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SERVICE CONTRACT

THIS AGREEMENT is made on the date specified in Schedule 1 as the Agreement Date

BETWEEN

AUSTRALIAN MARINE OIL SPILL CENTRE PTY. LTD., the registered office of which is situated at Australian Institute of Petroleum, 24 Marcus Clarke Street, Canberra in the Australian Capital Territory.

("AMOSC") of the one part and

THE CUSTOMER designated as such in Schedule 1

("the Customer") of the other part

WHEREAS:

- A.** AMOSC manages and operates a marine Oil spill centre ("**the Centre**") near Geelong, Victoria;
- B.** The Customer has requested AMOSC to assist it in relation to an actual or threatened Oil spill, or for the purposes of training the Customer's servants and agents in Oil spill Clean-Up techniques and AMOSC is willing to do so upon and subject to the terms of this Agreement; and
- C.** For the foregoing purposes, the parties have agreed to enter into this Agreement.

NOW THIS AGREEMENT WITNESSES as follows:-

1 DEFINITIONS AND INTERPRETATION

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

"**Affiliate**" in respect of a company means:

- (a) the ultimate holding company of that company;
- (b) any company controlled by that ultimate holding company; or
- (c) any company controlling or controlled by that company.

In this definition one company controls another when at the relevant time it owns either directly or indirectly the majority of the shares carrying the right to vote at general meetings of that other company. A company is an ultimate holding company when at the relevant time it controls another company but itself is not controlled by another company. Nothing in this definition prevents a company from having more than one ultimate holding company;

"**Centre Rules**" means the regulations passed by the Board of Directors of AMOSC pursuant to Article 120 of its Articles of Association on the 13th day of December 1991 or those regulations as amended, or any substitute therefor, current at the Agreement Date;

“Clean-Up”, with respect to Oil, means the containment, dispersal, control and clean-up of the Oil;

“Consumable” means an item of materials, not being Equipment supplied to the Customer under this Agreement;

"Delivery" includes delivery to a carrier for the Customer, and "Deliver" and "Delivered" have corresponding meanings.

"Equipment" means equipment for the Clean-Up of Oil;

"Non-participating Company" means a person (including a government department or statutory body) who is not a Participating Company;

"Oil" means crude petroleum oil and any fraction thereof and any petroleum product and includes oil refuse and oil mixed with waste;

"Participating Company" means any company listed in Attachment A to the Centre Rules and any company which becomes a Participating Company under Clause 5.1 thereof which in each case has not ceased to be a Participating Company under Clause 5.2 thereof and in each case includes an Affiliate of any such company;

“Personnel” means the employees or agents of either AMOSC or a Principal;

“Principal” means, where AMOSC hires Equipment, supplies Consumables or provides Personnel or Services as agent, the principal for whom AMOSC acts as agent;

"Return" includes return to a carrier for AMOSC or to any other location directed by AMOSC, and "Returned" and "Returning" have corresponding meanings;

“Services” includes the Clean-Up of Oil, training for the Clean-Up of Oil and advice with respect to the Clean-Up of Oil.

1.2 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.

1.3 Headings to Clauses are for convenience only and do not affect the meaning or operation of this Agreement.

1.4 The Customer acknowledges that AMOSC may have entered into this Agreement wholly in its own capacity or wholly as agent for one or more Principal(s) (whether or not AMOSC purports to act as agent or discloses the fact of agency to the Customer) or partly in its own capacity and partly as an agent for one or more Principal(s).

2 SUPPLY OF SERVICES, CONSUMABLES AND PERSONNEL

2.1 AMOSC hereby agrees to supply and the Customer hereby agrees to take the Services specified in Schedule 1.

2.2 AMOSC hereby agrees to sell and Customer hereby agrees to purchase the Consumables specified in Schedule 2.

2.3 If the Customer so requests, AMOSC shall provide to the Customer the services of the Personnel specified in Schedule 3 or such greater or lesser number of Personnel as it may, in its discretion, determine, having regard to the circumstances. AMOSC may withdraw the Personnel at its discretion or as directed by a Principal.

