

**SHIP (BULK OIL) MEMBERSHIP AGREEMENT
BETWEEN**

<p style="text-align: center;">WESTERN CANADA MARINE RESPONSE CORPORATION</p> <p>206-3500 Gilmore Way, Burnaby, BC V5G 0B8 Emergency No: (604) 294-9116 Facsimile No: (604) 294-6003 Electronic mail: ap@wcmrc.com</p> <p style="text-align: center;">("WCMRC")</p>	AND	
		("Owner/Operator")
WCMRC Agreement#		Effective Date

SHIP (BULK OIL) MEMBERSHIP AGREEMENT TERMS AND CONDITIONS

WHEREAS:

- A. The Act requires that certain ships have an arrangement with a certified response organization in respect of a specified quantity of oil that is at least equal to the total amount of oil that the ship carries, both as cargo and as fuel, to a maximum of 10,000 tonnes, and in respect of waters where the ship navigates or engages in a marine activity;
- B. Western Canada Marine Response has obtained certification as a response organization with response capability within its geographic area of response for spills up to 10,000 tonnes;
- C. Western Canada Marine Response is willing to provide an arrangement to Owner for each of the ships owned or operated by Owner which navigates or engages in a marine activity in Western Canada Marine Response’s geographic area of response;
- D. Western Canada Marine Response is also willing to provide to Owner marine spill response services which Owner 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 INTERPRETATIONS**

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

"Agreement" means this agreement, all amendments and supplements to this agreement and all schedules to this agreement, including the following:

- Schedule A - Arrangement Form
- Schedule A-1 - Definition of Oil

"Approved Marine Spill Response Services" means the Initial Response and all actions and inactions set forth in Work Orders and, for greater certainty, includes all actions, inactions, omissions, options and alternative courses of action not taken by Western Canada Marine Response by reason of Western Canada Marine Response having undertaken only those actions carried out during the Initial Response or specifically referred to in Work Orders;

"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;

"Effective Date" is the date upon which both parties have signed the Agreement;

"Handled" has the meaning ascribed to it in Section 3.2 of this Agreement;

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

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

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

“Lead Agency” means the Canadian Coast Guard or other agency designated by statute, interagency 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, 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;

“Membership Fees” means the Registration Fee payable by Owner in respect of each ship owned or operated by Owner within Western Canada Marine Response’s GAR;

“Non-Member Oil Handling Fee” means any oil handling facility located in Western Canada Marine Response's GAR, or on lands adjacent thereto, but not listed in the schedule of designated/member oil handling facilities published by Western Canada Marine Response from time to time;

“Oil” means oil and those products described in Schedule “A-1” to 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 Ship Owner;

“Registration Fee” means the most current published rate in the Canada Gazette for Western Canada Marine Response Corporation'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 Owner 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;

“Tonne” means one thousand (1000) kilograms or two thousand, two hundred 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 Owner 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” means all fees payable by Owner to Western Canada Marine Response pursuant to the terms and conditions of this Agreement;

“Western Canada Marine Response’s GAR” includes all of the coastal waters, and connected, navigable and tidal inland waters of the Province of British Columbia to the Alberta border extending seaward as provided for in federal legislation; and

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

1.2 Construction

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

- (a) a reference to a numbered or lettered article, section, paragraph or clause refers to the article, section, paragraph or clause bearing that number or letter in this Agreement;
- (b) the words “hereof”, “herein”, “hereunder” and similar expressions used in any provision of this Agreement will relate to the whole of his 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, Owner shall be entitled, for a period of one (1) year from the Effective Date:

- (a) for purposes of its oil pollution emergency plan (as referred to in the Act) to identify Western Canada Marine Response as the response organization with which Owner has an arrangement in Western Canada Marine Response’s GAR; 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.

2.2 Membership Fees

The Membership Fees are comprised of the Registration Fee, 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 the Bulk Oil Cargo Fees) Article 3 of this Agreement.

