

## EMERGENCY RESPONSE AGREEMENT

This Agreement is made this 26<sup>th</sup> day of January 2008, by and between Safety-Kleen Systems, Inc., a Wisconsin corporation, with offices located at 5400 Legacy Drive, Cluster II, Building 3, Plano, Texas 75024, ("Contractor") and Aston Asto Body, Inc, a MA corporation, with its principal place of business at 135 Great Rd Acton, MA 01720 ("Customer").

**WHEREAS**, Contractor is engaged in the business of providing Emergency Response Services ("Services") to respond to discharges of oil or other hazardous substances; and

**WHEREAS**, Customer desires to engage Contractor to provide such Services; and

**WHEREAS**, Customer and Contractor desire to establish the terms and conditions pursuant to which such Services will be provided.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

### **ARTICLE 1. Purpose**

- 1.1 This Agreement establishes the terms and conditions pursuant to which Contractor may furnish Customer with certain Services in connection with response to discharges of oil or other hazardous substances.
- 1.2 This Agreement shall not obligate Customer to purchase Services from Contractor, nor shall it obligate Contractor to provide Services, but shall govern all orders for Services issued by Customer and which are accepted by Contractor. Contractor will use best efforts to respond to requests by Customer for Services.

### **ARTICLE 2. Scope of Services**

- 2.1 The Services contemplated in connection with the response to discharges of oil or other hazardous substances may include, but not be limited to, the following:
  - Containment, recovery, repackaging and removal of materials;
  - Site evaluation, decontamination and restoration;
  - Transportation, storage, treatment or disposal of wastes;

- Technical services, including sampling, laboratory analysis, and other related services;
- Regulating notifications where required.

### **ARTICLE 3. Contractor's Warranties**

- 3.1 Contractor shall provide supervision, labor, materials, tools, equipment and subcontracted items for the performance of the Services.
- 3.2 Contractor shall take necessary precautions for the safety of its employees, and shall comply with applicable provisions of the Occupational Safety and Health Act. It is understood and agreed, however, that Contractor shall not be responsible for the elimination or abatement of safety hazards created by or otherwise resulting from work being performed by Customer's employees, its other contractors or agents.
- 3.3 Contractor represents that it holds the permits and licenses required for the performance of Services.
- 3.4 Contractor shall provide Customer with a 24-hour emergency response telephone number that will be monitored 24-hours a day, 7 days a week for purposes of responding to requests for Services hereunder.

### **ARTICLE 4. Customer's Warranties**

- 4.1 Customer shall contact the Contractor's emergency response telephone number in order to request Services hereunder and shall provide full and complete information regarding its requirements for the Services.
- 4.2 Customer shall designate a representative ("Customer's Representative") who shall be fully acquainted with the Services to be provided hereunder and who shall be authorized to approve changes in the Services; render decisions promptly; authorize commitments and expenditures on behalf of Customer; approve Contractor's daily worksheets and to accept, verify and approve Contractor's invoices.
- 4.3 Any description of or information regarding the waste material and/or the generation of the waste material given to Contractor by Customer in connection with the Services will be true, accurate and complete, regardless of whether or not Contractor has sampled or analyzed the waste material;
- 4.4 Customer shall be responsible for repairs to all private property, roadways, structures and rights-of-way resulting from Contractor's reasonable use thereof.
- 4.5 Customer represents and warrants that it shall provide payment to Contractor for the services provided by Contractor as set forth in Article 5, and shall demonstrate to Contractor's satisfaction prior to the commencement of the Services, and at such other times as Contractor may require, that sufficient funds are available and committed by

Customer for the entire cost of the Services. Unless such financial assurances are provided by Customer, Customer agrees that Contractor shall not be required to commence or continue any Services and may immediately stop work. The failure of Contractor to insist upon the provisions of this paragraph at any one time shall not constitute a waiver of Customer's obligation to make payments pursuant to this Agreement nor shall it constitute a waiver of Contractor's right to request that evidence of sufficient funds be provided by Customer at a later date.

- 4.6 Customer shall communicate to Contractor all special hazards or risks known to or learned by the Customer during the term hereof which are related to the performance of Services pursuant to this Agreement.

