

# **OIL SPILL CONTINGENCY MANUAL**

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## **SECTION 10**

### **EQUIPMENT LEASE AGREEMENT**

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A graphic consisting of a light gray oval with a black banner at the top and bottom. The text "EQUIPMENT LEASE AGREEMENT" is centered in the oval in black, bold, uppercase letters. The number "10.1" is centered in the bottom banner in white, bold, uppercase letters.

**EQUIPMENT  
LEASE  
AGREEMENT**

**10.1**

**EQUIPMENT LEASE AGREEMENT**

**Dated** \_\_\_\_\_

**BETWEEN**

**WESTERN CANADIAN SPILL SERVICES LTD.**

**Box 503, 3545-32 Avenue N.E.  
Calgary, AB T1Y 6M6**

**- and -**

**WCSS Member company in Good Standing**

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**WCSS Member Company in good standing outside of the WCSS boundaries**

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**Non-Member Company**

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## EXECUTIVE SUMMARY

Following are the highlights of the contents of this lease agreement:

- Member companies in good standing are not charged rental for the equipment but are responsible to pay for transportation to/from an incident, as well as any repairs, maintenance or replacement of equipment used during the incident. This could include replacement costs for containment boom, skimmers, and rotating equipment
- Non-member companies agree to pay the costs outlined in schedule “B” of this document, applicable taxes as well as transportation to/from the incident as well as any repairs, maintenance or replacement of equipment used during the incident. This could include replacement costs for containment boom, skimmers, and rotating equipment.
- Member companies outside of the WCSS jurisdictional boundaries agree to pay 1/3 of the rental rates stated in Schedule “B” of this document. as well as transportation to/from the incident as well as any repairs, maintenance or replacement of equipment used during the incident. This could include replacement costs for containment boom, skimmers, and rotating equipment.
- Non-member companies accept the terms of this lease with the understanding that the equipment may be required by a member company and ,therefore relocated prior to completion of the incident.
- Although the term of the lease will not expire, the expectation is that, if the anticipated use of the equipment lasts beyond 14 days, the WCSS Equipment Manager will negotiate an extension with the lessee.
- Only persons who have successfully completed the Enform Boat Handling Course and have certification ( including MED training), shall be permitted to operate the corporations’ boats.
- From and including the time the Equipment is removed from the Storage Site to and including the time that the Equipment is returned to the Storage Site, the Lessee will at its own expense maintain “all-risk” property insurance of not less than the replacement cost of the Equipment, together with comprehensive general liability insurance (including coverage for property damage, bodily injury and contractual liability).

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## EQUIPMENT LEASE AGREEMENT

**THIS AGREEMENT** made as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**BETWEEN:**

**WESTERN CANADIAN SPILL SERVICES LTD.**, a body corporate having an office at in the City of Calgary, in the Province of Alberta (hereinafter referred to as the “Corporation”)

– and –

\_\_\_\_\_, a

body corporate having an office in the City of

\_\_\_\_\_, in the Province of \_\_\_\_\_

(hereinafter referred to as the “Lessee”)

**WHEREAS** the Corporation owns, manages or leases certain oil spill emergency response equipment; and

**WHEREAS** the Lessee desires to lease from the Corporation certain oil spill emergency response equipment.

**NOW THEREFORE** in consideration of the mutual covenants and agreement herein contained, the Corporation and the Lessee agree as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions**

In this Agreement the following words and expressions shall have the following meanings:

**“Agreement”**, **“this Agreement”**, **“herein”**, **“thereof”**, **“hereunder”** and similar expressions mean or refer to this Equipment Lease Agreement and any subsequent amendments thereto;

**“Business Day”** means any day which is not Saturday, Sunday or a statutory holiday in Alberta;

**“Co-op”** means the Western Canadian Spill Services Cooperative organized under the *Canada Cooperative Association Act*;

**“Deployment Site”** means the location or locations where the Lessee uses or wishes to use all or some of the Equipment for emergency oil spill containment and recovery operations;