2.4 AMOSC may cease to supply Services as set out in **sub-clause 6.1**.

3 HIRE OF EQUIPMENT

3.1 AMOSC agrees to let and the Customer agrees to take on hire the Equipment specified in Schedule 4.

3.2 The Customer agrees that AMOSC may choose to hire Equipment to a Non-participating Company only on the basis that the Non-participating Company also hires such Personnel as AMOSC determines in its absolute discretion to be appropriate.

3.3 The period of hire of Equipment commences when AMOSC Delivers any item of it to the Customer and, subject to sub-clause 6.2, terminates when all of it is returned to AMOSC. Notwithstanding the foregoing, the provisions of this Agreement referred to in **sub-clause 12.3** survive the termination of the period of hire.

4 FEES

4.1 The Customer shall pay AMOSC in respect of each item of Services fees set out in or calculated in the manner described in Schedule 1. Any reference to Equipment, Personnel or Consumables in Schedule 1 is merely for the purpose of determining the fee payable to AMOSC and does not imply any hire or purchase by the Customer of any Equipment, Personnel or Consumables. Each of the rates specified in Schedule 1 with respect to the supply of Services on site, is a rate for a day but shall be apportioned with respect to part of a

day (not being less than one hour). For the purposes of this clause a day means a period of 24 hours from the time any of AMOSC's or a Principal's Equipment is deployed on site and any corresponding 24 hour period. Where an item of AMOSC's or a Principal's Equipment is, in any one day, part of the time (not being less than one hour) deployed and part of the time in transit, on stand-by or otherwise not deployed (as determined by AMOSC) then in respect of that entire day the Incident In Use Rate of service fee shall apply. Where for any reason Schedule 1 does not include a rate for a particular Service, the Customer shall pay AMOSC a fee for that Service at AMOSC's standard rate for that Service or, if no standard rate exists, at a reasonable rate fixed by AMOSC.

- 4.2** The Customer shall pay AMOSC for Consumables supplied the price set out in or determined from Schedule 2 and if no price is specified at a reasonable price fixed by AMOSC.
- 4.3** The Customer shall pay AMOSC for Personnel provided under clause 2.3 at the rates specified in Schedule 3 for personnel of the appropriate category.
- 4.4** The Customer shall pay AMOSC in respect of each item of Equipment hired fees calculated at the rates set out in Schedule 4 for each day during the period of hire:
- (a) that the item is deployed in a Clean-Up operation (including any time during which the Equipment is being prepared for deployment), at the Incident In Use Rate specified in Schedule 4;
 - (b) that the item is in transit to or from or on standby for a Clean-Up operation (or for any other reason not deployed), at the Incident Standby Rate specified in Schedule 4; or
 - (c) that the item is deployed for the purpose of training, (including any time during which the Equipment is being prepared for deployment) at the Exercise In Use Rate specified in Schedule 4; or
 - (d) that the item is in transit to or from or on standby for the purpose of training (or for any other reason not deployed) at the Exercise Standby Rate specified in Schedule 4.
- 4.5** Each of the rates specified in Schedule 4 is a rate for a day but shall be apportioned with respect to part of a day (not being less than one hour). For the purposes of this Clause a day means the period of twenty-four (24) hours from the time that the item of Equipment is Delivered and any corresponding subsequent 24 hour period. Where an item of Equipment is in any one day part of the time (not being less than one (1) hour) deployed and part of the time in transit, on standby or otherwise not deployed (as determined by AMOSC) then in respect of that entire day the Incident In Use Rate shall apply. Where for any reason Schedule 4 does not include a rate for a particular item of Equipment the Customer shall pay AMOSC a fee for that item at AMOSC's standard rate for that item, or, if no standard rate exists, at a reasonable rate fixed by AMOSC.
- 4.6** For the avoidance of doubt, references to "transit" in this Agreement are references to transit between the time that the item of Equipment is deployed as determined by AMOSC or, if

hired, is Delivered to the Customer and its ceasing to be deployed as determined by AMOSC or, if hired, its Return.

