

**BURRARD CLEAN OPERATIONS,**  
a division of Western Canada Marine Response Corporation  
P.O. Box 82070, Burnaby, B.C. V5C 5P2  
(Deliveries: 201 Kensington Avenue, Burnaby, B.C. V5C 4B2)  
Emergency Contact No.: (604) 294-9116  
Facsimile No.: (604) 294-6003

Contract No.

**SUBSCRIBER AGREEMENT  
REMITTANCE AND RENEWAL CONFIRMATION**

\_\_\_\_\_  
Name of Subscriber

\_\_\_\_\_  
\_\_\_\_\_  
Subscriber Mailing Address

\_\_\_\_\_  
Authorized Subscriber Representative

\_\_\_\_\_  
E-mail address of Authorized Representative

\_\_\_\_\_  
Telephone Number of Authorized Representative

\_\_\_\_\_  
Facsimile Number of Authorized Representative

**Term of Coverage: 1 Year**

Effective Date: \_\_\_\_\_

End Date: \_\_\_\_\_

Subscriber Fee Annual): \$ \_\_\_\_\_

Applicable Taxes: \$ \_\_\_\_\_

Total Payable (\$CDN) \$ \_\_\_\_\_

**In accordance with Article III of the Agreement, the annual subscriber fee of together with all applicable Taxes shall be due and payable on or prior to the anniversary date of the Effective Date of the Agreement.**

This Remittance and Renewal Confirmation dated \_\_\_\_\_, confirms that, Subscriber is entitled to:

- a) identify Burrard Clean as the response organization with which Subscriber has an agreement to receive Marine Spill Response Services in Burrard Cleans' geographic area of response ("GAR"); and
- b) in the event of an oil spill on water within Burrard Cleans' GAR, to request Burrard Clean to respond and provide marine spill response services.

Unless otherwise terminated pursuant to the Agreement: the

- a) Agreement commences as of the Effective Date of the Agreement and continues in effect for one (1) year beyond the Effective Date; and
- b) the Agreement automatically renews for successive one (1) year terms unless one party gives notice to the other at least sixty (60) days prior to the date on which either the initial one-year term is due to expire or any subsequent one (1) year is due to expire that such party does not wish to renew the Agreement. In accordance with Article III of the Agreement, the annual subscriber fee of together with all applicable Taxes shall be due and payable on or prior to the anniversary date of the Effective Date of the Agreement.

**BURRARD CLEAN OPERATIONS,**  
a division of Western Canada Marine Response Corporation

By: \_\_\_\_\_  
(Authorized Signatory)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Date)

(Oil Handling Facility Operator)

By: \_\_\_\_\_  
(Authorized Signatory)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Date)

**Unless otherwise modified or terminated in accordance with the Agreement, the Agreement shall continue in full force and effect.**

BURRARD CLEAN OPERATIONS  
a division of  
WESTERN CANADA MARINE RESPONSE CORPORATION

- and -

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**NAME OF SUBSCRIBER**

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**SUBSCRIBER AGREEMENT**

Dated this \_\_\_\_ day of \_\_\_\_\_, 200\_\_

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**SUBSCRIBER AGREEMENT**

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

**B E T W E E N:**

BURRARD CLEAN OPERATIONS,  
a division of  
WESTERN CANADA MARINE RESPONSE CORPORATION  
P.O. Box 82070, Burnaby, B.C. V5C 5P2  
(Deliveries: 201 Kensington Avenue, Burnaby, B.C. V5B 4B2)  
Emergency No.: (604) 294-9116  
Facsimile No.: (604) 294-6003  
("Burrard Clean")

- and -

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Name, Address and Facsimile Number of Subscriber**  
("Subscriber")

**WHEREAS:**

- A. Burrard Clean is in the business of providing marine spill response services in respect of oil spilled on or into water within its designated geographic area of response;
- B. Subscriber wishes to enter into an agreement to permit it to call on Burrard Clean in the event that Subscriber requires marine spill response services in respect of oil spilled on or into water in the designated geographic area of response within which Burrard Clean offers its services;
- C. The parties wish to set forth the terms on which such marine spill response services will be provided;

**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**” means the *Canada Shipping Act, 2001* as amended;

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

Schedule A	-	Definition of Oil
Schedule B	-	Non-Toxic Substances

“**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;

“**Burrard Clean Fees**” has the meaning ascribed to it in Section 4.8 of this Agreement;

