

**MEMBER 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  
Electronic mail: [ap@wcmrc.com](mailto:ap@wcmrc.com)

(“WCMRC”)

- and -

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**Name, Address of Member (“Owner”/“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;
- B. Operator wishes to put in place an arrangement for certain of Operator's oil handling facilities which it operates in Western Canada Marine Response's geographic area of response;
- C. Western Canada Marine Response has obtained certification as a response organization with response capability for spills up to 10,000 tonnes within its geographic area of response and, as one or more of Operator's oil handling facilities is located within Western Canada Marine Response's geographic area of response, Western Canada Marine Response is able to provide an arrangement to Operator in respect of such facilities;
- D. Western Canada Marine Response 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"** has the meaning ascribed to it on page 1 of this Agreement;

**"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, including the following:

Schedule "A"	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;

**"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;

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

**“Effective Date”** is the date upon which both parties sign the Agreement;

**“GAR”** means the geographic area of response within which a response organization intends to offer its services;

**“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 (including preventative measures) of Oil spilled on or into water or spilled on water in connection with the loading or unloading of Oil from ships 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;

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

**“Membership Fees”** means 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;

**“Oil”** means oil and those oil products described in Schedule “B” to this Agreement and Tallow and Tallow based substances;

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

**“Person Authorized to Implement Arrangement”** means one or more persons who have the authority to implement the arrangement contemplated by this Agreement and to incur response costs on behalf of the Operator;

**“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”** has the meaning ascribed to it on page 1 of this Agreement;

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

**“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, 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 Western Canada Marine Response.

**“Waters”** has the meaning ascribed to it on page 1 of this Agreement;

**“Western Canada Marine Response Fees”** has the meaning ascribed to it in Section 7.1 of this Agreement;

**“Western Canada Marine Response’s GAR”** has the meaning ascribed to it on page 1 of this Agreement; 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 term of one (1) year (the **“Term”**) in accordance with the terms and conditions of this Agreement:

- (a) where required for purposes of an oil pollution emergency plan (as referred to in the Act), to identify Western Canada Marine Response as the response organization with which Operator has an arrangement for its Member Oil Handling Facilities; and

- (b) upon the occurrence of a spill of Oil on water within Western Canada Marine Response's GAR, to request Western Canada Marine Response to respond and provide Marine Spill Response Services for its Member Oil Handling Facilities.

## **2.2 Membership Fees**

The Membership Fees are comprised of the Registration Fee, the Bulk Oil Cargo Fees and the Capital Asset/Loan Fees, the terms and conditions of which are set forth on page 1 of this Agreement and (in the case of Bulk Oil Cargo Fees and Capital Asset/Loan Fees) in Articles 3 and 4 of this Agreement.

## **2.3 More than One Facility**

Where Operator operates more than one oil handling facility in Western Canada Marine Response's GAR or on lands adjacent thereto, and wishes to obtain an arrangement from Western Canada Marine Response in respect of more than one such oil handling facility, Operator shall pay Membership Fees to Western Canada Marine Response for each oil handling facility in respect of which an arrangement is to be granted under this Agreement. Confirmation of Arrangement Form

Western Canada Marine Response agrees to provide to Operator for each of the Member Oil Handling Facilities in respect of which an arrangement is to be granted under this Agreement and for which applicable Registration Fees have been paid by Operator, a confirmation of arrangement form which Operator may retain on site as evidence that the arrangement requested by Operator has been granted. The confirmation of arrangement form shall be in the form on Page 1 of 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 Western Canada Marine Response 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 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 either unloaded or (in the case of Bulk Oil Cargo intended for international destinations) loaded at Operator's Member Oil Handling Facilities and the Bulk Oil Cargo Fee Rate and Capital Asset/Loan Fee Rate, as applicable, plus all applicable Taxes payable in connection with the Bulk Oil Cargo Fee and Capital Asset/Loan Fee.

