

**WASHINGTON STATE MARITIME COOPERATIVE (WSMC)**

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Enrollment No. and WSMC Member MSRC  
Service Agreement No. (assigned by WSMC):

## WSMC ENROLLMENT AGREEMENT (revised and effective December 15, 2013)

Vessel Name: \_\_\_\_\_

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

## PART 1

The *Schedule of Vessel Information* for the identified vessel is incorporated as the cover page and is part of this Agreement.

Upon the execution of this Enrollment Agreement by both the Washington State Maritime Cooperative (WSMC) and the Ship Owner/Operator/[Authorized Agent](#) identified in the *Schedule of Vessel Information*, the Ship Owner ("Owner") shall have an agreement with WSMC. The Agreement will be effective (assigned an effective date) upon the first notice of arrival (or notice of presence) of the Covered Vessel in the WSMC Area of Coverage.

Also upon execution of this Enrollment Agreement, the Owner shall have entered into a [WSMC Member MSRC Service Agreement](#) with the Marine Spill Response Corporation (MSRC), the Primary Response Contractor (PRC) cited in the WSMC Umbrella Plan. The Owner acknowledges and agrees that it has received a copy of the WSMC Member MSRC Service Agreement or has accessed it online, and has read and agreed to its terms and conditions.

Unless otherwise terminated for the reasons set forth in the attached Part 2, Terms and Conditions, and provided all relevant fees have been paid by the due date on WSMC's invoices, this Agreement shall in respect of the above-named vessel commence on the Effective Date and continue in effect until terminated by the Owner/Operator/Authorized agent or WSMC pursuant to the Terms and Conditions. The Owner/Operator/Authorized Agent shall update the information entered on the *Schedule of Vessel Information* as it may change from time to time and shall submit a new *WSMC Enrollment Agreement* if there is a change in the Covered Vessel's owner/operator.

TO GUARANTEE TIMELY COVERAGE, THIS ENROLLMENT AGREEMENT FORM SHOULD BE SUBMITTED AT LEAST 96 HOURS PRIOR TO VESSEL'S FIRST TRANSIT OR PRESENCE IN THE WSMC AREA OF COVERAGE.

WSMC Area of Coverage

For purposes of this Agreement, the WSMC Area of Coverage waters means the public and private properties, beaches, harbors and waters along the coastal portions of the State of Washington, south to North Head on Cape Disappointment and normally extending three (3) miles offshore, including, but not limited to, the inland waters of the State known as Puget Sound, Hood Canal, Straits of Georgia, Haro, Rosario and Juan de Fuca, Admiralty Inlet, Lake Washington, Lake Union and their connecting waters, but excluding the waters of the Columbia River System.

Transit Fees

For the initial annual term of this Agreement, and for each annual transit period thereafter, the Annual Transit Fee shall be due and payable pursuant to the terms of WSMC's invoice. All fees shall be payable in United States dollars and shall be determined, and from time to time amended, in accordance with the decisions of WSMC's Board of Directors and published in WSMC's fee schedule.

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

**Covered Vessel Owner/operator/authorized agent action items under this agreement:**

Pursuant to section 5.1.2 of this Agreement, each Covered Vessel is required to have aboard, and to make available upon request, vessel diagrams or plans, for Washington Department of Ecology inspection and/or to WSMC, for spill response. Such diagrams should show locations of cargo, fuel, and ballast tanks, including piping. Diagrams should also be available showing power plant locations, and any other locations for oil storage and/or oil transfer operations.

Pursuant to section 5.1.4 of this Agreement, unless otherwise agreed in writing by WSMC, vessels that do not submit an Advanced Notice of Arrival (ANOVA) Form to the US Coast Guard, must send notice of a vessel's transit into and out of (or presence in) the WSMC Area of Coverage, in writing, to WSMC for each call or transit in the WSMC Area of Coverage by an individual vessel (or barge or vessel transit that is internal to the WSMC Area of Coverage). Each Covered Vessel will be invoiced the appropriate transit fee(s) for each transit in the WSMC Area of Coverage by an individual vessel (or internal vessel transit) as determined by WSMC's Transit Fee

Schedule. Each WSMC Covered Vessel in the WSMC Area of Coverage will be charged at least one Transit Fee per annual enrollment period. Vessels that reside in the WSMC Area of Coverage that do not transit during the annual period will be invoiced pursuant to policies established by WSMC's Board of Directors. For most vessels (except barges and vessels that make internal transits) a transit is defined as a trip into and then out of the WSMC Area of Coverage. Barges and other vessels that make internal transits may be required to submit a periodic list of trips made (as determined by WSMC) within the WSMC Area of Coverage.

Pursuant to Section 5.1.5 of this Agreement, the Ship Owner/Operator/Authorized Agent will ensure that a WSMC FIELD DOCUMENT and WSMC Notification Placard are provided for use on the bridge of each Covered Vessel (or in the pilot house of the tug towing a covered barge) prior to such vessel's arrival in the WSMC Area of Coverage. In the event of a spill or threatened oil spill, the Ship Owner/Operator herein agrees to follow the notification requirements of the WSMC FIELD DOCUMENT and the WSMC Notification Placard.

