

**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. Each of the members of the Response Organization Group has obtained certification as a response organization with response capability within its defined geographic area of response for spills up to 10,000 tonnes;

C. Response Organization Group 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 the specified geographic area of response of any of the members of the Response Organization Group;

D. Members of the Response Organization Group are willing to provide to Owner marine spill response services within their defined geographic area of response 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 I.  
DEFINITIONS AND INTERPRETATION**

**1.1 Definitions** - For the purposes of this Agreement the following words and phrases will have the following meanings:

**"Act"** means the *Canada Shipping Act, 2001* as amended;

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

Schedule A	-	Description of Geographic Areas of Response
Schedule B	-	Additional Arrangements Form
Schedule C	-	Definition of Oil

**"Applicable Response Organization"** means the member of the Response Organization Group having the defined geographic area of response within which:

- (i) Bulk Oil Cargo is unloaded from or (in the case of Bulk Oil Cargo intended for destinations outside Canada) loaded onto each of Owner's ships at Non-Member Oil Handling Facilities; or
- (ii) Owner requests Marine Spill Response Services;

**"Applicable Response Organization Fees"** has the meaning set forth in Section 6.1 of this Agreement

**"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 Applicable Response Organization by reason of Applicable Response Organization having undertaken only those actions carried out during the Initial Response or specifically referred to in Work Orders;

**"Atlantic Provinces"** means the Provinces of Nova Scotia, New Brunswick, Newfoundland and Labrador, and Prince Edward Island;

**"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 by each Applicable Response Organization as published in the *Canada Gazette* as same may be amended from time to time;

**"Effective Date"** is the date set forth on page 1 of this Agreement;

**"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 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 and any/or any applicable provincial 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;

**"Membership Fees"** means the Registration Fee and the Bulk Oil Cargo Fees payable by Owner in respect of each ship owned or operated by Owner within Response Organization Group's geographic area of response;

**"Non-Member Oil Handling Facility"** means any oil handling facility located in Response Organization Group's geographic area of response, or on lands adjacent thereto, but not listed in the schedule of member oil handling facilities published by Response Organization Group from time to time;

**"Oil Handling Facility"** means a facility of the nature described in section 2 of the Act, as amended from time to time.

**"Oil"** means oil and those oil products described in Schedule "C" to this Agreement;

**"Plan of Action"** has the meaning ascribed to it in Section 4.5 of this Agreement;

**"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 Owner and collectable by Response Organization Group or a Applicable Response Organization 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 and four and six-tenths (2204.6) pounds;

**"Waters"** has the meaning given to it for purposes of the Act;

**"Work Order"** has the meaning ascribed to it in Section 4.5 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 II MEMBERSHIP**

2.1 **Membership Privileges** - Upon payment of Membership Fees in accordance with the terms of this Agreement, Owner shall be entitled:

(a) for purposes of its oil pollution emergency plan (as referred to in the Act) prepared in relation to the Ship, to identify each response organization of the Response Organization Group as the response organizations with which Owner has an arrangement in Response Organization Group's geographic area of response for the Ship; and

(b) upon the occurrence of a spill of Oil on waters within the Response Organization Group's geographic area of response to request the response organization in whose geographic area of response the spills occurs (the "Applicable Response Organization") to respond and provide Marine Spill Response Services. Where two response organizations are requested to provide Marine Spill Response Services concurrently, each shall, subject to Section 9.2 (e), be an Applicable Response Organization for purposes of this Agreement.

2.2 **More than One Ship** - Where Owner owns or operates more than one ship which navigates or engages in marine activities in Response Organization Group's geographic area of response and for which Owner

wishes to obtain an arrangement from Response Organization Group, Owner shall pay fees in respect of each such ship, and the parties shall complete an Additional Arrangements Form identifying the additional ships in respect of which an arrangement is to be provided under this Agreement, all on the terms set for in Schedule "B" to this Agreement. All references to the "Ship" shall refer to the ship described on the face page of this Agreement and to each ship described in Schedule "B" hereto, as the case may be.