**“Equipment”** means the oil spill emergency response equipment owned, managed or leased by the Corporation, and leased to the Lessee hereunder for the purpose of emergency oil spill containment and recovery operations at the Deployment Site;

**“GST”** means the Goods and Services Tax imposed under the provisions of Part IX of the *Excise Tax Act*, R.S.C. 1985, C. E-15, as amended, or any successor or parallel provincial or federal legislation that imposes a tax on the recipient of goods and services;

**“Party”** means a person who has agreed to be bound by this Agreement;

**“person”** includes an individual, a partnership, an incorporated company, an unincorporated association and the legal representatives of an individual; and

**“Storage Site”** means the location or locations designated by the Corporation for storage of all or any of the Equipment from time to time.

### **1.2 Headings**

The insertion of headings is for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless something in the subject matter or context is inconsistent with such references, references in this Agreement to Articles, Sections, subsections and paragraphs are to Articles, Sections, subsections and paragraphs of this Agreement.

### **1.3 Number and Gender**

Words importing the singular number only shall include the plural and vice versa, and words importing the masculine gender shall include the feminine and neuter genders and vice versa.

### **1.4 Calculation of Time Periods**

Unless otherwise specified in this Agreement, when calculating the period of time within which or following which any act is to be done or step taken pursuant to this Agreement, the date which is the reference day in calculating such period shall be excluded. If the last day of such period is not a Business Day, the period in question shall end on the next Business Day.

### **1.5 Currency**

All dollar amounts referred to herein are expressed in Canadian funds.

## **ARTICLE 2 LEASE OF EQUIPMENT**

### **2.1 Lease of Equipment**

The Corporation hereby leases to the Lessee and the Lessee hereby leases from the Corporation, the Equipment as set out in the attached Schedule "A". The lessee accepts the terms of this lease with the understanding that the equipment may be required by a member company and, therefore relocated prior to completion of the incident.

### **2.2 Term**

The term of this Agreement and the lease of the Equipment shall commence on the calendar day on which (i) the Corporation, or an agent of the Corporation, or (ii) the Lessee, or an agent of the Lessee, removes the Equipment from the Storage Site and shall continue to and including the later of (i) the calendar day on which the Equipment is returned to the Storage Site; and (ii) the date on which all outstanding obligations of the Lessee to the Corporation hereunder are satisfied.

Although the term of this lease will not expire, the expectation is that, if the expected use of the equipment lasts beyond 15 days, that lessee pursues other equipment options.

## **ARTICLE 3 FEES AND COSTS**

### **3.1 Fee**

The Lessee shall pay to the Corporation those fees set forth and described in Schedule "B" hereto.

### **3.2 GST/PST (Saskatchewan, British Columbia)**

The Lessee shall be responsible for the payment of GST/PST with respect to the Equipment. The Corporation will collect from the Lessee such GST/PST and remit the GST/PST to the appropriate governmental agency. Any such GST shall be paid by the Lessee in addition to the fees contemplated in Section 3.1.

### **3.3 Other Costs**

Except as specifically provided herein, all costs associated with the transportation, storage, maintenance and use of the Equipment, including insurance, and all costs of Corporation's employees or agents for their performance of services required under this Agreement during the term of this Agreement shall be for the account of the Lessee.

### **3.4 Interest**

All fees and all other costs under this Agreement shall be paid within thirty (30) days of receipt by the Lessee of an invoice issued by the Corporation. All overdue accounts shall bear interest at the rate of 15% per annum from the last day of the term period without prejudice to the rights and remedies of the Corporation under law.

## **ARTICLE 4 SELECTION OF EQUIPMENT**

### **4.1 List of Equipment**

Prior to the commencement of the term of this Agreement, the Corporation shall complete all relevant sections of Schedule A. The Lessee is entitled to inspect and verify the condition of the Equipment prior to leasing the same hereunder. Subject to any dispute by the Lessee as to the condition of the Equipment, the Equipment shall be deemed to be in the condition set forth in Schedule A prepared by the Corporation.