Pursuant to Section 5.1.6 of this Agreement, in the event of a vessel emergency that results in the discharge or substantial threat of discharge of oil into the state waters, and if not already reported to WSMC as a spill or threatened oil spill, then within one (1) hour of the onset of the emergency the Ship Owner/Operator must notify WA State (WEMD) at, 1-800-258-5990. WSMC will perform this notification to WEMD if requested.

Pursuant to Section 5.1.7 of this Agreement, the Owner/Operator/Authorized Agent shall advise WSMC of any and all updates and changes to information provided in this Agreement or the Schedule of Vessel Information.

Pursuant to Section 12.11 of this Agreement, this Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument. This Agreement may be signed and transmitted by facsimile (or electronically in a form that is accepted as a legal signature), with the same effect as an original signature, provided such signing party shall provide a counterpart signed original of the executed document, if requested by the other party.

Pursuant to Section 13.2 of this Agreement, if this Agreement is signed by an agent or authorized representative of the Covered Vessel's Owner/Operator, such agent or authorized representative warrants his/her authority to sign this Agreement and the *WSMC Member MSRC Service Agreement*, and shall provide WSMC with a copy of his/her [written authorization](#) to act on behalf of the Owner/Operator to sign this Agreement and the [WSMC Member MSRC Service Agreement](#).

**PART 1 OF THIS AGREEMENT (PAGES 1-2), PLUS PART 2, THE TERMS AND CONDITIONS OF THIS AGREEMENT (PAGES 3-11), CONSTITUTE INTEGRAL PARTS OF THE AGREEMENT BETWEEN WSMC AND SHIP OWNER/OPERATOR. THE OWNER/OPERATOR/AUTHORIZED AGENT HEREBY ACCEPTS THE TERMS OF THIS AGREEMENT. THE OWNER/OPERATOR/AUTHORIZED AGENT HEREBY ALSO ACCEPTS AND AGREES TO THE TERMS AND CONDITIONS OF THE [WSMC MEMBER MSRC SERVICE AGREEMENT](#).**

<p><b>WASHINGTON STATE MARITIME COOPERATIVE (WSMC) FOR ITSELF AND AS AGENT FOR MSRC</b></p> <p>By: _____ (Authorized Signature)</p> <p>_____ (Print Name)</p> <p>_____ (Date)</p>	<p>_____ (Ship Owner/Operator/Authorized Agent)</p> <p>By: _____ (Authorized Signature)</p> <p>_____ (Print Name)</p> <p>_____ (Date)</p>
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## **PART 2. TERMS AND CONDITIONS**

### **2. RECITALS.**

2.1 Under applicable Washington State law, certain cargo, fishery, passenger and other commercial vessels of 300 or more gross tons and all tank vessels and tank barges are required to file and maintain with state regulatory authorities an approved contingency plan for the containment and cleanup of oil spills. Vessels subject to these laws may satisfy the requirements by participation in a contingency plan filed by a non-profit maritime cooperative for a group of covered vessels.

2.2 WSMC is a cooperative non-profit corporation which has developed and maintains with the Washington State regulatory agency an umbrella contingency oil spill response plan (referred to herein as the "Plan") covering operations of various classes of vessels calling in certain Washington State waters defined as the WSMC Area of Coverage.

2.3 The WSMC Area of Coverage waters as used herein are defined in Part 1 of this Agreement.

2.4 "Oil" means oil in any form that is liquid at atmospheric temperature, including crude oil, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil, and for greater certainty, includes oil as defined by Washington State Law.

2.5 Except for vessels which may be obligated to satisfy additional requirements under federal law, the Plan provides contingency planning coverage required by applicable Washington State law for vessels and their owners/operators (referred to herein collectively as "Covered Vessel") who are enrolled for coverage and who pay WSMC's Transit Fees for coverage in the WSMC Area of Coverage.

2.6 Funding for the maintenance and implementation of the Plan and for the spill response system is provided by fees paid by Covered Vessels for coverage within the WSMC Area of Coverage.

2.7 This Agreement describes coverage of represented vessels under the WSMC Plan and other benefits available to such Covered Vessels under this Agreement.

### **3. ELIGIBLE VESSELS.**

The following vessels are eligible for enrollment with WSMC for coverage under the Plan:

- (a) Tank vessels, including barges constructed or adapted to carry oil in bulk as cargo or cargo residue;
- (b) Cargo and other self-propelled vessels of 300 gross tons or more engaged in commerce;
- (c) Passenger vessels of 300 gross tons or more with a fuel capacity of at least six thousand gallons carrying passengers for compensation;
- (d) Fishing vessels or fish processing vessels of 300 gross tons or more; and
- (e) Any other vessels required to have contingency plans by Washington Law.

### **4. TERM OF AGREEMENT.**

4.1 This Agreement shall be effective from the Effective Date and shall remain in effect until terminated by the Owner/Operator/Authorized agent or WSMC so long as the Ship Owner/Operator remains in good standing with WSMC. WSMC may terminate, cancel and revoke this Agreement if the Ship Owner/Operator is in breach or default of its obligations under this Agreement or any other WSMC Enrollment Agreement.

4.2 In the event WSMC elects to discontinue offering oil spill contingency plan coverage, ceases operations or has its contingency plan disapproved by the State of Washington Department of Ecology, WSMC may terminate this Agreement with written notice to the Owner/Operator/Authorized Agent.

