

**OIL HANDLING FACILITY MEMBERSHIP AGREEMENT  
AND CONFIRMATION OF ARRANGEMENT**

(UNDER SECTION 168.(1)(a) OF CANADA SHIPPING ACT, 2001)

Contract Number

**EASTERN CANADA RESPONSE CORPORATION LTD.**

1201 – 275 Slater Street  
Ottawa, Ontario K1P 5H9  
Telephone (613) 230-7369  
Facsimile (613) 230-7344

Facility Address \_\_\_\_\_  
\_\_\_\_\_  
Term of Coverage: 1 year  
Effective Date: \_\_\_\_\_  
End Date: \_\_\_\_\_

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

<u>Oil Handling Facility Operator</u>		<u>Person Authorized to Implement Arrangement</u>	
Name: _____		Name: _____	
Address: _____ _____		Address: _____ _____	
Phone: _____	Email: _____	Phone: _____	Email: _____

**Confirmation**

This Agreement confirms that, effective upon the execution of this Agreement by both Eastern Canada Response Corporation Ltd. (“ECRC”) and Oil Handling Facility Operator (“Operator”), Operator shall, in accordance with the terms of Section 168.(1)(a) of the Canada Shipping Act, 2001, as amended (the “Act”), have an arrangement with ECRC, a certified response organization with a 10,000 tonne rated capability.

**Geographic Area of Response (GAR)**

For the purposes of this Agreement the geographic area of response means the geographic area of response for Eastern Canada Response Corporation Ltd. as detailed in Schedule A to this Agreement. In general, the geographic area of response for ECRC covers the waters of the Canadian Great Lakes system, Quebec and the Atlantic Provinces.

**Fees**

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. Bulk Oil Cargo Fees are also payable on the terms set forth in the attached terms and conditions. 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.

Registration Fee (annual)	\$ _____
Taxes (as applicable)	\$ _____
Total Payable By Effective Date	\$ _____

**THE TERMS AND CONDITIONS OF THIS ARRANGEMENT ARE SET FORTH BELOW AND CONSTITUTE AN INTEGRAL PART OF THE AGREEMENT BETWEEN ECRC AND OIL HANDLING FACILITY OPERATOR**

**EASTERN CANADA RESPONSE CORPORATION LTD.**

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

\_\_\_\_\_  
(Oil Handling Facility Operator)  
By: \_\_\_\_\_  
(Authorized Signatory)  
\_\_\_\_\_  
(Print Name)  
\_\_\_\_\_  
(Date)

# OIL HANDLING FACILITY MEMBERSHIP AGREEMENT

## TERMS AND CONDITIONS

### WHEREAS:

- A. The Act requires that operators of certain oil handling facilities have an arrangement with a certified response organization;
- B. Operator wishes to put in place an arrangement for certain oil handling facilities which it operates in ECRC's geographic area of response;
- C. ECRC has obtained certification as a response organization with response capability for spills up to 10,000 tonnes within its geographic area of response and, as one or more of Operator's oil handling facilities is located within ECRC's geographic area of response, ECRC is able to provide an arrangement to Operator in respect of such facilities;
- D. ECRC is also willing to provide to Operator marine spill response services which Operator may require from time to time;

**NOW THEREFORE** in consideration of the mutual agreements and covenants set forth in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is mutually acknowledged) the parties covenant and agree as follows:

### ARTICLE 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;

**"Advance Quarterly Payments"** has the meaning ascribed to it in Section 5.1 of this Agreement;

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

- |            |   |  |
|------------|---|--|
| Schedule A | - | Description of Geographic Area of Response |
| Schedule B | - | Member Oil Handling Facilities             |
| Schedule C | - | Definition of Oil                          |

**"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 4.1 of this Agreement;

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

**"Difference"** has the meaning ascribed to it in Section 5.3 of this Agreement;

**"Effective Date"** has the meaning ascribed to it in Section 12.1 of this Agreement;

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

**"ECRC Fees"** has the meaning ascribed to it in Section 8.1 of this Agreement;

**"Initial Request"** has the meaning ascribed to it in Section 6.2 of this Agreement;

**"Initial Response"** has the meaning ascribed to it in Section 6.2 of this Agreement;

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**"Lead Agency"** means the Canadian Coast Guard or other agency that is designated by statute, inter-agency agreement, cabinet decision and/or custom and precedent to lead the response to a marine spill on behalf of the Canadian government;

**"Marine Spill Response Services"** means marine spill response services, including equipment, personnel and operational management, for the containment, recovery and clean-up (including preventative measures) of Oil spilled on or into water in connection with the loading or unloading of Oil from ships and, for greater certainty, does not include acting as on-scene commander, lightering of distressed vessels, involvement in third party damage claims or adjustments, or natural resource damage assessment;

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

**"Membership Fees"** means the Registration Fee and the Bulk Oil Cargo Fees payable by Operator in respect of each Member Oil Handling Facility;

