



DONJON-SMIT, LLC
OIL POLLUTION ACT OF 1990
SALVAGE, FIREFIGHTING AND LIGHTERING
CONTRACT AND FUNDING AGREEMENT



This agreement is made on the _____ between *DONJON-SMIT LLC*, having its principal place of business at 909 N. Washington St., Suite 300A, Alexandria, VA 22314 USA (Hereinafter referred to as "DONJON-SMIT"), And having its principal place of business at:

(hereinafter referred to as "OWNER").

RECITALS

- WHEREAS OWNER is or will be trading vessels in and/or to United States (U.S.) waters and must retain a professional salvage company for the provision of salvage, firefighting, and lightering services in fulfillment of the requirements set forth in 33 CFR Part 155 under the Oil Pollution Act of 1990; and
- WHEREAS DONJON-SMIT is a joint venture between two internationally recognized salvage companies, each of which fully meets all of the fifteen qualifying criteria listed in 33 CFR 155.4050(b) issued by the United States Coast Guard under the Oil Pollution Act of 1990 and listed in Annex 4 hereto; and
- WHEREAS OWNER and DONJON-SMIT desire to enter into a contract and funding agreement for the provision of and access to salvage, firefighting and lightering services for OWNER's vessels trading in U.S. waters as and when required under the terms and conditions as set forth herein.

NOW THEREFORE, DONJON-SMIT agrees to provide -- and OWNER agrees to accept -- the salvage, firefighting and/or lightering services to the vessel(s) of OWNER (listed in SCHEDULE A) as and when required in accordance with the following Articles, Annexes, and Schedules:

ARTICLE 1. CONTRACT PERIOD OF PERFORMANCE AND MUTUAL RIGHT TO TERMINATE

- (a) In consideration of the retainer provided for in Article 9, the services provided for in this Agreement shall commence in full force at 0001 hours, EST, on _____ and shall continue for one full year. Unless one party gives the other two months written notice before the end of a contract period, this Agreement will be automatically renewed for each subsequent one year period at the rates specified herein or at different rates agreed between the parties prior to each renewal. Notwithstanding the period of this Agreement mentioned above, this Agreement may be terminated by either party giving to the other not less than two months notice in writing.
- (b) Should OWNER decide to terminate, no fees shall be reimbursable. Should DONJON-SMIT decide to terminate, the retainer fee shall be returned on a pro-rated basis for the amount of the one year period remaining on the contract from the date of termination.
- (c) An individual OWNER vessel may be unilaterally suspended from coverage by DONJON-SMIT in accordance with Article 5(d) below, Marine Firefighting Pre-Fire Plans, or for failure to comply with Article 5. Coverage for such vessel will be reinstated upon correction of the deficiency. There will be no reimbursement of any portion of the retainer fee for the period of suspension.

ARTICLE 2. DEFINITIONS

For the purposes of this agreement the following definitions shall apply:

- "Tariff Rate" shall mean the DONJON-SMIT Salvage tariff rates set out in each of the Annexes 1, 2 and 3 Tariff clauses and Schedule C.
- "OWNER" the party to this agreement that owns, manages, and/or operates the vessel(s) that require(s) salvage, firefighting, and/or lightering services.
- "TOWHIRE" shall mean the BIMCO Daily Hire Towage and Marine Services contract known commonly as 'BIMCO TOWHIRE 2008 contract or any future amended version, the current edition of which is attached as Annex 1.
- "WRECKHIRE" shall mean the BIMCO Daily Hire Marine Services and Wreck Removal Contract known as the 'BIMCO WRECKHIRE 2010 contract or any future amended version, the current edition of which is attached as Annex 2.
- "LOF" shall mean Lloyd's Standard Form of Salvage Agreement, 2011 or any future amended version, the current edition of which is attached as Annex 3.
- "Category 1" shall mean a situation, such as a vessel adrift offshore without motive power, not in any immediate danger, that is in need of a tow but no other salvage services are needed, and it does not pose any immediate threat to the environment.
- "Category 2" shall mean a situation, such as a vessel that is resting lightly aground in calm conditions so that there is no reasonable apprehension of immediate danger, with no (or minor) hull breaches that may need some minor patching, that can be refloated (i) by internal shifting of ballast/bunkers or by the discharge of clean ballast into the sea or (ii) by means of lightening and towage assistance, and it does not pose any immediate threat to the environment.
- "Category 3" shall mean a situation, such as a vessel or her cargo that is in imminent danger either because the ship or cargo is on fire (or there is a serious risk of either catching fire), there is a serious risk of sinking, a serious risk of explosion, an imminent risk of grounding, or where the vessel is more than lightly aground or threatening to become more than lightly aground, or where the vessel or her cargo require the discharge of all or part of the cargo or her bunkers, or where compartments have been flooded necessitating salvage skills over and above those envisaged in Categories 1 and 2; or where the vessel and/or her cargo may constitute a threat of damage to the environment within the meaning of Article 14 of the Salvage Convention of 1989, but without the geographical limits set out in Article 1(d) of the Convention.