## 5. SHIP OWNER/OPERATOR/AUTHORIZED AGENT ENROLLMENT.

5.1 The vessel owned by Ship Owner or operated by Operator and identified in this Agreement is hereby enrolled for coverage under the Plan pursuant to the terms and conditions stated in this Agreement, and each Covered Vessel shall be subject to the following conditions:

5.1.1 Each Covered Vessel must be a class of vessel for which contingency planning coverage is provided under the Plan and required by Washington Law.

5.1.2 Each Covered Vessel is required to have aboard, and to make available upon request, vessel diagrams or plans, for Washington Department of Ecology inspection and/or to WSMC, for spill response. Such diagrams or plans should show locations of cargo, fuel, and ballast tanks, including piping. Diagrams should also be available showing power plant locations, and any other locations for oil storage and/or oil transfer operations.

5.1.3 Additional vessels owned by a Ship Owner or operated by an Operator who has already enrolled one or more vessels with WSMC must be enrolled for coverage under the Plan upon first arrival of the vessel in the WSMC Area of Coverage by submitting a WSMC Enrollment Agreement for each vessel. Enrollment of any vessel (and any other vessels enrolled by the same owner/operator/authorized agent) may be revoked by WSMC if the vessel and/or its owner/operator/authorized agent fails to pay the applicable WSMC Transit Fees, per the schedule of fees regularly maintained by WSMC, within the customary invoicing cycle maintained by WSMC or fails to pay amounts due WSMC as the result of an actual or threatened oil spill event.

5.1.4 Unless otherwise agreed in writing by WSMC, vessels that do not submit an Advanced Notice of Arrival (ANOVA) Form to the US Coast Guard, must send notice of a vessel's transit into and out of (or presence in) the WSMC Area of Coverage, in writing, to WSMC for each call or transit in the WSMC Area of Coverage by an individual vessel (or barge or vessel transit that is internal to the WSMC Area of Coverage). Each Covered Vessel will be invoiced the appropriate transit fee(s) for each transit in the WSMC Area of Coverage by an individual vessel (or internal vessel transit) as determined by WSMC's Transit Fee Schedule. Each WSMC covered vessel in the WSMC Area of Coverage will be charged at least one First Transit Fee per annual enrollment period. Vessels that reside in the WSMC Area of Coverage that do not transit during an annual period will be invoiced pursuant to policies established by WSMC's Board of Directors. For most vessels (except barges and vessels that make internal transits) a transit is defined as a trip into and then out of the WSMC Area of Coverage. Barges and other vessels that make internal transits may be required to (as determined by WSMC) submit a periodic list of trips made within the WSMC Area of Coverage.

NOTE: For the WSMC coverage to apply, each vessel must have a current Vessel Enrollment Number and an Effective Date assigned by WSMC. Vessels already in the area when application (or renewal) for coverage is made, must report their presence in the WSMC Area of Coverage to WSMC. An Effective Date will be assigned by WSMC upon a vessel's first presence in and/or first transit into the WSMC Area of Coverage.

5.1.5 The Ship Owner/Operator/Authorized Agent will ensure that a WSMC FIELD DOCUMENT and WSMC Notification Placard are provided for use on the bridge of each Covered Vessel (or in the pilot house of the tug towing a covered barge) prior to such vessel's arrival in the WSMC Area of Coverage. In the event of a spill or threatened oil spill, the Ship Owner/Operator herein agrees to follow the notification requirements of the WSMC FIELD DOCUMENT and the WSMC Notification Placard.

5.1.6 In the event of a vessel emergency that results in the discharge or substantial threat of discharge of oil into the state waters, and if not already reported to WSMC as a spill or threatened spill, then within one (1) hour of the onset of the emergency the vessel must notify WA State (WEMD) at, 1-800-258-5990. WSMC will perform this notification to WEMD if requested.

5.1.7 The Owner/Operator/Authorized Agent shall advise WSMC of any and all updates and changes to information provided in this Agreement or the Schedule of Vessel Information.

5.2 In addition to denial or revocation of enrollment for non-payment of transit fees or spill charges, WSMC may deny or revoke enrollment if the Covered Vessel fails to maintain customary Federal VRP or NTVRP, and certificates or other proof of financial responsibility as required by the United States Coast Guard and, if applicable, state regulatory agencies, under applicable federal and state law. WSMC retains the right to deny or revoke enrollment for any Covered Vessel or any Ship Owner/Operator for cause as solely determined by the good faith decisions of WSMC's Board of Directors or Executive Committee.

6. EXCLUSION OF VESSELS FROM ENROLLMENT AGREEMENT.

Ship Owner/Operator/Authorized Agent may exclude vessels it owns, operates or represents from coverage under this Agreement, by providing written notice to WSMC in advance of the vessel's anticipated arrival in the WSMC Area of Coverage (or for barges, or other vessels already within the WSMC Area of Coverage, the Ship Owner/Operator/Authorized Agent must provide written notice prior to exclusion of coverage). The owner or operator of any vessel excluded from WSMC coverage by Ship Owner/Operator/Authorized Agent shall remain responsible for filing or providing proof of coverage under a separate contingency plan as may be required by the state and federal regulatory agencies. In the event of the exclusion of a vessel from WSMC coverage, WSMC may advise Washington Department of Ecology of such exclusion.