**"Oil"** means oil and those oil products described in Schedule "C" to this Agreement; **"Payment Period"** has the meaning ascribed to it in Section 5.2 of this Agreement; **"Plan of Action"** has the meaning ascribed to it in Section 6.5 of this Agreement;

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

**"Registration Fee"** has the meaning ascribed to it in Section 3.1 of this Agreement;

**"Taxes"** means the goods and services tax, or any equivalent or replacement thereof, payable by Operator and collectable by ECRC under the *Excise Tax Act* (Canada), or any other federal or any provincial legislation imposing a similar value-added or multi-stage tax, and any sales, use, or excise tax, duty, fee or levy, as applicable;

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

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

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

**"Work Order"** has the meaning ascribed to it in Section 6.5 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, Operator shall be entitled:

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

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**2.2 Membership Fees** - The Membership Fees are comprised of the Registration Fee and the Bulk Oil Cargo Fees, the terms and conditions of which are set forth in Articles III, IV, and V of this Agreement.

**2.3 More than One Facility** - Where Operator operates more than one oil handling facility in ECRC's GAR or on lands adjacent thereto, and wishes to obtain an arrangement from ECRC in respect of more than one such oil handling facility, Operator shall pay ECRC Membership Fees in respect of each oil handling facility in respect of which an arrangement is to be granted under this Agreement. The list of Member Oil Handling Facilities is attached as Schedule "B" to this Agreement and Operator agrees that it will advise ECRC forthwith if there are any changes in the information contained in Schedule "B".

**2.4 Confirmation of Arrangement Form** - ECRC agrees to provide to Operator for each of the Member Oil Handling Facilities listed in Schedule "B" and for which applicable Registration Fees have been paid by Operator a confirmation of arrangement form which Operator may retain on site as evidence that the arrangement requested by Operator has been granted. The confirmation of arrangement form shall be in the form shown on Page 1 of this Agreement.

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## **ARTICLE III REGISTRATION FEE**

**3.1 Registration Fee** - Operator shall pay to ECRC for each arrangement granted to Operator under this Agreement the annual registration fee specified in the confirmation of arrangement for each Oil Handling Facility covered under this Agreement, together with all applicable Taxes payable in connection with the Registration Fee.

**3.2 Payment of Registration Fee -**

(a) The initial Registration Fee for each Member Oil Handling Facility requiring an arrangement on the date hereof shall be due and payable on or prior to the Effective Date, and each subsequent Registration Fee shall be paid on or prior to the anniversary date of the Effective Date.

(b) For each Member Oil Handling Facility for which Operator requires an arrangement after the Effective Date, a Registration Fee shall be payable prior to the arrangement in respect of such Member Oil Handling Facility becoming effective, and thereafter the Registration Fee for such Member Oil Handling Facility shall be payable on or prior to each anniversary date of the date on which the Registration Fee was initially paid. In the case of Member Oil Handling Facilities in respect of which arrangements are required after the Effective Date and prior to an anniversary of an Effective Date, a new agreement on terms similar to the terms of this Agreement shall be signed.

**3.3 Adjustment of Registration Fee** - The Registration Fee shall be determined, and from time to time amended, in accordance with the provisions of the Act.

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

**4.1 Bulk Oil Cargo Fees** - Operator shall pay to ECRC a bulk oil cargo fee (the "Bulk Oil Cargo Fee") in respect of all Bulk Oil Cargo which is unloaded or (in the case of Bulk Oil Cargo intended for international destinations and destinations north of the 60°N latitude) loaded at each of Operator's Member Oil Handling Facilities. The Bulk Oil Cargo Fee shall be calculated by obtaining the product of the number of Tonnes of Bulk Oil Cargo either unloaded or (in the case of Bulk Oil Cargo intended for international destinations and destinations north of the 60°N latitude) loaded at Operator's Member Oil Handling Facilities and the Bulk Oil Cargo Fee Rate, plus all applicable Taxes payable in connection with the Bulk Oil Cargo Fee.

**4.2 Calculation of Volume** - The volume of Bulk Oil Cargo which is unloaded or (in the case of Bulk Oil Cargo intended for an international destination or a destination north of the 60°N latitude) loaded at Operator's Member Oil Handling Facility shall for greater certainty mean:

(a) the volume of Bulk Oil Cargo measured in Tonnes at the shore side of the dock flange at Operator's Member Oil Handling Facility, without regard to title, unloaded from a ship to Operator's Member Oil Handling Facility; and

(b) the volume of Bulk Oil Cargo measured in Tonnes at the shore side of the dock flange at Operator's Member Oil Handling Facility, without regard to title, loaded onto a ship from Operator's Member Oil Handling Facility if such volume is intended for movement to an international destination or a destination north of the 60°N latitude.

**4.3 Adjustments** - The Bulk Oil Cargo Fee Rate and the calculation of volumes set forth in Section 4.2 of this Agreement shall be determined, and from time to time amended, in accordance with the provisions of the Act.

