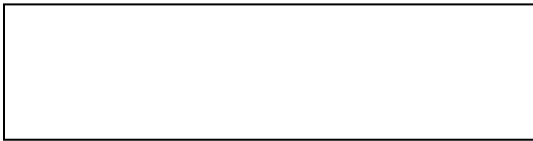


**WESTERN CANADA MARINE RESPONSE CORPORATION**

P.O. Box 82070, Burnaby, BC V5C 5P2  
(Deliveries: 201 Kensington Avenue, Burnaby, BC V5B 4B2)  
Emergency Contact No.: (604) 294-9116



Contract No.

**SHIP (NON-BULK OIL) MEMBERSHIP AGREEMENT  
AND CONFIRMATION OF ARRANGEMENT  
(UNDER SUBSECTION 167 (1) OF CANADA SHIPPING ACT, 2001)**

\_\_\_\_\_  
(Ship Owner)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Mailing Address)

\_\_\_\_\_  
(Person Authorized to Implement Arrangement)

\_\_\_\_\_  
(Address of Person Authorized to Implement Arrangement)

\_\_\_\_\_  
(E-mail of Person Authorized to Implement Arrangement)

\_\_\_\_\_  
(Telephone No. of Person Authorized to Implement Arrangement)

\_\_\_\_\_  
(Facsimile No. of Person Authorized to Implement Arrangement)

This Agreement confirms that, effective upon the execution of this Agreement by both Western Canada Marine Response Corporation, ("Western Canada Marine Response") and Ship Owner/Operator/Authorized Agent, Ship Owner ("Owner") shall, in accordance with the terms of Subsection 167 (1) of the *Canada Shipping Act, 2001* as amended (the "Act"), have an arrangement with Western Canada Marine Response, a certified response organization with a 10,000 tonne rated capability.

Unless otherwise terminated for the reasons set forth in the attached terms and conditions, and provided all relevant fees have been paid, this Agreement shall in respect of the above-named ship commence on the Effective Date and continue in effect for one (1) year. This Agreement shall be automatically renewed for successive one (1) year terms unless (a) one party gives notice to the other at least sixty (60) days prior to the date on which either the initial one (1) year term is due to expire or any subsequent one (1) year term is due to expire that such party does not wish to renew the Agreement; or (b) Owner has failed to pay any fees when due.

**THE TERMS AND CONDITIONS OF THIS ARRANGEMENT ARE SET FORTH BELOW AND CONSTITUTE AN INTEGRAL PART OF THE AGREEMENT BETWEEN WESTERN CANADA MARINE RESPONSE AND OPERATOR.**

**WESTERN CANADA MARINE RESPONSE CORPORATION**

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

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Date)

Ship Name: \_\_\_\_\_

Official Number: \_\_\_\_\_

Effective Date: \_\_\_\_\_

End Date: \_\_\_\_\_

Term of Coverage: 1 year

WESTERN CANADA MARINE RESPONSE'S GAR

Geographic Area of Response

For purposes of this Agreement, Western Canada Marine Response's GAR means the Waters bordering the Province of British Columbia (including the shorelines associated with such Waters), the inland Waters of British Columbia, and excluding Waters north of the 60<sup>th</sup> parallel of latitude. GAR means the geographic area of response within which a response organization intends to offer its services.

Registration Fee (annual): \$ \_\_\_\_\_

Taxes (as applicable): \$ \_\_\_\_\_

TOTAL: \$ \_\_\_\_\_

In the case of the initial one (1) year term of this Agreement, all fees shall be due and payable on or before the Effective Date. In the case of any renewal term of this Agreement, all fees shall be due and payable on or before the applicable anniversary date of the Effective Date. The Registration Fee is payable annually. All fees shall be payable in Canadian dollars and shall be determined, and from time to time, amended, in accordance with the provisions of the Act.

ALL RESPONSIBILITY FOR PAYING FEES AND TAXES OWED UNDER THIS AGREEMENT SHALL REST WITH SHIP OWNER/OPERATOR/AUTHORIZED AGENT.

\_\_\_\_\_  
(Ship Owner/Operator/Authorized Agent)

By: \_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Date)

**SCHEDULE 1**

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

I, \_\_\_\_\_,  
(name and title of authorized individual)

of \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(name and complete legal address of person, other than individual)

certify that \_\_\_\_\_  
(name of person, other than individual)

is **not** resident in Canada for purposes of the *Excise Tax Act* and that  
\_\_\_\_\_  
(name of person, other than individual)

is **not** registered under the Act.