### **ARTICLE III. BULK OIL CARGO FEES**

**3.1 Bulk Oil Cargo Fees** - Owner shall pay to Applicable Response Organization a bulk oil cargo fee (the "Bulk Oil Cargo Fee") which shall be calculated as follows:

- (a) in respect of all Bulk Oil Cargo which is unloaded from or (in the case of Bulk Oil Cargo intended for a destination outside Canada) loaded onto each of Owner's ships at Non-Member Oil Handling Facilities within the geographic area of response of ECRC or ALERT, the Bulk Oil Cargo Fee shall be calculated by obtaining the product of the number of Tonnes of Bulk Oil Cargo either unloaded from or (in the case of Bulk Oil Cargo intended for a destination outside Canada) loaded onto Owner's ships at such Non-Member Oil Handling Facilities and the Bulk Oil Cargo Fee Rate published in the *Canada Gazette* by the Applicable Response Organization, plus all applicable Taxes payable in connection with the Bulk Oil Cargo Fees.
- (b) in respect of all Bulk Oil Cargo which is unloaded from or (in the case of Bulk Oil Cargo intended for a destination outside Canada) loaded onto each of Owner's ships in the geographic area of response of PTMS the Bulk Oil Cargo Fee shall be calculated by obtaining the product of the number of Tonnes of Bulk Oil Cargo either unloaded from or (in the case of Bulk Oil Cargo intended for a destination outside Canada) loaded onto Owner's ships at the Oil Handling Facility and the Bulk Oil Cargo Fee Rate published in the *Canada Gazette* by PTMS, plus all applicable Taxes, payable in connection with the Bulk Oil Cargo Fees.

**3.2 Calculation of Volume** - The volume of Bulk Oil Cargo which is unloaded from or (in the case of Bulk Oil Cargo intended for a destination outside Canada) loaded onto Owner's ship shall, without regard to title, be measure in Tonnes at the shore side of the dock flange at the Non-Member Oil Handling Facility. For purposes of Section 3.1, the chargeable quantity of Bulk Oil Cargo in respect of which the Bulk Oil Cargo Fee is payable shall include both free water and water and sediment in suspension (S&W or BS&W).

**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** - Bulk Oil Cargo Fees shall be payable by Owner forthwith upon unloading or (in the case of Bulk Oil Cargo intended for a destination outside Canada) loading at the Oil Handling Facility referred to in Section 3.1, and any Bulk Oil Cargo 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 unloaded or (in the case of Bulk Oil Cargo intended for destination outside Canada) loaded, as the case may be.

**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 a destination outside Canada) load Bulk Oil Cargo, is a Non-Member Oil Handling Facility so as to

necessitate the payment of Bulk Oil Cargo Fees to ECRC or ALERT by Owner under the terms of this Agreement. If Owner has failed in any case to pay Bulk Oil Cargo Fees required by this Agreement, Owner shall, in addition to being liable to Applicable Response Organization 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 destination outside Canada) loaded, as the case may be.

### **3.6 Reporting Requirements**

- (a) Owner shall within ten (10) days following each occasion when Owner:
- (i) in the case of ECRC and ALERT, unloads or (in the case of Bulk Oil Cargo intended for a destination outside Canada) loads Bulk Oil Cargo at a Non-Member Oil Handling Facility within Applicable Response Organization's geographic area of response; and
  - (ii) in the case of PTMS, unloads or (in the case of Bulk Oil Cargo intended for a destination outside of Canada) loads Bulk Oil Cargo at an Oil Handling Facility within the geographic area of response of PTMS.

provide Applicable Response Organization with a report indicating the ship name, the name and address of the Oil Handling Facility at which Bulk Oil Cargo was loaded or unloaded, the date, the total Tonnes of Bulk Oil Cargo unloaded or (in the case of Bulk Oil Cargo intended for a destination outside Canada) loaded and, for all loaded volumes, the destination outside Canada. Applicable Response Organization agrees that the information provided to Applicable Response Organization in respect of volumes of Bulk Oil Cargo shall remain confidential and will not be disclosed by Applicable Response Organization, its directors, officers, agents or employees (including disclosure to any director, officer, agent or employee of Applicable Response Organization not directly requiring such information to carry out his or her duties to Applicable Response Organization) other than as part of the aggregate volumes of Bulk Oil Cargo of all members of Applicable Response Organization.