**4.4 Payment of Bulk Oil Cargo Fee** - Except as otherwise provided in Article V of this Agreement, Bulk Oil Cargo Fees shall be payable by Operator within ten (10) days following the end of the month in which such volumes are unloaded or (in the case of Bulk Oil Cargo intended for international destinations and destinations north of the 60°N latitude) loaded at Operator's Member Oil Handling Facility. Any Bulk Oil Cargo Fees not paid in full within ten (10) days of the end of the relevant month will be charged interest on the outstanding amount at the rate of one per cent (1%) per month, or 12.6825% per year, commencing on the eleventh (11th) day following the end of the month in which such volumes were unloaded or (in the

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case of Bulk Oil Cargo intended for international destinations and destinations north of the 60°N latitude) loaded.

**4.5 Reporting Requirements** - Operator shall within ten (10) days following the end of each month provide ECRC with a report containing the total volumes (on a facility-by-facility basis) of Bulk Oil Cargo unloaded or (in the case of Bulk Oil Cargo intended for international destinations and destinations north of the 60°N latitude) loaded at each of Operator's Member Oil Handling Facilities during the preceding month. ECRC agrees that the information provided to ECRC in respect of volumes of Bulk Oil Cargo shall remain confidential and will not be disclosed by ECRC, its directors, officers, agents or employees (including disclosure to any director, officer, agent or employee of ECRC not directly requiring such information to carry out his or her duties to ECRC) other than as part of the aggregate volumes of Bulk Oil Cargo of all members of ECRC.

### ARTICLE V.

#### ADVANCE PAYMENT PROVISIONS

##### 5.1 Payments in Advance -

(a) Bulk Oil Cargo Fees shall be payable by Operator in respect of each Member Oil Handling Facility in advance in four (4) equal quarterly installments (the "Advance Quarterly Payments") in those cases where the aggregate volumes of Bulk Oil Cargo unloaded or (in the case of Bulk Oil Cargo intended for international destinations and destinations north of the 60°N latitude) loaded at Operator's Member Oil Handling Facilities in the preceding calendar year exceed the Threshold, except where there has been a significant change affecting Operator's business which in ECRC's view is likely to reduce to below Threshold levels the volumes of Bulk Oil Cargo unloaded or (in the case of Bulk Oil Cargo intended for international destinations and destinations north of the 60°N latitude) loaded at Operator's Member Oil Handling Facilities in the subsequent year.

(b) Notwithstanding the provisions of Section 5.1(a), where volumes are not available for the preceding calendar year but the aggregate volumes of Bulk Oil Cargo forecast to be unloaded or (in the case of Bulk Oil Cargo intended for international destinations and destinations north of the 60°N latitude) loaded at Operator's Member Oil Handling Facilities for the forthcoming year exceed the Threshold, Operator shall be required to make Advance Quarterly Payments and comply with the provisions of Section 5.1(a) in all respects as though such volumes were available.

(c) The following provisions of this Article shall apply to Operator for each year in which the aggregate volumes of Bulk Oil Cargo unloaded or (in the case of Bulk Oil Cargo intended for international destinations and destinations north of the 60°N latitude) loaded at Operator's Member Oil Handling Facilities in a preceding calendar year exceed the Threshold.

**5.2 Information Regarding Volumes of Oil** - On or before February 15th of each year Operator shall provide to ECRC the total volumes (on a facility-by-facility basis) of Bulk Oil Cargo unloaded or (in the case of Bulk Oil Cargo intended for international destinations and destinations north of the 60°N latitude) loaded by Operator at Operator's Member Oil Handling Facilities in the preceding calendar year. ECRC shall use this information for the following purposes:

(a) to calculate the Advance Quarterly Payments which will be payable by Operator for each of the Quarters in the following period commencing April 1 in any year and ending on March 31 of the next year (the "Payment Period"), each Advance Quarterly Payment to be payable on the first business day of the Quarter in respect of which the Advance Quarterly Payment is being made;

(b) to determine the actual Bulk Oil Cargo Fees payable by Operator in respect of any Payment Period.

**5.3 Differences Between Advance Payments and Actual Volumes** - Where there is a difference between the sum of the Advance Quarterly Payments paid by Operator in respect of a preceding Payment Period and the actual Bulk Oil Cargo Fees calculated for the preceding calendar year (the "Difference"), the Difference shall be added or subtracted, as the case may be, to or from the sum of the Advance Quarterly Payments otherwise payable by Operator for the next Payment Period with the effect that each of the Advance Quarterly Payments in the next Payment Period shall be increased or decreased, as the

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case may be, by a quarter of the Difference. Unless otherwise agreed between the parties, no interest or carrying charges shall be payable by either party in respect of the Difference.