ARTICLE 3. RESPONSE READINESS OBLIGATIONS OF DONJON-SMIT DURING THE CONTRACT PERIOD

DONJON-SMIT shall, during the period of the contract:

- (a) Maintain under the partner companies' full-time employ, or have available under other arrangements satisfactory to OWNER, personnel of suitable skill and experience;
- (b) Maintain in partner company inventory or have available under other arrangements satisfactory to OWNER, items of material and equipment of suitable type and in reasonable quantity.
- (c) Maintain, by contract or other means, shore-based facilities in the Port of New York/New Jersey, which shall include a pier or other secure berthing space for ships/crafts, and storage space for equipment to be used by DONJON-SMIT; and at Houston, Texas, a shore-based facility to support administrative capabilities and to provide equipment storage space for support of the work to be or being performed in the geographic zone, and maintain the facilities as bases of operations such that equipment, personnel, ships and other

craft (e.g. barges, derrick barges, workboats, etc.) can be promptly deployed by land, sea or air as required and practical, and further provide containerized capability as may be required.

- (d) Provide ships, tugs, and other craft that may be required in connection with salvage, salvage-related towing, wreck removal, harbor clearance, fire-fighting, and/or pollution control/containment/abatement;
- (e) Upon notification to DONJON-SMIT of an incident requiring a salvage and/or firefighting response by OWNER, DONJON-SMIT agrees to and is capable of providing, and intends to commit to providing, the services that are listed in 33 Code of Federal Regulations (CFR) 155.4030(a) through 155.4030(h) to the OWNER and will make best endeavors to respond within the timeframes as specified in 33 CFR 155 Table 155.4030(b) and Table 155.4040(c) and defined in 33 CFR 155.4030 and 155.4040 always in compliance with the Oil Pollution Act of 1990.
- (f) Be capable of performing a minimum of two (2) simultaneous emergency response operations anywhere within the areas listed in Schedule B.

ARTICLE 4. DONJON-SMIT EXERCISE OBLIGATIONS

DONJON-SMIT shall be obligated to conduct exercises in accordance with the National Preparedness for Response Exercise Program (NPREP) guidelines, to include:

- i. Shore-based salvage and shore-based marine firefighting management team tabletop exercise, at least annually; and
- ii. Equipment deployment exercises at least annually.