- (b) For greater certainty, it is understood and agreed that all information provided by Owner to Applicable Response Organization pursuant to this clause, and any other information as to Bulk Oil Cargos carried by Owner, shall be confidential to the Applicable Response Organization and shall not, except to the extent Applicable Response Organization elects to disclose aggregate volumes in accordance with clause 3.6(a), be disclosed by applicable Response Organization to any other Member of the Response Organization Group.

## **ARTICLE IV. MARINE SPILL RESPONSE SERVICES**

**4.1 Management and Control of Spill** - Upon the occurrence within Applicable Response Organization's geographic area of response of a spill of Oil on Waters, Owner shall (where it has requested Applicable Response Organization to respond to such spill) be responsible for the management and control of all response activities.

**4.2 Initial Request and Response** - If Owner requests Applicable Response Organization to respond to a spill of Oil on Waters in Applicable Response Organization's geographic area of response ("Initial Request"), Applicable Response Organization 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 Applicable Response Organization is the person authorized to implement the arrangement, the name of the ship, the type of

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Oil involved, the contract number assigned to this Agreement and the nature and extent of the Marine Spill Response Services required. If the Initial Request is not provided in writing, then it shall be confirmed in writing forthwith. Unless otherwise agreed between the parties, the Initial Response shall consist of the provision of Marine Spill Response Services for up to forty-eight (48) hours.

#### **4.3 Twenty-four Hour Consultation -**

(a) If within twenty-four (24) hours of the Initial Request, Applicable Response Organization and Owner agree that the clean-up can be completed in the course of the Initial Response, then Applicable Response Organization shall continue providing Marine Spill Response Services until the spill is cleaned up.

(b) If within twenty-four (24) hours of the Initial Request, Applicable Response Organization and Owner agree that the clean-up cannot be completed within the course of the Initial Response, then Owner shall notify Applicable Response Organization as to whether or not Applicable Response Organization is to continue providing Marine Spill Response Services beyond the Initial Response.

#### **4.4 No Further Applicable Response Organization Response -**

(a) If Owner has notified Applicable Response Organization that Owner does not want Applicable Response Organization to continue to provide Marine Spill Response Services beyond the Initial Response, then Applicable Response Organization shall cease providing Marine Spill Response Services at the end of the Initial Response and Applicable Response Organization shall in respect of such spill be under no obligation to provide further Marine Spill Response Services to Owner.

(b) If Owner has failed to notify Applicable Response Organization within the initial twenty-four (24) hour period, and Applicable Response Organization has been unable to obtain instructions from Owner, then Applicable Response Organization shall be deemed to have been notified and requested to cease providing Marine Spill Response Services at the end of the Initial Response.

#### **4.5 Response Beyond 48 Hours -**

(a) If Owner has notified Applicable Response Organization within the initial twenty-four (24) hours that Owner wishes Applicable Response Organization to continue to provide Marine Spill Response Services beyond the forty-eight (48) hour period of the Initial Response then, by the end of the Initial Response, Applicable Response Organization shall provide Owner with a plan of action (the "Plan of Action") and, if agreed to by the parties, subsequent Plans of Action outlining the Marine Spill Response Services which in Applicable Response Organization's opinion are required to clean up the spill.

(b) Upon receipt of Plan of Action, Owner shall determine the extent to which it wishes Applicable Response Organization to perform the Marine Spill Response Services set forth in the Plan of Action, and the parties shall consult and agree on the Marine Spill Response Services which Applicable Response Organization is to undertake and complete.

(c) The parties shall in respect of each Plan of Action evidence their agreement by signing a work order (the "Work Order"). Each Work Order shall include a description of the Marine Spill Response Services to be performed by Applicable Response Organization, an estimate of the Applicable Response Organization Fees payable in connection with the Marine Spill Response Services, a facsimile number to which invoices may be sent to Owner, and any other information required under Section 6.3 of this Agreement.