**5.4 Start-Up Period** - Notwithstanding the foregoing provisions, where the Effective Date of this Agreement is a date other than April 1 in any year, the portion of the first Payment Period in respect of which advance payments are payable shall be the period commencing on the Effective Date and ending on the first March 31 which follows the Effective Date. The portion of the preceding calendar year which shall be used as a measure for determining the advance payments to be made shall be the portion of the preceding calendar year which corresponds in number of days, and dates to the period between the Effective Date and the first March 31 which follows the Effective Date. Volumes of Oil unloaded or (in the case of Bulk Oil Cargo intended for international destinations and destinations north of the 60°N latitude) loaded by Operator at Operator's Member Oil Handling Facility during such portion of the preceding year shall be provided to ECRC on or before the Effective Date. Advance payments will be payable by Operator on the Effective Date and on any of July 1, October 1 and January 1 (or, if such days are not business days, then on the first business day following such date) as fall within the period between the Effective Date and the first March 31 which follows the Effective Date. In all other respects, the provisions of Sections 5.1, 5.2 and 5.3 of this Agreement shall apply.

**5.5 Interest** - Subject always to Section 5.3, any Advance Quarterly Payment or other amount under this Article V which is not paid on or prior to its due date shall bear interest at the rate of one per cent (1%) per month, or 12.6825% per year, from the due date until paid.

### ARTICLE VI.

#### MARINE SPILL RESPONSE SERVICES

**6.1 Management and Control of Spill** - Upon the occurrence within ECRC's GAR of a spill of Oil on Waters, Operator shall (where it has requested ECRC to respond to such spill) be responsible for the management and control of all response activities.

**6.2 Initial Request and Response** - If Operator requests ECRC to respond to a spill of Oil on Waters in ECRC's GAR ("Initial Request"), ECRC 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 ECRC is the person authorized to implement the arrangement, the name of the ship (if applicable), the type of Oil involved, the contract number assigned to this Agreement and the nature and extent of the Marine Spill Response Services required. 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 twenty-four (24) hours.

**6.3 Twelve Hour Consultation -**

(a) If within twelve (12) hours of the Initial Request ECRC and Operator agree that the clean-up can be completed in the course of the Initial Response, then ECRC shall continue providing Marine Spill Response Services until the spill is cleaned up.

(b) If within twelve (12) hours of the Initial Request ECRC and Operator agree that the clean-up cannot be completed within the course of the Initial Response, then Operator shall notify ECRC as to whether or not ECRC is to continue providing Marine Spill Response Services beyond the Initial Response.

**6.4 No Further ECRC Response -**

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

(b) If Operator has failed to notify ECRC within the initial twelve (12) hour period, and ECRC has been unable to obtain instructions from Operator, then ECRC shall be deemed to have been notified and requested to cease providing Marine Spill Response Services at the end of the Initial Response.

**6.5 Response Beyond 24 Hours -**

(a) If Operator has notified ECRC within the initial twelve (12) hours that Operator wishes ECRC to

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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, ECRC shall provide Operator with a plan of action ("Plan of Action") outlining the Marine Spill Response Services which in ECRC's opinion are required for the remainder of the initial seven (7) day period. Unless the parties otherwise agree, ECRC shall provide Operator with a Plan of Action for each subsequent seven (7) day period.

(b) Upon receipt of each Plan of Action, Operator shall determine the extent to which it wishes ECRC 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 ECRC is to undertake and complete.

(c) 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 ECRC, an estimate of the ECRC Fees payable in connection with the Marine Spill Response Services, a facsimile number to which invoices may be sent to Operator, and any other information required under Section 8.3 of this Agreement.

(d) Upon being signed by both parties, a Work Order shall become an integral part of this Agreement and, for greater clarity, be subject to the terms and conditions set forth herein.

(e) Plans of Action and Work Orders may be amended by the parties from time to time as circumstances require.

### **6.6 Competing Requests for Services -**

(a) Notwithstanding any other provision of this Agreement, unless otherwise directed by the appropriate governmental Lead Agency, ECRC shall have no obligation to make Marine Spill Response Services available to Operator if the resources associated with the provision of such Marine Spill Response Services are already being provided to another party.

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

**6.7 Territory** - ECRC agrees to provide Marine Spill Response Services in ECRC's GAR only.

**6.8 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, ECRC shall cease to provide the Marine Spill Response Services or any portion thereof, and shall carry out any required demobilization activities, and Operator shall pay all outstanding ECRC Fees and Taxes.

**6.9 Right to Subcontract** – ECRC shall have the right without obtaining the consent of Operator to subcontract all or any portion of the Marine Spill Response Services to be provided under this Agreement.

**6.10 Recovered Oil and Waste** - The parties acknowledge that, notwithstanding any assistance which ECRC provides to Operator, ECRC shall not be responsible for the disposal of waste products.

## **ARTICLE VII.**

### **PERFORMANCE OF SERVICES**

**7.1 Standard of ECRC Performance** - Subject to the other terms and conditions of this Agreement, ECRC will use its Best Efforts to provide any Marine Spill Response Services requested by Operator pursuant to this Agreement in a manner which attempts to mitigate, remove or clean-up the applicable spill as effectively as practicable under the existing circumstances.

### **7.2 ECRC Safety Obligations -**

(a) ECRC 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 ECRC safety policies and procedures (a copy of which policies and procedures ECRC will make available to



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Operator upon request). However, ECRC and Operator understand that:

- (i) actions carried out in a response in an Oil spill environment may be inherently dangerous and difficult; and
- (ii) rules and requirements that may be appropriate and applicable under normal circumstances may not be appropriate or applicable in a particular response situation.