ARTICLE 5. DONJON-SMIT ADMINISTRATIVE SERVICES OBLIGATIONS

- (a) DONJON-SMIT agrees to provide, either to each Schedule A-listed vessel's Qualified Individual or OWNER's Vessel Response Plan (VRP) preparer (as designated by OWNER), a Salvage and Firefighting Addendum (SFA) designed to be inserted into the existing VRP. The SFA shall demonstrate how DONJON-SMIT meets the specific requirements of 33 CFR 155.4030 sections (a) through (h). With inclusion of the SFA into the vessel response plan, the otherwise USCG approved VRP will meet all the requirements required in 33 CFR 155.4030 through 155.4045. Any deficiencies of the SFA identified by the Coast Guard will be corrected by DONJON-SMIT and provided to the plan submitter.
- (b) As part of the SFA, DONJON-SMIT shall provide the designated Qualified Individual a letter certifying that DONJON-SMIT, upon notification of an incident requiring a salvage and/or firefighting response by OWNER, agrees to and is capable of providing, and intends to commit to providing, the services that are listed in 33 Code of Federal Regulations (CFR) 155.4030(a) through 155.4030(h) to the OWNER. Further, these services will be provided to the best of DONJON-SMIT's capability, in accordance with the planning response timeframes listed in 33 CFR Table 155.4030(b), for each of the COTP zones listed in Schedule B.
- (c) OWNER agrees to provide DONJON-SMIT the "Marine Firefighting Pre-Fire Plan" for each Schedule A-listed vessel at least 15 days prior to the date on which this agreement is to take effect. While DONJON-SMIT can assist in developing this plan on terms to be agreed, it is OWNER's responsibility to provide this plan in suitable form to DONJON-SMIT prior to contract signing.
- (d) If within 30 days of receipt of the Marine Fire-Fighting Pre-Fire Plan, DONJON-SMIT finds it unacceptable, a registered letter will be sent to OWNER suspending that ship from coverage until such time as the Marine Firefighting Pre-Fire Plan is corrected to the satisfaction of DONJON-SMIT. Otherwise, by signature on this contract, DONJON-SMIT certifies that the Pre-Fire Plans for Schedule A-listed vessels are acceptable and agrees to implement each vessel-specific plan to mitigate a potential or actual fire.
- (e) DONJON-SMIT shall provide its firefighting sub-contractor access to copies of the Marine Firefighting Pre-Fire Plan for each vessel listed in Schedule A.
- (f) DONJON-SMIT warrants that it will maintain agreements with public firefighting resource providers as indicated in Schedule B.

ARTICLE 6. DONJON-SMIT OBLIGATIONS IN THE EVENT OF AN EMERGENCY

- (a) DONJON-SMIT, upon notification of an incident requiring a salvage and/or firefighting response by OWNER, agrees to and is capable of providing, and intends to commit to providing, the services that are listed in 33 Code of Federal Regulations (CFR) 155.4030(a) through 155.4030(h) to the OWNER. Further, these services will be provided to the best of DONJON-SMIT's capability in accordance with the planning response timeframes listed in 33 CFR Table 155.4030(b), for each of the COTP zones listed in Schedule B under the following terms and conditions:
 - i) **For Category 1 situations.** On the basis of a TOWHIRE 2008 in the format as attached to this agreement in Annex I, suitably amended. Personnel and equipment rates will be charged at the rates shown in Annex 5 Rate Sheet plus a 20% uplift. Reimbursement of all out of pocket expenses will be on a cost plus 15% basis only and not subject to this 20% uplift.
 - ii) **For Category 2 situations.** On the basis of the WRECKHIRE 2010 contract at the Tariff rates in the format as attached to this agreement in Annex II, suitably-amended. Personnel and equipment rates will be charged at the rates shown in Annex 5 'Rate Sheet' plus a 20% uplift. Reimbursement of all out of pocket expenses will be on a cost-plus- 15% basis only and not subject to this 20% uplift.
 - iii) **For Category 3 situations.** On the basis of an LOF 2011, with the SCOPIC clause incorporated, in the format as attached to this Agreement in Annex 3 without amendment.
 - iv) **Inability to reach agreement as to the category applicable to a particular response** will be handled in accordance with Article 7 below, but in no case will a response be delayed or altered pending such agreement.
 - v) **Conflicts**, if any, between the terms and conditions set out in the applicable form that governs DONJON-SMIT's response according to the category and those set out in this Agreement are to be resolved in favor of those in this Agreement.
- (b) Requests may include salvage-related towing, wreck removal, harbor clearance, fire-fighting and/or lightering services to include fendering, transfer equipment and portable pumps, for the account of OWNER and its underwriters. DONJON-SMIT, upon notification of an incident requiring a salvage and/or firefighting response by OWNER, agrees to and is capable of providing, and intends to commit to providing, the services that are listed in 33 Code of Federal Regulations (CFR) 155.4030(a) through 155.4030(h) to the OWNER. Further, these services will be provided to the best of DONJON-SMIT's capability, in accordance with the planning response timeframes listed in 33 CFR Table 155.4030(b), for each of the COTP zones listed in Schedule B. See also Article 8 below.
- (c) DONJON-SMIT shall be compensated for its services in accordance with the terms of the applicable contract form for the category of the response. DONJON-SMIT shall be secured for the amounts due in accordance with the security provisions of the appropriate contract form, and in any event shall have a fully enforceable maritime lien against the vessel, her cargo, bunkers, stores, and pending freight until substitute security suitable to DONJON-SMIT in amount and form has been posted.