Where applicable, I agree to advise **Chamber of Shipping of British Columbia** (as Agent for Western Canada Marine Response Corporation) #100 – 1111 West Hastings Street, Vancouver, BC V6E 2J3, in the event there is any change to the residence status of

\_\_\_\_\_  
(name of person, other than individual)

or should \_\_\_\_\_  
(name of person, other than individual)

become registered for purposes of the *Excise Tax Act*.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Authorized Individual

\_\_\_\_\_  
Title

**SCHEDULE 2**  
(Section 167 (1)(b))

**DECLARATION FOR A SHIP THAT IS IN WATERS  
SOUTH OF THE SIXTIETH PARALLEL OF NORTH LATITUDE**

Pursuant to subparagraph 167(1)(b)(i) of the *Canada Shipping Act, 2001*, I declare that

(a) with respect to pollution insurance coverage, the ship's insurer is:

\_\_\_\_\_  
(Name, address, phone number)

(b) in accordance with paragraph 167(1)(a) of the *Canada Shipping Act, 2001*, I have an arrangement with the certified response organization known as:

WESTERN CANADA MARINE RESPONSE CORPORATION

\_\_\_\_\_  
(Name, address, phone number)

(c) the arrangement is in respect of 10,000 tonnes of oil and in respect of the following waters: \_\_\_\_\_

(waters in which the ship is operating)

(d) pursuant to subparagraph 167(1)(b)(iii) of the *Canada Shipping Act, 2001*

i. the following persons are authorized to implement the arrangement described in paragraph (b):

\_\_\_\_\_  
(Name, telephone, fax and email)

\_\_\_\_\_  
(Name, telephone, fax and email) (attach addition pages if required)

ii. the following persons are authorized to implement the shipboard oil pollution emergency plan required by section 27 of the Vessel Pollution & Dangerous Chemical Regulations, SOR/2012-69.

\_\_\_\_\_  
(Name, telephone, fax and email)

\_\_\_\_\_  
(Name, telephone, fax and email) (attach addition pages if required)

\_\_\_\_\_  
(Signed by Owner/Operator)

\_\_\_\_\_  
(Date)

## TERMS AND CONDITIONS

### 1. Arrangement

- 1.1 In consideration of the fees payable by Owner, Owner is entitled, for purposes of Owner's 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 geographic area of response for the ship named in this Agreement.
- 1.2 In addition, this arrangement also entitles Owner, upon the occurrence of a spill of Oil on water within Western Canada Marine Response's geographic area of response, to request Western Canada Marine Response to respond and provide Marine Spill Response Services.
- 1.3 "Oil" means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products and, for greater certainty, includes oil as defined by MARPOL 73/78 Annex 1.
- 1.4 Where Owner owns or operates more than one ship which navigates or engages in marine activities in Western Canada Marine Response's geographic area of response and for which Owner wishes to obtain an arrangement from Western Canada Marine Response, 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 forth in Schedule "A" to this Agreement.

### 2. Initial Request and Response

- 2.1 Upon the occurrence within Western Canada Marine Response's geographic area of response 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.
- 2.2 If Owner requests Western Canada Marine Response to respond to a spill of Oil on water in Western Canada Marine Response's geographic area of response ("**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, the type of 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.
- 2.3 Unless otherwise agreed between the parties, the Initial Response shall consist of the provision of Marine Spill Response Services for up to 24 hours.
- 2.4 "**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. "**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.

### **3. Twelve Hour Consultation**

- 3.1** If within twelve (12) hours of the Initial Request Western Canada Marine Response and Owner agree that the clean-up can be completed in the course of the Initial Response, then Western Canada Marine Response shall continue providing Marine Spill Response Services until the spill is cleaned up.
- 3.2** If within twelve (12) hours of the Initial Request Western Canada Marine Response and Owner agree that the clean-up cannot be completed within the course of the Initial Response, then Owner shall notify Western Canada Marine Response as to whether or not Western Canada Marine Response is to continue providing Marine Spill Response Services beyond the twenty-four (24) hour period of the Initial Response.

### **4. No Further Western Canada Marine Response Response**

- 4.1** If Owner has notified Western Canada Marine Response that Owner does not want Western Canada Marine Response to continue to provide Marine Spill Response Services beyond the twenty-four (24) hour period of the Initial Response, then Western Canada Marine Response shall cease providing Marine Spill Response Services at the end of the Initial Response and Western Canada Marine Response shall in respect of such spill be under no obligation to provide further Marine Spill Response Services to Owner.
- 4.2** If Owner has failed to notify Western Canada Marine Response within the initial twelve (12) hour period, and Western Canada Marine Response has been unable to obtain instructions from Owner, then Western Canada Marine Response shall be deemed to have been notified and requested to cease providing Marine Spill Response Services at the end of the twenty-four (24) hour period of the Initial Response.