Therefore, the provisions of this Section will not be interpreted in a manner that would hold ECRC to a standard that would be unreasonable under the actual conditions of a particular spill, and all ECRC actions carried out consistently with the directions of Operator, to the extent possible and appropriate in the actual conditions of the particular spill, or with approval of applicable safety officials will be deemed to be in compliance with this Section.

(b) ECRC shall, upon Operator's request, report to Operator as promptly as practicable under the circumstances any accidents associated with the performance of the Marine Spill Response Services resulting in or in ECRC's reasonable judgment possibly causing personal injury or death or property damage or loss. ECRC will, at Operator's expense, furnish Operator with copies of any final written reports and other factual information related to such accidents prepared by or for ECRC.

### **7.3 Operator Safety Obligations -**

(a) Operator shall observe, and shall require, to the extent of its authority, its employees, agents, contractors and subcontractors to observe, applicable safety laws and regulations and (except in the case of ECRC which shall follow its own safety policies and procedures) applicable Operator safety policies and procedures (a copy of which policies and procedures Operator will make available to ECRC upon request).

(b) Operator will report to ECRC as promptly as practicable under the circumstances any accidents associated with or caused as the result of the performance of the Marine Spill Response Services resulting in or in Operator's reasonable judgment possibly causing any personal injury or death or property damage or loss. Operator will, at ECRC's expense, furnish ECRC with copies of any final written reports and other factual information related to such accidents prepared by or for Operator.

**7.4 Illegal, Unsafe or Improper Instructions** - If Operator instructs ECRC to take any action under this Agreement in a manner which would, based on the reasonable judgment of ECRC:

- (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 ECRC, or any third party or jeopardize the safety of any ECRC 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 ECRC may refuse to follow such specific instruction by giving Operator oral (promptly confirmed in writing) or written notice of such refusal (specifying in reasonable detail the specific reason for such refusal). Any refusal under this Section of any obligation of ECRC to take any instructed action shall not affect any obligation of ECRC to take instructed actions under circumstances that would not result in the happening of the events specified in the preceding Subsections (a)-(c).

## **ARTICLE VIII.**

### **ECRC FEES AND PAYMENT**

#### **8.1 ECRC Fees -**

(a) "ECRC Fees" means all reasonable fees charged by ECRC 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 mobilization and 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.

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(b) Without limiting the foregoing, where ECRC has published a schedule of fees in respect of any of the items referred to in Section 8.1(a), the costs associated with those items will be in accordance with the most currently published schedule.

(c) Schedules of ECRC Fees are available upon request.

### **8.2 Payment of ECRC Fees -**

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

(b) ECRC shall submit an invoice to Operator for the ECRC Fees and Taxes incurred. Except as otherwise provided under Section 8.3 of this Agreement, any invoice submitted by ECRC pursuant to this Section shall be due and payable by Operator by the end of the fifth (5th) business day following receipt of the invoice by Operator and, subject to the terms of Section 8.5 of this Agreement, any invoice not paid in full by the end of the fifth (5th) business day following receipt of the invoice by Operator will be charged interest on the outstanding amount at the rate of one per cent (1%) per month, or 12.6825% per year, commencing on the sixth (6th) day after the date of the invoice.

(c) Invoices may be submitted by facsimile and a facsimile copy of an invoice shall be deemed to be received by Operator at such time as is indicated on the receipt of confirmation notice received by ECRC for such facsimile.

### **8.3 Funding for Response Beyond 24 Hours -**

(a) In those cases where the provisions of Section 6.5 (Response Beyond 24 Hours) apply, ECRC shall submit an invoice to Operator 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 Operator by the end of the fifth (5th) business day following Operator's receipt of the invoice.

(b) After ECRC has submitted the initial invoice, Operator and ECRC shall agree on how Operator 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 ECRC. In reaching such agreement, Operator shall be required to satisfy ECRC that any method of funding will, when implemented, permit all invoices rendered by ECRC during the relevant period to be paid in full on such terms as are acceptable to ECRC under the circumstances. Any decision to accept any particular method of funding shall be solely within the discretion of ECRC. If the parties are unable to agree on a method of funding acceptable to ECRC, ECRC will require cash.

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

(d) In the event that the parties are unable to agree on an acceptable means by which Marine Spill Response Services are to be funded in any seven (7) day period or portion thereof, ECRC shall cease to provide Marine Spill Response Services and shall carry out any required demobilization activities, and Operator shall pay all outstanding ECRC Fees and Taxes, including all ECRC Fees and Taxes set forth on any final invoice submitted by ECRC.

**8.4 Payments in Good Standing -** Marine Spill Response Services shall only be provided by ECRC if Operator has paid all outstanding Membership Fees, ECRC Fees and Taxes.