ARTICLE 7. DISPUTES

- (a) In the event of a dispute between the parties as to which category a casualty may fall, DONJON-SMIT hereby agrees and undertakes to use its best endeavors promptly to commence and execute the salvage, firefighting, and/or lightering services and have the category decided, during or after completion of the services in the manner appearing hereafter.
- (b) For dispute arising under services rendered pursuant to this Agreement, OWNER and DONJON-SMIT agree they will:
 - i) Always attempt to settle amicably;
 - ii) In the event that they fail to settle amicably, they will always mediate; and
 - iii) In the event attempts to mediate fail, then disputes shall be decided by arbitration in the manner set forth in Article 11 hereafter.

ARTICLE 8. PLANNING STANDARDS

DONJON-SMIT agrees to and is capable of providing, and intends to commit to providing, the services that are listed in 33 Code of Federal Regulations (CFR) 155.4030(a) through 155.4030(h) to the OWNER. Further, these services will be provided to the best of DONJON-SMIT's capability, in accordance with the planning response timeframes listed in 33 CFR Table 155.4030(b), for each of the COTP zones listed in Schedule B. As defined in 33 CFR 155.4010(b), the timeframes referred to in Articles 3(e), 6(a) and 6(b) are planning criteria, not performance standards, and as such are based on assumptions that may or may not exist during an actual incident. DONJON-SMIT warrants that adequate response resources are available and positioned to meet response time planning criteria for the zones indicated in Schedule B, but does NOT warrant that these resources will always be available or meet the planning response time criteria in every incident.

ARTICLE 9. SERVICE RETAINER FEE PROVISION

OWNER shall pay to DONJON-SMIT an annual retainer fee of **ZERO** USD per vessel listed in Schedule A. If DONJON-SMIT decides to change the fee amount, DONJON-SMIT shall inform OWNER at least two months prior to contract renewal.

- (a) Retainer fees shall be due and payable by OWNER 30 days after receipt of invoice from DONJON-SMIT.

ARTICLE 10. NON-EXCLUSIVE SERVICES

- (a) The parties agree that these services, including those of the personnel, equipment, and ships/craft offered by DONJON-SMIT to OWNER are not offered exclusively to OWNER and that DONJON-SMIT is free to contract with others for the provision of similar response services.
- (b) Further, the parties agree that the use of DONJON-SMIT as the OWNER's named salvor and marine firefighter is required under the regulatory language of 33 CFR Part 155 within the jurisdictional limits defined in that Part. If more than one primary provider is allowed, the parties agree that any of OWNER's listed primary providers within a COTP zone may be utilized by OWNER.

ARTICLE 11. CHOICE OF LAW AND JURISDICTION; ARBITRATION

This agreement shall be governed and construed according to the Federal Maritime Law of the United States, and the laws of the State of New York, with the exception of New York's conflicts of law provisions.

- (a) Any dispute arising under this Agreement that is not resolved amicably or through mediation, shall be submitted to arbitration in New York in accordance with the Rules of the Society of Maritime Arbitrators, Inc. In the case of a dispute arising under Article 6 (a) (iv), the parties may request an expedited proceeding before a sole arbitrator previously agreed by them to handle such disputes, or a sole arbitrator to whom they then agree if there has been no pre-selection. If they cannot agree on a sole arbitrator, then the Article 6(a) (iv) dispute shall be handled as other disputes under this agreement. In those and all other cases, the party requesting arbitration shall serve upon the other party a written demand for arbitration, whereupon the parties shall agree and jointly appoint one person to act as sole arbitrator. Failing such agreement within 14 (fourteen) days of the service of the written demand, the matter shall be referred to three arbitrators, one to be appointed by each of the parties hereto and the third by the two so chosen. The appointed Arbitrator(s) shall deal with the proceedings as he(they) see(s) fit and his(their) decision shall be final and binding on the parties.
- (b) The Arbitrator(s) shall have the discretion to impose the cost of the arbitration, including arbitrators and attorneys fees and expenses, upon the losing party or divide such between the parties on any terms which may appear just. Any decision or award rendered hereunder may be entered as a judgment of the Court. The applicable court for the enforcement of this agreement, including compelling arbitration or enforcement of arbitration awards, is the United States District Court for the Southern District of New York.
- (c) Disputes arising in Category 1 and Category 2 cases involving the terms of the TOWHIRE or WRECKHIRE contracts, shall be subject to U.S. law and jurisdiction and processed according to the same terms as disputes arising under this Agreement. However, any dispute that arises under the LOF in Category 3 cases shall be subject to English law and dealt with by the Arbitrator appointed by the Council of Lloyds (the Lloyd's Arbitrator) in London in the usual manner of Lloyd's Salvage Arbitration proceedings.

