

INTERNATIONAL GROUP GUIDELINES ON VRP CONTRACTS IN THE US

1. **Control**

It should be clear in the contract that the ultimate control of the clean-up operation remains with the owner.

2. **Funding (particularly important for contracts with OSROs)**

The Association will not provide advance funding guarantees. It may be possible in the appropriate cases to guarantee payment by the Member of invoices relating to the services provided under the contract in accordance with the contract terms within a reasonable time after the incident. Such a guarantee will be subject to the following provisos:

- (i) A fixed US dollar amount.
- (ii) A fixed time limit for the services, i.e. the letter would guarantee expenses incurred in providing response services up to a fixed period of time as appropriate (e.g. seven days from the incident date) subject to extension by written agreement of the Association; and
- (iii) A haul-off clause which provides for the Association's liability to be terminated upon 24 hours' notice.

3. **Insurance and Indemnity**

The Association will not agree to provide co-assurance for OSROs or to warrant the owners' cover directly to the contractor.

It will agree to provide cover for limited indemnities to QIs and OSROs in the following form:

- (i) Contractor indemnifies owner/operator for liabilities arising from gross negligence or wilful misconduct of contractor or a breach of the contract, or breach of applicable law or regulation by the contractor.
- (ii) Owner/operator indemnifies the contractor against liabilities arising from gross negligence or wilful misconduct or a breach of the contract, or breach of the applicable law or regulation by the owner/operator.
- (iii) Owner/operator indemnifies the contractor against liabilities for removal costs and damages arising out of a discharge of oil from the vessel, except to the extent that:
 - (a) responder immunity applies under Federal or State law;
 - (b) the liabilities arise from the gross negligence or wilful misconduct of the contractor;
 - (c) owner/operator would not have been liable if sued direct;
 - (d) owner/operator would have been able to limit his liability; and
 - (e) the liability arises in respect of death or personal injury.

It is advisable that the contracts include a limit so that the total aggregate of all liabilities incurred cannot exceed the limit of club cover.

4. **Warranties**

Contracts should contain warranties that the contractors (particularly for removal actions) will have and maintain all necessary Federal and State approvals/licences/classifications.

5. **Classification**

The OSRO contract should contain a warranty that the OSRO maintains classification under Federal and State law (if applicable).

6. **Insurance**

Care should be taken to ensure that the contractor warrants that they will carry and maintain in full force and effect General Liability and Contractor Liability Insurance in excess of USD 2m.

7. **Law and jurisdiction**

With regard to choice of law and jurisdiction it is preferable to name the State of New York.

8. **Disputed invoices**

If the contractor inserts payment time limits in his contract, then a provision should be inserted that payment of 80 per cent is made within a certain time limit (approximately 30 days) and the balance when the dispute is settled.

9. **Interest**

If interest is charged on outstanding balances it is recommended that it be one or two percent above normal commercially available Bank lending rates.

10. **Confidentiality**

Some contracts contain a confidentiality provision. Any provision inserted should at least ensure that an owner can discuss the contract with his P&I insurer.

INTERNATIONAL GROUP GUIDELINES ON VRP CONTRACTS OUTSIDE THE UNITED STATES OF AMERICA

1. Control

It should be clear in the contract that the ultimate control of the clean-up operation remains with the owner.

2. Funding (particularly important for contracts with OSROs)

The Association will not provide advance funding guarantees. It may be possible in the appropriate cases to guarantee payment by the Member of invoices relating to the services provided under the contract in accordance with the contract terms within a reasonable time after the incident. Such a guarantee will be subject to the following provisos:

- (i) A fixed limit.
- (ii) A fixed time limit for the services, i.e. the letter would guarantee expenses incurred in providing response services up to a fixed period of time as appropriate (e.g. seven days from the incident date) subject to extension by written agreement of the Association; and
- (iii) A haul-off clause which provides for the Association's liability to be terminated upon 24 hours' notice.

3. Insurance and Indemnity

The clauses should be even-handed as regards the liabilities of the shipowner and the contractor and should be based on simple negligence rather than gross negligence. Thus the contractor should be liable for the negligent acts of himself and his employees, etc. and the shipowner should be liable for the negligent acts of the shipowner and his employees, etc. and losses which would not have arisen but for the nature of the spill.

4. Applicable Limit

It is advisable that the contracts include a limit for shipowners' liabilities so that these are limited to the ship's limit under national law or if there is no limit under national law the total aggregate of all liabilities incurred cannot exceed the limit of club cover.

5. Warranties

Contracts should contain warranties that the equipment is fit for the purpose for which it is hired.

6. Insurance

Care should be taken to ensure that the contractor maintains adequate insurance.

7. Law and jurisdiction

England.

8. Disputed invoices

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If interest is charged on outstanding balances it is recommended that it be one or two percent above normal commercially available Bank lending rates.

10. **Confidentiality**

Some contracts contain a confidentiality provision. Any provision inserted should at least ensure that an owner can discuss the contract with his P&I insurer.