## **3.2 Calculation of Volume**

The volume of Bulk Oil Cargo which is unloaded or (in the case of Bulk Oil Cargo intended for an international destination) loaded 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**

Except as otherwise provided in Article 4 of this Agreement, Bulk Oil Cargo Fees and Capital Asset/Loan Fees shall be payable by Operator within ten (10) days following the end of the month in which such volumes are unloaded or (in the case of Bulk Oil Cargo intended for international destinations) loaded at Operator's Member Oil Handling Facility. Any Bulk Oil Cargo Fees and Capital Asset/Loan Fees not paid in full within ten (10) days of the end of the relevant month 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) day following the end of the month in which such volumes were unloaded or (in the case of Bulk Oil Cargo intended for international destinations) loaded.

### **3.5 Reporting Requirements**

Operator shall within ten (10) days following the end of each month provide Western Canada Marine Response with a report containing the total volumes (on a facility by facility basis) of Bulk Oil Cargo unloaded or (in the case of Bulk Oil Cargo intended for international destinations) loaded at each of Operator's Member Oil Handling Facilities during the preceding month. Western Canada Marine Response agrees that the information provided to Western Canada Marine Response in respect of volumes of Bulk Oil Cargo shall remain confidential and will not be disclosed by Western Canada Marine Response, its directors, officers, agents or employees (including disclosure to any director, officer, agent or employee of Western Canada Marine Response not directly requiring such information to carry out his or her duties to Western Canada Marine Response) other than as part of the aggregate volumes of Bulk Oil Cargo of all members of Western Canada Marine Response.

## **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 (the "Advance Quarterly Payments") in those cases where the aggregate volumes of Bulk Oil Cargo unloaded or (in the case of Bulk Oil Cargo intended for international destinations) loaded 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 Western Canada Marine Response's view is likely to reduce to below Threshold levels the volumes of Bulk Oil Cargo unloaded or (in the case of Bulk Oil Cargo intended for international destinations) loaded 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 unloaded or (in the case of Bulk Oil Cargo intended for international destinations) loaded 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 unloaded or (in the case of Bulk Oil Cargo intended for international destinations) loaded 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 Western Canada Marine Response the total volumes (on a facility by facility basis) of Bulk Oil Cargo unloaded or (in the case of Bulk Oil Cargo intended for international destinations) loaded by Operator at Operator's Member Oil Handling Facilities in the preceding calendar year. Western Canada Marine Response 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 unloaded or (in the case of Bulk Oil Cargo intended for international destinations) loaded by Operator at Operator's Member Oil Handling Facility during such portion of the preceding year shall be provided to Western Canada Marine Response 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 Western Canada Marine Response's GAR of a spill of Oil on Waters, Operator shall (where it has requested Western Canada Marine Response to respond to such spill) be responsible for the management and control of all response activities.

### 5.2 Initial Request and Response

- (a) If Owner 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 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 Western Canada Marine Response Duty Officer and thereafter one of the parties will prepare a draft work order (the "**Work Order**") and circulate it to the other. Each Work Order shall include a description of the Marine Spill Response Services to be performed by Western Canada Marine Response, may (in Western Canada Marine Response's discretion) provide an estimate of the Western Canada Marine Response Fees payable in connection with the Marine Spill Response Services
- (b) Upon issuance of each draft Work Order, Owner and Western Canada Marine Response shall determine the extent to which Western Canada Marine Response will 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 Western Canada Marine Response is to undertake and complete.
- (c) The parties shall evidence their agreement by signing a final Work Order. Western Canada Marine Response will not commence any Marine Spill Response Services until the parties have agreed on the terms of a final 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) Work Orders may be amended by the parties by an amendment or subsequent Work Order signed by both parties from time to time as circumstances require.
- (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



Unified Command, response tasks relevant to Western Canada Marine Response detailed in the Incident Action Plan are considered approved by the Operator and Western Canada Marine Response may cease issuing Work Orders.