7. OIL SPILL CONTINGENCY PLANNING SERVICE.

7.1 WSMC services under this Agreement are limited to providing cooperative contingency planning and related emergency oil spill response management services in accordance with the Plan in the event of a spill or threatened spill. This service includes providing an individual to serve as WSMC Incident Commander and/or an Incident Command Staff on behalf of the Covered Vessel, in liaison with the owner/operator and the Covered Vessel's Qualified Individual (QI), to initiate and manage the response to the spill or threatened spill under the Plan for up to the first 24 hours after notification to WSMC of the spill or until WSMC is relieved by the Covered Vessel Representative (as hereafter defined in Section 9.7) or governmental regulatory agencies within that 24 hour period.

7.2 WSMC contingency planning and emergency response services are limited to the following:

7.2.1 Develop and maintain an umbrella oil spill contingency plan for Covered Vessels operating in the WSMC Area of Coverage;

7.2.2 Obtain and maintain required contingency plan approvals from Washington State regulatory agencies, and, where applicable, federal agencies; administer and develop revisions, updates, and renewal of the Plan with the regulatory agencies; administer Plan tests, drills and required modifications pursuant to regulatory requirements;

7.2.3 Provide proof of satisfaction of contingency planning requirements by Covered Vessels upon request of the State of Washington or Federal regulatory agencies;

7.2.4 Provide radio communications services, either directly with WSMC equipment or under contract with others;

7.2.5 Perform emergency oil spill response management services on behalf of Covered Vessels and their owners/operators and agents, in liaison with the owner/operator and the Covered Vessel's QI, as required for implementation of the Plan as to a particular Covered Vessel, during the initial 24 hours of an oil spill;

7.2.6 Upon report of a spill or threatened spill, provide an individual to serve as Incident Commander or for the more significant spills (at the discretion of WSMC) provide an expanded Incident Command Staff to assist the Covered Vessel in implementation of the Plan until WSMC is relieved by the Covered Vessel Representative or a state or federal regulator, or until 24 hours after notification of the spill, whichever is earlier; and

7.2.7 Provide other contingency planning, oil spill response management, and administrative services as may be specifically agreed to in writing by WSMC from time to time and on a case-by-case basis.

7.3 WSMC has and will continue to endeavour to negotiate discounts and reductions in costs of contingency planning and spill response services.

7.4 NOTE: In addition to the contingency planning and emergency response services available under WSMC's Plan, all tank vessels and non-tank vessels over 400 International Tons require a federal response plan on file with the US Coast Guard and may need the services of an additional response organization or organizations in order to meet Federal and Washington State planning standard requirements. The owners/operators of such vessels are encouraged to check with the appropriate regulatory authorities or to contact WSMC for further information.

## 8. WSMC RESPONSIBILITIES IN THE EVENT OF AN OIL SPILL, OR THREAT OF A SPILL, AND PLAN IMPLEMENTATION

In the event of implementation of the Plan for response to an oil spill or threatened oil spill, WSMC's duties under this Agreement are limited to the following:

8.1 Whenever a Covered Vessel or its Representative requires implementation of the Plan, it shall immediately orally advise WSMC and confirm the request in writing as soon as practicable, giving the location of the spill or threatened spill, and all available information required under the initial reporting provisions of the Plan. WSMC and Ship Owner/Operator agree that a prompt implementation of the Plan and response is of paramount importance. Upon request for Plan implementation and response, WSMC shall follow the prescribed implementation and initiation of response procedures as set forth in the Plan.

8.2 Under the Plan, WSMC will initiate and manage the response to the spill or threatened spill on the Covered Vessel's behalf, in liaison with the owner/operator and the Covered Vessel's QI, in accordance with the Plan. WSMC will provide an individual to serve as the WSMC Incident Commander or for more significant spills (at the discretion of WSMC) provide an expanded Incident Command Staff to perform spill management for the Covered Vessel under the Plan. WSMC will provide incident command services for the first 24 hours after notification to WSMC of the spill or until WSMC is relieved by the Covered Vessel Representative or regulatory authority within the first 24 hours after notification to WSMC.

8.3 WSMC or the WSMC Incident Commander provided by WSMC may engage response contractors and other response services on behalf of Covered Vessel pursuant to the Plan, in liaison with the owner/operator and the Covered Vessel's QI, during the first 24 hours after notification to WSMC or until the WSMC Incident Commander is relieved by a Covered Vessel Representative or regulatory authorities within that 24 hour period. The Covered Vessel shall have the sole responsibility for any and all costs of such implementation. WSMC is authorized under this Agreement to receive notification and request for initiation of response to a Covered Vessel from any representative of the Covered Vessel having actual, apparent, or implied authority on behalf of such vessel or its owners or operators. Without limitation, WSMC may initiate response, in liaison with the owner/operator and the Covered Vessel's QI, by MSRC under the WSMC Member MSRC Service Agreement entered into concurrently herewith between the Owner/Operator and MSRC. WSMC is authorized, along with any Qualified Individual named in a federal or state vessel response plan, to mobilize MSRC, direct MSRC Resources and manage Response Activities on its behalf. Upon entering into the WSMC Member MSRC Service Agreement, MSRC agrees that the Owner/Operator and WSMC may cite MSRC as a Primary Response Contractor in the WSMC Umbrella Plan.