**8.5 Disputed Invoices -** If Operator objects to any item or statement shown on an invoice, Operator shall promptly notify ECRC of the dispute, specifying in reasonable detail the factual basis for the dispute and Operator shall pay to ECRC in accordance with the terms of this Agreement eighty per cent (80%) of the disputed invoiced amounts. The payment of eighty per cent (80%) of any invoiced amounts shall not prejudice Operator's right to object to or question such invoice, and such invoice shall be subject to adjustment for amounts included in the invoice which are ultimately determined not to be amounts for which Operator was obligated to pay ECRC under the terms of this Agreement. Operator shall be entitled to object to or question all invoices or matters related to it within thirty (30) days following the date of the invoice, or the date on which the last invoice under a Work Order is rendered, whichever is later. In the

## OIL HANDLING FACILITY MEMBERSHIP AGREEMENT

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 ECRC 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.

**8.6 Audits** - Operator shall have the right at all reasonable times and intervals to make such reasonable inspection or audit of such portion of the books and records maintained by ECRC as relate to the invoices submitted in respect of Marine Spill Response Services performed under the terms of this Agreement. ECRC shall make available to Operator such information and materials (including time sheets for personnel and equipment) as Operator may reasonably require to verify and substantiate the invoices provided by ECRC under this Agreement provided that ECRC shall be reimbursed by Operator for any costs incurred by ECRC in assisting Operator and ECRC 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 ECRC Fees or any portion of the ECRC Fees payable by Operator, ECRC and Operator shall promptly make the appropriate corrections and adjustments.

**8.7 Fees Remain Payable** - Operator's obligation to pay the fees payable under this Agreement is absolute and not subject to set-off, deduction or other reduction or counterclaim by reason of the non-availability of Marine Spill Response Services, force majeure described in Section 14.1, or any other event or circumstance which would otherwise effect a suspension or termination of the obligations of ECRC.

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

### ARTICLE IX.

#### REPRESENTATIONS AND WARRANTIES

**9.1 Operator's Representations and Warranties** - Operator represents and warrants to ECRC, with the intent that ECRC will rely upon such representations and warranties in entering into this Agreement, that:

(a) as of the Effective Date, the Member Oil Handling Facilities listed in Schedule "B" to this Agreement are the only oil handling facilities in respect of which an arrangement is required by Operator under the terms of this Agreement;

(b) Operator is a corporation duly incorporated and validly existing under the laws of its jurisdiction and has all necessary corporate power, authority and capacity to enter into and to carry out its obligations under this Agreement, and the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate action on the part of Operator;

(c) Operator is not party to, bound or affected by or subject to any indenture, mortgage, lease, agreement, obligation, instrument, charter or by-law provision, statute, regulation, order, judgment, decree, licence, permit or law which would be violated, contravened, breached by, or under which default would occur as a result of the execution and delivery of this Agreement, or the performance by Operator of any of its obligations provided under this Agreement;

(d) this Agreement is a valid and binding obligation of Operator, enforceable against it in accordance with its terms subject, however, to limitations with respect to enforcement imposed by law in connection with bankruptcy or similar proceedings and to the extent that equitable remedies such as specific performance and injunction are in the discretion of the court from which they are sought;

(e) Operator has the financial capability to pay the Membership Fees, as well as any ECRC Fees and Taxes which may accrue in the course of carrying out Marine Spill Response Services under the terms of this Agreement.

### ARTICLE X.

#### BOOKS AND RECORDS

**10.1 Books and Records** - Operator shall retain in accordance with generally accepted accounting

## OIL HANDLING FACILITY MEMBERSHIP AGREEMENT

practices, all books, records and accounts pertaining to Operator's obligations under this Agreement as may be necessary to conduct an audit to verify that Bulk Oil Cargo Fees, ECRC Fees and Taxes were properly charged in accordance with the terms of this Agreement, and to verify Operator's compliance with this Agreement.

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

**10.3 Adjustments** - In the event an audit indicates a discrepancy between the actual volumes of Bulk Oil Cargo unloaded or (in the case of Bulk Oil Cargo intended for international destinations and destinations north of the 60°N latitude) loaded at Operator's Member Oil Handling Facilities during a particular period and Operator's reported volumes of Bulk Oil Cargo unloaded or (in the case of Bulk Oil Cargo intended for international destinations and destinations north of the 60°N latitude) loaded at Operator's Member Oil Handling Facilities in respect of the same period, Operator shall make the appropriate corrections and adjustments and, if necessary, promptly make any additional payments to reflect such correction, and interest shall be payable in respect of such corrected amount at a rate of one per cent (1%) per month, or 12.6825% per year, commencing on the date the discrepancy occurred.

### ARTICLE XI.

#### ALLOCATION OF RISK

**11.1 Nature of Relationship** - ECRC and Operator recognize and agree that, in connection with providing the Marine Spill Response Services under this Agreement:

- (a) any Marine Spill Response Services provided under this Agreement are for the sole benefit of Operator;
- (b) the extraordinary and emergency nature of the Marine Spill Response Services may require actions by ECRC that may give rise to a variety of claims;
- (c) ECRC has based the charges for and availability of the Marine Spill Response Services to be provided under this Agreement on the premise that Operator, or anyone asserting rights on its behalf, will not challenge ECRC's right to be indemnified as provided in this Article XI.

