

[OIL COMPANY LIMITED]



PRINCIPAL AND AGENCY AGREEMENT

THIS AGREEMENT is made on

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BETWEEN [OIL COMPANY LIMITED] whose registered office is situated at [1 Oil Rig Street, Melbourne in the State of Victoria] ("**Principal**")

AND AUSTRALIAN MARINE OIL SPILL CENTRE PTY LIMITED (ACN 051 958 868) whose registered office is situated at Australian Institute of Petroleum, 24 Marcus Clarke Street, Canberra in the Australian Capital Territory ("**Agent**")

WHEREAS:

- A.** The Agent manages and operates a Marine Oil Spill Centre near Geelong Victoria.
- B.** The Agent from time to time receives requests from Customers to assist them in relation to an actual or threatened Oil spill or for the purposes of training the Customer's employees and agents in Oil spill Clean-Up techniques.
- C.** The Principal owns Oil spill equipment located at its Oil installations in various parts of Australia and has personnel expert in Oil spill Clean-Up techniques.
- D.** The parties contemplate that from time to time the Principal would be willing to provide Services, Personnel, Consumables and Equipment to Customers through the agency of the Agent without, necessarily, the Agent disclosing the fact of agency to the Customer.
- E.** The parties have agreed to enter into this Agreement to facilitate the making, from time to time, of contracts between the Principal and a Customer for the supply of Services, the sale of Consumables, the provision of services of Personnel or the hire of Equipment or a combination of them as the case may require.

IT IS AGREED as follows:-

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless the context otherwise requires, expressions which are defined in the Service Contract bear their defined meanings subject to such modification as is effected by subclause 1.2.
- 1.2 For the purposes of this Agreement, unless the context otherwise requires, definitions in clause 1.1 of the Service Contract are modified as under:-
 - (a) to the extent that it is a term of an Agency Contract that the Agent should enter into and perform a Service Contract as agent of the Principal, Service Contract, means a contract between the Agent in its capacity as agent for the Principal and the Customer and also a contract between the Principal and the Customer;
 - (b) to the extent that the Agent enters into a Service Contract with a Customer as agent for the Principal;

“Services” refers to services to be provided by the Principal;

“Consumable” means an item of materials supplied by the Principal;

“Personnel” means the employees or agents of the Principal; and

“Equipment” means equipment to be deployed or hired by the Principal;

1.3 In this Agreement, unless the context otherwise requires:-

“Agency Contract” means a contract between the Principal and the Agent with respect to a proposed Service Contract as described in clause 2.2(b)

“AMSA” means the Australian Maritime Safety Authority;

“ASC Law” means the ASC Law in each Australian jurisdiction;

“Corporations Law” means the Corporations Law in each Australian jurisdiction;

“Customer” means a person with whom the Agent enters into a Service Contract;

“Principal” includes the Principal, its successors, agents and assigns;

“Service Contract” means a contract entered into between the Agent on behalf of the Principal and a Customer for the provision of Services, Consumables, Personnel or Equipment or a combination of them.

1.4 In this Agreement, unless the context otherwise requires:-

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include the other genders;
- (c) words importing persons include corporations, governments and government bodies and vice versa;
- (d) references to Clauses and subsidiary parts of Clauses are to Clauses and parts of Clauses in this Agreement;
- (e) terms such as "herein", "hereby", "hereunder", and "hereof" refer to this Agreement as a whole and not to the Clause or subsidiary part where those terms appear;
- (f) references herein to any deed, agreement or other instrument are references to that deed, agreement or other instrument as it may from time to time be amended or extended in accordance with its terms; and
- (g) references to a party mean a party to this Agreement, and include the successors and permitted assigns of a party.

- 1.5 Headings to Clauses are for convenience only and do not affect the meaning or operation of this Agreement.
- 1.6 The Principal and the Agent may assume without further enquiry that a person who has been notified by the other of them as the nominee of that other is such a nominee and remains so until notified in writing to the contrary.
- 1.7 The Agent acknowledges that the Principal may have entered into this Agreement wholly in its own capacity or wholly as agent for one or more Affiliate(s) or partly in its own capacity and partly as agent for one or more Affiliate(s) (whether or not the Principal purports to act as agent or discloses the fact of agency to the Agent).

2 CREATION OF AGENCY

2.1 Appointment of Agent

The Principal hereby appoints the Agent as its agent to enter into a Service Contract with a Customer on the condition that the identity of the Principal is not intentionally disclosed by the Agent and otherwise on the terms and conditions set out in this agreement. The Agent accepts that appointment.