(d) Upon being signed by both parties, a Work Order shall become an integral part of this Agreement.

(e) Plans of Action and Work Orders may be amended by the parties from time to time as circumstances require. Upon preparation of an amended Plan of Action the parties shall consult and Owner will determine whether Owner wishes Applicable Response Organization to undertake any additional Marine Spill Response Services recommended in an amended Plan of Action. All such additional services shall be documented in an amended Work Order and all amendments to a Work Order shall be in writing and signed by both parties.

(f) Applicable Response Organization agrees to provide Marine Spill Response Services to Owner only within Applicable Response Organization's geographic area of response; provided however that in the event Applicable Response Organization for any reason, whether by agreement or otherwise, provides Marine Spill Response services outside of Applicable Response Organization's geographical area of response, the terms and conditions contained in this Agreement shall continue to apply.

(g) Where Applicable Response Organization proposes use of a dedicated oil spill response vessel as part of its Plan of Action, Applicable Response Organization may require the execution by Owner, of a specific Work Order containing additional terms and conditions relating to the hire of such vessel.

(h) It is understood and agreed that all services provided by Applicable Response Organization under this Agreement (including for greater certainty, all Marine Spill Response Services) and in respect of which Applicable Response Organization Fees are payable by Owner hereunder, shall constitute services supplied for the operation of the Ship entitling Applicable Response Organization to maintain a claim against the Ship in respect of all amounts due and owing hereunder. Owner confirms that it is the registered and beneficial owner or a demise charterer with authority to contract on behalf of the Ship.

#### **4.6 Competing Requests for Services -**

(a) Notwithstanding any other provision of this Agreement, unless otherwise directed by the appropriate governmental Lead Agency, Applicable Response Organization shall not be obligated to provide requested Marine Spill Response Services or such parts thereof as are already committed or being provided to another party. However requested Marine Spill Response Services or such parts thereof not already committed or being provided to another party shall be provided to Owner.

(b) In the event of contemporaneous or overlapping requests for Marine Spill Response Services, Owner acknowledges that Applicable Response Organization shall respond to the competing requests as directed by the appropriate governmental Lead Agency.

**4.7 Territory** - Applicable Response Organization agrees to provide Marine Spill Response Services in Applicable Response Organization's geographical area of response only.

**4.8 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, Applicable Response Organization 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 Applicable Response Organization Fees and Taxes.

**4.9 Right to Subcontract** - Applicable Response Organization 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.

**4.10 Recovered Oil and Waste** - The parties acknowledge that, notwithstanding any assistance which Applicable Response Organization provides to Owner, Applicable Response Organization shall not be responsible for the disposal of waste products.

## **ARTICLE V. PERFORMANCE OF SERVICES**

**5.1 Standard of Applicable Response Organization Performance** - Subject to the other terms and conditions of this Agreement, Applicable Response Organization 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. Owner acknowledges that no member of Response Organization Group makes any representation or warranty as to the skill, competence or capabilities of any other member of Response Organization Group.

### **5.2 Applicable Response Organization Safety Obligations -**

(a) Applicable Response Organization 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 Response Organization safety policies and procedures (a copy of which policies and procedures Applicable Response Organization shall make available to Owner upon request). However, Applicable Response Organization 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 Applicable Response Organization to a standard that would be unreasonable under the actual conditions of a particular spill, and all Applicable Response Organization 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) Applicable Response Organization 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 Applicable Response Organization's reasonable judgment possibly causing personal injury or death or property damage or loss. Applicable Response Organization 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 Applicable Response Organization.

### **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



Applicable Response Organization 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 Applicable Response Organization upon request).

(b) Owner shall report to Applicable Response Organization 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 Applicable Response Organization's expense, furnish Applicable Response Organization 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 Applicable Response Organization to take any action under this Agreement in a manner which would, based on the reasonable judgment of Applicable Response Organization:

(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 Applicable Response Organization, or any third party or jeopardize the safety of any Applicable Response Organization 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 Applicable Response Organization 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 Applicable Response Organization to take any instructed action shall not affect any obligation of Applicable Response Organization to take instructed actions under circumstances that would not result in the happening of the events specified in the preceding Subsections (a)--(c).