## 4.2 Selection of Equipment

The Lessee may use some or all of the Equipment. Prior to removal of such Equipment from the Storage Site, the Lessee and the Corporation shall designate on Schedule A which Equipment is to be removed by the Lessee from the Storage Site. The execution of Schedule A by the Lessee shall be deemed to be an acknowledgement by the Lessee of all of the provisions set forth therein including the equipment which has been removed by the Lessee from the Storage Site.

## 4.3 Authorization

The Parties agree that the Corporation shall not be obligated to make inquiry into the authority of any officer or employee executing Schedule A on behalf of the Lessee and the Corporation shall be entitled to rely on such execution as sufficient authorization by the Lessee of the matters set out in Schedule A.

# ARTICLE 5 HANDLING, MAINTENANCE, REPAIR AND USE

## 5.1 Handling of Specified Equipment

- (a) Only persons who have successfully completed Enform's "WCSS Boat Handling Course (including Marine Emergency Duties 3 shall be permitted to operate the Corporation's workboats, barges and airboats.
- (b) The persons described in subsections (a) and (b) above shall, while operating the Corporation's barges, airboats and work/safety boats, be deemed to be agents of the Lessee and the Lessee shall indemnify and hold harmless such person from and against any losses, costs, damages or expenses incurred in respect of any action taken on the Lessee's behalf except where such action by the person was grossly negligent or willfully damaging. AL. This should be removed.

## 5.2 Maintenance, Repair and Alterations

- (a) The Lessee shall keep the Equipment in good repair, condition and working order and shall be responsible for all expenses incurred in respect of necessary maintenance and repair (including replacements) of the Equipment as a result of the use of the Equipment by the Lessee. Prior to conducting any repairs or maintenance, the Lessee shall obtain the Corporation's approval of the nature and scope of repairs and maintenance to be conducted; **provided however that repairs and maintenance of a routine nature, which for greater certainty shall not include replacement of parts or other major repairs, shall not require the Corporation's approval.** All maintenance and repair of the Equipment shall be conducted by a person acceptable to the Corporation. Specifically, the Lessee shall:

- (i) supply all fuel and lubricants necessary to operate the Equipment. It is understood that although all Equipment will have been serviced at the Storage Site, fuel may not be available;
- (ii) execute all repairs necessary to keep the Equipment in good repair, condition and working order; and
- (iii) return the Equipment in a dry, clean and unmarred condition.

If the Lessee fails to comply with the foregoing provisions of this subsection 5.2(a), the Corporation may, at the Lessee's expense, take any action it deems necessary and shall be entitled to immediate reimbursement from the Lessee for any costs or expenses incurred without prejudice to any other rights or remedies of the Corporation set out in this Agreement.

- (b) The Lessee shall not without the prior written consent of the Corporation make any alterations to the Equipment. Any alterations so made to the Equipment shall be at the Lessee's expense and shall belong to and become the property of the Corporation subject to the terms of this Agreement.

### **5.3 Inspection and Repair Following Use**

Within ten (10) Business Days after return of Equipment to the Storage Site, the Corporation shall inspect the Equipment (with the Lessee or its representative if possible) and identify the items which must be cleaned, drained, dried, repaired or replaced by the Lessee in order to restore the Equipment to the same condition (reasonable wear and tear excepted) and cleanliness in which it was delivered to the Lessee. The Lessee shall confirm the same by signing Schedule A which shall then be sufficient authority for the Corporation to commence the required work. The Lessee shall be responsible for all costs and expenses incurred in accordance with Schedule A or required to restore the Equipment to the condition of the Equipment prior to removal from the Storage Site as described in Schedule A and the Corporation will invoice the Lessee and the Lessee shall pay directly to the Corporation all such amounts (including a twenty per cent (20%) administrative fee) incurred for such maintenance, repair or replacement.

### **5.4 Other Equipment**

The Lessee agrees and acknowledges that additional equipment other than the Equipment leased hereunder may be required by the Lessee in the performance of necessary oil spill emergency response procedures. The Lessee shall be solely responsible for supplying such additional equipment including, without limitation, additional radio and other communication and safety equipment.

