

SHIP (BULK OIL) MEMBERSHIP AGREEMENT TERMS AND CONDITIONS

WHEREAS:

- A. The Act requires that certain ships have an arrangement with a certified response organization in respect of a specified quantity of oil that is at least equal to the total amount of oil that the ship carries, both as cargo and as fuel, to a maximum of 10,000 tonnes, and in respect of waters where the ship navigates or engages in a marine activity;
- B. Burrard Clean has obtained certification as a response organization with response capability within its geographic area of response for spills up to 10,000 tonnes;
- C. Burrard Clean is willing to provide an arrangement to Owner for each of the ships owned or operated by Owner which navigates or engages in a marine activity in Burrard Clean's geographic area of response;
- D. Burrard Clean is also willing to provide to Owner marine spill response services which Owner may require from time to time;

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

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

For the purposes of this Agreement the following words and phrases will have the following meanings:

“**Act**” has the meaning ascribed to it on page 1 of this Agreement;

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

Schedule A	-	Additional Arrangements Form
Schedule B	-	Definition of Oil

“**Approved Marine Spill Response Services**” means the Initial Response and all actions and inactions set forth in Work Orders and, for greater certainty, includes all actions, inactions, omissions, options and alternative courses of action not taken by Burrard Clean by reason of Burrard Clean having undertaken only those actions carried out during the Initial Response or specifically referred to in Work Orders;

“**Best Efforts**” means all commercially reasonable efforts consistent with marine oil spill response industry practices considering available information and resources under circumstances, conditions (including weather and sea conditions) and factors existing at any relevant time;

“Bulk Oil Cargo” means Oil which is carried as cargo in a hold or tank that is part of the structure of a ship (which, for greater certainty, shall include a barge) without any intermediate form of containment;

“Bulk Oil Cargo Fee” has the meaning ascribed to it in Section 3.1 of this Agreement;

“Bulk Oil Cargo Fee Rate” means the rate which is used to establish the Bulk Oil Cargo Fee;

“Burrard Clean Fees” has the meaning set forth in Section 6.1 of this Agreement;

“Burrard Clean’s GAR” has the meaning ascribed to it on page 1 of this Agreement;

“Effective Date” is the date set forth on page 1 of this Agreement;

“GAR” has the meaning ascribed to it on page 1 of this Agreement;

“Handled” has the meaning ascribed to it in Section 3.2 of this Agreement;

“Initial Request” has the meaning ascribed to it in Section 4.2 of this Agreement;

“Initial Response” has the meaning ascribed to it in Section 4.2 of this Agreement;

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

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

“Membership Fees” means the Registration Fee and the Bulk Oil Cargo Fees payable by Owner in respect of each ship owned or operated by Owner within Burrard Clean’s GAR;

“Non-Member Oil Handling Facility” means any oil handling facility located in Burrard Clean’s GAR, or on lands adjacent thereto, but not listed in the schedule of designated/member oil handling facilities published by Burrard Clean from time to time;

“Oil” means oil and those oil products described in Schedule “B” to this Agreement;

“Plan of Action” has the meaning ascribed to it in Section 4.5 of this Agreement;

“Registration Fee” has the meaning ascribed to it on page 1 of this Agreement;

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

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

“Waters” has the meaning ascribed to it on page 1 of this Agreement; and

“Work Order” has the meaning ascribed to it in Section 4.5 of this Agreement.

1.2 Construction

In this Agreement, except as otherwise expressly provided or as the context otherwise requires:

- (a) a reference to a numbered or lettered article, section, paragraph or clause refers to the article, section, paragraph or clause bearing that number or letter in this Agreement;
- (b) the words “hereof”, “herein”, “hereunder” and similar expressions used in any provision of this Agreement will relate to the whole of this Agreement and not to that provision only, unless otherwise expressly provided; and
- (c) all references to money amounts are to Canadian currency.