### **5. Response Beyond 24 Hours**

- 5.1** If Owner has notified Western Canada Marine Response within the initial twelve (12) hours that Owner wishes Western Canada Marine Response to continue to provide Marine Spill Response Services beyond the twenty-four (24) hour period of the Initial Response then, by the end of the Initial Response, Western Canada Marine Response shall provide Owner with a plan of action ("**Plan of Action**") outlining the Marine Spill Response Services which in Western Canada Marine Response's opinion are required for the remainder of the initial seven (7) day period. Unless the parties otherwise agree, Western Canada Marine Response shall provide Owner with a Plan of Action for each subsequent seven (7) day period.
- 5.2** Upon receipt of each Plan of Action, Owner shall determine the extent to which it wishes Western Canada Marine Response 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 Western Canada Marine Response is to undertake and complete.
- 5.3** The parties shall in respect of each Plan of Action evidence their agreement by signing a work order ("**Work Order**"). Each Work Order shall include a description of the Marine Spill Response Services to be performed by Western Canada Marine Response, an estimate of the Western Canada Marine Response 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 Article 13 of this Agreement.
- 5.4** Upon being signed by both parties, a Work Order shall become an integral part of this Agreement.
- 5.5** Plans of Action and Work Orders may be amended by the parties from time to time as circumstances require.

## **6. Right to Subcontract**

- 6.1** 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.

## **7. Additional Conditions**

- 7.1** Marine Spill Response Services shall only be provided by Western Canada Marine Response if Owner has paid all outstanding fees.
- 7.2** 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.
- 7.3** 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 as directed by the appropriate governmental Lead Agency.
- 7.4** “**Lead Agency**” means the Canadian Coast Guard or other agency designated by statute, inter-agency agreement, cabinet decision and/or custom and precedent to lead the response to a marine spill on behalf of the Canadian government.

## **8. Recovered Oil and Waste**

- 8.1** 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.

## **9. Termination of Work**

- 9.1** 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.

## **10. Instructions**

- 10.1** 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); (b) endanger the safety of any employee, agent, contractor or subcontractor of Western Canada Marine Response, or any third party or jeopardize the safety of any Western Canada Marine Response equipment in a manner not reasonable given the nature of the oil spill response industry; or (c) be in violation of or breach this Agreement in any material respect, then Western Canada Marine Response may refuse to follow such specific instruction by giving 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).

## **11. Western Canada Marine Response Fees**

- 11.1** “**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.
- 11.2** Without limiting the foregoing, where Western Canada Marine Response has published a schedule of fees in respect of any of the items referred to in Section 11.1, the costs associated with those items will be in accordance with the most currently published schedule.
- 11.3** Schedules of Western Canada Marine Response Fees are available upon request.
- 11.4** “**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.

## **12. Payment of Western Canada Marine Response Fees**

- 12.1** 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.
- 12.2** Western Canada Marine Response shall submit an invoice to Owner for the Western Canada Marine Response Fees and Taxes incurred. Except as otherwise provided under Article 13 of this Agreement, any invoice submitted by Western Canada Marine Response pursuant to this Section 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 14.1 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 after the date of the invoice.
- 12.3** 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 Western Canada Marine Response for such facsimile.
- 12.4** All Western Canada Marine Response Fees and Taxes payable under this Agreement shall be paid in Canadian currency.

## **13. Funding for Response Beyond 24 Hours**

- 13.1** In those cases where the provisions of Article 5 (Response Beyond 24 Hours) apply, Western Canada Marine Response shall submit an invoice to Owner for the Marine Spill Response Services provided during the first twenty-four (24) 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.

- 13.2** 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 initial seven (7) day period and, if applicable, each seven (7) day period thereafter during which it is anticipated that Marine Spill Response Services will be provided by Western Canada Marine 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.
- 13.3** The parties shall set forth in each Work Order, or any amendment of a Work Order, their agreement as to funding and, in the event of any inconsistency between the provisions of a Work Order or any amendment thereof and this Agreement, the provisions of the Work Order or any amendment thereof shall govern.
- 13.4** In the event that the parties are unable to agree on an acceptable means by which Marine Spill Response Services are to be funded in any seven (7) day period or portion thereof, 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 on any final invoice submitted by Western Canada Marine Response.

## **14. Disputed Invoices**

- 14.1** 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.



## **15. Audits**

- 15.1** 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.