2.3 More than One Ship

Where Owner owns or operates more than one ship which navigates or engages in marine activities in Western Canada Marine Response's GAR and for which Owner wishes to obtain an arrangement from Western Canada Marine Response, Owner shall pay Western Canada Marine Response Membership Fees in respect of each such ship, and the parties shall complete an Additional Arrangements From identifying the additional ships in respect of which an arrangement is to be provided under this Agreement, all on the terms set forth in Schedule "A" to this Agreement.

ARTICLE 3

BULK OIL CARGO FEES AND CAPITAL ASSET/LOAN FEES

3.1 Bulk Oil Cargo Fees and Capital Asset/Loan Fees

Owner 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 Handled. 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 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 which is Handled shall for greater certainty mean:

- (a) the volume of Bulk Oil Cargo measured in tonnes at the shore side of the dock flange at the Non-Member Oil Handling Facility, without regard to title, unloaded from Owner's ship to the Non-Member Oil Handling Facility;
- (b) the volume of Bulk Oil Cargo measured in tonnes at the shore side of the dock flange at the Non-Member Oil Handling Facility, without regard to title, loaded onto Owner's ship from the Non-Member Oil Handling Facility if such volume is intended for movement to an international destination;
- (c) where Owner's ship has been loaded outside Western Canada Marine Response's GAR, the volume of Bulk Oil Cargo measured in tonnes at Owner's ship flange, without regard to title, transferred within Western Canada Marine Response's GAR from Owner's ship to another ship for use as fuel by such other ship; and
- (d) the volume of Bulk Oil Cargo measured in tonnes at Owner's ship flange, without regard to title, transferred within Western Canada Marine Response's GAR onto Owner's ship from another ship as cargo, provided that such volume is intended for movement to an international destination.

3.3 Adjustments

The Bulk Oil Cargo Fee Rate and the calculation of volumes as 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 Fee and Capital Asset/Loan Fee

Bulk Oil Cargo Fees and Capital Asset/Loan Fees shall be payable by Owner forthwith upon Handling, and any Bulk Oil Cargo Fees and Capital Asset/Loan Fees not paid in full 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 Confirmation of Facility Status

Owner acknowledges that Owner shall be solely responsible for determining whether any oil handling facility to which Owner's ships unload or (in the case of Bulk Oil Cargo intended for international destinations) load Bulk Oil Cargo, is a Non-Member Oil Handling Facility so as to necessitate the payment of Bulk Oil Cargo Fees and Capital Asset/Loan Fees by Owner under the terms of this Agreement. If Owner has failed in any case to pay Bulk Oil Cargo Fees and Capital Asset/Loan Fees in respect of Bulk Oil Cargo Handled, Owner shall, in addition to being liable to Western Canada Marine Response for the payment of such Bulk Oil Cargo Fees, 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 unloaded or (in the case of Bulk Oil Cargo intended for international destinations) loaded, as the case may be.

3.6 Reporting Requirements

In addition to the requirements of Section 3.4 of this Agreement, Owner shall within ten (10) days following each occasion when Owner Handles Bulk Oil Cargo provide Western Canada Marine Response with a report indicating the ship name, the name and address of the Non-Member Oil Handling Facility (if applicable), the date, the total Tonnes of Bulk Oil Cargo Handled and, for all loaded volumes, the international destination. 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 director, officer, agent 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

MARINE SPILL RESPONSE SERVICES

4.1 Management and Control of Spill

Upon the occurrence within Western Canada Marine Response's GAR of a spill of Oil on water, Owner 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.

4.2 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, and any other information required under Section 6.3 of this Agreement.
- (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 Work Order. Western Canada Marine Response 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) 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 a Unified Command, response tasks relevant to Western Canada Marine Response that are detailed in the Incident Action Plan (IAP) are considered approved by the Owner when the Owner signs off on the IAP. Western Canada Marine Response may or may not cease issuing individual Work Orders once the IAP process is in place and rely on IAP signatures (including Owners) as approval for WCMRC resources deployed and response strategies being implemented.
- (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.