## **5.5 Use**

The Lessee shall use the Equipment in a careful and prudent manner and for the purposes of emergency oil spill containment and recovery operations or training exercises approved by the Corporation. The Lessee shall, at its expense, comply with and conform to all federal, provincial, municipal and other laws, ordinances and regulations in any way relating to the possession, use and maintenance of the Equipment.

## **5.6 Inspection**

The Corporation shall at all times during business hours have the right upon reasonable prior notice to enter into and upon the lands and premises where the Equipment may be located for the purposes of inspecting the Equipment and observing its use or to repossess and/or remove the Equipment.

## **5.7 No Warranties**

No warranty, express or implied is made by the Corporation or its agents, employees or directors as to the ability of the Corporation's employees or agents or the correctness, sufficiency or suitability of the Equipment, or that any information, recommendation or suggestions including the use or deployment of Equipment supplied or made by the Corporation or its employees or agents will provide for total or effective cleanup or containment of a spill, nor do they assume any responsibility in connection therewith.

## **5.8 Liens**

The Lessee will ensure that all Equipment leased from the Corporation hereunder is kept free and clear of all liens, charges and encumbrances. The Lessee shall give the Corporation immediate notice of any seizure, attachment, lien or other judicial process affecting any item of the Equipment.

# **ARTICLE 6 EQUIPMENT RISKS, INSURANCE AND TITLE**

## **6.1 Equipment Risks**

Upon removal of the Equipment from the Storage Site, the Lessee shall bear all risk of loss with respect to damage, destruction, loss, theft or governmental taking of any kind of any item of the Equipment as well as all risks to the Lessee and others in connection with the Equipment. The Lessee will notify the Corporation of any damage, destruction, loss, theft or governmental taking and, unless the Corporation is otherwise agreeable, the Lessee shall either:

- (a) immediately on demand pay to the Corporation the replacement value; or
- (b) subject to the written consent of the Corporation, repair or replace the Equipment or the items or parts of the Equipment that are the subject of such damage, destruction, loss, theft or governmental taking with equipment of like manufacture, value, class, utility and quality so that the Equipment is put into first class mechanical and working order as determined by the Corporation.

## **6.2 Insurance**

From and including the time the Equipment is removed from the Storage Site to and including the time that the Equipment is returned to the Storage Site, the Lessee will at its own expense maintain “all-risk” property insurance of not less than the replacement cost of the Equipment, together with comprehensive general liability insurance (including coverage for property damage, bodily injury and contractual liability) and any other form of insurance covering the Equipment against risks as considered prudent for that type of property by operators of business similar to that run by the Lessee or as may be reasonably required by the Corporation. The Lessee, will, upon request, give the Corporation evidence acceptable to the Corporation that the insurance coverage is in effect. If the Lessee fails to obtain or maintain such insurance, the Corporation may do so and shall be entitled to immediate reimbursement from the Lessee without prejudice to any other rights or remedies of the Corporation set out in this Agreement. The Lessee shall immediately advise the insurer and the Corporation of any and all accidents or claims involving the Equipment. Any insurance proceeds paid in respect of a loss of Equipment shall be paid to the Corporation.

## **6.3 Title**

Nothing in this Agreement shall give or convey to the Lessee any right, title, estate or interest in and to the Equipment together with any alterations thereof except as Lessee hereunder.

# **ARTICLE 7 INDEMNIFICATION BY LESSEE**

## **7.1 Indemnification**

The Lessee hereby agrees to indemnify and save harmless the Corporation, its directors, officers, employees or agents from and against any and all actions, causes of action, suits, claims, demands, costs, losses and expenses resulting from loss, injury, death or damage in respect of any party or person or government or government agency which may be brought against or incurred or suffered by the Corporation, its directors, officers, employees or agents or which the Corporation, its directors, officers, employees or agents may sustain, pay or incur by reason of or which may be attributable to or arise out of:

- (a) any act, omission, misrepresentation or breach of warranty or covenant or obligation by the Lessee in connection with this Agreement.