#### **ARTICLE 5. Compensation**

- 5.1 Customer agrees to pay Contractor an annual subscription fee of \$500 within thirty (30) days of execution of this Agreement. Customer agrees to pay Contractor for Services in accordance with Contractor's Rate Schedule for emergency response work attached hereto as Exhibit A ("Rates"). The Rates will remain firm for the initial term of this Agreement. Due to the emergency nature of the Services performed under this Agreement, any cost estimate provided by Contractor in advance of completion of the Services is only an estimate and may vary significantly from the final invoice. Customer's obligation to pay amounts due pursuant to this Agreement shall not be conditioned upon or limited by the types, amounts or availability of insurance coverage. Customer agrees to pay each invoice in full regardless of whether or not Customer has any available insurance and notwithstanding the Customer's insurance company or its adjusters' estimates of what any emergency response services should have cost.
- 5.2 Contractor will present its invoice to Customer as soon as possible following commencement of Services provided hereunder. Customer agrees to pay the full amount of each invoice within fifteen (15) days of the date of receipt of said invoice by Customer's Representative.
- 5.3 Customer agrees that interest shall accrue and will be paid to Contractor on any unpaid balance of any invoice after fifteen (15) days of receipt of invoice by Customer at the rate of the lesser of one and one half percent (1.5%) per month or the maximum amount allowed by law.
- 5.4 In the event that legal or other action is required to collect unpaid balances of invoices due Contractor, Customer agrees to pay all costs of collection, litigation or settlement incurred by Contractor, including reasonable attorneys fees. "Legal or other action" as used above shall include bankruptcy and insolvency proceedings.
- 5.5 In the event that work is suspended or terminated for any reason prior to the completion of the Services, Customer agrees to pay for labor, equipment, materials,

disposal and other costs incurred by Contractor at the Rates and for reasonable demobilization costs.

- 5.6 Customer agrees to pay Contractor in accordance with the Rates for any litigation support or testimony provided by Contractor in connection with, or arising out of, the work performed by Contractor hereunder.

#### **ARTICLE 6. Changes in Work**

- 6.1 Customer agrees to pay Contractor at the Rates for any costs incurred or delays resulting from Contractor's response to any emergency condition which threatens safety of persons or property during the performance of the Services.
- 6.2 If any change occurs during the term of this Agreement with respect to any laws, rules, regulations or ordinances which affect the rights or obligations of Customer or Contractor under this Agreement, or the applicability of any taxes or fees, or the cost of handling waste materials, Customer and Contractor shall negotiate in good faith to bring this Agreement into conformance with such change or changes. In the event that such agreement cannot be reached, Customer or Contractor shall have the right to terminate this Agreement immediately upon written notice to the other party.

#### **ARTICLE 7. Insurance**

- 7.1 Contractor agrees to procure and maintain at least the following insurance coverages during the term of this Agreement:
- a. Workers' Compensation  
Statutory
  - b. Employer's Liability  
\$1,000,000 per occurrence
  - c. General Liability (bodily injury and property damage - combined single limit)  
\$500,000 per occurrence, \$2,000,000 annual aggregate
  - d. Automobile Liability (and MCS-90 Motor Carriers Act of 1980 endorsement)  
\$2,000,000 combined single limit
- 7.2 Contractor shall provide Customer with a certificate of insurance upon written request.

#### **ARTICLE 8. Indemnification**

- 8.1 Contractor agrees to indemnify, hold harmless and defend Customer, its directors, officers, employees and agents from and against any and all liabilities, claims, penalties, forfeitures, suits, and the costs and expenses incident thereto (including costs of defense, settlement and reasonable lawyers' fees, consultant or other professional fees and the reasonable costs of investigation, containment and cleanup and any remedial actions required by law, regulation or order, including the Comprehensive Environmental Response, Compensation

and Liability Act of 1980 or comparable state superfund law [applicable only in the United States], except natural resource and other damages as provided in Section 8.3, (collectively referred to as "Damages"), which it may hereafter incur, become responsible for, or pay out as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of Laws, to the extent that such Damages were caused by: (i) Contractor's breach of any term or provision of this Agreement; (ii) the failure of any representation or warranty of Contractor to be true, accurate and complete; or (iii) any negligent act or omission or willful misconduct of Contractor or its employees or agents.

8.2 Customer agrees to indemnify, hold harmless and defend Contractor, its directors, officers, employees and agents from and against any and all Damages, which it may hereafter incur, become responsible for, or pay out as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of Laws, to the extent that such Damages were caused by: (i) Customer's breach of any term or provision of this Agreement; (ii) the failure of any representation or warranty of Customer to be true, accurate and complete; or (iii) any negligent act or omission or willful misconduct of Customer or its employees or agents.