5 EXPENSES

In addition to fees payable under Clause 4 and any other charges provided for in this Agreement, the Customer shall, upon receipt of an invoice from AMOSC, pay AMOSC:

- (a) where the place of Delivery or Return of any item of Equipment hired is not the Centre, the cost incurred by AMOSC in transporting the item of Equipment from the Centre to the place of Delivery or from the place of Return to the Centre;
- (b) the cost of travel, accommodation and living expenses incurred by or in relation to personnel supplied by AMOSC to the Customer travelling to the site of an Oil spill or training and returning therefrom;
- (c) the cost of accommodation and living expenses incurred by or in relation to personnel supplied by AMOSC to the Customer during the period that they are providing Services to the Customer;
- (d) the cost incurred by AMOSC in cleaning and rehabilitating and, where necessary, replacing any Equipment used in providing Services or hired hereunder. For this purpose AMOSC will charge for materials and Services provided at cost and for work at man/hour rates specified for particular categories of Personnel from time to time by AMOSC;
- (e) the cost incurred by AMOSC as agent of the Customer under sub-clause 8.4; and
- (f) in Schedule 1 if any fee for Services to be supplied by AMOSC is not expressed to be inclusive of expenses, expenses incurred by AMOSC in relation to Personnel of AMOSC or Personnel hired by AMOSC of the kind referred to in sub-clauses (b) and (c) of this clause 5.

6 RETURN OF EQUIPMENT

- 6.1** If the Customer is a Participating Company which has engaged AMOSC to supply Services for training, or is a Non-Participating Company, and a Participating Company requests AMOSC to hire Equipment to it or to provide Services to it in respect of an actual or threatened Oil spill which, in AMOSC's opinion requires AMOSC to deploy Equipment which it had deployed in providing Services to the first-mentioned Participating Company or the Non-Participating Company, then AMOSC may at any time, by notice to the Customer terminate the provision of Services (and shall remain entitled to its fees up to the time of termination) and shall not thereby incur any liability to the Customer.

6.2 The Customer shall return hired Equipment either to the Centre or to such other location as directed by AMOSC:

- (a) immediately upon notice from AMOSC that the Principal, in its absolute discretion, has determined that the Equipment is required for use in responding to an actual or threatened Oil spill;
- (b) immediately upon notice from AMOSC that, where the Equipment belongs to a Principal, the Principal and Agency Agreement between the Principal and AMOSC has been terminated; or
- (c) as soon as practicable after the Equipment ceases to be required for the purpose for which it was hired.

6.3 Notwithstanding any other provision hereof, if any Equipment hired hereunder is not Returned or is lost or damaged for any reason other than through normal wear and tear, then the period of hire of the Equipment and the obligation of the Customer to pay fees in respect of the item of Equipment under sub-clause 4.4 continues until the item of Equipment is Returned undamaged, has been repaired, has been replaced by substitute equipment acceptable to AMOSC, in all cases at the Customer's expense, or the Customer has paid to AMOSC compensation for the non-return of the item of Equipment being one hundred and twenty per centum (120%) of the replacement cost of the item.

6.4 If the Customer is a Participating Company which has hired Equipment for training or is a Non-participating Company and a Participating Company requests AMOSC to hire to it all or any of the Equipment hired hereunder for use by that Participating Company in responding to an actual or threatened Oil spill, or to supply Services to it in relation to an actual or threatened Oil spill and in AMOSC's opinion all or any of the Equipment is required by it to provide the Services then AMOSC may at any time, by notice to the Customer, require the Customer to return to the Centre all the Equipment (or such part of it as AMOSC specifies in the notice) by the fastest possible means. If the Customer fails to do so (which AMOSC may determine at its entire discretion) AMOSC may obtain alternative equipment for the other Participating Company from any other source available to AMOSC. In that event, the Customer shall pay to AMOSC the actual cost of procuring, importing, deploying and returning that alternative equipment, less the hiring and other charges fixed by AMOSC therefor for payment by the other Participating Company.