4.3 No Further Western Canada Marine Response

- (a) If Owner has notified Western Canada Marine Response in writing that Owner 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 be under no obligation to provide further Marine Spill Response Services to Owner.
- (b) If Owner does not notify Western Canada Marine Response in writing that Owner does not want Western Canada Marine Response to continue to provide Marine Spill Response Services, but Western Canada Marine Response has been unable to obtain signed Work Orders for further Marine Spill Response Services, then Western Canada Marine Response shall be deemed to have been notified and requested to cease providing Marine Spill Response Services at the conclusion of activities detailed in the last approved Work Order.

4.4 Competing Requests for Services

- (a) Notwithstanding any other provision of this Agreement, unless otherwise directed by the appropriate governmental Lead Agency, Western Canada Marine Response shall have no obligation to make Marine Spill Response Services available to Owner 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, Owner acknowledges that Western Canada Marine Response shall respond to the competing requests by competing requests as directed by the appropriate governmental Lead Agency.

4.5 Territory

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

4.6 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 Owner shall pay all outstanding Western Canada Marine Response Fees and Taxes.

4.7 Right to Subcontract

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

4.8 Recovered Oil and Waste

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

ARTICLE 5

PERFORMANCE OF SERVICES

5.1 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 Owner pursuant to this Agreement in a manner which attempts to mitigate, remove or clean-up the applicable spill as effectively as practicable under the existing circumstances.

5.2 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 shall make available to Owner upon request). However, Western Canada Marine Response and Owner 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.

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 Owner or with approval of applicable safety officials will be deemed to be in compliance with this Section.

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

5.3 Owner Safety Obligations

- (a) Owner 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 Owner safety policies and procedures (a copy of which policies and procedures Owner shall make available to Western Canada Marine Response upon request).
- (b) Owner shall 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 Owner's reasonable judgment possibly causing any personal injury or death or property damage or loss. Owner shall, 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 Owner.

5.4 Illegal, Unsafe or Improper Instructions

If Owner 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);
- (a) 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
- (b) 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 Owner 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 6

WESTERN CANADA MARINE RESPONSE FEES AND PAYMENT

6.1 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, 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.

6.2 Payment of Western Canada Marine Response Fees

- (a) Owner shall pay all reasonable Western Canada Marine Response Fees which are due and payable. Owner 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 Owner for the Western Canada Marine Response Fees and Taxes incurred. Any invoice submitted by Western Canada Marine Response pursuant to this Section shall be due and payable by Owner by the end of the tenth (10th) business day following receipt of the invoice by Owner and, subject to the terms of Section 5.5 of this Agreement, any invoice not paid in full by the end of the tenth (10th) business day following receipt of the invoice by Owner 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 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 Owner at such time as is indicated on the receipt of confirmation notice received by Western Canada Marine Response for such electronic mail.

6.3 Funding for Response Beyond 48 Hours

- (a) In those cases where the provisions of Section 4.2 apply, Western Canada Marine Response shall submit an invoice to Owner for the Marine Spill Response Services provided. Unless the parties otherwise agree, such invoice shall be paid by Owner by the end of the tenth (10th) business day following Owner's receipt of the invoice.
- (b) After Western Canada Marine Response has submitted the initial invoice, Owner and Western Canada Marine Response shall agree on how Owner will fund the remainder of the response. In reaching such agreement, Owner 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.
- (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 Owner shall pay all outstanding 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.

6.4 Payments in Good Standing

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

6.5 Disputed Invoices

If Owner objects to any item or statement shown on an invoice, Owner shall promptly notify Western Canada Marine Response of the dispute, specifying in reasonable detail the factual basis for the dispute and Owner 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 Owner'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 Owner was obligated to pay Western Canada Marine Response under the terms of this Agreement. Owner 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.

