

TERMS AND CONDITIONS

1. Arrangement

- 1.1 In consideration of the fees payable by Owner, Owner is entitled, for purposes of Owner's 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 geographic area of response for the ship named in this Agreement.
- 1.2 In addition, this arrangement also entitles Owner, upon the occurrence of a spill of Oil on water within Burrard Clean's geographic area of response, to request Burrard Clean to respond and provide Marine Spill Response Services.
- 1.3 "Oil" means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products and, for greater certainty, includes oil as defined by MARPOL 73/78 Annex 1.
- 1.4 Where Owner owns or operates more than one ship which navigates or engages in marine activities in Burrard Clean's geographic area of response and for which Owner wishes to obtain an arrangement from Burrard Clean, Owner shall pay 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.

2. Initial Request and Response

- 2.1 Upon the occurrence within Burrard Clean's geographic area of response 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.
- 2.2 If Owner requests Burrard Clean to respond to a spill of Oil on water in Burrard Clean's geographic area of response ("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, 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.
- 2.3 Unless otherwise agreed between the parties, the Initial Response shall consist of the provision of Marine Spill Response Services for up to 24 hours.
- 2.4 "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. "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.

3. Twelve Hour Consultation

- 3.1 If within twelve (12) 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.
- 3.2 If within twelve (12) 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 twenty-four (24) hour period of the Initial Response.

4. No Further Burrard Clean Response

- 4.1 If Owner has notified Burrard Clean that Owner does not want Burrard Clean to continue to provide Marine Spill Response Services beyond the twenty-four (24) hour period of 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.
- 4.2 If Owner has failed to notify Burrard Clean within the initial twelve (12) 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 twenty-four (24) hour period of the Initial Response.

5. Response Beyond 24 Hours

- 5.1 If Owner has notified Burrard Clean within the initial twelve (12) hours that Owner wishes Burrard Clean to continue to provide Marine Spill Response Services beyond the twenty-four (24) 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.
- 5.2 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.
- 5.3 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 Article 13 of this Agreement.
- 5.4 Upon being signed by both parties, a Work Order shall become an integral part of this Agreement.
- 5.5 Plans of Action and Work Orders may be amended by the parties from time to time as circumstances require.

6. Right to Subcontract

- 6.1 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.

7. Additional Conditions

- 7.1 Marine Spill Response Services shall only be provided by Burrard Clean if Owner has paid all outstanding fees.
- 7.2 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.
- 7.3 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.

7.4 “Lead Agency” means the Canadian Coast Guard or other agency 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.

8. Recovered Oil and Waste

8.1 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.

9. Termination of Work

9.1 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.

10. Instructions

10.1 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).

11. Burrard Clean Fees

11.1 “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.

11.2 Without limiting the foregoing, where Burrard Clean has published a schedule of fees in respect of any of the items referred to in Section 11.1, the costs associated with those items will be in accordance with the most currently published schedule.

11.3 Schedules of Burrard Clean Fees are available upon request.

11.4 “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.

12. Payment of Burrard Clean Fees

12.1 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.

12.2 Burrard Clean shall submit an invoice to Owner for the Burrard Clean Fees and Taxes incurred. Except as otherwise provided under Article 13 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 14.1 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.

12.3 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.

12.4 All Burrard Clean Fees and Taxes payable under this Agreement shall be paid in Canadian currency.

13. Funding for Response Beyond 24 Hours

13.1 In those cases where the provisions of Article 5 (Response Beyond 24 Hours) apply, Burrard Clean shall submit an invoice to Owner for the Marine Spill Response Services provided during the first twenty-four (24) 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.

13.2 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.

13.3 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.

13.4 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 on any final invoice submitted by Burrard Clean.

14. Disputed Invoices

14.1 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.

15. Audits

15.1 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.

16. Fees Remain Payable

16.1 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 22.1, or any other event or circumstance which would otherwise effect a suspension or termination of the obligations of Burrard Clean.

17. Representations and Warranties

17.1 Owner represents and warrants to Burrard Clean that, both as of the Effective Date and for the remaining term of this Agreement, Owner: (a) does not and will not carry Oil in bulk as cargo and Owner's ship is not constructed or adapted primarily to carry Oil in bulk in its cargo spaces; and (b) is and will continue to be a member of a protection and indemnity club, an association which is a member of the international group of protection and indemnity clubs, or an organization providing equivalent P & I cover.

18. Allocation of Risk

18.1 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 18. 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 18.

18.2 Burrard Clean, its directors, officers, agents, contractors and employees shall have no liability to Owner, for: (a) any loss or damage caused to any person, property or the environment, of any nature or kind; or (b) 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 its directors, officers, contractors, agents or employees.

18.3 Burrard Clean, its directors, officers, agents, contractors and employees shall have no liability to Owner, for: (a) any loss or damage caused to any persons, property or the environment, of any nature or kind; or (b) 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 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. "**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.

18.4 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, contractors, employees 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.

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

19. Termination

19.1 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 as required under the terms of this Agreement; (c) Owner has failed to pay any Burrard Clean Fees or Taxes in accordance with the terms of this Agreement; (d) 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) 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.

20. Consequences of Termination

20.1 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 to Owner under this Agreement shall cease; (c) Burrard Clean shall cease to perform any Marine Spill Response Services for Owner; and (d) Owner shall pay to Burrard Clean any outstanding Burrard Clean Fees, Taxes or Registration Fee.

20.2 Owner shall not be entitled to receive a refund of all or any portion of the Registration Fee 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.

21. Survival

21.1 Notwithstanding the termination of this Agreement, this Article and the provisions of Articles 12, 13, 14, 15, 16, 18, and 20 survive any such termination.

22. Force Majeure

22.1 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 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.

22.2 Neither party will be entitled to the benefits of the provisions of Section 22.1 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.

22.3 The obligations of the party relying on Section 22.1 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.

23. Time

23.1 Time is of the essence of this Agreement.

24. Assignment

24.1 This Agreement shall not be assigned by Owner without the prior written consent of Burrard Clean.

25. Independent Contractor

25.1 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.

26. Governing Law

26.1 This Agreement shall be interpreted in accordance with and governed by the laws of the Province of British Columbia and the laws of Canada applicable therein.

27. Notice

27.1 All notice required or permitted to be given under this Agreement shall be in writing and either delivered by hand, mailed, or sent by facsimile to the addresses listed on page 1 of this Agreement. Any such notice shall be deemed to have been given and received: (a) if delivered, on the date of delivery; (b) if mailed, on the 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.