 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 Operator;
- (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; and
- (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 Operator, or anyone asserting rights on its behalf, will not challenge WCMRC's right to be indemnified as provided in this Article 10.

Accordingly, WCMRC and Operator 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 Operator as set forth in this Article 10.

## **10.2 Liability Between WCMRC and Operator**

- (a) WCMRC and its directors, officers, agents, contractors, and employees shall have no liability to Operator, 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 Operator or any of Operator's directors, officers, contractors, agents or employees.

- (b) WCMRC and its directors, officers, agents, contractors and employees shall have no liability to Operator, 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 the act or omission of WCMRC or any of its directors, officers, agents, contractors or employees unless such act or omission is the result of gross negligence or willful misconduct of WCMRC or any of its directors, officers, agents, contractors or employees.

- (c) Operator shall indemnify, defend and hold harmless WCMRC, its directors, officers, employees, contractors and agents from and against all claims, losses, damages, costs, expenses, liabilities (including without limitation, strict and absolute liability), demands, fees, penalties, actions, suits and other proceedings incurred or suffered 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, liabilities, demands, fees, penalties, actions, suits or other proceedings 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. Operator 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 Operator and its directors, officers, employees and agents from and against all claims, losses, damages, costs, expenses, liabilities (including without limitation, strict and absolute liability), demands, fees, penalties, actions, suits and other proceedings incurred or suffered by Operator and its directors, officers, employees and agents in connection with this Agreement as a result of the gross negligence or willful misconduct of WCMRC, its directors, officers, agents, contractors or employees.

### **10.3 Insurance**

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

## **ARTICLE 11 TERMINATION**

### **11.1 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.

### **11.2 Termination by WCMRC**

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

- (a) in the event that the Minister of Transport revokes WCMRC's certification as a response organization with 10,000 Tonnes rated capability;
- (b) if Operator has failed to pay any Membership Fees or WCMRC Fees or Taxes in accordance with the terms of this Agreement;
- (c) if Operator has knowingly created or if, after learning of it, has failed to correct, a discrepancy between the actual volumes of Bulk Oil Cargo Handled at Operator's Member Oil Handling Facility during on any particular occasion and Operator's reported volumes of Bulk Oil Cargo Handled at Operator's Member Oil Handling Facility in respect of the same occasion;
- (d) if Operator 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
- (e) if Operator has breached any representation or warranty or other term of this Agreement and failed to cure such breach within five (5) days after Operator 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.

### **11.3 Consequences of Termination**

Upon the termination of this Agreement:

- (a) WCMRC shall be entitled to advise Transport Canada and the Canadian Coast Guard of such termination;
- (b) all obligations of WCMRC under this Agreement shall cease;
- (c) WCMRC shall cease to perform any Marine Spill Response Services; and
- (d) Operator shall pay to WCMRC any outstanding Membership Fees, WCMRC Fees and Taxes, including all WCMRC Fees and Taxes set forth in any final invoice submitted by WCMRC.

### **11.4 No Reimbursement of Membership Fees**

Operator shall not be entitled to receive a refund of all or any portion of the Membership Fees paid by Operator except where termination of this Agreement is due to the revocation by the relevant authorities of WCMRC's certification as a response organization with 10,000 tonne rated capability in which case Registration Fees shall be refunded on a pro-rated basis.



### **11.5 Survival**

Notwithstanding the termination of this Agreement by WCMRC or Operator pursuant to this Article, the provisions of this Section, Section 11.3 and Articles 7, 9 and 10 shall survive any such termination.

## **ARTICLE 12 TERM**

### **12.1 Term**

This Agreement shall come into force and effect as of the date upon which both parties have signed the Agreement (the “**Effective Date**”) and shall continue for a period of one year.

### **12.2 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 13 FORCE MAJEURE**

### **13.1 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 Operator, 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 Operator 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.

### **13.2 Exception for Failure by Either Party**

Neither party will be entitled to the benefits of the provisions of Section 13.1 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.

### **13.3 Other Aspects of Force Majeure**

The obligations of the party relying on Section 13.1 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 14 GENERAL PROVISIONS**

### **14.1 Time**

Time is of the essence of this Agreement.

### **14.2 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 or electronic mail.

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 electronic mail shall be considered a form of notice for the purpose of this Agreement.

### **14.3 Amendments to Agreement**

Subject to Section 14.4, this Agreement may not be amended except in writing executed by all the parties.

### **14.4 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.

### **14.5 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 Operator.

### **14.6 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.

### **14.7 Benefit of Agreement**

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

**14.8 Entire Agreement**

The provisions of this Agreement, including the schedules to 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.

**14.9 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.

**14.10 Assignment**

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

**14.11 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 day first above written.

**14.12 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 dependent on the validity and enforceability of the particular provision, the other provision will be deemed also to be invalid or unenforceable.

<p style="text-align: center;"><b>WESTERN CANADA MARINE RESPONSE CORPORATION</b></p> <p>BY: _____ (Authorized Signature)</p> <p>_____ (Print Name)</p> <p>_____ (Date)</p>	<p style="text-align: center;">_____ (Name of Facility Owner/Operator/Authorized Agent)</p> <p>BY: _____ (Authorized Signature)</p> <p>_____ (Print Name)</p> <p>_____ (Date)</p>
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**SCHEDULE A  
(OIL HANDLING FACILITY) MEMBERSHIP AGREEMENT ADDITIONAL ARRANGEMENT FORM**

This document is Schedule A to the (Oil Handling Facility) Membership Agreement and Confirmation of Arrangement under Subsection 168(1) of *Canada Shipping Act, 2001* (the "Agreement") between \_\_\_\_\_ ("Operator") and Western Canada Marine Response Corporation (WCMRC) **Arrangement No.** \_\_\_\_\_.

This Schedule is incorporated into and forms an integral part of the. The parties agree that an arrangement shall be granted by WCMRC in respect of the following facilities, and that in all other respects, the terms of the Agreement shall apply to such facilities:

Facility Name(s)	Person(s) Authorized to Implement Arrangement
1. _____	1. _____
2. _____	2. _____
3. _____	3. _____
4. _____	4. _____
5. _____	5. _____
6. _____	6. _____

**Applicable Fees**

Registration Fee:     \$ 775 \_ x \_\_\_\_\_ = \$ \_\_\_\_\_  
 Applicable Taxes:                                     \$ \_\_\_\_\_  
 Total Amount Payable:                                 \$ \_\_\_\_\_

**Term of Coverage**

Effective Date of Agreement:                     \_\_\_\_\_  
 End Date:   \_\_\_\_\_

Notwithstanding any of the terms of the Agreement and the provisions of this Schedule, the arrangements to be provided by WCMRC to Operator shall be subject to:

- a) receipt by WCMRC of the above-mentioned Registration Fees and Taxes on or before the Effective Date of Agreement; and
- b) payment of all outstanding fees owed under the Agreement, including all WCMRC Fees and Taxes (as such terms defined in the Agreement).

**WESTERN CANADA MARINE RESPONSE CORPORATION**

\_\_\_\_\_  
 (Oil Handling Facility Operator)

BY: \_\_\_\_\_  
 (Authorized Signature)

BY: \_\_\_\_\_  
 (Authorized Signature)

\_\_\_\_\_  
 (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 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**

**Asphalt solutions**

Blending stocks  
Roofers flux  
Straight run residue

**Oils**

Clarified  
Crude Oil (including diluted Bitumen)  
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