- (b) the maintenance, repair, use, operation, possession, storage, delivery or transportation of the Equipment by the Lessee or the failure to maintain, repair, use, operate, store, deliver or transport the Equipment in a manner required hereunder or by applicable laws;
- (c) the condition (including without limitation latent and other defects with respect thereto, whether or not discoverable by the Corporation or the Lessee) of the Equipment and or surface rights upon which the Equipment is located or the escape, release or spill of any containment or other substance processed in or used in connection with the Equipment; and
- (d) all removal, abandonment, salvage, reclamation, environmental and health matters pertaining to the Equipment and all obligations, damages, costs, fines and penalties associated therewith whether arising by or imposed by applicable laws, agreements or otherwise;

and the Lessee agrees to assume liability for all losses, costs, expenses, liabilities and damages suffered or incurred by the Corporation, its directors, officers, employees or agents resulting from or in any way attributable or arising out of the foregoing matters.

## **ARTICLE 8 DEFAULT**

### **8.1 Default**

The Corporation shall be entitled to exercise the rights and remedies set out below on the occurrence of any one or more of the following events, each of which is an event of default (herein called an “Event of Default”) under this Agreement:

- (a) the Lessee fails to perform any of its obligations (including failure to pay any amount when due) under this Agreement and the default continues for 15 days;
- (b) any of the Equipment is subjected to any lien, charge, encumbrance, levy, seizure, attachment or judicial process or the Lessee sells, leases, mortgages or pledges, or attempts to sell, lease, mortgage or pledge any of the Equipment;
- (c) the Lessee makes an assignment for the benefit of its creditors, becomes insolvent, commits any act of bankruptcy, ceases or threatens to cease to do business as a going concern, or seeks any arrangement or composition with its creditors;
- (d) any proceeding in bankruptcy, receivership, liquidation or insolvency is commenced by or against the Lessee or a substantial part of its property; or
- (e) in the opinion of the Corporation, acting reasonably, an event has occurred or is reasonably likely to occur which may materially reduce the value of the Equipment or

the Corporation's interest in it or increase the risk to it (normal wear and tear excluded).

## **8.2 Remedies Upon Default**

Upon the occurrence of any Event of Default, the Corporation may in its sole discretion exercise one or more of the following remedies without prejudice to any other right it may have at law or otherwise:

- (a) the Corporation may, at its option and without terminating this Agreement, do all acts and make all expenditures to remedy such default and the Lessee shall forthwith, upon demand, reimburse the Corporation for any and all expenditures; and
- (b) the Corporation may, at its option, declare this Agreement to be terminated.

Notwithstanding anything contained elsewhere in this Agreement, no Event of Default shall be cured or remedied under this Agreement until all defaults under this Agreement are cured and all amounts owing under this Agreement are paid.

## **8.3 Expenses Upon Default**

The Corporation's costs and expenses incurred in respect of legal proceedings to recover any monies due hereunder, taking possession of the Equipment and enforcement of any of the Corporation's rights, including, without limitation, legal costs on a solicitor-client basis, shall be paid by the Lessee to the Corporation immediately upon demand.

## **8.4 Effective Waiver**

No delay or omission to exercise any right or remedy accruing to the Corporation upon any breach or default of the Lessee will impair any such right or remedy or be construed to be a waiver of any such breach or default, nor will a waiver of any single breach or default be deemed a waiver of any other breach or default occurring prior thereto or thereafter. Any waiver, permit, consent or approval on the part of the Corporation of any breach or default under this Agreement, or of any provision or condition hereof, must be in writing and will be effective only to the extent specifically set forth.