6.6 Audits

Owner shall have the right at all reasonable times and intervals to make such reasonable inspection or audit of such portion of the books and records maintained by Western Canada Marine Response as relate to the invoices submitted in respect of Marine Spill Response Services performed under the terms of this Agreement. Western Canada Marine Response shall make available to Owner such information and materials (including time sheets for personnel and equipment) as Owner 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 Owner for any costs incurred by Western Canada Marine Response in assisting Owner 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 Owner, Western Canada Marine Response and Owner shall promptly make the appropriate corrections and adjustments.

6.7 Fees Remain Payable

Owner'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 10.1, or any other event or circumstance which would otherwise effect a suspension or termination of the obligations of Western Canada Marine Response.

6.8 Currency

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

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of Owner

Owner 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) If the Owner is not a natural person, the Owner 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 the Owner;
- (b) Owner 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 Owner of any of its obligations provided under this Agreement;
- (c) this Agreement is a valid and binding obligation of Owner, 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
 - (a) that equitable remedies such as specific performance and injunction are in the discretion of the court from which they are sought;
 - (d) Owner 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; and
 - (e) Owner is a member of a protection and indemnity club or association which is a member of the international group of protection and indemnity clubs, party to the Tanker Owners Voluntary Agreement concerning Liability for Oil Pollution (TOVALOP), or a member of an organization providing equivalent P & I cover.

ARTICLE 8

BOOKS AND RECORDS

8.1 Books and Records

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

8.2 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 Owner in respect of the ships owned or operated by Owner as may be reasonable under the circumstances. Owner 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 Owner and Owner 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 Owner's staff to perform any functions reasonably required by the Western Canada Marine Response auditors in connection with such audit.

8.3 Adjustments

In the event an audit indicates a discrepancy between the actual volumes of Bulk Oil Cargo Handled on any particular occasion and Owner's reported volumes of Bulk Oil Cargo Handled on the same occasion, Owner 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 9 ALLOCATION OF RISK

9.1 Nature of Relationship

Western Canada Marine Response and Owner recognize and agree that, in connection with providing the Marine Spill Response Services under this Agreement:

- (a) any Marine Spill Response Services provided under this Agreement are for the sole benefit of the Owner;
- (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 Owner, or anyone asserting rights on its behalf, will not challenge Western Canada Marine Response's right to be indemnified as provided in this Article 9.

Accordingly, Western Canada Marine Response and Owner 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 Owner as set forth in this Article 9.

9.2 Liability between Western Canada Marine Response and Owner

- (a) Western Canada Marine Response and its directors, officers, agents, contractors and employees shall have no liability to Owner, 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 Owner or any of Owner'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 Owner, 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 Western Canada Marine Response or any of its directors, officers, agents, contractors or employees in performing the Approved Marine Spill Response Services unless such act or omission is a result of the negligence of Western Canada Marine Response or any of its directors, officers, agents, contractors or employees in carrying out the Initial Response or any Work Order, and Western Canada Marine Response, its directors, officers, agents, contractors or employees are unable to rely on their respective immunities under the Act.

- (c) Owner 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 performing Approved Marine Spill Response Services 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 negligence or the negligence of Western Canada Marine Response's directors, officers, agents, contractors or employees in carrying out the Initial Response or any Work Order, and except to the extent that Western Canada Marine Response, its directors, officers, employees, contractors and agents are able to rely on their respective immunities under the Act. Owner 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 Owner, its directors, officers, employees and agents from and against all claims, losses, damages, costs, expenses and other liabilities incurred by Owner and its directors, officers, employees and agents as a result of the negligence of Western Canada Marine Response, its directors, officers, agents, contractors or employees in carrying out the Initial Response or any Work Order.

ARTICLE 10 TERMINATION

10.1 Termination by Western Canada Marine Response

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

- (a) in the event that the Minister of Transport revokes Western Canada Marine Response's certification as a response organization with 10,000 tonne rated capability;
- (b) if Owner has failed to pay the Registration Fee, any 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 Owner has knowingly created or if, after learning of it, has failed to correct, a discrepancy between the actual volumes of Bulk Oil Cargo Handled on a particular occasion and Owner's reported volumes of Bulk Oil Cargo Handled in respect of such occasion;
- (d) if Owner 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 Owner has breached any representation or warranty or other term of this Agreement and failed to cure such breach within five (5) days after Owner 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.