ARTICLE 2 MEMBERSHIP

2.1 Membership Privileges

Upon payment of Membership Fees in accordance with the terms of this Agreement, Owner shall be entitled:

- (a) for purposes of its oil pollution emergency plan (as referred to in the Act) to identify Burrard Clean as the response organization with which Owner has an arrangement in Burrard Clean’s GAR; and
- (b) upon the occurrence of a spill of Oil on water within Burrard Clean’s GAR to request Burrard Clean to respond and provide Marine Spill Response Services.

2.2 Membership Fees

The Membership Fees are comprised of the Registration Fee and the Bulk Oil Cargo Fees, the terms and conditions of which are set forth on page 1 of this Agreement and (in the case of the Bulk Oil Cargo Fees) Article III of this Agreement.

2.3 More than One Ship

Where Owner owns or operates more than one ship which navigates or engages in marine activities in Burrard Clean’s GAR and for which Owner wishes to obtain an arrangement from Burrard Clean, Owner shall pay Burrard Clean Membership Fees in respect of each such ship, and the parties shall complete an Additional Arrangements Form identifying the additional ships in respect of which an arrangement is to be provided under this Agreement, all on the terms set forth in Schedule “A” to this Agreement.

ARTICLE 3 BULK OIL CARGO FEES

3.1 Bulk Oil Cargo Fees

Owner shall pay to Burrard Clean a bulk oil cargo fee (the “Bulk Oil Cargo Fee”) in respect of all Bulk Oil Cargo which is Handled. The Bulk Oil Cargo Fee shall be calculated by obtaining the

product of the number of Tonnes of Bulk Oil Cargo Handled and the Bulk Oil Cargo Fee Rate, plus all applicable Taxes payable in connection with the Bulk Oil Cargo Fees.

3.2 Calculation of Volume

The volume of Bulk Oil Cargo which is Handled shall for greater certainty mean:

- (a) the volume of Bulk Oil Cargo measured in Tonnes at the shore side of the dock flange at the Non-Member Oil Handling Facility, without regard to title, unloaded from Owner's ship to the Non-Member Oil Handling Facility;
- (b) the volume of Bulk Oil Cargo measured in Tonnes at the shore side of the dock flange at the Non-Member Oil Handling Facility, without regard to title, loaded onto Owner's ship from the Non-Member Oil Handling Facility if such volume is intended for movement to an international destination;
- (c) where Owner's ship has been loaded outside Burrard Clean's GAR, the volume of Bulk Oil Cargo measured in Tonnes at Owner's ship flange, without regard to title, transferred within Burrard Clean's GAR from Owner's ship to another ship for use as fuel by such other ship; and
- (d) the volume of Bulk Oil Cargo measured in tonnes at Owner's ship flange, without regard to title, transferred within Burrard Clean's GAR onto Owner's ship from another ship as cargo, provided that such volume is intended for movement to an international destination.

3.3 Adjustments

The Bulk Oil Cargo Fee Rate and the calculation of volumes as set forth in Section 3.2 of this Agreement, shall be determined, and from time to time amended, in accordance with the provisions of the Act.

3.4 Payment of Bulk Oil Cargo Fee

Bulk Oil Cargo Fees shall be payable by Owner forthwith upon Handling, and any Bulk Oil Cargo Fees not paid in full forthwith will be charged interest on the outstanding amount at the rate of one per cent (1%) per month, or 12.6825% per year, commencing on the first (1st) day following the date on which the Bulk Oil Cargo was Handled.

3.5 Confirmation of Facility Status

Owner acknowledges that Owner shall be solely responsible for determining whether any oil handling facility to which Owner's ships unload or (in the case of Bulk Oil Cargo intended for international destinations) load Bulk Oil Cargo, is a Non-Member Oil Handling Facility so as to necessitate the payment of Bulk Oil Cargo Fees by Owner under the terms of this Agreement. If Owner has failed in any case to pay Bulk Oil Cargo Fees in respect of Bulk Oil Cargo Handled, Owner shall, in addition to being liable to Burrard Clean for the payment of such Bulk Oil Cargo Fees, be charged interest on the outstanding amount at the rate of one per cent (1%) per month, or 12.6825% per year, commencing on the first (1st) day following the date on which the Bulk Oil Cargo was unloaded or (in the case of Bulk Oil Cargo intended for international destinations) loaded, as the case may be.