“**Burrard Clean’s GAR**” means the Waters bordering the Province of British Columbia (including the shorelines associated with such Waters) and excluding Waters north of the 60th parallel of latitude;

“**Effective Date**” has the meaning ascribed to it in Section 8.1 of this Agreement;

“**GAR**” means the geographic area of response within which a response organization intends to offer its services;

“**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 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 of Oil spilled on or into water or spilled on water in connection with the loading or unloading of Oil from ships, including preventative measures taken with respect thereto 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;

“**Oil**” means oil and those oil products described in Schedule “A” to this Agreement and those non-toxic substances described in Schedule “B” to this Agreement;

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

“**Subscriber Fee**” has the meaning set forth in Section 3.1 of this Agreement;

“**Taxes**” means the goods and services tax, or any equivalent or replacement thereof, payable by Subscriber 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;

“**Waters**” has the meaning ascribed to it in Section 166 of the Act, as amended from time to time;

“**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 SUBSCRIBER PRIVILEGES**

### **2.1 Subscriber Privileges**

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

- (a) to identify Burrard Clean as the response organization with which Subscriber has an agreement to receive Marine Spill Response Services 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 Agreement not an Arrangement**

This agreement does not constitute an arrangement for purposes of the Act.

## **ARTICLE 3 SUBSCRIBER FEE**

### **3.1 Subscriber Fee**

Subscriber shall pay to Burrard Clean an annual subscriber fee of \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00) (the "Subscriber Fee") together with all applicable Taxes payable in connection with the Subscriber Fee.

### **3.2 Payment of Subscriber Fee**

The initial Subscriber Fee shall be due and payable on or prior to the Effective Date, and each subsequent Subscriber Fee shall be paid on or prior to the anniversary date of the Effective Date.

### **3.3 Adjustment of Subscriber Fee**

Burrard Clean shall on each anniversary date following the Effective Date, be entitled to adjust the Subscriber Fee payable in respect of the following year. In the event Burrard Clean wishes to adjust the Subscriber Fee, Burrard Clean shall provide written notice of the proposed adjustment to Subscriber at least ninety (90) days prior to the end of the applicable one (1) year term and the adjusted Subscriber Fee shall be payable on the first anniversary date of the Effective Date which follows the provision of such notice and thereafter until the Subscriber Fee is adjusted further.

## **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, Subscriber 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 Subscriber 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 make the Initial Request, the type of Oil involved 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 twenty-four (24) hours.

### **4.3 Twelve Hour Consultation**

- (a) If within twelve (12) hours of the Initial Request Burrard Clean and Subscriber 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, and the provisions of Section 6.2 shall apply.

- (b) If within twelve (12) hours of the Initial Request Burrard Clean and Subscriber agree that the clean-up cannot be completed within the course of the Initial Response, then Subscriber 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 Subscriber has notified Burrard Clean that Subscriber 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 Subscriber.
- (b) If Subscriber has failed to notify Burrard Clean within the initial twelve (12) hour period, and Burrard Clean has been unable to obtain instructions from Subscriber, 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 and Section 4.4(a) shall apply in all other respects as though Subscriber had notified Burrard Clean to cease providing Marine Spill Response Services at the end of the Initial Response.

#### **4.5 Response Beyond 24 Hours**

- (a) If Subscriber has notified Burrard Clean within the initial twelve (12) hours that Subscriber 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 Subscriber 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 Subscriber with a Plan of Action for each subsequent seven (7) day period.
- (b) Upon receipt of each Plan of Action, Subscriber 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 Subscriber, 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**

- (a) 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 Subscriber if the resources associated with the provision of such Marine Spill Response Services are already being provided to another party.
- (b) In the event of contemporaneous or overlapping requests for Marine Spill Response Services, Subscriber acknowledges that Burrard Clean shall respond to the competing requests as directed by the appropriate governmental Lead Agency.
- (c) Where for any reason Burrard Clean is unable to make available to Subscriber the resources associated with the provision of Marine Spill Response Services required by Subscriber, Burrard Clean agrees that it will make reasonable efforts to assist Subscriber in establishing arrangements with regard to the provision of such required resources.

#### **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 Subscriber 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 Subscriber 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 Subscriber, 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 Subscriber 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**

- (i) 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 Subscriber upon request). However, Burrard Clean and Subscriber understand that:
- (ii) actions carried out in a response in an Oil spill environment may be inherently dangerous and difficult; and
- (iii) 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 Subscriber or with approval of applicable safety officials will be deemed to be in compliance with this Section.