7 CONTROL OF OPERATIONS AND EQUIPMENT

7.1 Notwithstanding anything contained in this Agreement or to be implied herein, regardless of whether AMOSC provides Services, supplies Personnel or hires Equipment or any combination thereof, the Customer and not AMOSC is responsible for the control of all matters at the training location or the location of the Oil spill Clean-Up operation. AMOSC, its Principals, their Affiliates, independent contractors or any of them and any of the directors, employees and agents of any of them working at the training location or the location of the Oil spill Clean-Up operation may decline to carry out any instruction and may take any action it or they see fit in any situation where the safety of persons or property may be at risk. The determination of whether or not any such situation exists is at the sole discretion of AMOSC, Principal, Affiliate, independent contractor or any director, employee

or agent referred to above who is present at the training location or the location of the Oil spill Clean-Up operation.

7.2 The Customer shall:-

- (a) take all reasonable steps to ensure the safety of any Personnel supplied by AMOSC;
- (b) take all reasonable steps open to it to protect and preserve the hired Equipment in good working order;
- (c) keep AMOSC fully informed of the location of the hired Equipment and of any malfunctioning thereof or loss or damage thereto;
- (d) not sell, hire, charge, encumber or part with possession of the hired Equipment or purport to do so without the prior written consent of AMOSC;
- (e) permit AMOSC, its directors, employees and agents or any of them such access to the hired Equipment as they may reasonably request;
- (f) take all such reasonable steps as may be necessary to keep the hired Equipment free from all liens, charges and encumbrances and to prevent the hired Equipment becoming the property of any person other than AMOSC or the Principal;
- (g) not make or allow to be made any modification or alteration to any of the hired Equipment except by the Personnel or with the prior consent of AMOSC;
- (h) obtain and comply with any necessary permission under any law for the time being applying in any place, State, Territory or country in which the hired Equipment may be located during the period of hire and relating to the operation of the hired Equipment or the work of personnel provided under this Agreement and for dealing with any customs formalities, entry permits or other matters in connection with the receipt, use or return of the hired Equipment and the personnel provided hereunder; and
- (i) without limiting the meaning of paragraph (g), ensure that the hired Equipment is operated by persons who hold all necessary licences, qualifications and experience. This obligation applies in respect of any Personnel supplied by AMOSC under sub-clause 2.3 and notwithstanding any advice provided by AMOSC or Personnel under sub-clause 2.1.

8 TRANSPORT

8.1 Where at the Agreement Date an item of Equipment to be hired is situate at a place where it is required for use, standby or training, the place of Delivery shall be the place where the item then is.

8.2 Where at the Agreement Date an item of Equipment to be hired is required for use, standby or training in a jurisdiction (if any) other than the jurisdiction (if any) applicable to the place where the item of Equipment then is the place of Delivery shall be the place where the item

of Equipment first leaves Australia or, if it does not do so, the place where the Equipment then is, if that place is Victoria or New South Wales or, if not, the place where the item of Equipment is to be used.

- 8.3** The place of Return of each item of Equipment shall be either the Centre or such other location as directed by AMOSC.
- 8.4** Unless the Customer makes other arrangements the Customer appoints AMOSC as the Customer's agent to arrange (at the Customer's cost) transport of each item of Equipment from the place of Delivery to the place at which Customer requires the item for use, standby or training and also from such place to the Centre (or such other location as directed by AMOSC) for the purpose of Returning the item of Equipment. AMOSC may arrange such transport with such carrier and on such terms and conditions as AMOSC would arrange if it were the principal but it need not disclose the fact of agency to the carrier.
- 8.5** The provisions of this Clause 8 shall be subject to any agreement between AMOSC and the Customer to the contrary but any such agreement shall only be binding on a party against whom it is sought to enforce it if that party has executed the same or a memorandum of it.