ARTICLE 12. GENERAL PROVISIONS

- (a) The person signing this Agreement on behalf of OWNER enters into this Agreement for the vessels listed in Schedule A and their respective owners and binds each (but not the one for the other or himself personally) to the due performance thereof.
- (b) The parties hereby evidence their agreement with the terms, rates and conditions stated herein by executing this Agreement in the spaces provided below.
- (c) In the event OWNER sells or disposes of any of the vessels which named in Schedule A and gives written certification that the vessel in question will not trade in the United States as part of OWNER's fleet for the duration of this Agreement, DONJON-SMIT agrees to delete that vessel from this Agreement and de-obligate the OWNER from any future payments relating to the deleted vessel, except for those payments accrued prior to the above-referenced certification.
- (d) In the event OWNER adds a vessel or group of vessels and wishes to have them or added as part of Schedule A, the charges for each additional vessel will be consistent with the payment breakdown as appears below for the duration of the Agreement. All other terms and conditions will remain in full effect.
- (e) Titles and Captions: All Article titles and captions contained in this Agreement are for convenience only and shall not be deemed part of the content nor affect the interpretation of this Agreement.

- (f) Entire Agreement: This Agreement, including the Annexes and Schedules herewith and the documents and regulations referred to herein, contains the entire understanding between the parties and supersedes any prior understandings and agreements between them respecting the subject matter of this Agreement.
- (g) Agreement Binding: This Agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto.
- (h) Presumption: This Agreement or any section thereof shall not be construed against any party due to the fact that said Agreement or section was drafted by said party.
- (i) Further Action: The parties hereto shall execute and deliver all documents, provide all information and take or forebear from all such action as may be necessary or appropriate to achieve the purposes of this Agreement.
- (j) Savings Clause: If any provision of this Agreement, or the application of a provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it has been held invalid, shall not be affected thereby.
- (k) Any notice required to be given hereunder will be given by hand delivery, facsimile, overnight mail, certified or registered mail, postage prepaid at the following addresses or such substitute addresses as are later supplied in writing:

If to: DONJON-SMIT LLC
 909 N. Washington St, Suite 301
 Alexandria, VA 22314 U.S.A.
 Attention: Noelle Driscoll, Contracts Administrator

If to:

IN WITNESS WHEREOF, DONJON-SMIT and the OWNER have caused this Agreement to be executed by their duly authorized representative as of the day and year first above written.

for OWNER

for DONJON-SMIT LLC

 Signature

 Name

 Title

 Signature

 Name

 Title

ANNEX 1
BIMCO TOWHIRE

- I. Additional clauses from Schedule C are incorporated herein.



BIMCO

TOWHIRE 2008

International Ocean Towing Agreement
(Daily Hire)

PART I

Recommended by International Salvage Union (ISU)

Explanatory Notes for TOWHIRE 2008 are available from BIMCO at www.bimco.org

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1. Date and place of Agreement		
2. Tugowner/place of business (Cl. 1)	3. Hirer/place of business (Cl. 1)	
4. Tow (name and type) (Cl. 1)	5. Gross tonnage/displacement tonnage	
6. Maximum length/maximum breadth & towing draught (fore and aft)	7. Flag and place of registry	
8. Registered owners	9. Classification Society	
10. P&I liability insurers	11. General condition of tow	
12. Particulars of cargo and/or ballast and/or other property on board the tow		
13. Tug (name and type) (Cl. 1)	14. Flag and place of registry	
15. Gross tonnage	16. Classification Society	
17. P&I liability insurers		
18. Certificated bollard pull (if any)	19. Indicated BHP	
20. Estimated daily average bunker oil consumption in good weather and smooth water		
(a) at full towing power with tow		
(b) at full sea speed without tow		
21. Winches and main towing gear		
22. Nature of service(s) (Cl. 2)		
23. Place of Departure (Cl. 11)	24. Date of departure	25. Place of Destination (Cl. 12)
26. Contemplated route (Cl. 22)		

continued

TOWHIRE 2008

INTERNATIONAL OCEAN TOWAGE AGREEMENT (DAILY HIRE)