# **ARTICLE 9 MISCELLANEOUS**

## **9.1 Notice**

Any disclosure, notice, direction or other communication required or permitted to be given by any party to any party hereunder (a "notice") shall be in writing and delivered personally or by registered mail to the parties at the following addresses:

(a) To the Lessee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention:

(b) To the Corporation: **Western Canadian Spill Services Ltd.**  
1538 - 25 Avenue N.E.  
Calgary, Alberta  
T2E 8Y3

Attention: Alan B. McFadyen

Any notice shall, if delivered, be deemed to have been given and received on the date on which it was delivered if a Business Day and on the next succeeding Business Day if not a Business Day and if given by registered mail shall be deemed to have been received by the party to whom the same is addressed on the second Business Day following the day upon which such notice sent by registered mail has been deposited with the appropriate post office, postage and cost of registration prepaid. Any of the parties may change its designated address for notices by notice in writing to the other party. In the event of an interruption in postal service, any notice shall be delivered personally.

## **9.2 Further Assurances**

The Parties shall promptly sign such further and other papers, and do and perform or cause to be done and performed any further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement.

## **9.3 Governing Laws**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and each of the Parties exclusively attorn to the jurisdiction of the courts of Alberta.

## **9.4 Counterparts**

This Agreement may be executed in as many counterparts as are deemed necessary by the Parties and, when so executed, each counterpart shall be as valid and binding on all Parties as every other counterpart.

## **9.5 Entire Agreement**

This Agreement constitutes the entire agreement among the Parties and there are no other written or verbal agreements or representations.

## **9.6 Time of the Essence**

Time shall be of the essence of this Agreement.

## **9.7 Severability**

If any provision of this Agreement, or the application of such provision to any person or in any circumstance, shall be held to be invalid, the remaining provisions of this Agreement, and the application of such provision to any persons or in any circumstances other than those as to which it is held invalid, shall not be affected thereby.

## **9.8 Enurement**

The Agreement shall enure to the benefit of and be binding upon the Parties and their respective personal representatives, successors and assigns.

## **9.9 Assignment**

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective personal representatives, successors and assigns.

## **9.10 Force Majeure**

The Parties shall be excused from the performance of any of their obligations herein from time to time, but only so long as it is prevented from performance by any cause beyond its reasonable control including, but not limited to, acts of God or of the Queen's enemies, strike, walkout, fire or explosion; provided however, that the lack of funds shall never be considered a cause beyond the reasonable control of either party.

## **9.11 No Amendment Except in Writing**

No amendment or variation of the provisions of this Agreement shall be binding upon any Party unless and until it is evidenced in writing executed by all Parties.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

**WESTERN CANADIAN SPILL  
SERVICES LTD.**

**SIGNATURE:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**LESSEE:**  
\_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**TITLE:**  
\_\_\_\_\_

**CONTACT INFORMATION:** \_\_\_\_\_



**SCHEDULE “B”****FEE**

- \$3,000.00 per day for any portion or all of a Western Canadian Spill Services Ltd. (WCSS) OSCAR Trailer and the Air Curtain Incinerator
- Boom rental is \$1 per day per foot
- Mini-OSCARS (Cooperative Initial Response Units) are \$1800.00 per day
- Lake Boom sea-can and Lake Boom trailer are \$1800 per day.
- Winter OSCARS are \$1,800.00 per day.
- Work Boats are \$1,000.00 per day.
- Barges are \$1,800.00 per day.
- Barge with bow collector is \$3000 per day
- Air Boats are \$1,800.00 per day.
- WCSS Certified Boat Operators must be used to operate all WCSS owned boats. It is between the lessee and WCSS Contract Custodians/Boat Operators to agree on rates charged to operate the boats.
- Drum skimmers are \$500.00 per day.
- WCSS Equipment Coordinator (as required by WCSS) is \$650.00 per day plus expenses.
- WCSS may invoice company directly.
- If the duration of the equipment lease agreement extends beyond 30 days, WCSS will invoice the lessee on the 30<sup>th</sup> day and every 14 days thereafter for the duration of the lease agreement.
- Payment of invoices is due within 30 days of invoice date. Overdue payments will be assessed a 15% penalty

**Note:** Companies that are charged for equipment as non-members may be exempted for a portion of or the entire daily rental fee if they are in fact WCSS members in good standing at the time of equipment use.