9 LIABILITY AND INDEMNITIES

The parties recognise and acknowledge that many varying factors contribute to the success or failure of an Oil spill Clean-Up operation and the performance of the Equipment and Consumables used and Services supplied and that success in any event can be relative and accordingly agree that any condition, warranty or representation as to merchantable quality or fitness for any purpose of any Equipment or Consumables or as to the effect of any Services provided is inappropriate. Accordingly, the parties agree as follows:-

- (a) all representations, conditions and warranties in respect of any Equipment, Consumables and/or Services relating to fitness for purpose, merchantability or of any other kind implied by statute or by common law or otherwise (other than any representation, condition or warranty which is expressly made non-excludable by statute) are hereby excluded and the liability of AMOSC (or AMOSC and the Principal where AMOSC acts as an agent) (except for liability which has not been excluded by sub-paragraph (c)(i)) for any breach of any non-excludable representation, condition or warranty is limited, in the case of the hire of the Equipment, to the repair of the Equipment or the cost of such repair whichever AMOSC or the Principal chooses and in the case of the provision of Services including advice, to the supply of the Services again or the payment of the cost of having the Services supplied again whichever AMOSC or the Principal chooses;
- (b) any advice offered to the Customer by Personnel or by or on behalf of AMOSC or a Principal is to be construed as a statement of opinion only and not as a representation of any kind as to the effects of following the advice and any advice given, Services provided, or other acts or omissions by Personnel or by or on behalf of AMOSC or a Principal shall not be construed as the indication of any expertise on which the Customer may rely or as the assumption by Personnel or by AMOSC or a Principal of any liability in relation to any such advice, services, acts or omissions;

- (c) Subject to any non-excludable statutory provision expressly to the contrary, in respect of any loss or damage of whatsoever nature or howsoever caused which in any way arises out of or is connected with the performance or non-performance by or on behalf of AMOSC of its obligations, or the Equipment, Consumables, Personnel or Services supplied hereunder:-
- (i) the liability (if any) of AMOSC (or of AMOSC and the Principal as the case may be) to the Customer (whether in contract, negligence or any other tort or under any other legal doctrine or under statute and howsoever a head of loss or damage is formulated) (including liability for any Services provided pursuant to sub-clause 2.1 or any liability relating to any other matter on which the Customer has sought the advice of AMOSC or Personnel (or both) (and whether any such services are provided or such advice is given before, during or after any period of hire of Equipment, supply of Personnel or Services) and liability relating to the determination by AMOSC of the location of an Oil spill and the consequent determination of the Equipment to be hired or Services to be supplied to the Customer hereunder) is limited to the case of proven wilful misconduct (as to which the Customer has the burden of proof) by AMOSC, or its Principal, their respective directors, employees or authorised agents or Personnel, but shall not in any case (including proven wilful misconduct) extend to any loss of profit or other consequential loss or damage;
 - (ii) each Affiliate of AMOSC, each director, employee or agent of AMOSC or of any Affiliate of AMOSC or the Principal and each other person referred to in paragraph (e) shall not have any liability to the Customer hereunder, whether in contract, negligence or any other tort or under any legal doctrine or under statute and howsoever a head of loss or damage is formulated, or whether for any Services provided pursuant to sub-clause 2.1 or whether relating to any other matter on which the Customer has sought advice (and whether any such advice is given before, during or after any period of hire of Equipment, supply of Personnel or Services) or whether relating to the determination of the location of an Oil spill and the consequent determination of the Equipment to be hired or Services to be supplied to the Customer hereunder; and
 - (iii) the Customer agrees not to take any proceedings against any Affiliate of AMOSC or against any director, employee or agent of AMOSC or the Principal or of any Affiliate of AMOSC or the Principal or against any other person referred to in paragraph (e), but shall look solely to AMOSC or the Principal under the provisions of sub-paragraph (c)(i);
- (d) subject to any non-excludable statutory provision expressly to the contrary, during and after the term of this Agreement, the Customer shall keep AMOSC, the Principal, their Affiliates and the directors, employees and agents of any of them and each other person referred to in paragraph (e) indemnified against any claim, demand, action or proceeding (including any claim, demand, action or proceeding for loss of profit or other consequential loss or damage) arising out of or in any way connected with the performance or non-performance by or on behalf of AMOSC or