8.3 Notwithstanding the foregoing, Customer shall indemnify, defend and hold harmless Contractor, its parent and affiliated companies and their respective directors, officers, employees, agents and subcontractors from and against any and all costs, liabilities, claims, demands and causes of action for pollution damages; contamination or adverse effects on the environment; destruction of, damage to, or loss of, whether actual or alleged, any property or natural resources, including the cost of assessing the damage; injury to or economic losses resulting from destruction of real or personal property; damages for loss of subsistence use of natural resources; damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property or natural resources; damages for net costs of providing increased or additional public services; removal costs; and any other costs assessable under the Oil Pollution Act of 1990, the Comprehensive Environmental Response, Compensation and Liability Act or other local, state or Federal law or lawful authority applicable to discharges or releases of oil or hazardous substances which Contractor, individually or collectively, may suffer, incur, or pay out in connection with, or arising out of, the release of oil or hazardous substances by Customer; provided, however, that the foregoing indemnity shall not apply to any claims, liabilities or causes of action caused by the transportation or disposal of waste materials by Contractor.

## **ARTICLE 9. Excuse of Performance**

The performance of this Agreement, except for the payment for Services already rendered, may be suspended by either party in the event performance of this Agreement is prevented by a cause or causes beyond the reasonable control of such party. Such causes shall include but not be limited to: acts of God, acts of war, riot, fire, explosion, accidents, inclement weather, or sabotage; lack of adequate fuel, power, raw materials, labor or transportation facilities; changes in government laws,

regulations, orders, or defense requirements; restraining orders, labor dispute, strike, lock-out or injunction (provided that neither party shall be required to settle a labor dispute against its own best judgements). The party which is prevented from performing by a cause beyond its reasonable control shall use its best efforts to eliminate such cause or event.

**ARTICLE 10. Term and Termination**

This Agreement shall be for a term of one (1) year from the date first stated above. This Agreement may be terminated by either party at any time upon thirty (30) days prior notice to the other party. Additionally, either party may terminate this Agreement, without prejudice to any other remedy the terminating party may have:

- i. Immediately if the other party is adjudicated insolvent, seeks any remedy for itself under any present or future law related to bankruptcy, insolvency or other relief for debtors; or
- ii. If the other party repeatedly fails to perform in accordance with this Agreement or breaches any term of this Agreement and fails to correct such default or neglect within 30 days after notice thereof.

**ARTICLE 11. Notice**

Any notice to be given under this Agreement shall be in writing and delivered to the address listed below:

Customer: Acton Auto Body, Inc.  
135 Great Rd.  
Acton, MA 01720

Contractor: Safety-Kleen Systems, Inc.  
5400 Legacy Drive  
Cluster II, Building 3  
Plano, Texas 75022  
Attn: Legal Department - Contracts

**ARTICLE 12. Additional Provisions**

- 12.1 Limitation of Liability - Customer agrees that Contractor shall not be responsible for pre-existing contamination at the job location, natural resource damage, or for indirect, incidental, consequential or special damages, including loss of use or lost profits, resulting from or arising out of the performance of the Services by Contractor, its employees, agents and/or subcontractors.

- 12.2 **Waiver** - Any waiver by either party of any provision or condition of this Agreement shall not be construed or deemed to be a waiver of any other provision or condition of this Agreement, nor a waiver of a subsequent breach of the same provision or condition.
- 12.3 **Severability** - If any section, subsection, sentence or clause of this Agreement shall be deemed to be illegal, invalid or unenforceable for any reason, such illegality, invalidity or unenforceability shall not affect the legality, validity or enforceability of this Agreement or other sections of this Agreement.
- 12.4 **Entire Agreement** - This Agreement and any Exhibits to this Agreement represent the entire understanding and agreement between Customer and Contractor and supersedes any and all prior agreements, whether written or oral, that may exist between the parties regarding same. Modifications to this Agreement shall be in writing and shall be signed by the Customer and Contractor. Additional, conflicting or different terms on any purchase order or other preprinted document issued by Customer shall be void and are hereby expressly rejected by Contractor.
- 12.5 **Survival** - The provisions contained in Articles 3, 4, 5, 8 and 12 shall survive and remain in effect following the termination of this Agreement.
- 12.6 **Applicable Law** - This Agreement shall be interpreted and enforced according to the Laws of the State of Texas and the parties agree to submit to the jurisdiction of the courts of the State of Texas for any disputes arising under this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

CUSTOMER

Acton Auto Body Inc.  
 Signature: [Handwritten Signature]  
 By: SONIA MOURATO  
 PRINT NAME  
 Title: Office Manager

SAFETY-KLEEN SYSTEMS, INC.