8.4 A Covered Vessel's Owner/Operator may elect to provide the Covered Vessel's own oil spill response management in conjunction with use of the WSMC Plan or other plan acceptable to state and federal authorities if a Memorandum of Understanding of such arrangement has been approved by the state agency.

## 9. RESPONSIBILITIES OF COVERED VESSEL IN THE EVENT OF A VESSEL EMERGENCY, AN OIL SPILL, OR THREAT OF A SPILL, AND PLAN IMPLEMENTATION.

9.1 Covered Vessel retains sole responsibility for reporting a vessel emergency, or a spill, or threat of a spill to appropriate federal, state, and local regulatory agencies. Covered Vessel has sole responsibility for complying with all oil spill and vessel emergency reporting requirements of state, federal and local law.

9.2 In the event of a vessel emergency that may require tug assistance in the vicinity of Neah Bay, Washington, call 1.206.281.3810 or 1.800.562.2856 to contract the Washington state mandated Emergency Response Towing Vessel (ERTV). Any such contracting of the ERTV will automatically provide notice to WSMC that implementation of the Plan may become necessary.

9.3 In the event of an oil spill or threatened spill, from a Covered Vessel, the Captain/crew of the Covered Vessel is required to implement the Plan by contacting WSMC. Upon implementation of the Plan pursuant to the initial notification and reporting procedures stated in the Plan, spill response, containment, and cleanup shall be the responsibility of the Covered Vessel. By this Agreement, the Covered Vessel and the Owner/Operator authorize WSMC to act on behalf of the Covered Vessel, in liaison with the owner/operator and the Covered Vessel's QI, using such cleanup contractors and procedures as are designated in the Plan or as may otherwise be approved by regulatory agencies having jurisdiction. The conduct, suspension or termination of the spill response, containment and cleanup are the sole responsibility of the Covered Vessel, all as designated in the Plan and otherwise specified in applicable contingency plans, rules and regulations of state and federal authorities having jurisdiction.

9.4 Covered Vessel is required to notify the state through the Washington emergency management division of a discharge or substantial threat of discharge. Notifications must be made within one hour of the discharge or substantial threat of discharge, or as soon as is feasible without further endangering the vessel or personnel. This notification to the state may be made on behalf of the Covered Vessel by WSMC. Otherwise, WSMC must be notified by the Covered Vessel in addition to their state notification. The substantial threat of discharge may be affected or determined by; ship location and proximity to land or other navigational hazards, weather, tidal currents, sea state, traffic density, condition of vessel and timing or likelihood of vessel repairs.

9.5 Covered Vessel is responsible for all cleanup and disposal costs and expenses as designated in the Plan, related response contractor fees and charges (including all MSRC fees and charges), WSMC fees for administration and communications services and for services of the WSMC Incident Commander and/or Incident Command Staff, and for all damages, costs, expenses, fines, and penalties, as may exist or arise under this Agreement, the Plan, or applicable state and/or federal law, subject to such defences as are available to the Covered Vessel under applicable law. Performance by WSMC of Plan implementation procedures under the Plan or providing services of a WSMC Incident Commander shall not relieve the Covered Vessel of the duties, responsibilities, and liabilities imposed on the Covered Vessel under the Plan or applicable law.

**NOTE: WSMC responsibility upon Plan implementation is limited to initiating the response, in liaison with the owner/operator and the Covered Vessel's QI, following the procedures of the WSMC Incident Command as specified in the Plan, providing a WSMC Incident Command and arranging for contractor clean-up services as specified in the Plan for up to 24 hours after the spill or until the WSMC Incident Command is relieved by the Covered Vessel Representative or regulatory agencies within the first 24 hours.**

9.6 Any charges for oil spill response management and cleanup services provided by WSMC to the Covered Vessel shall be for costs incurred by WSMC, including costs of administration; it being the intent of WSMC to provide such services on a non-profit basis. Upon WSMC's response to a Covered Vessel's oil spill or threatened spill, WSMC may request an assurance of payment by the Covered Vessel's Owner/Operator/Authorized Agent, Person Authorized to Enter Agreement, the Covered Vessel's insurance underwriters, or Representative, for the cleanup and response management costs. The assurance of payment shall be in a form that is mutually acceptable to WSMC and the Covered Vessel's owner/operator or its insurance underwriters. In the event such a request is made by WSMC, the assurance must be promptly received by WSMC. If WSMC fails to receive such an assurance within a reasonable time, then WSMC shall be entitled, in its sole discretion, to transfer the responsibility of cleanup and response management operations to the federal on-scene coordinator or the coordinator's duly authorized, delegated representative. Assurance of payment may also be requested by MSRC under the WSMC Member MSRC Service Agreement.

9.7 In the event of an oil spill from a Covered Vessel, the Covered Vessel is required to designate an individual, the Covered Vessel Representative, who will represent the Covered Vessel to coordinate the transfer of the oil spill response management to the Covered Vessel's responsible party within the first twenty-four (24) hours of the spill.

9.8 Actual oil spill cleanup is performed under the Plan by the Plan's primary response contractor (s), and other contractors and cooperatives as engaged under the Plan. WSMC is not a primary response contractor or an oil spill removal organization (OSRO).