the Principal of its or their obligations or the Equipment, Consumables, Personnel, or Services supplied hereunder (including, without limitation, any employees on secondment to AMOSC) (whether brought in contract or in negligence or any other tort or under any other legal doctrine or under statute and howsoever a head of loss or damage is formulated) (including any claim, demand, action or proceeding relating to Services provided pursuant to sub-clause 2.1 or relating to any other matter on which the Customer has sought the advice of AMOSC or Personnel (or both) (and whether any such services are provided or such advice is given before, during or after any period of hire of Equipment, supply of Personnel or Services) or relating to the determination by AMOSC of the location of an Oil spill and the consequent determination of the Equipment to be hired or Services to be supplied to the Customer hereunder) brought or instituted against any of AMOSC, its Affiliates or the Principal and the directors, employees or agents of any of them or any such other person by the Customer or by any third party save that the Customer shall not be required to indemnify AMOSC or any other party referred to in this clause against any claim, demand, action or proceeding for loss or damage suffered as a result of proven wilful misconduct (as to which the Customer has the burden of proof) by AMOSC, the Principal, their directors, employees, Personnel, or authorized agents;

- (e) for the purposes of this Clause 9 AMOSC contracts both on its own behalf and as agent for its directors, employees and agents, each of its Affiliates and the Principal and their Affiliates, directors, employees and agents, each Participating Company (other than the Customer) the directors, employees and agents of each Participating Company (including those of the Customer) and each person (including its directors, employees and agents) to whom performance of any obligation arising under or in connection with the performance of this Agreement is delegated and also as trustee for the benefit of each such person so that each of them may rely upon and enforce the provisions contained in this Clause; and
- (f) in this Clause 9:-
 - (i) "agents" includes the directors and employees of agents;
 - (ii) "third party" means any person not a party to this Agreement excluding this Clause 9, including, without limitation, any Affiliate of the Customer and any director, employee or agent of the Customer or any such Affiliate; and
 - (iii) "wilful misconduct" means any act or omission (including any negligent act or omission) done or omitted to be done with deliberate or reckless disregard for foreseeable and harmful consequences.

10 EQUIPMENT LOSS OR DAMAGE

- 10.1** The Customer shall indemnify and reimburse AMOSC or if AMOSC directs, the Principal, in respect of any loss of or damage to Equipment of AMOSC or the Principal during any period in which it is deployed in providing Services or is hired hereunder which arises during

the period of deployment or hire from any cause, including fire, theft and accident (except for normal wear and tear).

10.2 AMOSC shall maintain during the currency of this Agreement an insurance policy in respect of deployed or hired Equipment in the form of Schedule 5 to this Agreement, but the existence or performance of this obligation shall not in any way whatsoever limit the operation of sub-clause 10.1.

10.3 Unless otherwise expressly agreed by AMOSC, the benefit of the insurance referred to in sub-clause 10.2 shall be extended to the Customer during the period of provision of Services or of hire and for the Equipment deployed and Equipment hired. AMOSC shall ensure that the Customer is noted on the policy as a co-insured with AMOSC to the full extent of its interest and with a waiver by the insurer of any right of subrogation against the Customer. The Customer shall, upon receipt of a proper invoice therefor, pay AMOSC for:-

- (a) the additional premium applicable to the Equipment during the period deployed or hired; and
- (b) the deductible in respect of any insurance claim for loss of or damage to the Equipment for which the Customer is liable under sub-clause 10.1 to indemnify and reimburse AMOSC.
- (c) AMOSC may, at its discretion, accept alternative arrangements to the extension of the insurance specified in sub-clause 10.3. to the Customer during the period of deployment or hire, including, without limitation, alternative insurance arrangements or the acknowledgement that the Customer has adequate financial resources to discharge its obligations under sub-clause 10.1 without insurance. AMOSC may impose such conditions as it thinks fit on the exercise of its discretion to accept alternative arrangements pursuant to this sub-clause.

