

Contract #5
(Updated - September, 2008)

ATLANTIC EMERGENCY RESPONSE TEAM (“ALERT”) INC.

- and -

(NAME OF OIL HANDLING FACILITY OPERATOR)

DESIGNATED OIL HANDLING FACILITY MEMBERSHIP AGREEMENT

Dated this ____ day of _____, 20__.

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SCHEDULE “A”- OIL HANDLING FACILITIES OPERATED BY OPERATOR IN ALERT’S GAR

SCHEDULE “B” - CONFIRMATION OF ARRANGEMENT FORM

SCHEDULE “C” - DEFINITION OF OIL

DESIGNATED OIL HANDLING FACILITY MEMBERSHIP AGREEMENT

THIS DESIGNATED OIL HANDLING FACILITY MEMBERSHIP AGREEMENT made as of the ____ day of _____, 20 ____.

B E T W E E N:

ATLANTIC EMERGENCY RESPONSE TEAM (“ALERT”) INC., a duly incorporated company (“Alert”)
11 Expansion Avenue
Saint John, New Brunswick
E2R 1A6

Telephone: (506) 632-4499
Telecopier (506) 632-4450

- and-

Telephone: _____

Telecopier: _____

(the “Operator”)

WHEREAS:

A. The Canada Shipping Act, as amended (the “Act”), requires that every operator of an oil handling facility designated under the Act have an arrangement with a certified response organization;

B. Certain of the oil handling facilities operated by Operator have been designated for purposes of the Act, thereby requiring that Operator have in place an arrangement in respect of each such oil handling facility;

C. Alert has obtained certification as a response organization with response capability within its geographic area of response for spills up to 10,000 tonnes and, as one or more of Operator’s

oil handling facilities is located within Alert's geographic area of response, Alert is able to provide an arrangement to Operator in respect of such facilities;

D. Alert is also willing to provide to Operator any marine spill response services which Operator may require from time to time;

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

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“Act” means the Canada Shipping Act, as amended;

“Advance Quarterly Payments” has the meaning ascribed to it in Section 5.1 of this Agreement;

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

Schedule A - Oil Handling Facilities Operated by Operator

Schedule B - Confirmation of Arrangement Form

Schedule C - Definition of Oil

“Alert Fees” has the meaning ascribed to it in Section 8.1 of this Agreement;

“Alert's GAR” means the geographic area in which Alert is certified to offer its services which, for greater certainty and purposes of this Agreement, shall correspond to the primary area of response associated with the designated port of Saint John, New Brunswick, as more fully described in the Response Organization Standards issued pursuant to the Act;

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

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

“Bulk Oil Cargo Fee” has the meaning ascribed to it in Section 4.1 of this Agreement;

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

“Difference” has the meaning ascribed to it in Section 5.3 of this Agreement;

“Effective Date” has the meaning ascribed to it in Section 12.1 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 6.2 of this Agreement;

“Initial Response” has the meaning ascribed to it in Section 6.2 of this Agreement;

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

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

“Membership Fees” means the Registration Fee and the Bulk Oil Cargo Fees payable by Operator in respect of each designated oil handling facility operated by Operator within Alert’s GAR;

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

“Payment Period” has the meaning ascribed to it in Section 5.2 of this Agreement;

“Plan of Action” has the meaning ascribed to it in Section 6.5 of this Agreement;

“Quarter” means the three month periods ending March 31, June 30, September 30 and December 31 in any year;

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

“Taxes” means the goods and services tax, or any equivalent or replacement thereof, payable by Operator and collectable by Alert 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;

“Threshold” means Three Hundred Thousand (300,000) Tonnes;

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

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

“Work Order” has the meaning ascribed to it in Section 7.5 of this Agreement.

1.2 Construction

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

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

ARTICLE 2 MEMBERSHIP

2.1 Membership Privileges

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

- (a) for purposes of the oil pollution emergency plan(s) (as referred to in the Act), prepared for the designated oil handling facility/facilities located in Alert’s GAR, to identify Alert as the response organization with which Operator has an arrangement in Alert’s GAR; and
- (b) upon the occurrence of a spill of Oil on Waters within Alert’s GAR to request Alert to respond and provide Marine Spill Response Services.

2.2 Membership Fees

The Membership Fees are comprised of the Registration Fee and the Bulk Oil Cargo Fees, the terms and conditions of which are set forth in Articles III, IV and V of this Agreement.