PART I

(continued)

27. Notices (state number of hours/days notice of arrival of tug at Place of Departure to whom to be given)	28. Notices (state number of hours/days notice of arrival of tug and tow at Place of Destination to whom to be given)
29. Riding crew to be provided by (also state number to be provided) (Cl. 13)	30. If riding crew provided by Tugowner state amount per man per day payable by Hirer (Cl. 13)
31. Mobilisation payment (optional, only to be filled in if expressly agreed) (Cl. 3(d))	32. Demobilisation payment (optional, only to be filled in if expressly agreed) (Cl. 3(e))
33. Daily rate of hire and advance payment period(s) (Cl. 3(b)(i))	34. Payment of hire and for riding crew (if any) (state currency, mode of payment, place of payment and bank account) (Cl. 3(g))
35. Minimum period of hire, if any agreed	36. Commencement of period of hire (Cl. 3(j))
37. Termination of period of hire (Cl. 3(a))	38. Cancelling date agreed (Cl. 5(a))
39. Interest rate (%) per annum to run from (state number of days) after any sum is due (Cl. 8)	40. Financial security (state sum, by whom to be provided and when) (optional, only to be filled in if expressly agreed) (Cl. 10 and 21(iii))
41. Cost of bunker oil and lubricating oils (state whether included or excluded from daily rate of hire; if included state type of bunkers and cost per metric tonne (per litre for lubricating oils) (Cl. 4)	
42. Termination fee (Cl. 20)	43. Dispute resolution (Cl. 31) (state whether alternative (a), (b) or (c) of Clause 31 agreed)
44. Numbers of additional clauses, covering special provisions, if agreed	

It is mutually agreed between the party stated in Box 2 (hereinafter called "the Tugowner") and the party stated in Box 3 (hereinafter called "the Hirer") that the Tugowner shall, subject to the terms and conditions of this Agreement which consists of PART I including additional clauses, if any agreed and stated in Box 44, PART II and Annex A use its best endeavours to perform the towage or other service(s) as set out herein. In the event of a conflict of terms and conditions, the provisions of PART I and any additional clauses, if agreed, shall prevail over those of PART II and Annex A to the extent of such conflict but no further.

Signature (Tugowner)	Signature (Hirer)
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PART II
TOWHIRE 2008 (Daily Rate)