11 PAYMENT OF FEES

The Customer shall pay all fees due hereunder within 14 days of the date of receipt of AMOSC's invoice therefor. Without affecting AMOSC's other rights, any payment outstanding after that period shall bear interest from the date of the invoice to the date of final payment in full at 2% above the Commonwealth Bank of Australia's prime lending rate on the date of invoice.

12 TERMINATION

12.1 Notwithstanding anything to the contrary express or implied elsewhere herein, AMOSC (without prejudice to its other rights) may at its sole discretion terminate this Agreement forthwith on notifying the Customer either orally (confirming such notice in writing) or by notice in writing if:-

- (a) a liquidator (other than for the purpose of amalgamation or reconstruction), trustee in bankruptcy, receiver or receiver and manager is appointed in respect of the assets or undertaking of the Customer or its Affiliate, or if the Customer or its Affiliate enters into an agreement or composition with its creditors, or if any similar

appointment, arrangement or composition is made under any applicable law, or if AMOSC has reason to anticipate any such appointment, arrangement or composition, but with respect to any Affiliate of the Customer, only where the occurrence of any of the foregoing events would or might adversely affect the performance by the Customer of any of its obligations or responsibilities hereunder;
or

- (b) the Customer fails to pay any money due to AMOSC under this Agreement punctually by the due date or commits any breach of this Agreement and fails to make the payment or remedy the breach within 14 days of being notified by AMOSC that the payment is due and has not been made or the breach has been committed.

12.2 If this Agreement has been terminated by AMOSC, the Customer shall reimburse AMOSC for all direct costs and expenses incurred by AMOSC as a consequence of the termination forthwith upon demand therefor in writing made by AMOSC on the Customer.

12.3 Upon any termination or expiry of this Agreement the Customer shall forthwith return to AMOSC or to such other location as directed by AMOSC, all Equipment hired and release all Personnel whose Services are provided under this Agreement. 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.

13 ASSIGNMENT AND DELEGATION

13.1 A party may not transfer or assign its rights or obligations under this Agreement without the prior written consent of the other party and also the Principal in the case where AMOSC has entered into this Agreement as agent of a Principal (whether or not AMOSC has purported to act as agent or has disclosed the fact of agency to the Customer).

13.2 Notwithstanding the provisions of sub-clause 13.1, AMOSC may arrange for all or any of its obligations hereunder to be performed by an independent contractor engaged by it, but AMOSC shall remain responsible to the Customer for the performance of all of its obligations hereunder notwithstanding that delegation.

14 FORCE MAJEURE

14.1 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.

14.2 In this Agreement, "Force Majeure" means:-

- (a) any circumstance whatsoever which is beyond the reasonable control of the party affected;
- (b) 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

- (c) 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).

14.3 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 relief under this Clause.

14.4 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.

15 NOTICES

15.1 Any notice or other communication to be given hereunder by either party to the other shall, unless otherwise specified herein, be given to the party for which it is intended in writing and sent to its address for notices specified in Schedule 1. Notices and other communications may be sent by post (by airmail where airmail is possible) postage pre-paid, or by telex or facsimile or personal delivery. A notice or other communication is effective upon receipt, which is deemed to be one working day after despatch in the case of a notice sent by telex or facsimile and two working days after despatch in the case of a notice sent by post from within Australia to an address within Australia. A notice or other communication given to the Customer is deemed to have been served on any applicable Affiliate of the Customer and AMOSC may rely on any notice or other communication given to or by the Customer or any applicable Affiliate of the Customer as binding on the Customer and all other applicable Affiliates of the Customer.