2.2 Requests to Hire

- (a) The Agent may from time to time hereafter request the approval of the Principal to the entry by the Agent into a Service Contract as agent for the Principal.
- (b) An Agency Contract shall immediately come into force on each occasion that an authorised nominee of the Agent requests an authorised nominee of the Principal to enter into a Service Contract, and that request is agreed to. The Principal may accept any such request in writing or orally.
- (c) The Agent acknowledges that the Principal need not agree to a request when, in the Principal's absolute discretion, the Principal determines that Consumables, Equipment or Personnel are required for use in another case. The particulars to be included by the Agent in the Schedules to any Service Contract shall be as agreed by the Customer and the nominee of the Principal or, in default of agreement, as specified by the Principal's nominee.
- (d) The Service Contract must provide that if the Principal, in its absolute discretion, determines that Consumables (if not already consumed), Personnel or Equipment that are or are to be supplied, deployed or hired are required by the Principal for use in responding to an actual or threatened Oil Spill, the Principal may direct the Agent to require their return forthwith from the Customer.
- (e) If a Customer so requests, the Agent may offer to supply to the Customer the services of the Personnel if, in the Principal's absolute discretion, it considers it is able to do so, having regard to the circumstances. The services of the Personnel shall only be offered to a Customer on the condition that the Principal may in its absolute discretion direct the Agent to withdraw the Personnel.

- (f) The Principal shall nominate, by separate written notice made from time to time, persons who are authorised to agree to a request by the Agent to enter into a Service Contract as agent of the Principal. In addition, any director of the Principal and any executive of the Principal having ostensible authority so to act is expressly hereby authorised to respond to a request by the Agent to enter into Service Contracts as agent of the Principal. The same person, or two persons who are both employees of the Principal and Agent, may not so act both for the Principal and the Agent.
- (g) Any nominee or other person referred to in sub-clause 2.2(f) has authority to act under sub-clause 15.2 of any Service Contract.
- (h) Where a nominee of the Agent requests the Principal to enter into a Service Contract, the Principal's nominee may specify that the Service Contract shall be between the Agent on behalf of an Affiliate of the Principal, in which event references to the Principal in this document shall, where the context permits, be deemed to be references to that Affiliate. For this purpose the Principal is entering into this Agreement as agent for all such Affiliates and hereby warrants its authority to do so.
- (i) Each of the Principal and the Agent agrees to ratify and confirm any action lawfully taken by a nominee, director or executive in the exercise of the powers conferred by this Agreement.

3 DUTIES OF AGENT

- (a) As soon as practicable after the making of an Agency Contract, the Agent shall use its best endeavours to procure in accordance with the Principal's instructions (unless an offer to enter into the Service Contract has already been executed) execution of the Service Contract by the proposed Customer;
- (b) Each Service Contract in respect of which the Principal is to be the principal shall be in a form approved of by the Principal and the Agent shall have no authority to use any other form without the specific written authority of the Principal. The Principal acknowledges and confirms that the Service Contract annexed to this agreement and marked "A" is, until the Principal notifies the Agent otherwise, in a form approved by the Principal;
- (c) The Agent shall use its best endeavours to ensure that the terms and conditions of each Service Contract entered into on behalf of the Principal are fully and properly performed and observed by the Customer;
- (d) The Agent shall not have authority to agree to any term (whether a condition or warranty) of or with respect to any Service Contract which would or might involve the Principal in liability or afford any defence or counterclaim to the Customer or other party and which is not specifically within the Agent's authority;
- (e) The Agent warrants that the Agent has not made and will not make any representation with respect to or in connection with any Service Contract or any

Services, Consumables, Personnel or Equipment to the Customer or any other person which is not specifically authorised by the Principal;