Accordingly, ECRC and Operator fully understand and recognize and agree that the nature of the Marine Spill Response Services to be provided under the terms set forth in this Agreement make it appropriate, equitable and essential to provide for the allocation of the risks and liabilities, limitation of remedies, and the indemnification of ECRC and Operator as set forth in this Article XI.

**11.2 Liability Between ECRC and Operator -**

- (a) ECRC and its directors, officers, agents, contractors, and employees shall have no liability to Operator, for:
  - (i) any loss or damage caused to any person, property or the environment, of any nature or kind; or
  - (ii) any liability arising as the result of the breach of any statute, regulation, rule, court order or other governmental or administrative decree having the force of law,

caused by any act or omission of Operator or any of Operator's directors, officers, contractors, agents or employees.

- (b) ECRC and its directors, officers, agents, contractors and employees shall have no liability to Operator, for:

## OIL HANDLING FACILITY MEMBERSHIP AGREEMENT

- (i) any loss or damage caused to any persons, property or the environment, of any nature or kind; or
- (ii) any liability arising as the result of the breach of any statute, regulation, rule, court order or other governmental or administrative decree having the force of law,

caused by the act or omission of ECRC or any of its directors, officers, agents, contractors or employees or equipment unless such act or omission is a result of the wilful misconduct or recklessness (it being understood that for the purposes of this Section 11.2, recklessness shall necessarily involve knowledge that loss or damage would probably result) of ECRC or any of its directors, officers, agents, contractors or employees.

(c) Operator shall indemnify, defend and hold harmless ECRC, its directors, officers, employees, contractors and agents from and against all claims, losses, damages, costs, expenses and other liabilities incurred by ECRC, its directors, officers, employees, contractors or agents as a result of ECRC's entering into of, or carrying out any obligations under, this Agreement, except where such claims, losses, damages, costs, expenses and other liabilities are incurred by ECRC, its directors, officers, employees, contractors or agents as a result of ECRC's own wilful misconduct or recklessness, or the wilful misconduct or recklessness of ECRC's directors, officers, agents, contractors or employees. Operator acknowledges that ECRC shall not be required to exhaust its recourses against any third party as a condition precedent to claiming indemnification under this Section.

(d) ECRC shall indemnify, defend and hold harmless Operator and its directors, officers, employees and agents from and against all claims, losses, damages, costs, expenses and other liabilities incurred by Operator and its directors, officers, employees and agents as a result of the wilful misconduct or recklessness of ECRC, its directors, officers, agents, contractors or employees.

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

## ARTICLE XII

### TERM

**12.1 Term** - This Agreement shall come into force and effect as of the date indicated on the first page of this Agreement (the "Effective Date") and shall continue for a period of one (1) year beyond the Effective Date.

**12.2 Renewal** - This Agreement shall be automatically renewed for successive one (1) year terms unless one party gives notice to the other at least sixty (60) days prior to the date on which either the initial one 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 on the terms set forth herein.

## ARTICLE XIII. TERMINATION

**13.1 Termination by Either Party** - This Agreement may be terminated by either party upon the provision of at least sixty (60) days prior written notice to the other party in accordance with the terms of Section 12.2 of this Agreement.

**13.2 Termination by ECRC** - This Agreement may be terminated by ECRC effective immediately upon notice to Operator:

- (a) in the event that ECRC's certification as a response organization with 10,000 tonne rated capability is revoked;
- (b) if Operator has failed to pay any Registration Fees, Bulk Oil Cargo Fees or any ECRC Fees or Taxes in accordance with the terms of this Agreement;
- (c) if Operator has knowingly created or if, after learning of it, has failed to correct, a discrepancy between the actual volumes of Bulk Oil Cargo unloaded or (in the case of Bulk Oil Cargo intended for

## OIL HANDLING FACILITY MEMBERSHIP AGREEMENT

international destinations and destinations north of the 60°N latitude) loaded at Operator's Member Oil Handling Facility during a particular period and Operator's reported volumes of Bulk Oil Cargo unloaded or (in the case of Bulk Oil Cargo intended for international destinations and destinations north of the 60°N latitude) loaded at Operator's Member Oil Handling Facility in respect of the same period;

(d) Operator has become insolvent, commenced an act of bankruptcy, suspended business operations or has bankruptcy, dissolution, liquidation or winding-up proceedings commenced against it (unless such proceedings are actively and diligently contested in good faith on a timely basis); or

(e) Operator has breached any representation or warranty or other term of this Agreement and failed to cure such breach within five (5) days after Operator received written notice from ECRC advising of such breach.

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

**13.3 Termination by Operator** - This Agreement may be terminated by Operator effective immediately upon notice to ECRC if Operator has ceased to require an arrangement for the Member Oil Handling Facilities within ECRC's GAR.