2.3 More than One Designated Facility

Where Operator operates more than one designated oil handling facility in Alert's GAR or on lands adjacent thereto, Operator shall pay Alert Membership Fees in respect of each designated oil handling facility. The list of the designated oil handling facilities operated by Operator within Alert's GAR is attached as Schedule "A" to this Agreement and Operator agrees that it will advise Alert forthwith if there are any changes in the information contained in Schedule "A".

2.4 Confirmation of Arrangement Form

Alert agrees to provide to Operator for each of the designated oil handling facilities listed in Schedule "A" and for which applicable Registration Fees and Initiation Fees have been paid by Operator a confirmation of arrangement form which Operator may retain on site as evidence that the arrangement required by the Act has been made. The confirmation of arrangement form shall be in the form attached as Schedule "B" to this Agreement.

ARTICLE 3 REGISTRATION FEE

3.1 Registration Fee

Operator shall pay to Alert an annual registration fee of _____ Dollars (\$_____) (the "Registration Fee") in respect of each designated oil handling facility operated by Operator in Alert's GAR or on lands adjacent thereto together with all applicable Taxes payable in connection with the Registration Fee.

3.2 Payment of Registration Fee

- (a) The initial Registration Fee for each designated oil handling facility operated by Operator on the date hereof shall be due and payable on or prior to the Effective Date, and each subsequent Registration Fee shall be paid on or prior to the anniversary date of the Effective Date.
- (b) For each designated oil handling facility which Operator commences to operate after the Effective Date, a Registration Fee shall be payable prior to the arrangement in respect of such designated oil handling facility becoming effective and thereafter the Registration Fee for such designated oil handling facility shall

be payable on or prior to each anniversary date of the date on which the Registration Fee was initially paid.

3.3 Adjustment of Registration Fee

The Registration Fee may be amended from time to time by Alert in accordance with the provisions of the Act.

ARTICLE 4 BULK OIL CARGO FEES

4.1 Bulk Oil Cargo Fees

Operator shall pay to Alert a bulk oil cargo fee (the “Bulk Oil Cargo Fee”) in respect of all Bulk Oil which is unloaded or (in the case of Bulk Oil intended for a destination outside Canada) loaded at each of Operator’s designated oil handling facilities located within or on lands adjacent to Alert’s GAR. The Bulk Oil Cargo Fee shall be calculated by obtaining the product of the number of Tonnes of Bulk Oil either unloaded or (in the case of Bulk Oil intended for a destination outside Canada) loaded at Operator’s designated oil handling facilities and the Bulk Oil Cargo Fee Rate, plus all applicable Taxes payable in connection with the Bulk Oil Cargo Fees.

4.2 Calculation of Volume

The volume of Bulk Oil which is unloaded or (in the case of Bulk Oil intended for a destination outside Canada) loaded at Operator’s designated oil handling facilities shall, without regard to title, be measured in Tonnes at the shore side of the dock flange at each facility.

4.3 Adjustments

The Bulk Oil Cargo Fee Rate and the calculation of volumes, as set out in Section 4.2 of this Agreement, shall be established and may from time to time be amended in accordance with the provisions of the Act.

4.4 Payment of Bulk Oil Cargo Fee

Except as otherwise provided in Article V of this Agreement, Bulk Oil Cargo Fees shall be payable by Operator within ten (10) days following the end of each month during which Bulk Oil is unloaded or (in the case of Bulk Oil intended for a destination outside Canada) loaded at any of Operator’s designated oil handling facilities. Any Bulk Oil Cargo Fees not paid in full within ten (10) days of the end of the relevant month 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 eleventh (11th) day following the end of the month.

4.5 Reporting Requirements

Operator shall within ten (10) days following the end of each month provide Alert with a report detailing the total volumes (on a facility by facility basis) of Bulk Oil unloaded or (in the case of Bulk Oil intended for a destination outside Canada) loaded at each of Operator's designated oil handling facilities during the preceding month. Alert agrees that the information provided to Alert in respect of Bulk Oil volumes shall remain confidential and will not be disclosed by Alert or its directors, officers, agents or employees, other than as part of the aggregate volumes of Bulk Oil of all parties who have arrangements with Alert.

ARTICLE 5 ADVANCE PAYMENT PROVISIONS

5.1 Payments in Advance

- (a) Bulk Oil Cargo Fees shall be payable by Operator in respect of each designated oil handling facility located in Alert's GAR in advance in four (4) equal quarterly instalments (the "Advance Quarterly Payments") in cases where the aggregate volume of Bulk Oil unloaded or (in the case of Bulk Oil intended for a destination outside Canada) loaded at Operator's designated oil handling facilities in the preceding calendar year exceeds the Threshold, except where there has been a significant change affecting Operator's business which in Alert's view is likely to reduce to below the Threshold the volume of Bulk Oil unloaded or (in the case of Bulk Oil intended for a destination outside Canada) loaded at Operator's designated oil handling facilities in the present year. The Advance Quarterly Payments shall, subject always to adjustment in the manner contemplated in section 5.3, be set based on the assumption that the volume of Bulk Oil loaded or unloaded in the present year will be equal to the volume for the preceding year.
- (b) Notwithstanding the provisions of Section 5.1(a), where volumes are not available for the preceding calendar year but the aggregate volume of Bulk Oil forecast to be unloaded or (in the case of Bulk Oil intended for a destination outside Canada) loaded at Operator's designated oil handling facilities during the present calendar year exceed the Threshold, Operator shall be required to make Advance Quarterly Payments and comply with the provisions of Section 5.1(a) in all respects as though such volumes were available and in any such instance the forecasted volume shall be used in place of the volumes for the preceding calendar year for the purpose of calculating the Advance Quarterly Payments required to be made in relation to the present year.

5.2 Information Regarding Volumes of Oil

On or before February 15th of each year Operator shall provide Alert with the total volumes (on a facility by facility basis) of Bulk Oil unloaded or (in the case of Bulk Oil intended

for a destination outside Canada) loaded by Operator at Operator's designated oil handling facilities in the preceding calendar year. Alert shall use this information for the following purposes:

- (a) to calculate the Advance Quarterly Payments which will be payable by Operator for each of the Quarters in the period commencing April 1 and ending on March 31 of the next year (the "Payment Period"), each Advance Quarterly Payment to be payable on the first business day of the Quarter in respect of which the Advance Quarterly Payment is being made; and
- (b) to determine the actual Bulk Oil Cargo Fees payable by Operator in respect of the preceding calendar year.

5.3 Differences Between Advance Payments and Actual Volumes

Where there is a difference between the sum of the Advance Quarterly Payments paid by Operator during a Payment Period and the actual Bulk Oil Cargo Fees calculated for the preceding calendar year (the "Difference"), the Difference shall be added or subtracted, as the case may be, to or from the sum of the Advance Quarterly Payments otherwise payable by Operator for the next Payment Period with the effect that each of the Advance Quarterly Payments in the next Payment Period shall be increased or decreased, as the case may be, by a quarter of the Difference. Unless otherwise agreed between the parties, no interest or carrying charges shall be payable by either party in respect of the Difference.

5.4 Start-Up Period

Notwithstanding the foregoing provisions, where the Effective Date of this Agreement is a date other than April 1 in any year, the portion of the first Payment Period in respect of which advance payments are payable shall be the period commencing on the Effective Date and ending on the first March 31 which follows the Effective Date. The advance payments shall be calculated in the same manner as is stipulated in sections 5.1, 5.2 and 5.3 in relation to Advance Quarterly Payments, save and except that the portion of the preceding calendar year which shall be used as a measure for determining the advance payments shall be the portion of the preceding calendar year which corresponds in number of days to the period between the Effective Date and the first March 31 which follows the Effective Date. Volumes of Bulk Oil unloaded or (in the case of Bulk Oil intended for a destination outside Canada) loaded by Operator at Operator's designated oil handling facilities during such portion of the preceding year shall be provided to Alert on or before the Effective Date. The advance payments will be paid by Operator on the Effective Date and on any of July 1, October 1 and January 1 (or, if such days are not business days, then on the first business day following such date) as fall within the period between the Effective Date and the first March 31 which follows the Effective Date. In all other respects, the provisions of Sections 5.1, 5.2 and 5.3 of this Agreement shall apply.

5.5 Interest

Subject always to sections 5.3, any Advance Quarterly Payment or other amount under this Article V which is not paid on or prior to its due date shall bear interest at the rate one percent (1%) per month, or 12.6825% per year, from the due date until paid.

ARTICLE 6 MARINE SPILL RESPONSE SERVICES

6.1 Management and Control of Spill

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

6.2 Initial Request and Response

If Operator requests Alert to respond to a spill of Oil on Waters in Alert's GAR (the "Initial Request"), Alert shall use its Best Efforts to provide a response (the "Initial Response"). The Initial Request shall specify the approximate location and size of the spill, that the individual contacting Alert is the person authorized to implement the arrangement, the name of the designated oil handling facility and ship (if applicable), the type of Oil involved, the contract number identified in Operator's confirmation of arrangement form 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.

6.3 Twelve Hour Consultation

- (a) If within twelve (12) hours of the Initial Request Alert and Operator agree that the clean-up can be completed in the course of the Initial Response, then Alert shall continue providing Marine Spill Response Services until the spill is cleaned up.
- (b) If within twelve (12) hours of the Initial Request Alert and Operator agree that the clean-up cannot be completed within the course of the Initial Response, then Operator shall notify Alert as to whether or not Alert is to continue providing Marine Spill Response Services beyond the Initial Response.

6.4 No Further Alert Response

- (a) If Operator has notified Alert that Operator does not want Alert to continue to provide Marine Spill Response Services beyond the Initial Response, then Alert shall cease providing Marine Spill Response Services at the end of the Initial

Response and Alert shall in respect of such spill be under no obligation to provide further Marine Spill Response Services to Operator.

- (b) If Operator has failed to notify Alert within the initial twelve (12) hour period, and Alert has been unable to obtain instructions from Operator, then Alert shall be deemed to have been notified and requested to cease providing Marine Spill Response Services at the end of the Initial Response.

6.5 Response Beyond 24 Hours

- (a) If Operator has notified Alert within the initial twelve (12) hours that Operator wishes Alert 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, Alert shall provide Operator with a plan of action (the “Plan of Action”) outlining the Marine Spill Response Services which in Alert’s opinion are required to clean-up the spill.
- (b) Upon receipt of the Plan of Action, Operator shall determine the extent to which it wishes Alert 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 Alert is to undertake and complete.
- (c) The parties shall evidence their agreement by signing a work order (the “Work Order”). The Work Order shall include a description of the Marine Spill Response Services to be performed by Alert, an estimate of the Alert Fees payable in connection with the Marine Spill Response Services, a facsimile number to which invoices may be sent to Operator and any other information required under Section 8.3 of this Agreement.
- (d) Upon being signed by both parties, the Work Order shall become an integral part of this Agreement.
- (e) Alert may amend a Plan of Action from time to time as required. Upon preparation of an amended Plan of Action the parties shall consult and determine whether any amendment to the Work Order prepared in relation to the Plan of Action is required, provided always that Operator shall have the exclusive right to determine whether it wishes Alert to undertake any additional Marine Spill Response Services recommended in an amended Plan of Action. All amendments to a Work Order shall be in writing and signed by both parties.

6.6 Competing Requests for Services

- (a) Notwithstanding any other provision of this Agreement, unless otherwise directed by the appropriate governmental Lead Agency, Alert shall have no obligation to

make Marine Spill Response Services available to Operator 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, Operator acknowledges that Alert shall respond to the competing requests as directed by the appropriate governmental Lead Agency.

6.7 Territory

Alert agrees to provide Marine Spill Response Services to Operator in Alert's GAR only.

6.8 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, Alert shall cease to provide the Marine Spill Response Services or any portion thereof, and shall carry out any required demobilization activities, and Operator shall pay all outstanding Alert Fees and Taxes payable in connection therewith.

6.9 Right to Subcontract

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

6.10 Recovered Oil and Waste

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

ARTICLE 7 PERFORMANCE OF SERVICES

7.1 Standard of Alert Performance

Subject to the other terms and conditions of this Agreement, Alert will use its Best Efforts to provide any Marine Spill Response Services requested by Operator 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.

7.2 Alert Safety Obligations

- (a) Alert 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 Alert safety policies and procedures (a copy of which policies and procedures Alert will make available to Operator upon request). However, Alert and Operator understand that:
 - (i) actions carried out in a response in an Oil spill environment may be inherently dangerous and difficult; and
 - (ii) rules and requirements that may be appropriate and applicable under normal circumstances may not be appropriate or applicable in a particular response situation.

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

- (b) Alert shall, upon Operator's request, report to Operator as promptly as practicable under the circumstances any accidents associated with the performance of the Marine Spill Response Services resulting in or in Alert's reasonable judgment possibly causing personal injury or death or property damage or loss. Alert shall, at Operator's expense, furnish Operator with copies of any final written reports and other factual information related to such accidents prepared by or for Alert.

7.3 Operator Safety Obligations

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

7.4 Illegal, Unsafe or Improper Instructions

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

- (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 Alert, or any third party or jeopardize the safety of any Alert 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 Alert may refuse to follow such specific instruction by giving Operator oral (promptly confirmed in writing) or written notice of such refusal (specifying in reasonable detail the specific reason for such refusal). Any refusal of Alert to take any instructed action under this Section shall not affect the obligation of Alert to take instructed action under circumstances that would not result in the happening of the events specified in the preceding Subsections (a)-(c).

ARTICLE 8 ALERT FEES AND PAYMENT

8.1 Alert Fees

- (a) Alert Fees means the fees charged by Alert in 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 mobilization and demobilization which shall include the cost associated with moving equipment to and from the work site, cleaning, repairing or replacing equipment and transporting equipment to the location from which it was originally obtained.
- (b) Without limiting the foregoing, where Alert has published a schedule of fees in respect of any of the items referred to in Section 9.1(a), the costs associated with those items will be in accordance with the most currently published schedule.
- (c) Schedules of Alert Fees are available upon request.

8.2 Payment of Alert Fees

- (a) Operator shall pay all Alert Fees which are due and payable together with all Taxes due in connection therewith.

- (b) Alert shall submit an invoice to Operator for the Alert Fees and Taxes which become payable in connection therewith. Except as otherwise agreed pursuant to Section 8.3 of this Agreement, any invoice submitted in respect of Alert Fees shall be due and payable by Operator by the end of the fifth (5th) business day following receipt of the invoice by Operator and, subject to the terms of Section 8.5 of this Agreement, any invoice not paid in full by the end of the fifth (5th) business day following receipt of the invoice by Operator 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 following Operator's receipt of the invoice.
- (c) Invoices may be submitted by facsimile and a facsimile copy of an invoice shall be deemed to be received by Operator at such time as is indicated on the receipt of confirmation notice received by Alert for such facsimile.

8.3 Funding for Response Beyond 24 Hours

- (a) In those cases where the provisions of Section 6.5 (Response Beyond 24 Hours) apply, Alert shall submit an invoice to Operator for the Marine Spill Response Services provided during the first twenty-four (24) hours following the Initial Request, and such invoice shall be paid by Operator by the end of the fifth (5th) business day following Operator's receipt of the invoice.
- (b) In conjunction with the preparation of the Work Order, Operator and Alert shall agree on how Operator will fund the remainder of the period during which it is anticipated that Marine Spill Response Services will be provided by Alert. In reaching such agreement, Operator shall be required to satisfy Alert that any method of funding will, when implemented, permit all invoices rendered by Alert during the relevant period to be paid in full on such terms as are acceptable to Alert under the circumstances. Any decision to accept any particular method of funding shall be solely within the discretion of Alert. If the parties are unable to agree on a method of funding acceptable to Alert, Alert will require cash.
- (c) The parties shall set forth in the Work Order, or any amendment of the Work Order, their agreement as to funding and, in the event of any inconsistency between the provisions of the 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 at anytime unable to agree on an acceptable means by which Marine Spill Response Services are to be funded, Alert shall cease to provide Marine Spill Response Services and shall carry out any required demobilization activities, and Operator shall pay all outstanding Alert Fees and

Taxes due in connection therewith, including all Alert Fees and Taxes set forth on any final invoice submitted by Alert.

8.4 Payments in Good Standing

Marine Spill Response Services shall only be provided by Alert if Operator has paid all outstanding Membership Fees, Alert Fees and Taxes due in connection therewith.

8.5 Disputed Invoices

If Operator objects to any item or statement shown on an invoice, Operator shall promptly notify Alert of the dispute, specifying in reasonable detail the factual basis for the dispute and Operator shall pay to Alert 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 Operator'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 Operator was obligated to pay Alert under the terms of this Agreement. Operator 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 Alert of notice of a dispute in respect of any particular invoice, the dispute shall be referred to arbitration in Saint John, New Brunswick in accordance with the AMAC Maritime Arbitration Rules. The parties agree that any decision of an arbitrator appointed under the AMAC Maritime Arbitration Rules shall be final and binding. Where a dispute does not exceed \$50,000 Cdn., the AMAC small claims procedure (Rule 31) shall apply.

8.6 Provision of Information

Operator shall have the right to request from Alert such information and materials (including time sheets for personnel and equipment) as Operator may reasonably require to verify and substantiate the invoices provided by Alert under this Agreement; provided always that Alert shall be reimbursed by Operator for any costs incurred by Alert in assisting Operator and Alert Fees themselves shall not be subject to review under the terms of this Agreement. In the event a review of such information and materials indicates an error in the prior calculation of Alert Fees, Alert or Operator (as applicable) shall promptly make the appropriate corrections, adjustments and payments.

8.7 Fees Remain Payable

Operator'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 15.1, or any other event

or circumstance which would otherwise effect a suspension or termination of the obligations of Alert.

8.8 Currency

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

ARTICLE 9 REPRESENTATIONS AND WARRANTIES

9.1 Representations and Warranties of Operator

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

- (a) as of the Effective Date, the oil handling facilities listed in Schedule “A” to this Agreement have been designated for purposes of the Act and Schedule “A” contains a complete list of all of the designated oil handling facilities operated by Operator within Alert’s GAR or on any lands adjacent thereto;
- (b) Operator is a corporation duly incorporated and validly existing under the laws of its jurisdiction of incorporation and has all necessary corporate power, authority and capacity to enter into and to carry out its obligations under this Agreement, and the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate action on the part of Operator;
- (c) Operator is not party to, bound or affected by or subject to any indenture, mortgage, lease, agreement, obligation, instrument, charter or by-law, proviso, statute, regulation, order, judgment, decree, licence, permit or law which would be violated, contravened, breached by, or under which default would occur as a result of the execution and delivery of this Agreement, or the performance by Operator of any of its obligations provided under this Agreement;
- (d) this Agreement is a valid and binding obligation of Operator, enforceable against it in accordance with its terms subject, however, to limitations with respect to enforcement imposed by law in connection with bankruptcy or similar proceedings and to the extent that equitable remedies such as specific performance and injunction are in the discretion of the court from which they are sought;
- (e) Operator has the financial capability to pay the Membership Fees, as well as any Alert Fees and Taxes which it may incur in connection with the provision of Marine Spill Response Services under the terms of this Agreement; and

- (f) Operator shall maintain in force throughout the term of this Agreement pollution liability insurance with limits of not less than Five Million Dollars (\$5,000,000.00) per occurrence, covering bodily injury, property damage, environmental damage and clean-up costs arising out of a spill of oil.

ARTICLE 10 BOOKS AND RECORDS

10.1 Books and Records

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

10.2 Audits

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

10.3 Adjustments

In the event an audit indicates a discrepancy between the actual volumes of Bulk Oil unloaded or (in the case of Bulk Oil intended for a destination outside Canada) loaded at Operator's designated oil handling facilities during a particular period and Operator's reported volumes of Bulk Oil unloaded or (in the case of Bulk Oil intended for a destination outside Canada) loaded at Operator's designated oil handling facilities in respect of the same period, Operator shall make the appropriate corrections and adjustments and, if necessary, promptly make any additional payments to reflect such correction, and interest shall be payable in respect of such corrected amount at a rate of one percent (1%) per month, or 12.6825% per year, calculated from the date the discrepancy occurred.

ARTICLE 11 ALLOCATION OF RISK

11.1 Nature of Relationship

Alert and Operator recognize and agree that, in connection with providing Marine Spill Response Services under this Agreement:

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

Accordingly, Alert and Operator fully understand, recognize and agree that the nature of the Marine Spill Response Services to be provided under the terms of 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 Alert and Operator as set forth in this Article XI.

11.2 Liability Between Alert and Operator -

- (a) Alert and its directors, officers, agents, contractors and employees shall have no liability to Operator, for:
 - (i) any claims or liability arising as a result of loss or damage, including injury or loss of life, caused to any person, property or the environment, of any nature or kind; or
 - (ii) any claims or liability arising as a result of the breach or alleged 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 Operator or any of Operator's directors, officers, contractors, agents or employees.
- (b) Alert and its directors, officers, agents, contractors and employees shall have no liability to Operator, for:

- (i) any claims or liability arising as a result of loss or damage, including injury or loss of life, caused to any person, property or the environment, of any nature or kind; or
- (ii) any claims or liability arising as a result of the breach or alleged 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 Alert or any of its directors, officers, agents, contractors or employees unless such act or omission is a result of the gross negligence or the wilful misconduct of Alert or any of its directors, officers, agents, contractors or employees.

- (c) Operator shall indemnify, defend and hold harmless Alert and its directors, officers, employees, contractors and agents from and against all claims, losses, damages, costs, expenses and other liabilities arising against or incurred by Alert or its directors, officers, employees, contractors or agents as a result of Alert's entering into of or performance of Marine Spill Response Services or other obligations under this Agreement, except where any such claim, loss, damage, cost, expense or other liability is incurred as a result of Alert's own gross negligence or wilful misconduct, or the gross negligence or wilful misconduct of Alert's directors, officers, agents, contractors or employees. Operator acknowledges that Alert shall not be required to exhaust its recourses against any third party as a condition precedent to claiming indemnification under this section.
- (d) Alert shall indemnify, defend and hold harmless Operator and its directors, officers, employees and agents from and against all claims, losses, damages, costs, expenses and other liabilities incurred by Operator or its directors, officers, employees or agents as a result of the gross negligence or wilful misconduct of Alert or the gross negligence or wilful misconduct of Alert's directors, officers, agents, contractors or employees.

11.3 Insurance

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

ARTICLE 12 TERM

12.1 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.

12.2 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 13 TERMINATION

13.1 Termination by Either Party

This Agreement may be terminated by either party upon the provision of sixty (60) days prior written notice to the other party in accordance with Section 12.2 of this Agreement.

13.2 Termination by Alert

This Agreement may be terminated by Alert effective immediately upon notice to Operator:

- (a) in the event that the Minister of Transport revokes Alert’s certification as a response organization with 10,000 tonne rated capability;
- (b) if Operator has failed to pay any Registration Fees, Bulk Oil Cargo Fees, Alert Fees or Taxes in accordance with the terms of this Agreement;
- (c) if Operator has knowingly created or if, after learning of it, has failed to correct a discrepancy between the actual volumes of Bulk Oil unloaded or (in the case of Bulk Oil intended for a destination outside Canada) loaded at Operator’s designated oil handling facilities during a particular period and Operator’s reported volumes of Bulk Oil unloaded or (in the case of Bulk Oil intended for a destination outside Canada) loaded at Operator’s designated oil handling facilities in respect of the same period;

- (d) if Operator has become insolvent, commits an act of bankruptcy, suspends business operations or has bankruptcy, dissolution, liquidation or winding-up proceedings commenced against it (unless such proceedings are actively and diligently contested in good faith on a timely basis); or
- (e) if Operator has breached any representation or warranty or other term of this Agreement and failed to cure such breach within five (5) days after Operator received written notice from Alert advising of such breach.

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

13.3 Termination by Operator

This Agreement may be terminated by Operator effective immediately upon notice to Alert if Operator has ceased to operate any designated oil handling facilities within Alert's GAR.

13.4 Consequences of Termination

Upon the termination of this Agreement:

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

13.5 No Reimbursement of Membership Fees

Operator shall not be entitled to receive a refund of all or any portion of the Membership Fees paid by Operator except where termination of this Agreement is due to the revocation by the Minister of Transport of Alert's certification as a response organization with 10,000 tonne rated capability in which case Registration Fees shall be refunded on a pro-rated basis and, if applicable, Advance Quarterly Payments exceeding Bulk Oil Cargo Fees owing shall be refunded in full.

13.6 Survival

Notwithstanding the termination of this Agreement by Alert or Operator pursuant to this Article, the provisions of this Article, Sections 7.1 and 13.4 and Articles VIII, X and XI shall survive any such termination.

ARTICLE 14 FORCE MAJEURE

14.1 Force Majeure

If during the term of this Agreement there should arise or occur any event or circumstance beyond the reasonable control of Alert or Operator, 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 Alert or Operator 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.

14.2 Exception for Failure by Either Party

Neither party will be entitled to the benefits of the provisions of Section 14.1 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.

14.3 Other Aspects of Force Majeure

The obligations of the party relying on Section 14.1 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 15 GENERAL PROVISIONS

15.1 Time

Time is of the essence of this Agreement.

15.2 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 mail postage prepaid or sent by facsimile to

the party's address shown on page one (1) of this Agreement and 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.

15.3 Amendments to Agreement

Subject to Section 15.4, this Agreement may not be amended except in writing executed by all the parties.

15.4 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 initialing a new schedule dated as of the effective date of such amendment or replacement.

15.5 Independent Contractor

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

15.6 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.

15.7 Benefit of Agreement

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

15.8 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.

15.9 English Language

It is the express wish of the parties that this Agreement and any related documents be drawn up and executed in English. Il est la volonté expresse des parties que cette convention et tous les documents s'y rattachant soient rédigés et signés en anglais.

15.10 Governing Law

This Agreement shall be interpreted in accordance with and governed by the laws of the Province of New Brunswick and the laws of Canada applicable therein.

15.11 Assignment

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

15.12 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.

15.13 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.

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

Oil Handling Facility Operator

Per: _____

**ATLANTIC EMERGENCY RESPONSE
TEAM (“ALERT”) INC.**

Per: _____

SCHEDULE “A”

Oil Handling Facilities Operated by Operator

SCHEDULE "B"
CONFIRMATION OF ARRANGEMENT FORM

ATLANTIC EMERGENCY RESPONSE TEAM ("ALERT") INC.

11 Expansion Avenue
Saint John, New Brunswick
E2R 1A6
Telephone: (506) 632-4499
Telecopier: (506) 632-4450

**DESIGNATED OIL HANDLING FACILITY MEMBERSHIP AGREEMENT
AND CONFIRMATION OF ARRANGEMENT**

(Oil Handling Facility Operator)

(Oil Handling Facility Operator Address)

(Person Authorized to Implement Arrangement)

(Address)

(Telephone Number)

(Fax or Telex Number)

successive one (1) year terms unless terminated in accordance with the requirements of the agreement.

Contract No. _____

Signing Date: _____

Facility Name and Address: _____

Term of Coverage: 1 year

Effective Date: _____

End Date: _____

Geographic Area of Response:

For purposes of this document, geographic area of response means the geographic area in which Alert is certified to offer its services which, for greater certainty and purposes of this Arrangement, shall correspond to the primary area of response associated with the designated port of Saint John, New Brunswick, as more fully described in the Response Organization Standards issued pursuant to the Act.

This document confirms that, effective upon the execution of an agreement between Atlantic Emergency Response Team ("Alert") Inc. ("Alert") and Oil Handling Facility Operator (the "Effective Date"), and subject to the terms of that agreement, Oil Handling Facility Operator shall, in accordance with the terms of the Canada Shipping Act (as amended) (the "Act") and in respect of the facility named above, have an arrangement with Alert within Alert's geographic area of response. This arrangement shall commence upon the Effective Date, continue in effect for one (1) year and shall be automatically renewed for

THE TERMS AND CONDITIONS OF THIS ARRANGEMENT ARE SET FORTH IN AN OIL HANDLING FACILITIES MEMBERSHIP AGREEMENT BETWEEN ALERT AND OIL HANDLING FACILITY OPERATOR AND CONSTITUTE AN INTEGRAL PART OF SUCH ARRANGEMENT.

ATLANTIC EMERGENCY RESPONSE TEAM ("ALERT") INC.

By: _____
(Authorized Signatory)

(Print Name and Title)

(Oil Handling Facility Operator)

By: _____
(Authorized Signatory)

(Print Name and Title)

**SCHEDULE “C”
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

Oils

Crude Oil
Mixtures containing crude oil

[Alternate page 6 prepared for the Irving Terminals Agreement only]

- (a) be payable on or prior to each anniversary date of the date on which the Registration Fee was initially paid.

3.3 Adjustment of Registration Fee

The Registration Fee may be amended from time to time by Alert in accordance with the provisions of the Act.

**ARTICLE 4
BULK OIL CARGO FEES**

4.1 Bulk Oil Cargo Fees

Operator shall pay to Alert a bulk oil cargo fee (the “Bulk Oil Cargo Fee”) in respect of all Bulk Oil which is unloaded or (in the case of Bulk Oil intended for a destination outside Canada) loaded at each of Operator’s designated oil handling facilities located within or on lands adjacent to Alert’s GAR. The Bulk Oil Cargo Fee shall be calculated by obtaining the product of the number of Tonnes of Bulk Oil either unloaded or (in the case of Bulk Oil intended for a destination outside Canada) loaded at Operator’s designated oil handling facilities and the Bulk Oil Cargo Fee Rate, plus all applicable Taxes payable in connection with the Bulk Oil Cargo Fees. Operator and Alert acknowledge that the Bulk Oil Cargo Fee together with applicable taxes shall be paid by the Operator on behalf of the vessel operator/owner and that it shall be the responsibility of the Operator to attend to the recovery of same from the vessel operator/owner or other appropriate party.

4.2 Calculation of Volume

The volume of Bulk Oil which is unloaded or (in the case of Bulk Oil intended for a destination outside Canada) loaded at Operator’s designated oil handling facilities shall, without regard to title, be measured in Tonnes at the shore side of the dock flange at each facility.

4.3 Adjustments

The Bulk Oil Cargo Fee Rate and the calculation of volumes, as set out in Section 4.2 of this Agreement, shall be established and may from time to time be amended in accordance with the provisions of the Act.

4.4 Payment of Bulk Oil Cargo Fee

Except as otherwise provided in Article V of this Agreement, Bulk Oil Cargo Fees shall be payable by Operator within ten (10) days following the end of each month during which Bulk Oil is unloaded or (in the case of Bulk Oil intended for a destination outside Canada) loaded at any of Operator’s designated oil handling facilities. Any Bulk Oil Cargo Fees not paid in full within ten (10) days of the end of the relevant month 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 eleventh (11th) day following the end of the month.