- (f) The Agent covenants and agrees with the Principal:
- (i) to collect all moneys payable under any Service Contract, to the extent that such monies belong to the Principal, and to hold the same in specie in trust for the Principal without any deduction except as specifically authorised in this document and to account for such moneys by banking them to the account of the Principal or otherwise as the Principal shall direct;
 - (ii) to notify the Principal forthwith of any moneys banked for the credit of the Principal's account and to notify the Principal as and when required by the Principal of all collections referred to in the previous subparagraph;
 - (iii) to notify the Principal forthwith of any communication in writing or otherwise received by the Agent with respect to any Service Contract and to deliver up to the Principal such communications as are in writing;
 - (iv) upon request by the Principal to deliver up to the Principal each Service Contract entered into on behalf of the Principal;
 - (v) to use its best endeavours to ensure that each Service Contract will be (if stamped) duly stamped and (if not stamped) will not require to be stamped under the laws of any State or Territory of the Commonwealth of Australia which claims jurisdiction to impose such stamp duty and that each of them is valid in all States and Territories in the Commonwealth of Australia where it may then or later require to be enforced and that no Service Contract is subject to being defeated or avoided or prejudiced in any way by reason of the conduct of the Agent or its employees or agents;
 - (vi) at any time and from time to time to execute and do all such assurances and things reasonably requested by the Principal for conferring upon the Principal, to the extent that they belong to the Principal, legal and beneficial title to all or any of the following (without any implication that the same has not or will not otherwise vest in the Principal):
 - (A) all Equipment deployed or hired;
 - (B) all moneys due by the Customer under any Service Contract;
 - (C) all rights, powers and benefits, expressed to be of the Agent under any Service Contract, entered into by the Agent for the Principal;

- (D) the interest in property arising out of the fact that any Equipment is or may become affixed or otherwise a part of such property; and
 - (E) all other property intended to be vested in the Principal or otherwise as may be required by the Principal for effecting the intention of these presents or more effectively vesting in the Principal the property intended to be vested in it;
- (vii) upon request by the Principal to take all lawful steps for the enforcement of each Service Contract and the protection of Equipment deployed or hired or Personnel and the recovery of all moneys and damages payable under the Service Contract including (without limiting the generality of the foregoing) in the name of the Agent or the Principal, or both, all lawful steps, actions, matters and things (including legal proceedings) for the recovery of moneys or damages owing or unpaid by the Customer, the repossession of Equipment, the making of claims under insurance policies and/or the enforcement of such policies; and
 - (viii) during the currency of each Service Contract to cause the Equipment deployed or hired, and any other insurable property the subject thereof to be insured in the name of the Agent on behalf of the Principal and in the name of the Customer for the full insurable value of the Equipment or other property against fire, theft and accident and such other perils as the Principal may reasonably require on terms and conditions and with an insurer approved of by the Principal.

4 CONSUMABLES, EQUIPMENT AND PERSONNEL

- 4.1 Where a Service Contract provides for Equipment to be deployed or hired or Consumables or Personnel to be supplied to a Customer, the Principal shall as soon as practicable, arrange for the Equipment to be deployed or delivered and the Consumables and Personnel supplied at the place advised by the Agent or, at its discretion make the Equipment, Consumables or Personnel available to be collected or transported by the Agent or the Customer.
- 4.2 The Agent shall arrange for the return of Equipment, Personnel and Consumables (if not already consumed) as soon as practicable to the Principal:
 - (a) where the Principal in its absolute discretion has determined that they are required by the Principal for use in responding to a actual threatened Oil Spill; or
 - (b) if this Agreement is terminated under clause 10; or
 - (c) after they cease to be required under the Service Contract.

5 GENERAL UNDERTAKINGS

The Agent covenants with the Principal that it:

- (a) will perform all obligations (if any) imposed upon it or upon the Principal by or under the Service Contract and whether such obligations arise by agreement or under statute;
- (b) will promptly pay the Principal any sum which is owing by the Agent to the Principal pursuant to a Service Contract or this Agreement;
- (c) will retain for a period of two years all books, accounts and records which directly relate to the Service Contract, Services, Consumables, Equipment or Personnel; and
- (d) will permit the Principal at any reasonable time by any authorised person to inspect the Agent's books, accounts and records and to take copies thereof and to deliver up to the Principal for attention by it for such period as the Principal thinks fit all books, accounts and records which relate substantially to the Service Contract, Services, Consumables, Equipment and Personnel only and do not substantially relate to any other matter.

6 FEES AND EXPENSES

6.1 The Principal, within 14 days of the expiration or termination of each Service Contract, in relation to which its Equipment is deployed or hired or its Personnel or its Consumables are supplied, shall:

- (a) pay the Agent a fee with respect to the Service Contract set out in the Schedule to this document; and
- (b) reimburse the Agent for the Agent's out-of-pocket expenses directly related to the making of each Service Contract.

6.2 The Agent shall use its best endeavours to procure the payment by the Customer of any amounts payable under a Service Contract in respect of stamp duty which are payable by the Principal and shall promptly account to the Principal for any such payments it receives from the Customer. Nothing in this clause 6.2 obliges the Agent to pay any such duty.