- (g) Western Canada Marine Response will invoice Owner for, and the Owner will pay in accordance with the terms of such invoices, all response costs borne from work orders and Incident Action Plans.

### **5.3 No Further Western Canada Marine Response Services Required**

- (a) If Operator has notified Western Canada Marine Response in writing that Operator 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 Operator.
- (b) If Operator 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.

### **5.4 Competing Requests for Services**

- (a) Notwithstanding any other provision of this Agreement, unless otherwise directed by the appropriate governmental Lead Agency, Western Canada Marine Response 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 party.
- (b) In the event of contemporaneous or overlapping requests for Marine Spill Response Services, Operator acknowledges that Western Canada Marine Response shall respond to the competing requests as directed by the appropriate governmental Lead Agency.

### **5.5 Territory**

Western Canada Marine Response agrees to provide Marine Spill Response Services in Western Canada Marine Response'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 in any given case 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 carry out any required demobilization activities, and Operator shall pay all outstanding Western Canada Marine Response Fees and Taxes.

### **5.7 Right to Subcontract**

Western Canada Marine Response 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 Western Canada Marine Response provides to Operator, Western Canada Marine Response shall not be responsible for the disposal of waste products.

## **ARTICLE 6 PERFORMANCE OF SERVICES**

### **6.1 Standard of Western Canada Marine Response Performance**

Subject to the other terms and conditions of this Agreement, Western Canada Marine Response 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 Western Canada Marine Response Safety Obligations**

- (a) Western Canada Marine Response 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 Western Canada Marine Response safety policies and procedures (a copy of which policies and procedures Western Canada Marine Response will make available to Operator upon request). However, Western Canada Marine Response 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 responsesituation.

Therefore, the provisions of this Section will not be interpreted in a manner that would hold Western Canada Marine Response to a standard that would be unreasonable under the actual conditions of a particular spill, and all Western Canada Marine Response 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) Western Canada Marine Response 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 Western Canada Marine Response's reasonable judgment possibly causing personal injury or death or property damage or loss. Western Canada Marine Response will, 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 Western Canada Marine Response.

### **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 Western Canada Marine Response 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 Western Canada Marine Response upon request).

- (b) Operator will report to Western Canada Marine Response 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 will, at Western Canada Marine Response's expense, furnish Western Canada Marine Response with copies of any final written reports and other factual information related to such accidents prepared by or for Operator.

#### **6.4 Illegal, Unsafe or Improper Instructions**

If Operator 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 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 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).

## **ARTICLE 7 WESTERN CANADA MARINE RESPONSE FEES AND PAYMENT**

### **7.1 Western Canada Marine Response Fees**

- (a) "Western Canada Marine Response Fees" means all reasonable fees charged by Western Canada Marine Response 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 Western Canada Marine Response has published a schedule of fees in respect of any of the items referred to in Section 7.1(a), the costs associated with those items will be in accordance with the most currently published schedule.
- (c) Schedules of Western Canada Marine Response Fees are available upon request.

## **7.2 Payment of Western Canada Marine Response Fees**

- (a) Operator shall pay all reasonable Western Canada Marine Response Fees which are due and payable. Operator shall also be liable for and shall pay to Western Canada Marine Response an amount equal to any Taxes.
- (b) Western Canada Marine Response shall submit an invoice to Operator for the Western Canada Marine Response Fees and Taxes incurred. Except as otherwise provided under Section 7.3 of this Agreement, any invoice submitted by Western Canada Marine Response 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 and a facsimile 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 Western Canada Marine Response for such facsimile.