3.6 Reporting Requirements

In addition to the requirements of Section 3.4 of this Agreement, Owner shall within ten (10) days following each occasion when Owner Handles Bulk Oil Cargo provide Burrard Clean with a report indicating the ship name, the name and address of the Non-Member Oil Handling Facility (if applicable), the date, the total Tonnes of Bulk Oil Cargo Handled and, for all loaded volumes, the international destination. Burrard Clean agrees that the information provided to Burrard Clean in respect of volumes of Bulk Oil Cargo shall remain confidential and will not be disclosed by Burrard Clean, its directors, officers, agents or employees (including disclosure to any director, officer, agent or employee of Burrard Clean not directly requiring such information to carry out his or her duties to Burrard Clean) other than as part of the aggregate volumes of Bulk Oil Cargo of all members of Burrard Clean.

ARTICLE 4 MARINE SPILL RESPONSE SERVICES

4.1 Management and Control of Spill

Upon the occurrence within Burrard Clean's GAR of a spill of Oil on water, Owner shall (where it has requested Burrard Clean to respond to such spill) be responsible for the management and control of all response activities.

4.2 Initial Request and Response

If Owner requests Burrard Clean to respond to a spill of Oil on water in Burrard Clean's GAR ("Initial Request"), Burrard Clean shall use its Best Efforts to provide a response ("Initial Response"). The Initial Request shall specify the approximate location and size of the spill, that the individual contacting Burrard Clean is the person authorized to implement the arrangement, the name of the ship (if applicable), the type of Oil involved, the contract number assigned to this Agreement and the nature and extent of the Marine Spill Response Services required. If the Initial Request is not provided in writing, then it shall be confirmed in writing forthwith. Unless otherwise agreed between the parties, the Initial Response shall consist of the provision of Marine Spill Response Services for up to forty-eight (48) hours.

4.3 Twenty-Four Hour Consultation

- (a) If within twenty-four (24) hours of the Initial Request Burrard Clean and Owner agree that the clean-up can be completed in the course of the Initial Response, then Burrard Clean shall continue providing Marine Spill Response Services until the spill is cleaned up.
- (b) If within twenty-four (24) hours of the Initial Request Burrard Clean and Owner agree that the clean-up cannot be completed within the course of the Initial Response, then Owner shall notify Burrard Clean as to whether or not Burrard Clean is to continue providing Marine Spill Response Services beyond the Initial Response.

4.4 No Further Burrard Clean Response

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

- (b) If Owner has failed to notify Burrard Clean within the initial twenty-four (24) hour period, and Burrard Clean has been unable to obtain instructions from Owner, then Burrard Clean shall be deemed to have been notified and requested to cease providing Marine Spill Response Services at the end of the Initial Response.

4.5 Response Beyond 48 Hours

- (a) If Owner has notified Burrard Clean within the initial twenty-four (24) hours that Owner wishes Burrard Clean to continue to provide Marine Spill Response Services beyond the forty-eight (48) hour period of the Initial Response then, by the end of the Initial Response, Burrard Clean shall provide Owner with a plan of action (“Plan of Action”) outlining the Marine Spill Response Services which in Burrard Clean’s opinion are required for the remainder of the initial seven (7) day period. Unless the parties otherwise agree, Burrard Clean shall provide Owner with a Plan of Action for each subsequent seven (7) day period.
- (b) Upon receipt of each Plan of Action, Owner shall determine the extent to which it wishes Burrard Clean to perform the Marine Spill Response Services set forth in the Plan of Action and the parties shall consult and agree on the Marine Spill Response Services which Burrard Clean is to undertake and complete.
- (c) The parties shall in respect of each Plan of Action evidence their agreement by signing a work order (“Work Order”). Each Work Order shall include a description of the Marine Spill Response Services to be performed by Burrard Clean, an estimate of the Burrard Clean Fees payable in connection with the Marine Spill Response Services, a facsimile number to which invoices may be sent to Owner, and any other information required under Section 6.3 of this Agreement.
- (d) Upon being signed by both parties, a Work Order shall become an integral part of this Agreement.
- (e) Plans of Action and Work Orders may be amended by the parties from time to time as circumstances require.