## **ARTICLE VI. APPLICABLE RESPONSE ORGANIZATION FEES AND PAYMENT**

### **6.1 Applicable Response Organization Fees -**

(a) Applicable Response Organization Fees means all reasonable fees charged by Applicable Response Organization 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, which shall include the costs associated with moving equipment to and from the work site, cleaning, repairing or replacing equipment and transporting equipment to the location from which it was originally obtained.

(b) Without limiting the foregoing, where Applicable Response Organization has published a schedule of fees in respect of any of the items referred to in Section 6.1(a), the charges associated with those items will be in accordance with the most currently published schedule.

(c) Schedules of Applicable Response Organization Fees are available upon request.

## **6.2 Payment of Applicable Response Organization Fees -**

(a) Owner shall pay all reasonable Applicable Response Organization Fees which are due and payable. Owner shall also be liable for and shall pay to Applicable Response Organization an amount equal to any Taxes.

(b) Applicable Response Organization shall submit an invoice to Owner for the Applicable Response Organization Fees and Taxes which become due in connection therewith. Except as otherwise provided under Section 6.3 of this Agreement, any invoice submitted by Applicable Response Organization in respect of Applicable Response Organization Fees shall be due and payable by Owner by the end of the fifth (5th) business day following receipt of the invoice by Owner and, subject to the terms of Section 6.5 of this Agreement, any invoice not paid in full by the end of the fifth (5th) 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 sixth (6th) day following Owner's receipt of the invoice.

(c) Invoices may be submitted by facsimile and a facsimile 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 Applicable Response Organization for such facsimile.

## **6.3 Funding for Response Beyond 48 Hours -**

(a) In those cases where the provisions of Section 4.5 (Response Beyond 48 Hours) apply, Applicable Response Organization shall submit an invoice to Owner for the Marine Spill Response Services provided during the first forty-eight (48) hours following the Initial Request. Unless the parties otherwise agree, such invoice shall be paid by Owner by the end of the fifth (5th) business day following Owner's receipt of the invoice.

(b) In conjunction with the preparation of the Work Order, Owner and Applicable Response Organization shall agree on how Owner will fund the remainder of the period during which it is anticipated that Marine Spill Response Services will be provided by Applicable Response Organization. In reaching such agreement, Owner shall be required to satisfy Applicable Response Organization that any method of funding will, when implemented, permit all invoices rendered by Applicable Response Organization during the relevant period to be paid in full on such terms as are acceptable to Applicable Response Organization under the circumstances. Any decision to accept any particular method of funding shall be solely within the discretion of Applicable Response Organization. If the parties are unable to agree on a method of funding acceptable to Applicable Response Organization, Applicable Response Organization will require cash.

(c) The parties shall set forth in the Work Order, or any amendment of a Work Order, their agreement as to funding and, in the event of any inconsistency between the provisions of a Work Order or any amendment thereof and this Agreement, the provisions of the Work Order or any amendment thereof shall govern.

(d) In the event that the parties are unable to agree on an acceptable means by which Marine Spill Response Services are to be funded, Applicable Response Organization shall cease to provide Marine Spill Response Services and shall carry out any required demobilization activities, and Owner shall pay all outstanding Applicable Response Organization Fees and Taxes due in connection therewith, including all Applicable Response Organization Fees and Taxes set forth on any final invoice submitted by Applicable Response Organization.

**6.4 Payments in Good Standing** - Marine Spill Response Services shall only be provided by Applicable Response Organization if Owner has paid all outstanding Membership Fees and Applicable Response Organization Fees and Taxes.