15.2 Notwithstanding the provisions of sub-clause 15.1, any notice or communication which relates to emergency response is sufficiently made if made by telephone (subsequently confirmed by telex or facsimile) or by telex or facsimile where made by or to persons nominated by the Customer and AMOSC by separate written agreement made from time to time which specifies the name and telephone, telex and facsimile numbers to be used by or for notices or other communications to those persons.

- 15.3** A party may at any time and from time to time change its address for notices and other communications and its telex or facsimile number (or both) for the purposes of this Agreement by giving notice thereof to the other party.

16 GOVERNING LAW

This Agreement is governed by and shall be construed according to the law in force in the State of Victoria and the parties hereby submit to the non-exclusive jurisdiction of the Courts having jurisdiction in that State and Courts competent to hear appeals therefrom.

17 GENERAL

- 17.1** Subject to this Agreement, this Agreement is binding upon and inures for the benefit of the respective successors and permitted assigns of the parties.
- 17.2** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, contracts and covenants of the parties with respect thereto.
- 17.3** The parties shall execute and do all such acts and things as may be necessary or desirable to give effect to this Agreement.
- 17.4** 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.
- 17.5** The invalidity or unenforceability of any provision of this Agreement does not affect the validity or enforceability of the remainder.
- 17.6** An amendment to this Agreement is not effective unless it is in writing and executed by the parties.
- 17.7** The Customer shall pay the cost incurred by AMOSC in respect of stamp duty paid upon or in respect of this Agreement or any fee or amount paid under this Agreement with the exception of stamp duty (if any) incurred by AMOSC in respect of rental business in South Australia

IN WITNESS WHEREOF the parties have executed this Agreement.

SIGNED for and on behalf of the)
Customer)
by)
)

in the presence of:
..... Witness

..... Name of Witness (print)

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

in the presence of:
..... Witness

..... Name of Witness (print)

SCHEDULE 1

AGREEMENT DATE:

(Refer to Preamble)

THE CUSTOMER:

(Refer to Preamble and Clause 15)

Name:

Mail Address:

Facsimile No.:

AMOSC:

(Refer to Clause 15)

Name:

AUSTRALIAN MARINE OIL SPILL CENTRE PTY. LTD.

Address:

PO Box 1497, Geelong, Victoria, 3220

Facsimile No.:

03 5272 1839

PURPOSE OF SERVICES

(Refer to Clauses 2.1 and 4.1)

(eg. training in []; cleanup oil spill off North-Western Australia)

SERVICES REQUIRED

- (a) equipment likely to be necessary;
- (b) consumables likely to be necessary;
- (c) personnel likely to be necessary;
- (d) advice
- (e) estimated duration.

SERVICE FEES

(Refer Clause 4.1)

(a) **equipment deployed**

Item	Incident In Use Rate	Incident Standby Rate	Exercise in Use Rate	Exercise Standby Rate

(b) **consumables used**

Item	Price

(c) **personnel deployed**

Identity	Position	Daily Rate

(d) **advice**

Personnel to Provide Advice	Daily rate

Brief description e.g. How to contain and clean up oil spill.

SCHEDULE 2

(Refer to Clauses 2.2 and 4.2)

Consumables	Price

SCHEDULE 3

(Refer to Clauses 2.3 and 4.3)

AMOSC PERSONNEL

Category of Personnel	Daily Rate

SCHEDULE 4**THE EQUIPMENT, HIRE RATES:**

(Refer to Clauses 3.1 and 4.4)

Item	Incident In Use Rate	Incident Standby Rate	Exercise In Use Rate	Exercise Standby Rate

PURPOSE OF HIRING:

(Refer to Clauses 4.4, 6.2)

(e.g. Training, clean-up of oil spill off North Western Australia)

DURATION OF HIRING

(Use for training only)

From:

To:

SCHEDULE 5

(Refer to Clauses 10.2 and 10.3)

(Insurance Policy to be annexed)