4.6 Competing Requests for Services

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

In the event of contemporaneous or overlapping requests for Marine Spill Response Services, Owner acknowledges that Burrard Clean shall respond to the competing requests as directed by the appropriate governmental Lead Agency.

4.7 Territory

Burrard Clean agrees to provide Marine Spill Response Services in Burrard Clean's GAR only.

4.8 Termination of Work

Notwithstanding any other term of this Agreement, each of the parties shall be entitled at any time to terminate the Marine Spill Response Services, or any portion thereof, being provided under this Agreement in any given case by giving notice to the other. Upon such notice being provided, Burrard Clean shall cease to provide the Marine Spill Response Services or any portion thereof, and shall carry out any required demobilization activities, and Owner shall pay all outstanding Burrard Clean Fees and Taxes.

4.9 Right to Subcontract

Burrard Clean shall have the right without obtaining the consent of Owner to subcontract all or any portion of the Marine Spill Response Services to be provided under this Agreement.

4.10 Recovered Oil and Waste

The parties acknowledge that, notwithstanding any assistance which Burrard Clean provides to Owner, Burrard Clean shall not be responsible for the disposal of waste products.

ARTICLE 5 PERFORMANCE OF SERVICES

5.1 Standard of Burrard Clean Performance

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

5.2 Burrard Clean Safety Obligations

- (a) Burrard Clean shall observe, and shall require, to the extent of its authority, its employees, agents, contractors and subcontractors to observe, applicable safety laws and regulations and applicable Burrard Clean safety policies and procedures (a copy of which policies and procedures Burrard Clean shall make available to Owner upon request). However, Burrard Clean and Owner understand that:
 - (i) actions carried out in a response in an Oil spill environment may be inherently dangerous and difficult; and
 - (ii) rules and requirements that may be appropriate and applicable under normal circumstances may not be appropriate or applicable in a particular response situation.

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

- (b) Burrard Clean shall, upon Owner's request, report to Owner as promptly as practicable under the circumstances any accidents associated with the performance of the Marine Spill

Response Services resulting in or in Burrard Clean's reasonable judgment possibly causing personal injury or death or property damage or loss. Burrard Clean shall, at Owner's expense, furnish Owner with copies of any final written reports and other factual information related to such accidents prepared by or for Burrard Clean.

5.3 Owner Safety Obligations

- (a) Owner shall observe, and shall require, to the extent of its authority, its employees, agents, contractors and subcontractors to observe, applicable safety laws and regulations and (except in the case of Burrard Clean which shall follow its own safety policies and procedures) applicable Owner safety policies and procedures (a copy of which policies and procedures Owner shall make available to Burrard Clean upon request).
- (b) Owner shall report to Burrard Clean as promptly as practicable under the circumstances any accidents associated with or caused as the result of the performance of the Marine Spill Response Services resulting in or in Owner's reasonable judgment possibly causing any personal injury or death or property damage or loss. Owner shall, at Burrard Clean's expense, furnish Burrard Clean with copies of any final written reports and other factual information related to such accidents prepared by or for Owner.

5.4 Illegal, Unsafe or Improper Instructions

If Owner instructs Burrard Clean to take any action under this Agreement in a manner which would, based on the reasonable judgment of Burrard Clean:

- (a) be illegal (including an action that is illegal because it is fraudulent or deceptive);
- (b) endanger the safety of any employee, agent, contractor or subcontractor of Burrard Clean, or any third party or jeopardize the safety of any Burrard Clean equipment in a manner not reasonable given the nature of the oil spill response industry; or
- (c) be in violation of or breach this Agreement in any material respect;

then Burrard Clean may refuse to follow such specific instruction by giving Owner oral (promptly confirmed in writing) or written notice of such refusal (specifying in reasonable detail the specific reason for such refusal). Any refusal under this Section of any obligation of Burrard Clean to

take any instructed action shall not affect any obligation of Burrard Clean to take instructed actions under circumstances that would not result in the happening of the events specified in the preceding Subsections (a)-(c).