**6.5 Disputed Invoices** - If Owner objects to any item or statement shown on an invoice, Owner shall promptly notify Applicable Response Organization of the dispute, specifying in reasonable detail the factual basis for the dispute and Owner shall pay to Applicable Response Organization in accordance with the terms of this Agreement, all portions of the invoice which are not in dispute and eighty per cent (80%) of such portions of the invoice as are in dispute. 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 Applicable Response Organization 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 Applicable Response Organization of notice of a dispute in respect of any particular invoice, the dispute shall be referred to arbitration at Ottawa, Canada in accordance with the AMAC Maritime Arbitration Rules. The parties agree that any decision of an arbitrator appointed under the AMAC Maritime Arbitration Rules shall be final and binding. Where a dispute does not exceed Cdn. \$50,000 the AMAC small claims procedure (Rule 31) shall apply. Notwithstanding anything herein contained, if Applicable Response Organization is ALERT the arbitration shall occur in Saint John, New Brunswick and if Applicable Response Organization is PTMS the arbitration shall occur in Halifax, Nova Scotia.

**6.6 Provision of Information** - Applicable Response Organization 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 Applicable Response Organization under this Agreement, provided that Applicable Response Organization shall be reimbursed by Owner for any costs incurred by Applicable Response Organization in assisting Owner and Applicable Response Organization Fees shall themselves not be subject to review under the terms of this Agreement. In the event a review indicates an error in the prior calculation of Applicable Response Organization Fees, Applicable Response Organization or the Owner (as the case may be) shall promptly make the appropriate corrections, adjustments and payments.

**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 11.1, or any other event or circumstance which would otherwise effect a suspension or termination of the obligations of Applicable Response Organization.

**6.8 Currency** - All fees payable under this Agreement shall be paid in Canadian currency.

## **ARTICLE VII REPRESENTATIONS AND WARRANTIES**

**7.1 Representations and Warranties of Owner** - Owner represents and warrants to Applicable Response Organization, with the intent that Applicable Response Organization will rely upon such representations and warranties in entering into this Agreement, that:

(a) Owner is a corporation duly incorporated and validly existing under the laws of its jurisdiction of incorporation 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 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 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 Applicable Response Organization Fees and Taxes which may accrue in the course of carrying out Marine Spill Response Services under the terms of this Agreement;

(e) Operator is and will continue to be a member of a protection and indemnity club or association which is a member of the international group of protection and indemnity clubs or has and will continue to maintain an arrangement through underwriters providing first class security; and

(f) As of the Effective Date, Schedule "B" hereto contains a complete list of all ships owned or operated by Owner within Response Organization Group's geographic area of response, and in respect of which Owner is required to enter into an arrangement with a response organization pursuant to the Act.

## **ARTICLE VIII 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 Bulk Oil Cargo Fees and Applicable Response Organization 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** - Applicable Response Organization 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 Applicable Response Organization's auditors such information and material as may be required by Applicable Response Organization's auditors for the purposes of such audit. It is acknowledged that, in connection with such audit, the Applicable Response Organization 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 Applicable Response Organization 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 Applicable Response Organization 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 unloaded or (in the case of Bulk Oil Cargo intended for destinations outside Canada) loaded by Owner on any particular occasion and Owner's reported volumes of Bulk Oil Cargo unloaded or (in the case of Bulk Oil Cargo intended for destinations outside Canada) loaded 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 IX. ALLOCATION OF RISK**

**9.1 Nature of Relationship** - Applicable Response Organization 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 Owner;
- (b) the extraordinary and emergency nature of the Marine Spill Response Services may require actions by Applicable Response Organization that may give rise to a variety of claims;
- (c) Applicable Response Organization has based the charges for and availability of 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 Applicable Response Organization's right to be indemnified as provided in this Article IX.

Accordingly, Applicable Response Organization 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 Applicable Response Organization and Owner as set forth in this Article IX.

**9.2 Liability between Applicable Response Organization and Owner -**

(a) Applicable Response Organization its directors, officers, agents, contractors and employees shall have no liability to Owner, for:

- (i) any loss or damage, including injury or loss of life, 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 Owner or any of its directors, officers, contractors, agents or employees.