## **7.3 Funding for Response Beyond 24 Hours**

- (a) After Western Canada Marine Response has submitted the initial invoice, Operator and Western Canada Marine Response shall agree on how Operator will fund the remainder of the response. In reaching such agreement, Operator shall be required to satisfy Western Canada Marine Response that any method of funding will, when implemented, permit all invoices rendered by Western Canada Marine Response during the relevant period to be paid in full on such terms as are acceptable to Western Canada Marine Response under the circumstances. Any decision to accept any particular method of funding shall be solely within the discretion of Western Canada Marine Response. If the parties are unable to agree on a method of funding acceptable to Western Canada Marine Response, Western Canada Marine Response will require cash.
- (b) 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.
- (c) In the event that the parties are unable to agree on an acceptable means by which Marine Spill Response Services are to be funded, Western Canada Marine Response shall cease to provide Marine Spill Response Services and shall carry out any required demobilization activities, and Operator shall pay all outstanding Western Canada Marine Response Fees and Taxes, including all Western Canada Marine Response Fees and Taxes set forth on any final invoice submitted by Western Canada Marine Response.

## **7.4 Payments in Good Standing**

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

## **7.5 Disputed Invoices**

If Operator objects to any item or statement shown on an invoice, Operator shall promptly notify Western Canada Marine Response of the dispute, specifying in reasonable detail the factual basis for the dispute and Operator shall pay to Western Canada Marine Response in accordance with the terms of this Agreement eighty per cent (80%) of the disputed invoiced amounts. The payment of eighty per cent (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 included in the invoice which are ultimately determined not to be amounts for which Operator was obligated to pay Western Canada Marine Response 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 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 determination in accordance with the Rules of the Vancouver Maritime Arbitrators Association. The parties agree that any decision of an arbitrator appointed under the Rules of the Vancouver Maritime Arbitrators Association shall be final and binding.

## **7.6 Audits**

Operator 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 related 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 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 Western Canada Marine Response under this Agreement provided that Western Canada Marine Response shall be reimbursed by Operator for any costs incurred by Western Canada Marine Response in assisting Operator 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 Operator, Western Canada Marine Response and Operator shall promptly make the appropriate corrections and adjustments.

## **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 12.1, or any other event or circumstance which would otherwise effect a suspension or termination of the obligations of Western Canada Marine Response.

## **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 Western Canada Marine Response, with the intent that Western Canada Marine Response will rely upon such representations and warranties in entering into this Agreement, that:

- (a) Operator is a corporation duly incorporated and validly existing under the laws of its jurisdiction and has all necessary corporate power, authority and capacity to enter into and to 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 corporate action 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, licence, 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 Western Canada Marine Response 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 Bulk Oil Cargo Fees, Capital Asset/Loan Fees, Western Canada Marine Response 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**

Western Canada Marine Response 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 Western Canada Marine Response's auditors such information and material as may be required by Western Canada Marine Response's auditors for the purposes of such audit. It is acknowledged that, in connection with such audit, the Western Canada Marine Response 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 Western Canada Marine Response 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 Western Canada Marine Response 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 unloaded or (in the case of Bulk Oil Cargo intended for international destinations) loaded at Operator's Member Oil Handling Facilities during

a particular period and Operator's reported volumes of Bulk Oil Cargo unloaded or (in the case of Bulk Oil Cargo intended for international destinations) loaded at Operator's Member Oil Handling Facilities in respect of the same period, 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**

Western Canada Marine Response 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 Western Canada Marine Response that may give rise to a variety of claims;
- (c) Western Canada Marine Response 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 Western Canada Marine Response's right to be indemnified as provided in this Article 10.

Accordingly, Western Canada Marine Response 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 Western Canada Marine Response and Operator as set forth in this Article 10.

### **10.2 Liability Between Western Canada Marine Response and Operator**

- (a) Western Canada Marine Response 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) Western Canada Marine Response and its directors, officers, agents, contractors and employees shall have no liability to Operator, for:

- (i) any loss or damage caused to any persons, 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 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 wilful misconduct of Western Canada Marine Response or any of its directors, officers, agents, contractors or employees.