ARTICLE 6 BURRARD CLEAN FEES AND PAYMENT

6.1 Burrard Clean Fees

- (a) Burrard Clean Fees means all reasonable fees charged by Burrard Clean for carrying out Marine Spill Response Services including, but not limited to, equipment (owned, non-owned or leased) costs, overhead costs, salaries, wages and benefits paid to personnel, food, lodging

and travel costs for personnel, fees paid to contractors, fees paid to mutual aid partners or any other parties and the costs of demobilization.

- (b) Without limiting the foregoing, where Burrard Clean has published a schedule of fees in respect of any of the items referred to in Section 6.1(a), the costs associated with those items will be in accordance with the most currently published schedule.
- (c) Schedules of Burrard Clean Fees are available upon request.

6.2 Payment of Burrard Clean Fees

- (a) Owner shall pay all reasonable Burrard Clean Fees which are due and payable. Owner shall also be liable for and shall pay to Burrard Clean an amount equal to any Taxes.
- (b) Burrard Clean shall submit an invoice to Owner for the Burrard Clean Fees and Taxes incurred. Except as otherwise provided under Section 6.3 of this Agreement, any invoice submitted by Burrard Clean pursuant to this Section shall be due and payable by Owner by the end of the fifth (5th) business day following receipt of the invoice by Owner and, subject to the terms of Section 6.5 of this Agreement, any invoice not paid in full by the end of the fifth (5th) business day following receipt of the invoice by Owner will be charged interest on the outstanding amount at the rate of one per cent (1%) per month, or 12.6825% per year, commencing on the sixth (6th) day after the date of the invoice.
- (c) Invoices may be submitted by facsimile and a facsimile copy of an invoice shall be deemed to be received by Owner at such time as is indicated on the receipt of confirmation notice received by Burrard Clean for such facsimile.

6.3 Funding for Response Beyond 48 Hours

- (a) In those cases where the provisions of Section 4.5 (Response Beyond 48 Hours) apply, Burrard Clean shall submit an invoice to Owner for the Marine Spill Response Services provided during the first forty-eight (48) hours following the Initial Request. Unless the parties otherwise agree, such invoice shall be paid by Owner by the end of the fifth (5th) business day following Owner's receipt of the invoice.
- (b) After Burrard Clean has submitted the initial invoice, Owner and Burrard Clean shall agree on how Owner will fund the remainder of the initial seven (7) day period and, if applicable, each seven (7) day period thereafter during which it is anticipated that Marine Spill Response Services will be provided by Burrard Clean. In reaching such agreement, Owner shall be required to satisfy Burrard Clean that any method of funding will, when implemented, permit all invoices rendered by Burrard Clean during the relevant period to be paid in full on such terms as are acceptable to Burrard Clean under the circumstances. Any decision to accept any particular method of funding shall be solely within the discretion of Burrard Clean. If the parties are unable to agree on a method of funding acceptable to Burrard Clean, Burrard Clean will require cash.
- (c) The parties shall set forth in each Work Order, or any amendment of a Work Order, their agreement as to funding and, in the event of any inconsistency between the provisions of a

Work Order or any amendment thereof and this Agreement, the provisions of the Work Order or any amendment thereof shall govern.

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

6.4 Payments in Good Standing

Marine Spill Response Services shall only be provided by Burrard Clean if Owner has paid all outstanding Membership Fees, Burrard Clean Fees and Taxes.