## **16. Fees Remain Payable**

- 16.1** 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 22.1, or any other event or circumstance which would otherwise effect a suspension or termination of the obligations of Western Canada Marine Response.

## **17. Representations and Warranties**

- 17.1** Owner represents and warrants to Western Canada Marine Response that, both as of the Effective Date and for the remaining term of this Agreement, Owner: (a) does not and will not carry Oil in bulk as cargo and Owner's ship is not constructed or adapted primarily to carry Oil in bulk in its cargo spaces; and (b) is and will continue to be a member of a protection and indemnity club, an association which is a member of the international group of protection and indemnity clubs, or an organization providing equivalent P & I cover.

## **18. Allocation of Risk**

- 18.1** 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 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 18. 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 18.

- 18.2** Western Canada Marine Response, its directors, officers, agents, contractors and employees shall have no liability to Owner, for: (a) any loss or damage caused to any person, property or the environment, of any nature or kind; or (b) 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 its directors, officers, contractors, agents or employees.
- 18.3** Western Canada Marine Response, its directors, officers, agents, contractors and employees shall have no liability to Owner, for: (a) any loss or damage caused to any persons, property or the environment, of any nature or kind; or (b) 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 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. **“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.
- 18.4** 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, contractors, employees 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.
- 18.5** 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.

## **19. Termination**

- 19.1** 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 as required under the terms of this Agreement; (c) Owner has failed to pay any Western Canada Marine Response Fees or Taxes in accordance with the terms of this Agreement; (d) 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) 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.

## **20. Consequences of Termination**

**20.1** Upon the termination of this Agreement: (a) Western Canada Marine Response shall be entitled to advise Transport Canada and the Canadian Coast Guard of such termination; (b) all obligations of Western Canada Marine Response to Owner under this Agreement shall cease; (c) Western Canada Marine Response shall cease to perform any Marine Spill Response Services for Owner; and (d) Owner shall pay to Western Canada Marine Response any outstanding Western Canada Marine Response Fees, Taxes or Registration Fee.

**20.2** Owner shall not be entitled to receive a refund of all or any portion of the Registration Fee 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.

## **21. Survival**

**21.1** Notwithstanding the termination of this Agreement, this Article and the provisions of Articles 12, 13, 14, 15, 16, 18, and 20 survive any such termination.

## **22. Force Majeure**

**22.1** 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 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.

**22.2** Neither party will be entitled to the benefits of the provisions of Section 22.1 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.

**22.3** The obligations of the party relying on Section 22.1 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.

## **23. Time**

**23.1** Time is of the essence of this Agreement.

## **24. Assignment**

**24.1** This Agreement shall not be assigned by Owner without the prior written consent of Western Canada Marine Response.

## **25. Independent Contractor**

**25.1** 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.

## **26. Governing Law**

**26.1** 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.

## **27. Notice**

**27.1** All notice required or permitted to be given under this Agreement shall be in writing and either delivered by hand, mailed, or sent by facsimile to the addresses listed on page 1 of this Agreement. Any such notice shall be deemed to have been given and received: (a) if delivered, on the date of delivery; (b) if mailed, on the 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.

**SCHEDULE "A"**  
**SHIP (NON-BULK OIL) MEMBERSHIP AGREEMENT**  
**ADDITIONAL ARRANGEMENT FORM**

This document is Schedule A to the Ship (Non-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) Contract No. \_\_\_\_\_.

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

<b>Ship Name(s)</b>	<b>Person(s) Authorized to Implement Arrangement</b>
1. _____	1. _____
2. _____	2. _____
3. _____	3. _____
4. _____	4. _____
5. _____	5. _____
6. _____	6. _____
7. _____	7. _____
8. _____	8. _____
9. _____	9. _____
10. _____	10. _____

**Applicable Fees**

Registration Fee:      \$775 x \_\_\_\_\_ =    \$ \_\_\_\_\_

Applicable Taxes:                                    \$ \_\_\_\_\_

Total Amount Payable:                            \$ \_\_\_\_\_

**Term of Coverage**

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

End Date: \_\_\_\_\_

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

- a) receipt by WCMRC of the above-mentioned Registration Fees and Taxes within five (5) business days of the effective date of the arrangement; and
- b) payment of all outstanding fees owed under the Agreement, including all WCMRC Fees and Taxes (as such terms defined in the Agreement).

**WESTERN CANADA MARINE RESPONSE CORPORATION**

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

\_\_\_\_\_  
 (Ship Owner/Operator/Authorized Agent)  
 By: \_\_\_\_\_  
 (Authorized Signature)  
 \_\_\_\_\_  
 (Print Name)  
 \_\_\_\_\_  
 (Date)