10.2 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 under this Agreement shall cease;
- (c) Western Canada Marine Response shall cease to perform any Marine Spill Response Services; and
- (d) Owner shall pay to Western Canada Marine Response any outstanding Membership Fees, 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.

10.3 No Reimbursement of Membership Fees

Owner shall not be entitled to receive a refund of all or any portion of the Registration Fee or the Bulk Oil Cargo Fees paid by Owner except where termination of this Agreement is due to the revocation by the Minister of Transport of Western Canada Marine Response's certification as a response organization with 10,000 tonne rated capability in which case the Registration Fee shall be refunded on a pro-rated basis.

10.4 Survival

Notwithstanding the termination of this Agreement by Western Canada Marine Response or Owner pursuant to this Article, the provisions of this Section, Section 10.2, and Article 7, Article 8 and Article 9 shall survive any such termination.

ARTICLE 11 FORCE MAJEURE

11.1 Force Majeure

If during the term of this Agreement there should arise or occur any event or circumstance beyond the reasonable control of Western Canada Marine Response or Owner, 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 Owner 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.

11.2 Exception for Failure by Either Party

Neither party will be entitled to the benefits of the provisions of Section 10.1 if and to the extent that its inability to duly perform any obligation hereunder was caused or contributed to by its failure to act in a reasonable and prudent manner under the circumstances.

11.3 Other Aspects of Force Majeure

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

ARTICLE 12 GENERAL PROVISIONS

12.1 Time

Time is of the essence of this Agreement.

12.2 Notices

All notices required or permitted to be given to a party under this Agreement shall be in writing and delivered by hand, mailed by registered first-class airmail postage prepaid, or sent by facsimile or e-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 e-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.

12.3 Amendments to Agreement

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

12.4 Amendments to Schedules

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

12.5 Independent Contractor

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 Owner.

12.6 Further Assurances

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

12.7 Benefit of Agreement

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

12.8 Entire Agreement

The provisions of this Agreement, including the schedules to this Agreement, constitute the entire agreement between the parties respecting the subject matter of this Agreement and supersede all previous understandings and agreements, whether verbal or written, between the parties with respect thereto.

12.9 Governing Law

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

12.10 Assignment

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

12.11 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.

12.12 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.

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

This document is Schedule A to the Ship (Bulk Oil) Membership Agreement and Confirmation of Arrangement under Subsection 167(1) of *Canada Shipping Act, 2001* (the "Agreement") between _____ ("Member") and Western Canada Marine Response Corporation (WCMRC) Arrangement. 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:

Ship Name(s) with registration numbers.

Person(s) Authorized to Implement Arrangement

1. Vessel _____

Name _____

Registration Number _____

24/7 Contact number _____

2. Vessel _____

Name _____

Registration Number _____

24/7 Contact number _____

3. Vessel _____

Name _____

Registration Number _____

24/7 Contact number _____

4. Vessel _____

Name _____

Registration Number _____

24/7 Contact number _____

* attached a separate list if necessary

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 Member shall be subject to:

- a) receipt by WCMRC of the above-mentioned Registration Fees and Taxes on or before the Effective Date of 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 (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



SCHEDULE 1
SATISFACTORY EVIDENCE AS PROOF OF NON-RESIDENCE
AND NON-REGISTRATION FOR GST/HST PURPOSES

This will confirm that, _____, is a company incorporated in a country other than Canada, where all or most of its activities consists of international shipping and all or most of its revenues is derived from shipping, and is therefore considered not a resident of Canada for GST/HST purposes.

Where applicable, I agree to to advise Western Canada Marine Response Corporation (ap@wcmrc.com) in the event that there is any change to my residence stats or should I become registered for the purpose of the Excise Tax Act.

Date

Signature of Authorized Individual

Name of Authorized Individual

Company Name

Address