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

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

**13.5 No Reimbursement of Membership Fees** - Operator shall not be entitled to receive a refund of all or any portion of the Membership Fees paid by Operator except where termination of this Agreement is due to the revocation by the relevant authorities of ECRC's certification as a response organization with 10,000 tonne rated capability in which case Registration Fees shall be refunded on a pro-rated basis and, if applicable, Advance Quarterly Payments exceeding Bulk Oil Cargo Fees owing shall be refunded in full.

**13.6 Survival** - Notwithstanding the termination of this Agreement by ECRC or Operator pursuant to this Article, the provisions of this Section, Section 13.4 and Articles VIII, X and XI shall survive any such termination.

## OIL HANDLING FACILITY MEMBERSHIP AGREEMENT

### ARTICLE XIV.

#### FORCE MAJEURE

**14.1 Force Majeure** - If during the term of this Agreement there should arise or occur any event or circumstance beyond the reasonable control of ECRC or Operator, including without limiting the generality of the foregoing, the action of government, flood, fire, strike, lock-out or other labour unrest, riot, civil unrest, terrorism, war (whether declared or undeclared), or an act of God, (but for greater certainty not including a shortage or lack of financing) which prevents, restricts or delays ECRC or Operator from duly performing any of its obligations under this Agreement, then during the period that such event or circumstance, or the effect thereof continues, performance by such party of such obligation will be suspended and excused to the extent that such party is so prevented, restricted or delayed.

**14.2 Exception for Failure by Either Party** - Neither party will be entitled to the benefits of the provisions of Section 14.1 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.

**14.3 Other Aspects of Force Majeure** - The obligations of the party relying on Section 14.1 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 XV. GENERAL PROVISIONS

**15.1 Time** - Time is of the essence of this Agreement

**15.2 Notices** - All notices required or permitted to be given to a party under this Agreement shall be in writing and delivered by hand, mailed by registered first class airmail postage prepaid, or sent by facsimile to the party's address shown on page one (1) of this Agreement

Any such notice shall be deemed to have been given and received:

- (a) if delivered, on the date on which it was delivered;
- (b) if mailed, on the fifth (5th) business day following the day it was posted; or
- (c) if given by facsimile, 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.

**15.3 Amendments to Agreement** - Subject to Section 15.4, this Agreement may not be amended except in writing executed by all the parties.

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

**15.5 Independent Contractor** - ECRC is an independent contractor in the performance of its obligations under this Agreement and neither ECRC nor ECRC's employees, agents, contractors or subcontractors shall be considered employees of Operator.

**15.6 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.

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

**15.8 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

## OIL HANDLING FACILITY MEMBERSHIP AGREEMENT

respect thereto.

**15.9 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 qui s'y rattachent soient rédigés et signés en anglais.*

**15.10 Governing Law** - This Agreement shall be interpreted in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

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

**15.12 Execution in Counterparts** - This Agreement may be executed in one or more counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same Agreement and notwithstanding their date of execution shall be deemed to be executed on the day first above written.

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



# **OIL HANDLING FACILITY MEMBERSHIP AGREEMENT**

## **SCHEDULE A**

### **DESCRIPTION OF GEOGRAPHIC AREA OF RESPONSE**

#### **Eastern Canada Response Corporation Ltd. “Emergency Contact Number (613) 930-9690”**

ECRC’s Geographic Area of Response covers the Waters south of the 60°N Latitude for all the provinces of Canada with the exception of British Columbia and the Ports of Saint John, New Brunswick, and Point Tupper, Nova Scotia and their associated primary area of response and for greater certainty includes but is not limited to the following:

- St Lawrence River, Gulf of St Lawrence and Coastal waters of the Atlantic Provinces
- James Bay
- Hudson Bay
- Ungava Bay
- Canadian Great Lakes System and connecting channels
- Lake Winnipeg
- Athabasca River from Fort McMurray to Lake Athabasca
- Lake Athabasca

# OIL HANDLING FACILITY MEMBERSHIP AGREEMENT

## SCHEDULE B

### MEMBER OIL HANDLING FACILITIES

This document is Schedule B to the Oil Handling Facility Membership Agreement and confirmation of Arrangement under Section 168.(1)(a) of Canada Shipping Act, 2001, (the "Agreement") between \_\_\_\_\_ ("Operator") and ECRC, Contract No. \_\_\_\_\_

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

Oil Handling Facility	Location	Person(s) Authorized to Implement Arrangement
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		

#### Applicable Fees

Item	Number of Facilities	Fee per Facility	Total
Registration Fee			
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 ECRC to Operator shall be subject to:

- (a) receipt by ECRC of the above-mentioned Registration Fee 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 ECRC Fees and Taxes (as such terms are defined in the Agreement).

#### **EASTERN CANADA RESPONSE CORPORATION LTD.**

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

\_\_\_\_\_  
(Oil Handling Facility Operator)  
By: \_\_\_\_\_  
(Authorized Signatory)  
  
\_\_\_\_\_  
(Print Name)  
  
\_\_\_\_\_  
(Date)

# **OIL HANDLING FACILITY MEMBERSHIP AGREEMENT**

## **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