9.9 In the event of Plan implementation, the following documents shall control Covered Vessel's responsibilities and relationship and duties of Covered Vessel and WSMC:

- (a) The Plan and WSMC Field Document and WSMC Notification Placard;
- (b) This WSMC Enrollment Agreement;
- (c) Any applicable service agreement or contracts between WSMC and spill response contractors or cooperatives;
- (d) Any applicable service contracts or agreements between spill response contractors or other cooperatives and WSMC or Covered Vessel in effect or entered into during implementation of an oil spill response under the Plan;
- (e) Federal Vessel Response Plan (VRP) or Non-Tank Vessel Response Plan (NTVRP) for the Covered Vessel;
- (f) Applicable Service Agreements between owner/operator and PRCs or OSROs;
- (g) Any applicable Authorized Representative (AR) letters;

- (h) Any applicable Memorandums of Understanding (MOU);
- (i) Any applicable plans or orders by state or federal agencies asserting jurisdiction over the oil spill;
- (j) Incident Action Plans Prepared and approved by the Incident Command Unified Command; and
- (k) WSMC Responsible Party's Acknowledgement of Transfer Agreement.

#### 10. LIMITED AGENCY APPOINTMENT OF WSMC.

10.1 By this Enrollment Agreement, the Covered Vessel appoints WSMC as its agent for the limited purpose of performing the initial oil spill notification and response initiation procedures, in liaison with the owner/operator and the Covered Vessel's QI, specified in the Plan. This limited agency appointment includes:

10.1.1 Authorization for WSMC to provide a WSMC Incident Commander and/or Incident Command Staff under the Plan for up to the first 24 hours after notification to WSMC of a spill or threatened spill and request by Covered Vessel for Plan initiation, or until the earlier relief of the WSMC Incident Command by the Covered Vessel or a state or federal regulatory agency;

10.1.2 Authorization for WSMC and the WSMC Incident Command Staff to engage on Covered Vessel's behalf, in liaison with the owner/operator and the Covered Vessel's QI, spill response contractors consistent with the Plan and to provide spill response for up to 24 hours following notification of the spill or threatened spill or until the earlier relief of the WSMC Incident Commander by the Covered Vessel or a state or federal regulatory agency;

10.1.3 Authorization for the WSMC Incident Commander, in liaison with the owner/operator and the Covered Vessel's QI, to take all steps reasonably considered necessary on the Covered Vessel's behalf to implement cleanup under the Plan for up to the first 24 hours after notification of the spill or threatened spill or until the earlier relief of the WSMC Incident Commander by the Covered Vessel Representative or a state or regulatory agency.

10.2 This limited agency appointment is effective upon first arrival of Covered Vessel in the WSMC Area of Coverage, or at the time an actual or threatened oil spill from a Covered Vessel enters or threatens the WSMC Area of Coverage, and shall remain in effect so long as Covered Vessel or its spill remains in or threatens the WSMC Area of Coverage. All costs or expenses arising from or incurred in WSMC's activities under its limited agency appointment in the implementation of the Plan are the Covered Vessel's sole responsibility (without prejudice to other defences or third-party claims Covered Vessel may have respecting such costs and expenses). Nothing contained in this Agreement shall limit, reduce or expand the liability of Covered Vessel to third parties under applicable federal or state law for cleanup costs and expenses chargeable to such Covered Vessel under applicable law.

#### 11. RELEASE AND WAIVER OF LIABILITY BY COVERED VESSEL AND BY WSMC

11.1 Covered Vessel acknowledges:

11.1.1 Covered Vessel is solely responsible under applicable law for all contingency planning, spill reporting, government agency notifications, contracting, and cleanup operations in connection with response action necessitated by an oil release from Covered Vessel. Covered Vessel is solely responsible for the ultimate control of any spill response and clean-up operation.

11.1.2 WSMC is only willing to undertake contingency planning services to assist Covered Vessel in meeting its statutory obligations, and to provide a WSMC Incident Commander and/or Incident Command Staff to assist Covered Vessel in implementation of spill response in consideration of Covered Vessel's hereinafter promise of indemnification in favor of WSMC.

11.2 In consideration of the foregoing, and for the purposes of any dispute relating to the enforceability of the indemnification provisions, Covered Vessel acknowledges that as a Member of WSMC prior to the event:

- (a) It did have adequate opportunity to participate in decisions made by or on behalf of WSMC or its contractors with regard to pre-event planning, communications, logistics, equipment and materials acquisition and maintenance, operations, and other functions;



- (b) It did have adequate opportunity to inspect the Plan or the equipment, materials and supplies designated under the Plan, or to evaluate their condition and usefulness to Covered Vessel in the event of a release; and
- (c) It did have adequate opportunity to evaluate the qualifications of the WSMC Incident Commander and/or Incident Command Staff to be provided by WSMC or of contractors designated in the Plan or engaged by WSMC to be of assistance to Covered Vessel in the event of oil spill.

11.3 The provisions stated in this Section 11 apply to WSMC, each of WSMC's other Covered Vessels and subsequent Covered Vessels and their respective Owners/Operators, and the directors, officers, managers, administrators, employees, agents, and loaned servants of each for their acts while acting on behalf of WSMC, including any persons provided by WSMC as a WSMC Incident Commander or member of the Incident Command Staff (collectively referred to herein as the "Released Parties").