- (c) Operator 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 incurred 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 wilful misconduct, or the gross negligence or wilful misconduct of Western Canada Marine Response's directors, officers, agents, contractors or employees. Operator 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.
- (d) Western Canada Marine Response shall indemnify, defend and hold harmless Operator and its directors, officers, employees and agents from and against all claims, losses, damages, costs, expenses and other liabilities incurred by Operator and its directors, officers, employees and agents as a result of the gross negligence or wilful misconduct of Western Canada Marine Response, 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 Western Canada Marine Response's request, Operator shall furnish Western Canada Marine Response 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 Western Canada Marine Response 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 Western Canada Marine Response**

This Agreement may be terminated by Western Canada Marine Response effective immediately upon notice to Operator:

- (a) in the event that Western Canada Marine Response's certification as a response organization with 10,000 tonne rated capability is revoked;



- (b) if Operator has failed to pay any Registration Fee, Bulk Oil Cargo Fees, Capital Asset/Loan Fees or any Western Canada Marine Response 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 unloaded or (in the case of Bulk Oil Cargo intended for international destinations) loaded at Operator's Member Oil Handling Facility during a particular period and Operator's reported volumes of Bulk Oil Cargo unloaded or (in the case of Bulk Oil Cargo intended for international destinations) loaded at Operator's Member Oil Handling Facility in respect of the same period;
- (d) 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) 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 Western Canada Marine Response advising of such breach.

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

#### **11.2 Termination by Operator**

This Agreement may be terminated by Operator effective immediately upon notice to Western Canada Marine Response if Operator has ceased to require an arrangement for the Member Oil Handling Facilities within Western Canada Marine Response's GAR.

#### **11.3 Consequences of Termination**

Upon the termination of this Agreement:

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

#### **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 Western Canada Marine Response'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 and, if applicable, Advance Quarterly Payments exceeding

Bulk Oil Cargo Fees and Capital Asset/Loan Fees owing shall be refunded in full.

#### **11.5 Survival**

Notwithstanding the termination of this Agreement by Western Canada Marine Response 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 indicated on the first page of this 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 Western Canada Marine Response 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 Western Canada Marine Response 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. 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 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.

### **14.3 Amendments to Agreement**

Subject to Section 13.4, 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 initialling a new Schedule dated as of the effective date of such amendment or replacement.

### **14.5 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 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 ensure 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 Western Canada Marine Response, and any attempt to so assign it shall be null and void.

**14.11 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.

**14.12 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.

**WESTERN CANADA MARINE RESPONSE CORPORATION**

\_\_\_\_\_  
(Name of Operator)

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

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

**SCHEDULE A**  
**MEMBERSHIP AGREEMENT**  
**ADDITIONAL ARRANGEMENT FORM**

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

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

Facility Name(s)	Person(s) Authorized to Implement Arrangement
1. _____	1. _____
2. _____	2. _____
3. _____	3. _____
4. _____	4. _____
5. _____	5. _____
6. _____	6. _____
7. _____	7. _____
8. _____	8. _____
9. _____	9. _____
10. _____	10. _____

**Applicable Fees**

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

**Term of Coverage**

Effective Date of Arrangement(s): \_\_\_\_\_  
 End Date: \_\_\_\_\_

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

- a) receipt by WCMRC of the above-mentioned Registration Fees and Taxes within five (5) business days of the effective date of the arrangement; 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**

By: \_\_\_\_\_  
 (Authorized Signature)  
 \_\_\_\_\_  
 (Print Name)  
 \_\_\_\_\_  
 (Date)

\_\_\_\_\_  
 (Ship Owner/Operator/Authorized Agent)  
 By: \_\_\_\_\_  
 (Authorized Signature)  
 \_\_\_\_\_  
 (Print Name)  
 \_\_\_\_\_  
 (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  
Mixtures containing crude oil  
(including diluted bitumen oils)  
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 stocks  
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