7 LIABILITY AND INDEMNITY

- (a) Apart from their respective obligations set out in this Agreement and subject also to sub-paragraphs (b) and (c) of this clause 7, except for any non-excludable statutory provision to the contrary, neither party shall have any liability to the other for:
 - (i) the failure of any Consumable or Equipment hired or deployed pursuant to the Service Contract to perform at all or to any set standard or criteria

or to be suitable for the purpose for which it was required or any other purpose;

- (ii) any act, omission, advice or representation of any Personnel;
 - (iii) any loss, destruction or damage of whatever nature and howsoever caused to the Equipment;
 - (iv) any death, injury, disease or loss of whatever nature and howsoever caused to or suffered by any Personnel; or
 - (v) any other reason whatsoever.
- (b) The Principal agrees to hold harmless and to indemnify the Agent for all acts or omissions performed or omitted by the Agent on behalf of the Principal where those acts or omissions are authorised by the Principal and are fully and properly performed in accordance with the Principal's instructions or directives. However, without prejudice to the exclusions from liability specified in sub-paragraph (a) of this clause 7, the Principal shall have no liability either to the Agent or to AMSA in relation to any loss, damage or claim of whatever nature and howsoever caused which is claimed against, suffered or incurred by the Agent, AMSA or any other person as a direct or indirect result of the Principal's Consumables, Equipment or Personnel being deployed, hired or supplied to AMSA pursuant to a Service Contract or otherwise being made available to AMSA by the Agent. Furthermore, the Agent agrees to hold harmless and to indemnify the Principal in relation to any loss, damage or claim of whatever nature and howsoever caused which is claimed against, suffered or incurred by the Principal as a direct or indirect result of its Consumables, Equipment or Personnel being deployed, hired or otherwise supplied or made available to AMSA by the Agent.
- (c) In the case of liability of one party to the other which has not been excluded by sub-paragraphs (a) or (b) of this clause 7, such liability is limited, in the case of the provision of Services including advice or the deploy of Equipment, to the supply of the Services again or the payment of the cost of having the Services supplied again whichever the party in default chooses and in the case of the Consumables or deployment or hire of Equipment to the repair of the Consumables or Equipment or the cost of such repair whichever the party in default chooses;
- (d) The liability of either party shall not in any case (including proven willful misconduct) extend to any loss of profit or other consequential loss or damage claimed against or suffered either by the Agent or the Principal.

8 FORCE MAJEURE

- (a) A party shall not be liable for any failure to fulfil its obligations under this Agreement (other than an obligation to pay money) if and to the extent to which fulfilment has been delayed, hindered, interfered with, curtailed or prevented by Force Majeure.

- (b) In this Agreement, "**Force Majeure**" means:-
- (i) any circumstance whatsoever which is beyond the reasonable control of the party affected;
 - (ii) any compliance with any law, regulation or ordinance, or with any order, demand or request of any international, national, port, transportation, local or other authority or agency or of any body or person purporting to be or to act for such authority or agency or any corporation directly or indirectly controlled by any of them; and
 - (iii) any strike, lockout or labour dispute (whether or not the party affected is a party thereto or would be able to influence or procure the settlement thereof).
- (c) A party intending to seek relief under this Clause shall, as soon as reasonably practicable after learning of the happening of a circumstance of Force Majeure, notify the other party of that circumstance, furnish reasonably full particulars thereof, and give the other party an estimate of the period of time required to enable it to resume full performance of its obligations. The giving of notice is not a condition precedent to reliance on or relief under this Clause.
- (d) A party intending to seek relief under this Clause shall use reasonable endeavours in all the circumstances to eliminate the circumstance of Force Majeure relied on and to minimise the effects of that circumstance. Notwithstanding anything to the contrary expressed or implied herein, the settlement of any strike, lockout or labour dispute is entirely within the discretion of the party involved therein which may settle it at such time and on such terms and conditions as it considers advisable.