11.4 Indemnification under this Agreement shall be, as follows:

11.4.1 Covered Vessel and its owners/operators who enroll for coverage under this Agreement, on their own behalf or their affiliates, authorized agents, employees, successors-in-interest and all other operators, owners, or charterers receiving services on behalf of Covered Vessel under this Agreement (collectively, the "Indemnitors") shall indemnify, defend, and hold harmless WSMC, and its directors, officers, managers, administrators, employees, agents and loaned servants, including any person provided by WSMC as an incident commander or as a member of an Incident Command Staff (collectively, the "Indemnitees") from and against any and all costs, liabilities, claims, demands, and causes of action, including pollution liabilities, to the extent caused by the Indemnitors: (i) failing to observe or comply with any applicable law, regulation, or lawful authority; (ii) failing to observe or comply with and fulfill the Indemnitors' obligations under this Agreement; or (iii) as a result of the Indemnitors' gross negligence or willful misconduct, except to the extent that such costs, liabilities, claims, demands, and causes of action occur as a result of the Indemnitees' failure to observe or comply with any applicable law, regulation or lawful authority, or the Indemnitees' failure to observe or comply with and fulfill the Indemnitees' obligations under this Agreement or as a result of the gross negligence or willful misconduct of the Indemnitees, or their employees or agents.

11.4.2 Without limitation of the foregoing, the Indemnitors shall additionally indemnify, defend, and hold harmless the Indemnitees, and each of them, from and against any and all costs, liabilities, claims, demands and causes of actions for removal costs and damages under the Oil Pollution Act of 1990 ("OPA 90") or corresponding state law which results from actions taken or omitted to be taken by the Indemnitees, or any of them, in the course of rendering contingency planning services, spill response services, or care, assistance, or advice in connection with a discharge or threatened discharge (as defined by OPA 90 or state law) consistent with the National Contingency Plan or as otherwise directed by the Indemnitors or their authorized representatives, the U.S. Coast Guard, or other governmental authorities, which the Indemnitees, individually or collectively, may suffer, incur or pay out, except to the extent that:

11.4.2.1 The Indemnitees, and each of them, are held to be entitled to full immunity from liability under an applicable federal or state responder immunity law, in which event the Indemnitors shall only be required to indemnify the Indemnitees for the reasonable attorney fees actually expended to establish such immunity or defense;

11.4.2.2 To the extent such liabilities, claims, demands and causes of action subject to indemnification or duty to defend hereunder are the proximate result of the gross negligence or willful misconduct of the Indemnitees, or any of them;

11.4.2.3 The Indemnitors would have been entitled to a complete defense to liability under federal or state law had such claim, demand or cause of action been made directly against the Indemnitors or the vessel(s) owned or operated by the Indemnitors subject to this Agreement directly;

11.4.2.4 Such payment or indemnification would result in a payment to the Indemnitees, or any of them, in excess of the amount to which the Indemnitors would have been entitled to limit liability under federal or state law had such claim, demand, or cause of action been made against the Indemnitors, or any vessel owned or operated by the Indemnitors subject to this Agreement, directly; or

11.4.2.5 The claim for indemnification arises in respect of death or personal injury.

11.4.3 WSMC will indemnify, defend and hold harmless the Indemnitors, and each of them, from and against any and all costs, liabilities, claims, demands, and causes of action to the extent caused by the WSMC: (i) failing to observe or comply with any applicable law, regulation or lawful authority; (ii) failing to observe or comply with and fulfill the

WSMC's obligations under this Agreement; or (iii) as a result of the gross negligence or willful misconduct of the WSMC, or any of the Indemnitees, except to the extent that such costs, liabilities, claims, demands, and causes of action occur as a result of the Indemnitors' failure to observe or comply with any applicable law, regulation or lawful authority, or the Indemnitors' failure to observe or comply with and fulfill the Indemnitors' obligations under this Agreement or as a result of the gross negligence or willful misconduct of the Indemnitors, or their employees or agents, or of third parties.

11.4.4 Notwithstanding anything to the contrary in this Section 11, Indemnitors' total aggregate of all liabilities incurred shall not exceed the limits of the Indemnitors' P&I insurance coverage.

11.5 Survival of Obligations. This Section 11, and each of its provisions, shall remain in full force and effect notwithstanding the existence of any breach or default by any party under this Agreement, and shall specifically survive the expiration or termination of this Agreement.

## 12. GENERAL PROVISIONS.

12.1 The Marine Exchange of Puget Sound (referred to herein as WSMC's "Services Administrator") or other organization, appointed from time to time by WSMC's Board of Directors, shall represent WSMC in its routine and emergency communications and transactions with Ship Owner/Operator/Authorized Agent, Covered Vessel and their representative agents. Ship Owner/Operator/Authorized Agent, Covered Vessel and their representative agents shall be entitled to rely upon the power and authority of the Services Administrator to represent and bind WSMC in matters pertaining to this Agreement.

12.2 This Agreement may be amended from time to time by WSMC, provided, however, that WSMC's Services Administrator is not empowered to agree to any amendments to this Agreement, without the express, written authority of WSMC. Amendments may also be required to maintain compliance with applicable regulations. Any such amendments shall be in writing and communicated to all Ship Owner/Operator/Authorized Agents. Such notification shall be given at least thirty (30) days in advance of the effective date of any amendments or modifications going into effect.