(b) Applicable Response Organization its directors, officers, agents, contractors and employees shall have no liability to Owner, for:

- (i) any loss or damage, including injury or loss of life, 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 Applicable Response Organization or any of its directors, officers, agents, contractors or employees in performing Approved Marine Spill Response Services unless such act or omission is a result of the negligence of Applicable Response Organization or any of its directors, officers, agents, contractors or employees in carrying out the Initial Response or any Work Order, and Applicable Response Organization, 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 Applicable Response Organization, other response organizations hereunder and their directors, officers, employees, contractors and agents from and against all claims, losses, damages, costs, expenses and other liabilities arising against or incurred by Applicable Response Organization, other response organizations hereunder or their directors, officers, employees, contractors or agents as a result of Applicable Response Organization performing Approved Marine Spill Response Services, except where any such claim, loss, damage, cost, expense or other liability is incurred by Applicable Response Organization, other response organizations hereunder, their directors, officers, employees, contractors or agents as a result of Applicable Response Organization's own negligence or the negligence of Applicable Response Organization's directors, officers, agents, contractors or employees in carrying out the Initial Response or any Work Order, and except to the extent that Applicable Response Organization, its directors, officers, employees, contractors and agents are able to rely on their respective immunities under the Act. Owner acknowledges that Applicable Response Organizations shall not be required to exhaust its recourses against any third party as a condition precedent to claiming indemnification under this Section.

(d) Except to the extent Applicable Response Organization, its directors, officers, agents, contractors or employees are able to rely on their respective immunities under the Act, Applicable Response Organization shall indemnify, defend and hold harmless Owner and 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 Applicable Response Organization, its directors, officers, agents, contractors or employees in carrying out the Initial Response or any Work Order.

(e) Owner acknowledges and agrees that in circumstances where Marine Spill Response Services are being provided by Applicable Response Organization, the other members of Response Organization Group shall have no responsibility or liability therefore whether pursuant to this Agreement or otherwise and Owner shall look only to Applicable Response Organization providing the Marine Spill Response Services in respect of all matters arising in conjunction with the provision of the Marine Spill Response Services.

## **ARTICLE X TERMINATION**

**10.1 Termination by Response Organization Group** - This Agreement may be terminated by Response Organization Group effective immediately upon notice to Owner:

(a) in the event that the Minister of Transport revokes the certification as a response organization with 10,000 tonne rated capability of any member of the Response Organization Group;

(b) if Owner has failed to pay any fee as required under 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 unloaded or (in the case of Bulk Oil Cargo intended for destinations outside Canada) loaded on a particular occasion and Owner's reported volumes of Bulk Oil Cargo unloaded or (in the case of Bulk Oil Cargo intended for destinations outside Canada) loaded in respect of such occasion;

(d) if Owner has become insolvent, commits an act of bankruptcy, suspends 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 Response Organization Group advising of such breach.

This right of termination is in addition to any of Response Organization Group's rights and remedies under this Agreement and at law or in equity and may be exercised by any member of Response Organization Group.

**10.2 Consequences of Termination** - Upon the termination of this Agreement:

(a) Response Organization Group shall be entitled to advise the Minister of Transport of such termination;

(b) all obligations of Response Organization Group to Owner under this Agreement shall cease;

(c) Applicable Response Organization shall cease to perform any Marine Spill Response Services for Owner; and

(d) Owner shall pay to Applicable Response Organization and/or Response Organization Group any amounts outstanding under this Agreement.

**10.3 No Reimbursement of Membership Fees** - Owner shall not be entitled to receive a refund of all or any portion of Membership Fees paid by Owner except where termination of this Agreement is due to the revocation by the Minister of Transport of the certification as a response organization with 10,000 tonne rated capability of any member of the Response Organization Group in which case Registration Fee shall be refunded on a pro-rated basis.

**10.4 Survival** - Notwithstanding the termination of this Agreement by Response Organization Group or Owner pursuant to this Article, the provisions of this Section, Section 10.2, and Articles VI, VIII and IX shall survive any such termination.