- (b) Burrard Clean shall, upon Subscriber's request, report to Subscriber 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 Subscriber's expense, furnish Subscriber with copies of any final written reports and other factual information related to such accidents prepared by or for Burrard Clean.

#### **5.3 Subscriber Safety Obligations**

- (a) Subscriber 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 Subscriber safety policies and procedures (a copy of which policies and procedures Subscriber shall make available to Burrard Clean upon request).

- (b) Subscriber will 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 Subscriber's reasonable judgment possibly causing any personal injury or death or property damage or loss. Subscriber will, 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 Subscriber.

#### **5.4 Illegal, Unsafe or Improper Instructions**

If Subscriber 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 Subscriber 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) Subscriber shall pay all reasonable Burrard Clean Fees which are due and payable. Subscriber 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 Subscriber 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 Subscriber by the end of the fifth (5th) business day following receipt of the invoice by Subscriber 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 Subscriber 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) business 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 Subscriber 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 24 Hours**

- (a) In those cases where the provisions of Section 4.5 (Response Beyond 24 Hours) apply, Burrard Clean shall submit an invoice to Subscriber 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 Subscriber by the end of the fifth (5th) business day following Subscriber's receipt of the invoice.
- (b) After Burrard Clean has submitted the initial invoice, Subscriber and Burrard Clean shall agree on how Subscriber 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, Subscriber 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 Subscriber 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.

#### **6.4 Payments in Good Standing**

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

#### **6.5 Disputed Invoices**

If Subscriber objects to any item or statement shown on an invoice, Subscriber shall promptly notify Burrard Clean of the dispute, specifying in reasonable detail the factual basis for the dispute and Subscriber 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 Subscriber'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 Subscriber was obligated to pay Burrard Clean under the terms of this Agreement. Subscriber 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 final 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**

Subscriber 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 Subscriber such information and materials (including time sheets for personnel and equipment) as Subscriber may reasonably require to verify and substantiate the invoices provided by Burrard Clean under this Agreement provided that Burrard Clean shall be reimbursed by Subscriber for any costs incurred by Burrard Clean in assisting Subscriber 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 Subscriber, Burrard Clean shall promptly make the appropriate corrections and adjustments.

## **6.7 Fees Remain Payable**

Subscriber'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 10.1, 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 Financial Capability**

Subscriber represents and warrants to Burrard Clean that Subscriber has the financial capability to pay the Subscriber 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.

# **ARTICLE 8 ALLOCATION OF RISK**

## **8.1 Nature of Relationship**

Burrard Clean and Subscriber 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 Subscriber;
- (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 Subscriber, or anyone asserting rights on its behalf, will not challenge Burrard Clean's right to be indemnified as provided in this Article VIII.

Accordingly, Burrard Clean and Subscriber 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 Subscriber as set forth in this Article VIII.

## **8.2 Liability Between Burrard Clean and Subscriber**

- (a) Burrard Clean and its directors, officers, agents, contractors, and employees shall have no liability to Subscriber, 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 Subscriber or any of Subscriber's directors, officers, contractors, agents or employees.

- (b) Burrard Clean and its directors, officers, agents, contractors and employees shall have no liability to Subscriber, 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 or equipment unless such act or omission is a result of the gross negligence or the wilful misconduct of Burrard Clean or any of its directors, officers, agents, contractors or employees.

- (c) Subscriber 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's entering into of, or carrying out any obligations under, this Agreement, 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 gross negligence or wilful misconduct, or the gross negligence or wilful misconduct of Burrard Clean's directors, officers, agents, contractors or employees. Subscriber 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 Subscriber and its directors, officers, employees and agents from and against all claims, losses, damages, costs, expenses and other liabilities incurred by Subscriber and its directors, officers, employees and agents as a result of the gross negligence or wilful misconduct of Burrard Clean, its directors, officers, agents, contractors or employees.

### **8.3 Insurance**

Subscriber shall carry and maintain in force during the term of this Agreement such insurance as is necessary to enable Subscriber to carry out its obligations under this Agreement. Upon Burrard Clean's request, Subscriber shall furnish Burrard Clean either with copies, certified by Subscriber's insurers, of such insurance policies or a certificate of insurance with respect to such insurance policies. Subscriber shall provide notice to Burrard Clean forthwith in the event that Subscriber's insurance coverage is amended, or any portion thereof terminated or cancelled.

## **ARTICLE 9 TERM**

### **9.1 Term**

This Agreement shall come into force and effect as of the date indicated on the first page of this Agreement (the "Effective Date") and shall continue for a period of one (1) year beyond the Effective Date.