12.3 Except for disputes relating to non-payment of WSMC fees or response costs, any dispute or controversy arising under, out of, in connection with, or in relation to this Agreement, any amendments hereof, or any breach hereof, shall be determined and settled by arbitration to be held in Seattle, Washington. Any party to this Agreement may call for arbitration by giving written notice to the other party giving a brief description of the dispute or differences which such parties desire to put to arbitration. The parties shall attempt to agree on a single arbitrator to decide the matter(s). If within twenty (20) days the parties are unable to agree on a single arbitrator, then the party requesting arbitration and the party responding to such request shall each appoint a single arbitrator and a third arbitrator shall be appointed by the two so chosen. If the other party shall not appoint its arbitrator within twenty (20) days of notice of appointment of an arbitrator by the first party, then the first party shall have the right without further notice to appoint a second arbitrator, who shall be a disinterested person, with precisely the same force and effect as if said second arbitrator had been appointed by the other party. In the event that the two arbitrators fail to appoint a third arbitrator within ten (10) days of the appointment of the second arbitrator, either arbitrator may apply to a judge of any court of competent jurisdiction at Seattle Washington, for the appointment of a third arbitrator, and the court appointment of such arbitrator shall have precisely the same force and effect as if such arbitrator had been appointed by the two arbitrators. The procedures followed and the conduct of the arbitration shall be in accordance with rules or guidelines selected by and deemed appropriate to the proceedings by the arbitrator(s). The decision of the single arbitrator, or if before a panel of three arbitrators, the decision of any two of them, shall be final and binding. The fees of a single arbitrator and, if there is a three-person panel, the fee of the third arbitrator, are to be shared equally by the parties. If a three person panel, each party is to pay the fees of the arbitrator appointed by them or on their behalf.

12.4 Notices required hereunder should be addressed to the address and facsimile numbers set forth in the Schedule of Vessel Information.

12.5 If any provision of this Agreement or portion thereof should be declared invalid for any reason, the invalid provision or portion shall be deemed omitted and the remaining terms shall nevertheless be given effect.

12.6 The waiver of a breach of any term or condition of this Agreement shall not be deemed to constitute the waiver of any other breach of the same or any other term or condition hereof.

12.7 WSMC Covered Vessel Owner/Operator/Authorized Agents who have enrolled under this Enrollment Agreement may refer to WSMC and the Plan in general reporting and contingency plan filing with governmental agencies. WSMC shall be entitled to provide information to any governmental agency regarding the relationship of any Covered Vessel to WSMC and coverage of any Covered Vessel under the Plan.

12.8 Neither WSMC nor any Ship Owner/Operator or Covered Vessel may assign their respective rights or obligations under this Agreement without the prior written consent of the other party.

12.9 No governmental agency or other private party, including any other contractors or subcontractors referenced herein or in the Plan, are intended to be third-party beneficiaries of any rights or obligations under this Agreement.

12.10 To the extent that the substantive law of the United States does not govern this Agreement, this Agreement shall be construed under the laws of the State of Washington. The parties agree that all matters involving interpretation or enforcement of this Agreement will be referred, subject to the arbitration provisions in Section 12.3, to the United States District Court for the Western District of Washington at Seattle, or, if and only if the United States District Court does not have jurisdiction over any such matter, to any other court of competent jurisdiction in Seattle, Washington.

12.11 This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument. This Agreement may be signed and transmitted by facsimile (or electronically in a form that is accepted as a legal signature), with the same effect as an original signature, provided such signing party shall provide a counterpart signed original of the executed document, if requested by the other party.

13. ACCEPTANCE OF AGREEMENTS BY COVERED VESSELS.

13.1 Enrollment of a vessel by the Ship Owner/Operator/Authorized Agent pursuant to this Enrollment Agreement shall be effective upon its first arrival or presence in the WSMC Area of Coverage. Unless excluded from enrollment under Section 6, a Covered Vessel owned and/or operated by Ship Owner/Operator shall be deemed to have acknowledged and accepted the terms and conditions of this Enrollment Agreement, and the Plan as of the time each such vessel enters the WSMC Area of Coverage. Each such Covered Vessel, and its Ship Owner/Operator, shall be deemed to have acknowledged and accepted the terms and conditions of the *WSMC Member MSRC Service Agreement* each time such vessel enters the WSMC Area of Coverage; in consideration of such agreement, MSRC shall allow the vessel to rely on MSRC for PRC coverage during such voyage. In the event the signer of this Agreement is an agent of a disclosed principal, nothing contained herein is or shall be construed to be a guarantee or agreement by such agent to pay any cost, fee, expense, damages, fines, penalties or assessments chargeable to or against Covered Vessel or its owners, operators, charterers, officers or crew, under any of the aforementioned agreements, under any other agreements relating thereto entered by the Covered Vessel's Authorized Agent in a representative or agency capacity or under applicable federal or state law or regulation. All such costs, fees, expenses, damages, etc., shall remain exclusively for the account of the Covered Vessel and its owners and/or operators.

13.2 If this Agreement is signed by an agent or authorized representative of the Covered Vessel's Owner/Operator, such agent or authorized representative warrants his/her authority to sign this Agreement and the *WSMC Member MSRC Service Agreement*, and shall provide WSMC with a copy of his/her written authorization to act on behalf of the Owner/Operator to sign this Agreement and the *WSMC Member MSRC Service Agreement*.