**ARTICLE XI.  
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 Applicable Response Organization 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 Applicable Response Organization 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 11.1 if and to the extent that its inability to duly perform any obligation hereunder was caused or contributed to by its failure to act in a reasonable and prudent manner under the circumstances, provided that the dispute shall not require either party to effect settlement of any labour disputes.

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

No party shall mail any notice during any period when postal workers are on strike or if a strike is imminent. Either party may change its address by giving notice of the change to the other party.

**12.3 Amendments to Agreement** - Subject to Section 12.4, this Agreement may not be amended except in writing executed by all the 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 initialling a new Schedule dated as of the effective date of such amendment or replacement.

**12.5 Independent Contractor** - Applicable Response Organization is an independent contractor in the performance of its obligations under this Agreement and neither Response Organization Group, the response organizations making up the Response Organization Group nor Applicable Response Organization'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 English Language** - It is the express wish of the parties that this Agreement and any related documents be drawn up and executed in English. Il est la volonté expresse des parties que cette convention et tous les documents s'y rattachant soient rédigés et signés en anglais.

**12.10 Governing Law** - This Agreement shall be interpreted in accordance with and governed by the laws of the Province of Ontario, except that in any instance in which Marine Spill Response Services are being provided by Applicable Response Organization all matters pertaining to the provision of such services, and the interpretation of this Agreement in relation thereto, shall be governed by the laws of the Province in which the registered office of the Applicable Response Organization providing the Marine Spill Response Services is located and the laws of Canada applicable therein.

**12.11 Assignment** - This Agreement shall not be assigned by Owner without the prior written consent of Response Organization Group, and any attempt to so assign it shall be null and void.

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

**12.13 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.

## **SCHEDULE A**

### **DESCRIPTION OF GEOGRAPHIC AREAS OF RESPONSE**

#### **Eastern Canada Response Corporation Ltd. (“ECRC”)**

***“Emergency Contact Number (613) 930-9690”***

ECRC’s Geographic Area of Response (GAR) covers the Canadian Waters south of the 60<sup>0</sup>N Latitude in the provinces of Newfoundland, Prince Edward Island, Nova Scotia, New Brunswick, Quebec, Ontario, Manitoba, Saskatchewan and Alberta, excluding the Waters in the primary area of response associated with the designated ports of Saint John, New Brunswick and Point Tupper, Nova Scotia.

The ECRC Geographic Area of Response includes, but is not limited, to the following;

- The Waters of the Atlantic Provinces;
- The Waters of James Bay, Hudson Bay and Ungava Bay and the waters in the Province of Quebec including the St. Lawrence River;
- The Waters of the Canadian Great Lakes system and connecting channels within the Province of Ontario including Lake Superior, the St. Mary’s River, Lake Huron, the St. Clair River, Lake St. Clair, the Detroit River, Lake Erie, Lake Ontario and the St. Lawrence River;
- The Waters of Lake Winnipeg;
- The Waters of the Athabasca River from Fort McMurray to Lake Athabasca; and
- The Waters of Lake Athabasca.

#### **Atlantic Emergency Response Team (“Alert”) Inc (“ALERT”).**

***“Emergency Contact Number (506) 632-4499”***

ALERT’s Geographic Area of Response covers all the Canadian Waters between the western boundary consisting of an arc having a 50 nautical mile radius about the point 45<sup>0</sup> 08’03”N, 66<sup>0</sup> 17’12”W, and the eastern boundary consisting of an arc having a 50 nautical mile radius about a point, centered on Cape Spencer Light.

#### **Point Tupper Marine Services Limited (“PTMS”)**

***“Emergency Contact Number (902) 625-1846”***

PTMS’s Geographic Area of Response covers all of the Waters within a circle having a fifty (50) nautical mile radius about Bearhead lights, 45<sup>0</sup> 33’ N, 61<sup>0</sup> 17’ W, but not extending north of the Canso Causeway into St. George’s Bay and the contiguous land mass and, for greater certainty, not to include the waters of the Bras D’or Lakes, St. Andrew’s Channel, St. Patrick’s Channel, Great Bras D’or and other waters internal to Cape Breton Island.

**SCHEDULE C**  
**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  
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