9 EVENTS OF DEFAULT

The matters set out in this clause are events of default for the purposes of this Agreement:

- (a) if default is made by the Agent in the observance or performance of any material obligation on the part of the Agent contained herein or in any Service Contract which is not remedied within 7 days of the Agent being required in writing by the Principal to do so;
- (b) if an application is made or a resolution is passed for the winding up of the Agent or for the reduction of its capital or a notice of intention to propose such a resolution is given;
- (c) if any part of the Agent's assets having a value in excess of \$10,000.00 is resumed, confiscated or forfeited;
- (d) if any distress or execution for an amount exceeding \$10,000.00 is issued against the Agent or any of its assets and is not satisfied within 7 days;
- (e) if the Australian Securities Commission is directed to arrange for an investigation into the affairs of or into particular affairs of the Agent pursuant to the ASC Law;

- (f) if a receiver, receiver and manager or administrator of the Agent's undertaking or assets or any part thereof or of any part of the income thereof is appointed or the Agent calls a meeting of its creditors pursuant to the Corporations Law;
- (g) if the Agent ceases to carry on business or stops or suspends payment of its debts or states its intention so to do; and
- (h) if any ground referred to in the Corporations Law arises upon which any Court may order the winding up of the Agent or if the Agent proposes or makes a composition or arrangement with its creditors or any of them.

10 TERMINATION

This agreement may be terminated on the following bases:

- (a) by the Principal effective immediately if an event of default listed in **clause 9** occurs; or
- (b) by either party without cause upon giving to the other not less than one month's notice in writing to that effect.

11 RIGHTS ON TERMINATION

Termination will be without prejudice to the rights of either party against the other in respect of acts or omissions under this Agreement before termination or regarding any sums or other claims outstanding at the time of termination.

12 MISCELLANEOUS

- (a) The proper law of this Agreement and of all transactions hereunder is the law in force in the State of Victoria and all disputes between the parties arising hereunder shall be submitted to the Courts of Victoria only.
- (b) Either party may serve any notice or other document upon the other by delivering the same to the registered office of the other or to its address as appearing herein or as last notified by the other party in writing or by prepaid post addressed to any of such addresses and if served by post such notice or document shall be deemed served in the ordinary course of post.
- (c) Subject to this Agreement, this document is binding upon and inures for the benefit of the respective successors and permitted assigns of the parties.
- (d) This Agreement constitutes the entire Agreement of the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations and contracts of the parties with respect thereto.
- (e) The parties shall execute and do all such acts and things as may be necessary or desirable to give effect to this Agreement.

- (f) The failure of a party to insist on the strict performance of any provision of this Agreement or to exercise any right, power or remedy on a breach hereof does not constitute a waiver of any provision of this Agreement or limit that party's right thereafter to enforce in full any provision of this Agreement or exercise any right arising hereunder. A waiver is effective only in writing and executed by the party from which the waiver is requested.

- (g) An amendment to this Agreement is not effective unless it is in writing and executed by the parties.

SCHEDULE

REMUNERATION OF AGENT

The Agent's remuneration with respect to each Service Contract entered into on behalf of the Principal, in addition to its out-of-pocket expenses payable under clause 6.1(b) of the Agreement, shall be a fee amounting to ten per cent of the value of the consideration received by the Agent from a Customer pursuant to a Service Contract, except when mutual aid is between AMOSC Participating Companies no fee is payable.

Completed: November 1997

ANNEXURE A
SERVICE CONTRACT

EXECUTED as an agreement.

SIGNED for and on behalf of [***OIL***)
COMPANY LIMITED] by its authorised)
representative)

in the presence of:

..... Witness

..... Name of Witness (print)

SIGNED for and on behalf of)
AUSTRALIAN MARINE OIL SPILL)
CENTRE PTY LTD)
by its authorised representative)

in the presence of:

..... Witness

..... Name of Witness (print)

ATTACHMENT TO PRINCIPAL AND AGENCY AGREEMENT

The Principal confirms that whenever AMOSC enters into a Service Contract with AMSA, as agent for a Principal under the Principal and Agency arrangements, AMOSC will disclose the identify of the Principal to AMSA in accordance with the provisions of the pro-forma Service Contract negotiated between AMOSC and AMSA.

Should the Principal act as agent for any affiliate company in relation to services/equipment to be provided to AMSA (as contemplated by clause 1.7 of the Principal and Agency Agreement), the Principal agrees to disclose the identity of the affiliate company to AMOSC, so that AMOSC can in turn disclose this to AMSA.

The Principal confirms that notwithstanding anything to the contrary in the Principal and Agency Agreement, the Principal agrees (in its own capacity and as agent for any affiliate) to AMOSC disclosing the identity of the Principal (or any affiliate, as the case may be) to AMSA as contemplated by this Attachment.

The Principal and Agency Agreement is deemed to be amended in accordance with this Attachment.

AGREED BY PRINCIPAL: -

Company:

Signed:

Date: