

ATLANTIC EMERGENCY RESPONSE TEAM (“ALERT”) INC.

11 Expansion Avenue
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Contract #3
(Updated – September, 2008)

**SHIP (NON-BULK OIL) MEMBERSHIP AGREEMENT
AND CONFIRMATION OF ARRANGEMENT**

(Ship Owner/Authorized Agent) (the “Owner”)

(Owner’s Address)

(Person Authorized to Implement Arrangement)

(Address)

(Telephone Number)

(Telecopier Number)

This agreement confirms that, effective upon the execution of this Agreement by both Atlantic Emergency Response Team (“Alert”) Inc. (“Alert”) and the Owner (the “Effective Date”), the Owner shall, in accordance with the terms of the Canada Shipping Act, as amended (the “Act”), have an arrangement with Alert in relation to the Ship within Alert’s geographic area of response.

Unless otherwise terminated for the reasons set forth in the attached terms and conditions, and provided all relevant fees have been paid, this Agreement shall commence on the Effective Date, continue in effect for one (1) year and 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 this Agreement.

Contract No.: _____

Signing Date: _____

Ship Name: _____
(the “Ship”)

P&I Club: _____

Term of Coverage: 1 Year

Effective Date: _____

End Date: _____

Geographic Area of Response: For purposes of this Agreement, 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 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; and “Waters” has the meaning ascribed to it in the Act.

Registration Fee (annual) \$ _____

Taxes (as applicable) \$ _____

TOTAL: \$ _____

In the case of the initial one (1) year term of this Agreement the Registration Fee and Initiation Fee shall be due and payable on or before the Effective Date. In the case of any renewal term of this Agreement, the Registration Fee shall be due and payable on or before the anniversary date of the Effective Date. Registration Fee is payable annually. The Registration Fee may from time to time be amended in accordance with the provisions of the Act.

RESPONSIBILITY FOR PAYING AMOUNTS OWED UNDER THIS AGREEMENT SHALL REST WITH THE OWNER.

THE TERMS AND CONDITIONS ATTACHED HERETO CONSTITUTE AN INTEGRAL PART OF THE AGREEMENT BETWEEN ALERT AND OWNER.

ATLANTIC EMERGENCY RESPONSE TEAM (“ALERT”) INC.

per: _____
(Authorized Signatory)

(Ship Owner/Authorized Agent)

per: _____
(Authorized Signatory)

TERMS AND CONDITIONS

1. Arrangement

1.1 In consideration of the fees payable by Owner, Owner is entitled, for purposes of the oil pollution emergency plan (as referred to in the Act) prepared in relation to the Ship, to identify Alert as the response organization with which Owner has an arrangement in Alert's geographic area of response.

1.2 In addition, this arrangement also entitles Owner, upon the occurrence of a spill of Oil on Waters within Alert's geographic area of response, to request Alert to respond and provide Marine Spill Response Services.

1.3 "Oil" means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products and, for greater certainty, includes oil as defined by MARPOL 73/78 Annex 1.

2. Initial Request and Response

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

2.2 If Owner requests Alert to respond to a spill of Oil on Waters in Alert's geographic area of response (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 ship, the type of oil involved, the contract number identified in this 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.

2.3 Unless otherwise agreed between the parties, the Initial Response shall consist of the provision of Marine Spill Response Services for up to 24 hours.

2.4 "Best Efforts" means all commercially reasonable efforts consistent with marine oil spill response industry practices considering available information and resources under circumstances, conditions (including weather and sea conditions) and factors existing at any relevant time. "Marine Spill Response Services" means marine spill response services, including equipment, personnel and operational management, for the containment, recovery and clean-up (including preventative measures) of Oil spilled on or into water or spilled on water in connection with the loading or unloading of Oil from ships, 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.

3. Twelve Hour Consultation

3.1 If within 12 hours of the Initial Request Alert and Owner 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.

3.2 If within 12 hours of the Initial Request Alert and Owner agree that the clean-up cannot be completed in the course of the Initial Response, then Owner shall notify Alert as to whether or not Alert is to continue providing Marine Spill Response Services beyond the Initial Response.

4. No Further Alert Response

4.1 If Owner has notified Alert that Owner 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 Owner.

4.2 If Owner has failed to notify Alert within the initial 12 hour period, and Alert has been unable to obtain instructions from Owner, 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.

5. Response Beyond 24 Hours

5.1 If Owner has notified Alert within the initial 12 hours that Owner wishes Alert to continue to provide Marine Spill Response Services beyond the 24 hour period of the Initial Response then, by the end of the Initial Response, Alert shall provide Owner 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.

5.2 Upon receipt of the Plan of Action, Owner 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.

5.3 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 Owner and any other information required under Section 13 of this Agreement.

5.4 Upon being signed by both parties, the Work Order shall become an integral part of this Agreement.

5.5 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 Owner 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. **Right to Subcontract and Territory**

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

6.2 Alert agrees to provide Marine Spill Response Services to Owner only within Alert's geographic area of response.

7. **Additional Conditions**

7.1 Marine Spill Response Services shall only be provided by Alert if Owner has paid all outstanding fees.

7.2 Notwithstanding any other provision of this Agreement, unless otherwise directed by the appropriate governmental Lead Agency, Alert shall have no obligation to make Marine Spill Response Services available to Owner if the resources associated with the provision of such Marine Spill Response Services are already being provided to another party.

7.3 In the event of contemporaneous or overlapping requests for Marine Spill Response Services, Owner

acknowledges that Alert shall respond to the competing requests as directed by the appropriate governmental Lead Agency.

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

8. **Recovered Oil and Waste**

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

9. **Termination of Work**

9.1 Notwithstanding any other term of this Agreement, each of the parties shall be entitled at any time to terminate the Marine Spill Response Services, or any portion thereof, being provided under this Agreement in any given case by giving notice to the other. Upon such notice being provided, Alert shall cease to provide the

Marine Spill Response Services or any portion thereof, and shall carry out any required demobilization activities, and Owner shall pay all outstanding Alert Fees and Taxes payable in connection therewith.

10. **Instructions**

10.1 If Owner instructs Alert to take any action under this Agreement in a manner which would, based on the reasonable judgement 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 Owner 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 any obligation of Alert to take instructed actions under circumstances that would not result in the happening of the events specified in the preceding subsections (a)-(c).

11. **Alert Fees**

11.1 "Alert Fees" means the fees charged by Alert 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, 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.

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

11.3 Schedules of Alert Fees are available upon request.

11.4 "Taxes" means the goods and services tax, or any equivalent or replacement thereof, payable by Owner and collectable by 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.

12. **Payment of Alert Fees**

12.1 Owner shall pay all Alert Fees which are due and payable together with all Taxes due in connection therewith.

12.2 Alert shall submit an invoice to Owner for the Alert Fees and Taxes which become due in connection therewith. Except as otherwise agreed pursuant to Section 13 of this Agreement, any invoice submitted in respect of Alert Fees shall be due and payable by Owner by the end of the fifth (5th) business day following receipt of the invoice by Owner and, subject to the terms of Section 14.1 of this Agreement, any invoice not paid in full by the end of the fifth (5th) business day following receipt of the invoice by Owner will be charged interest on the outstanding amount at the rate of one per cent (1%) per month, or 12.6825% per year, commencing on the sixth (6th) day following Owner's receipt of the invoice.

12.3 Invoices may be submitted by facsimile and a facsimile copy of an invoice shall be deemed to be received by Owner at such time as is indicated on the receipt of confirmation notice received by Alert for such facsimile.

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

13. Funding for Response Beyond 24 Hours

13.1 In those cases where the provisions of Section 5 (Response Beyond 24 Hours) apply, Alert shall submit an invoice to Owner for the Marine Spill Response Services provided during the first twenty-four (24) hours following the Initial Request. Unless the parties otherwise agree, such invoice shall be paid by Owner by the end of the fifty (5th) business day following Owner's receipt of the invoice.

13.2 In conjunction with the preparation of the Work Order, Owner and Alert shall agree on how Owner 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, Owner 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.

13.3 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.

13.4 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 Owner shall pay all outstanding Alert Fees and Taxes due in connection therewith, including all Alert Fees and Taxes set forth in any final invoice submitted by Alert.

14. Disputed Invoices

14.1 If Owner objects to any item or statement shown on an invoice, Owner shall promptly notify Alert of the dispute, specifying in reasonable detail the factual basis for the dispute and Owner 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 Owner's right to object to or question such invoice, and such invoice shall be subject to adjustment for amounts included in the invoice which are ultimately determined not to be amounts for which Owner was obligated to pay Alert under the terms of this Agreement. Owner shall be entitled to object to or question all invoices or matters related to it within thirty (30) days following the date of the invoice, or the date on which the last invoice under a Work Order is rendered, whichever is later. In the event of a dispute regarding an invoiced amount the parties shall use reasonable efforts to resolve such dispute but if the parties fail to resolve such dispute within a thirty (30) day period following receipt by 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.

15. Provision of Information

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

16. Fees Remain Payable

16.1 Owner's obligation to pay the fees payable under this Agreement is absolute and not subject to set-off, deduction or other reduction or counterclaim by reason of the non-availability of Marine Spill Response Services, force majeure described in Section 22.1, or any other event or circumstance which would otherwise effect a suspension or termination of the obligations of Alert.

17. Representations and Warranties

17.1 Owner represents and warrants to Alert that, both as of the Effective Date and for the remaining term of this Agreement, Owner (a) does not and will not carry Oil in bulk as cargo on the Ship and the Ship is not constructed or adapted primarily to carry Oil in bulk in its cargo spaces; (b) is and will continue to be a member of a protection and

indemnity club, an association which is a member of the international group of protection and indemnity clubs or has and will continue to maintain an arrangement through underwriters providing first class security; and (c) shall have the financial capacity to pay all Alert Fees and Taxes which it may incur in connection with the provisions of Marine Spill Response Services under the terms of this Agreement.

18. Allocation of Risk

18.1 Alert and Owner 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 Owner; (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 Owner, or anyone asserting rights on its behalf, will not challenge Alert's right to be indemnified as provided in this Section 18.

Accordingly, Alert and Owner 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 Owner as set forth in this Section 18.

18.2 Alert and its directors, officers, agents, contractors and employees shall have no liability to Owner, for (a) 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 (b) 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 Owner or any of Owner's directors, officers, contractors, agents or employees.

18.3 Alert and its directors, officers, agents, contractors and employees shall have no liability to Owner, for (a) 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 (b) 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 negligence of Alert or any of its directors, officers, agents, contractors or employees and such parties are unable to rely upon their respective immunities under the Act or otherwise.

18.4 Owner 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, contractors, employees 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 by Alert or its directors, officers, employees, contractors or agents as a result of Alert's own negligence or the negligence of Alert's directors, officers, agents, contractors or employees and such parties are unable to rely upon their respective immunities under the Act or otherwise. Owner 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.

18.5 Alert shall indemnify, defend and hold harmless Owner and its directors, officers, employees and agents from and against all claims, losses, damages, costs, expenses and other liabilities incurred by Owner or its directors, officers, employees or agents as a result of the negligence of Alert or the negligence of its directors, officers, agents, contractors or employees in circumstances where such parties are unable to rely upon their respective immunities under the Act or otherwise.

19. Termination

19.1 This Agreement may be terminated by Alert effective immediately upon notice to Owner (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 Owner has failed to pay the Registration Fees as required under the terms of this Agreement; (c) if Owner has failed to pay any Alert Fees or Taxes in accordance with the terms of this Agreement; (d) if Owner becomes 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 Owner has breached any representation or warranty or other term of this Agreement and failed to cure such breach within 5 days after Owner 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.

20. Consequences of Termination

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

20.2 Owner shall not be entitled to receive a refund of all or any portion of the Registration Fee paid by Owner except where termination of this Agreement is due to the revocation by the Minister of Transport of Alert's certification as a response organization with 10,000 tonne

rated capability in which case the Registration Fee shall be refunded on a pro-rated basis.

21. Survival

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

22. Force Majeure

22.1 If during the term of this Agreement there should arise or occur any event or circumstance beyond the reasonable control of Alert or Owner including the action of government, flood, fire, strike, lock-out or other labour unrest, riot, civil unrest, terrorism, war (whether declared or undeclared) or an act of God (but for greater certainty not including a shortage or lack of financing) which prevents, restricts or delays Alert or Owner from duly performing any of its obligations under this Agreement, then during the period that such event or circumstance, or the effect thereof continues, performance by such party of such obligation will be suspended and excused to the extent that such party is so prevented, restricted or delayed.

22.2 Neither party will be entitled to the benefits of the provisions of Section 22.1 if and to the extent that its inability to duly perform any obligation hereunder was caused or contributed to by its failure to act in a reasonable and prudent manner under the circumstances.

22.3 The obligations of the party relying on Section 22.1 shall be suspended during any period of force majeure. The performance of this Agreement shall be resumed as soon as practicable after force majeure has ceased.

23. Time

23.1 Time is of the essence of this Agreement.

24. Assignment

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

25. Independent Contractor

25.1 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 Owner.

26. Governing Law

26.1 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.

27. English Language

27.1 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.

28. Notice

28.1 All notices required or permitted to be given under this Agreement shall be in writing and either delivered by hand, mailed or sent by facsimile to the addressees listed on page 1. Any such notice shall be deemed to have been given and received (a) if delivered on the date of delivery; (b) if mailed, on the 5th business day following the day it was posted; or (c) if given by facsimile, on the date and at the time indicated on the receipt of confirmation form received for such facsimile. No party shall mail any notice during any period when postal workers are on strike or if a strike is imminent. Either party may change its address by giving notice of the change to the other party.