6.5 Disputed Invoices

If Owner objects to any item or statement shown on an invoice, Owner shall promptly notify Burrard Clean of the dispute, specifying in reasonable detail the factual basis for the dispute and Owner shall pay to Burrard Clean in accordance with the terms of this Agreement eighty per cent (80%) of the disputed invoiced amounts. The payment of eighty per cent (80%) of any invoiced amounts shall not prejudice Owner's right to object to or question such invoice, and such invoice shall be subject to adjustment for amounts included in the invoice which are ultimately determined not to be amounts for which Owner was obligated to pay Burrard Clean under the terms of this Agreement. Owner shall be entitled to object to or question all invoices or matters related to it within thirty (30) days following the date of the invoice, or the date on which the last invoice under a Work Order is rendered, whichever is later. In the event of a dispute regarding an invoiced amount the parties shall use reasonable efforts to resolve such dispute but if the parties fail to resolve such dispute within a thirty (30) day period following receipt by Burrard Clean of notice of a dispute in respect of any particular invoice, the dispute shall be referred to arbitration at Vancouver, Canada for determination in accordance with the Rules of the Vancouver Maritime Arbitrators Association. The parties agree that any decision of an arbitrator appointed under the Rules of the Vancouver Maritime Arbitrators Association shall be final and binding.

6.6 Audits

Owner shall have the right at all reasonable times and intervals to make such reasonable inspection or audit of such portion of the books and records maintained by Burrard Clean as relate to the invoices submitted in respect of Marine Spill Response Services performed under the terms of this Agreement. Burrard Clean shall make available to Owner such information and materials (including time sheets for personnel and equipment) as Owner may reasonably require to verify and substantiate the invoices provided by Burrard Clean under this Agreement provided that Burrard Clean shall be reimbursed by Owner for any costs incurred by Burrard Clean in assisting Owner and Burrard Clean Fees shall themselves not be subject to audit under the terms of this Agreement. In the event an audit indicates an error in the prior calculation of Burrard Clean Fees or any portion of the Burrard Clean Fees payable by Owner, Burrard Clean and Owner shall promptly make the appropriate corrections and adjustments.

6.7 Fees Remain Payable

Owner's obligation to pay the fees payable under this Agreement is absolute and not subject to set-off, deduction or other reduction or counterclaim by reason of the non-availability of Marine Spill Response Services, force majeure described in Section 11.1, or any other event or circumstance which would otherwise effect a suspension or termination of the obligations of Burrard Clean.

6.8 Currency

All fees payable under this Agreement shall be paid in Canadian currency.

ARTICLE 7 REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of Owner

Owner represents and warrants to Burrard Clean, with the intent that Burrard Clean will rely upon such representations and warranties in entering into this Agreement, that:

- (a) Owner is a corporation duly incorporated and validly existing under the laws of its jurisdiction and has all necessary corporate power, authority and capacity to enter into and to carry out its obligations under this Agreement, and the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate action on the part of Owner;
- (b) Owner is not party to, bound or affected by or subject to any indenture, mortgage, lease, agreement, obligation, instrument, charter or by-law provision, statute, regulation, order, judgment, decree, licence, permit or law which would be violated, contravened, breached by, or under which default would occur as a result of the execution and delivery of this Agreement, or the performance by Owner of any of its obligations provided under this Agreement;
- (c) this Agreement is a valid and binding obligation of Owner, enforceable against it in accordance with its terms subject, however, to limitations with respect to enforcement imposed by law in connection with bankruptcy or similar proceedings and to the extent that equitable remedies such as specific performance and injunction are in the discretion of the court from which they are sought;
- (d) Owner has the financial capability to pay the Membership Fees, as well as any Burrard Clean Fees and Taxes which may accrue in the course of carrying out Marine Spill Response Services under the terms of this Agreement; and
- (e) Owner is a member of a protection and indemnity club or association which is a member of the international group of protection and indemnity clubs, party to the Tanker Owners Voluntary Agreement concerning Liability for Oil Pollution (TOVALOP), or a member of an organization providing equivalent P & I cover.

ARTICLE 8 BOOKS AND RECORDS

8.1 Books and Records

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

8.2 Audits

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

8.3 Adjustments

In the event an audit indicates a discrepancy between the actual volumes of Bulk Oil Cargo Handled on any particular occasion and Owner's reported volumes of Bulk Oil Cargo Handled on the same occasion, Owner shall make the appropriate corrections and adjustments and, if necessary, promptly make any additional payments to reflect such correction, and interest shall be payable in respect of such corrected amount at a rate of one per cent (1%) per month, or 12.6825% per year, commencing on the date the discrepancy occurred.