Signature: [Handwritten Signature]  
 By: Robert M. St. Jean  
 PRINT NAME  
 Title: Automotive Market Specialist

# Emergency Action Plan

(continued)

### III Reporting Emergencies.

Any emergency shall be related directly to the office, or called into emergency authorities from any phone in our building. Emergency phone numbers are located next to all phones.

### IV Contact Person.

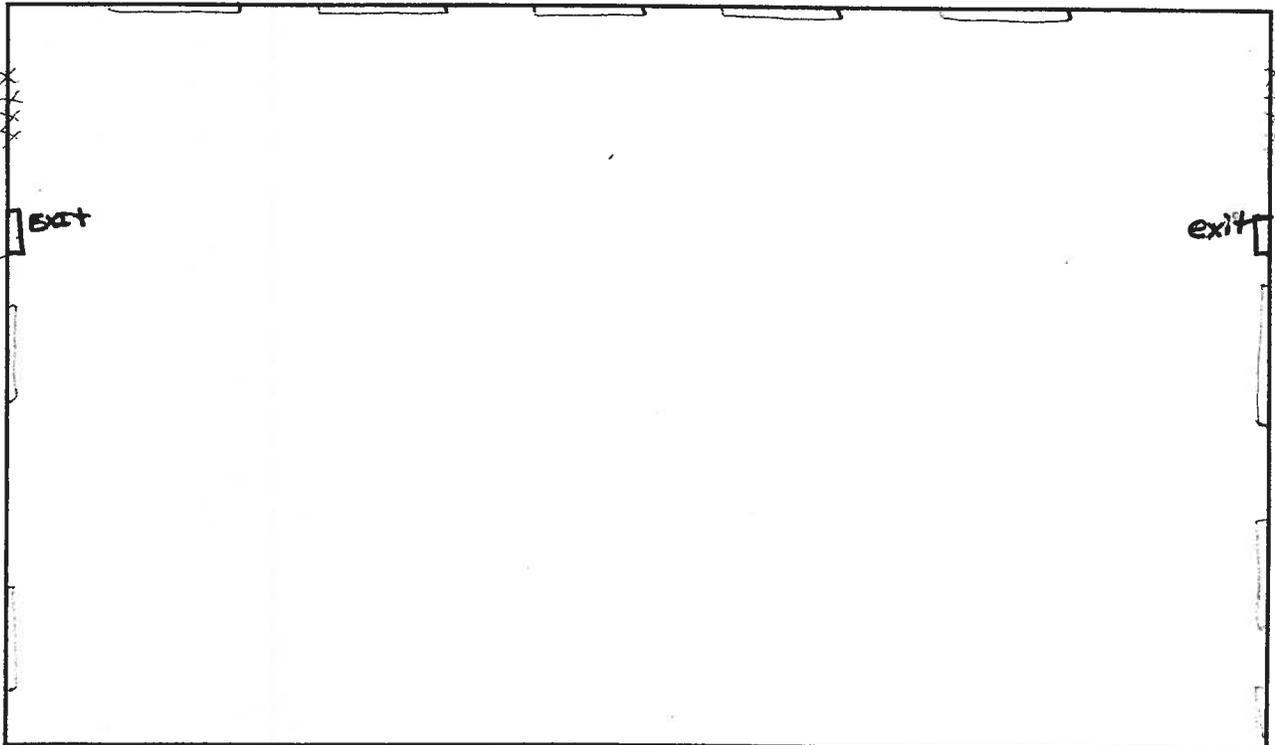
Contact SONIA MOURATO if you have any questions  
name of person  
about our emergency evacuation plan.

### V Alarm System.

We utilize a verbal and/or our PA system to announce an alarm warning.

### VI Facility Floor Plan.

The following floor plan shall show the evacuation routes for our facility,  
and shall be posted Lightpost in Parking lot [F] Location  
conspicuous location



\* SONIA MOURATO (617) 304-1298