### **9.2 Renewal**

This Agreement shall be automatically renewed for successive one (1) year terms unless one party gives notice to the other at least sixty (60) days prior to the date on which either the initial one year term is due to expire or any subsequent one (1) year term is due to expire that such party does not wish to renew the Agreement.

## **ARTICLE 10 TERMINATION**

### **10.1 Termination by Either Party**

This Agreement may be terminated by either party upon the provision of at least sixty (60) days prior written notice to the other party in accordance with the terms of Section 9.2 of this Agreement.

### **10.2 Termination by Burrard Clean**

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

- (a) if Subscriber has failed to pay any Subscriber Fees or any Burrard Clean Fees or Taxes in accordance with the terms of this Agreement;
- (b) if Subscriber 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
- (c) if Subscriber has breached any other term of this Agreement and failed to cure such breach within five (5) days after Subscriber 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.

### **10.3 Consequences of Termination**

Upon the termination of this Agreement:

- (a) all obligations of Burrard Clean under this Agreement shall cease;
- (b) Burrard Clean shall cease to perform any Marine Spill Response Services; and
- (c) Subscriber shall pay to Burrard Clean any outstanding Subscriber Fees and Burrard Clean Fees and Taxes.

### **10.4 No Reimbursement of Subscriber Fees**

Subscriber shall not be entitled to receive a refund of all or any portion of the Subscriber Fees paid by Subscriber.

### **10.5 Survival**

Notwithstanding the termination of this Agreement pursuant to this Article, the provisions of this Section, Section 10.3 and Articles VI and VIII 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 Subscriber, 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 Subscriber 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 Subscriber.

#### **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 British Columbia and the laws of Canada applicable therein.

**12.10 Assignment**

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

**12.11 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.

**12.12 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.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

**BURRARD CLEAN OPERATIONS,  
a division of WESTERN CANADA  
MARINE RESPONSE CORPORATION**

\_\_\_\_\_  
**Name of Subscriber**

By: \_\_\_\_\_

By: \_\_\_\_\_

**SCHEDULE "A"**  
**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**

Clarified  
Kerosene  
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

**Gas Oil**

Mineral spirit  
**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)  
Turbo fuel  
Cracked

**Naphtha**

Solvent  
Petroleum  
Heartcut distillate oil

**SCHEDULE B  
NON-TOXIC SUBSTANCES**

Animal and Fish oils, n.o.s.	Oil, edible: Soya bean
Animal and fish acids oils and distillates, n.o.s.	Oil, edible: Sunflower seed
Fatty acids (saturated, C13+)	Oil, edible: Tucum
Fatty acids amides	Oil, edible: Vegetable
Oil, edible: Beechnut	Oil, edible: Walnut
Oil, edible: Castor	Oil, misc: Animal
Oil, edible: Cocoa butter	Oil, misc: Coconut, fatty acid methyl ester
Oil, edible: Coconut	Oil, misc: Coconut oil, fatty acid
Oil, edible: Cod liver	Oil, misc: Cottonseed oil, fatty acid
Oil, edible: Corn (maize)	Oil, misc: Croton
Oil, edible: Cottonseed	Oil, misc: Lanolin
Oil, edible: Fish	Oil, misc: Linseed
Oil, edible: Groundnut	Oil, misc: Neatsfoot
Oil, edible: Hazelnut	Oil, misc: Oiticica
Oil, edible: Lard	Oil, misc: Palm oil, fatty acid methyl ester
Oil, edible: Nutmeg butter	Oil, misc: Perilla
Oil, edible: Olive	Oil, misc: Pilchard
Oil, edible: Palm	Oil, misc: Soapetock
Oil, edible: Palm kernel	Oil, misc: Soybean (epoxidized)
Oil, edible: Peanut	Oil, misc: Sperm
Oil, edible: Peel	Oil, misc: Tallow
Oil, edible: Poppy	Oil, misc: Whale
Oil, edible: Poppy seed	Palm kernel acid oil
Oil, edible: Raisin seed	Palm kernel acid oil, methyl ester
Oil, edible: Rapeseed	Tallow fatty acid
Oil, edible: Rice bran	Tallow nitrite
Oil, edible: Safflower	Vegetable acid oils and distillates, n.o.s.
Oil, edible: Salad	Vegetable oils, n.o.s.
Oil, edible: Sesame	

\* This is the list of non-petroleum oils prepared for purposes of the United States *Federal Water Pollution Control Act*