ARTICLE 9 ALLOCATION OF RISK

9.1 Nature of Relationship

Burrard Clean and Owner recognize and agree that, in connection with providing the Marine Spill Response Services under this Agreement:

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

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

9.2 Liability between Burrard Clean and Owner

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

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

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

caused by the act or omission of Burrard Clean or any of its directors, officers, agents, contractors or employees in performing the Approved Marine Spill Response Services unless such act or omission is a result of the negligence of Burrard Clean or any of its directors, officers, agents, contractors or employees in carrying out the Initial Response or any Work Order, and Burrard Clean, its directors, officers, agents, contractors or employees are unable to rely on their respective immunities under the Act.

- (c) Owner shall indemnify, defend and hold harmless Burrard Clean, its directors, officers, employees, contractors and agents from and against all claims, losses, damages, costs, expenses and other liabilities incurred by Burrard Clean, its directors, officers, employees, contractors or agents as a result of Burrard Clean performing Approved Marine Spill Response Services except where such claims, losses, damages, costs, expenses and other liabilities are incurred by Burrard Clean, its directors, officers, employees, contractors or agents as a result of Burrard Clean's own negligence or the negligence of Burrard Clean's directors, officers, agents, contractors or employees in carrying out the Initial Response or any Work Order, and except to the extent that Burrard Clean, its directors, officers, employees, contractors and agents are able to rely on their respective immunities under the Act. Owner acknowledges that Burrard Clean shall not be required to exhaust its recourses against any third party as a condition precedent to claiming indemnification under this Section.
- (d) Burrard Clean shall indemnify, defend and hold harmless Owner, its directors, officers, employees and agents from and against all claims, losses, damages, costs, expenses and other liabilities incurred by Owner and its directors, officers, employees and agents as a result of

- (e) the negligence of Burrard Clean, its directors, officers, agents, contractors or employees in carrying out the Initial Response or any Work Order.

ARTICLE 10 TERMINATION

10.1 Termination by Burrard Clean

This Agreement may be terminated by Burrard Clean effective immediately upon notice to Owner:

- (a) in the event that the Minister of Transport revokes Burrard Clean's certification as a response organization with 10,000 tonne rated capability;
- (b) if Owner has failed to pay the Registration Fee, any Bulk Oil Cargo Fees or any Burrard Clean Fees or Taxes in accordance with the terms of this Agreement;
- (c) if Owner has knowingly created or if, after learning of it, has failed to correct, a discrepancy between the actual volumes of Bulk Oil Cargo Handled on a particular occasion and Owner's reported volumes of Bulk Oil Cargo Handled in respect of such occasion;
- (d) if Owner has become insolvent, commenced an act of bankruptcy, suspended business operations or has bankruptcy, dissolution, liquidation or winding-up proceedings commenced against it (unless such proceedings are actively and diligently contested in good faith on a timely basis); or
- (e) if Owner has breached any representation or warranty or other term of this Agreement and failed to cure such breach within five (5) days after Owner received written notice from Burrard Clean advising of such breach.

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

10.2 Consequences of Termination

Upon the termination of this Agreement:

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

10.3 No Reimbursement of Membership Fees

Owner shall not be entitled to receive a refund of all or any portion of the Registration Fee or the Bulk Oil Cargo Fees paid by Owner except where termination of this Agreement is due to the revocation by the

Minister of Transport of Burrard Clean's certification as a response organization with 10,000 tonne rated capability in which case the Registration Fee shall be refunded on a pro-rated basis.

10.4 Survival

Notwithstanding the termination of this Agreement by Burrard Clean or Owner pursuant to this Article, the provisions of this Section, Section 10.2, and Articles VI, VIII and IX shall survive any such termination.

ARTICLE 11 FORCE MAJEURE

11.1 Force Majeure

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

11.2 Exception for Failure by Either Party

Neither party will be entitled to the benefits of the provisions of Section 11.1 if and to the extent that its inability to duly perform any obligation hereunder was caused or contributed to by its failure to act in a reasonable and prudent manner under the circumstances.

11.3 Other Aspects of Force Majeure

The obligations of the party relying on Section 11.1 shall be suspended during any period of force majeure. The performance of this Agreement shall be resumed as soon as practicable after force majeure has ceased.

ARTICLE 12 GENERAL PROVISIONS

12.1 Time

Time is of the essence of this Agreement.

12.2 Notices

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

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

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

- (c) if given by facsimile, on the date and at the time indicated on the receipt of confirmation form received for such facsimile.

No party shall mail any notice during any period when postal workers are on strike or if a strike is imminent. Either party may change its address by giving notice of the change to the other party.

12.3 Amendments to Agreement

Subject to Section 12.4, this Agreement may not be amended except in writing executed by all the parties.

12.4 Amendments to Schedules

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

12.5 Independent Contractor

Burrard Clean is an independent contractor in the performance of its obligations under this Agreement and neither Burrard Clean nor Burrard Clean's employees, agents, contractors or subcontractors shall be considered employees of Owner.

12.6 Further Assurances

Each party will, at its own expense and without expense to any other party, execute and deliver such further agreements, deeds, instruments and documents, and do such further acts as the other party reasonably requests for the purpose of evidencing, carrying out and giving full force and effect to the intent of this Agreement.

12.7 Benefit of Agreement

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

12.8 Entire Agreement

The provisions of this Agreement, including the schedules to this Agreement, constitute the entire agreement between the parties respecting the subject matter of this Agreement and supersede all previous understandings and agreements, whether verbal or written, between the parties with respect thereto.

12.9 Governing Law

This Agreement shall be interpreted in accordance with and governed by the laws of the Province of Ontario, and the laws of Canada applicable in the Province of Ontario.

12.10 Assignment

This Agreement shall not be assigned by Owner without the prior written consent of Burrard Clean, and any attempt to so assign it shall be null and void.

12.11 Severability

Each provision of this Agreement is intended to be severable and accordingly the invalidity or unenforceability of any particular provision will not affect the validity or enforceability of any other

provision except that if, on the reasonable construction of this Agreement as a whole, the applicability of the other provision is expressly stated, or by reasonable implication intended by the parties, to be dependant on the validity and enforceability of the particular provision, the other provision will be deemed also to be invalid or unenforceable.

12.12 Execution in Counterparts

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

SCHEDULE B
DEFINITION OF OIL

FOR THE PURPOSE OF THIS AGREEMENT THE DEFINITION OF OIL WILL BE THAT AS DEFINED BY THE MARPOL 73/78 ANNEX 1:

“Oil” means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products (other than petrochemicals which are subject to the provisions of Annex II of the present Convention) and, without limiting the generality of the foregoing includes the substances listed:

LIST OF OILS

Asphalt solutions

Blending stocks
Roofers flux
Straight run residue

Oils

Turbo fuel
Clarified
Crude Oil
Mixtures containing crude oil
Diesel Oil
Fuel oil no. 4
Fuel oil no. 5
Fuel oil no. 6
Residual fuel oil
Road oil
Transformer oil
Aromatic Oil (excluding vegetable oil)
Lubricating oils and blending stocks
Mineral oil
Motor oil
Penetrating oil
Spindle oil
Turbine oil

Distillates

Straight run
Flashed feed stocks

Cracked

Gasoline Blending Stocks

Alkylates - fuel
Reformats
Polymer - fuel

Gasolines

Casinghead (natural)
Automotive
Aviation
Straight run
Fuel oil no. 1 (kerosene)
Fuel oil no. 1-D
Fuel oil no. 2
Fuel oil no. 2-D

Jet Fuels

JP-1 (Kerosene)
JP-3
JP-4
JP-5 (Kerosene, Heavy)

Gas Oil

Kerosene
Mineral spirit

Naphtha

Solvent
Petroleum
Heartcut distillate oil