- | | |
|---|----|
| 1. Definitions | 1 |
| “Tugowner” means the party stated in Box 2. | 2 |
| “Hirer” means the party stated in Box 3. | 3 |
| “Tug” means the vessel or vessels as described in Boxes 13 to 16. | 4 |
| “Tow” means one or more vessels or objects of whatsoever nature including anything carried thereon as described in Boxes 4 to 12. | 5 |
| “Voyage” means the voyage described in Boxes 23 and 25. | 6 |
| | 7 |
| 2. Basis of the Agreement | 8 |
| The Tugowner agrees to render the service(s) to the Tow as set out in Box 22. | 9 |
| | |
| 3. Price and Conditions of Payment | 10 |
| (a) The Hirer shall pay the Tugowner the amount of hire set out in Box 33 per day or pro rata for part of a day (hereinafter called the “Tug’s Daily Rate of Hire”) from the time stated in Box 36 until the time stated in Box 37. | 11 |
| | 12 |
| | 13 |
| (b) | 14 |
| (i) The Tug’s Daily Rate of Hire shall be payable in advance as set out in Box 33 all hire due hereunder shall be fully and irrevocably earned and non-returnable on a daily basis. | 15 |
| | 16 |
| (ii) In the event of the Tug being lost, hire shall cease as of the date of the loss. If the date of the loss cannot be ascertained, then, in addition to any other sums which may be due, half the rate of hire shall be paid, calculated from the date the Tug was last reported until the calculated arrival of the Tug at her destination provided such period does not exceed 14 days. | 17 |
| | 18 |
| | 19 |
| | 20 |
| (iii) In the event of part of the Tow being lost, hire shall continue until the Tug arrives at its destination. In the event of the Tow being lost, hire shall continue until the Tug arrives at its destination or such nearer place, at the Tugowner’s discretion, provided such period does not exceed 14 days. | 21 |
| | 22 |
| | 23 |
| (c) Within 14 days of the termination of the services hereunder by the Tugowner, the Tugowner will if necessary adjust in conformance with the terms of this Agreement hire paid in advance. Any hire paid by the Hirer but not earned under this Agreement and which is refundable thereunder shall be refunded to the Hirer within 14 days of receipt of the Tugowner’s adjustment of hire. | 24 |
| | 25 |
| | 26 |
| | 27 |
| (d) *If agreed, the Hirer shall pay the sum set out in Box 31 by way of a mobilisation charge. This sum shall be paid on or before the commencement of the Tug’s voyage to the place of departure, and shall be non-returnable, Tug and/or Tow lost or not lost. | 28 |
| | 29 |
| | 30 |
| (e) *If agreed, the Hirer shall pay the sum set out in Box 32 by way of a demobilisation charge. This amount shall be paid Tow lost or not lost, on or before the termination by the Tugowner of his services under this Agreement. | 31 |
| | 32 |
| | 33 |
| (f) The Hire and any other sums due and payable to the Tugowner under this Agreement (or any part thereof) shall be paid without any discount, deduction, set-off, lien, claim or counterclaim. | 34 |
| | 35 |
| (g) All payments by the Hirer shall be made in the currency and to the bank account specified in Box 34. | 36 |
| | |
| <i>*Sub-clauses (d) and (e) are optional and shall only apply if agreed and stated in Box 31 and 32.</i> | 37 |
| | |
| 4. *Bunkers | 38 |
| (a) Daily Rate of Hire including Bunkers - Bunker Price Adjustment | 39 |
| (i) In the event that the Daily Rate of Hire includes the cost of bunkers then this Agreement is concluded on the basis of the price per metric tonne of bunker oil stated in Box 41. | 40 |
| | 41 |
| (ii) If the price actually paid by the Tugowner for bunker oil consumed during the Voyage should be higher, the difference shall be paid by the Hirer to the Tugowners. | 42 |
| | 43 |
| (iii) If the price actually paid by the Tugowner for bunker oil consumed during the Voyage should be lower, the difference shall be paid by the Tugowner to the Hirer. | 44 |
| | 45 |
| (iv) The log book of the Tug and copies of the bunker supplier’s invoices shall be conclusive evidence of the | 46 |

PART II
TOWHIRE 2008 (Daily Rate)

quantity of bunkers consumed and the prices actually paid.	47
(b) *Daily Rate of Hire excluding Bunkers	48
(i) In the event that the Daily Rate of Hire excludes the cost of bunkers then the Hirer shall pay to the Tugowner the cost of the bunkers and lubricants consumed by the Tug in fulfilling the terms of this Agreement.	49 50 51
(ii) The Tug shall be delivered with sufficient bunkers and lubricants on board for the tow to the first bunkering port (if any) or destination and be re-delivered with not less than sufficient bunkers to reach the nearest bunkering port en route to the Tug's next port of call.	52 53 54
(iii) The Hirer upon delivery and the Tugowner upon re-delivery shall pay for the bunkers and lubricants on board at the current contract price at the time at the port of delivery and re-delivery or at the nearest bunkering port.	55 56 57
(c) Bunker Quality	58
(i) If the Hirer supplies fuel it shall be of the specifications and grades stated in Box 41. The fuels shall be of a stable and homogeneous nature and unless otherwise agreed in writing, shall comply with ISO standard 8217:1996 or any subsequent amendments thereof as well as with the relevant provisions of MARPOL.	59 60 61 62
(ii) The Chief Engineer shall co-operate with the Hirer's bunkering agents and fuel suppliers and comply with their requirements during bunkering, including but not limited to checking, verifying and acknowledging sampling, reading or soundings, meters etc. before, during and/or after delivery of fuels. During delivery four representative samples of all fuels shall be taken at a point as close as possible to the Tug's bunker manifold. The samples shall be labelled and sealed and signed by suppliers, Chief Engineer and the Hirer or their agents. Two samples shall be retained by the suppliers and one each by the Tug and the Hirer. If any claim should arise in respect of the quality or specification or grades of the fuels supplied, the samples of the fuels retained as aforesaid shall be analysed at an independent laboratory by a qualified analyst.	63 64 65 66 67 68 69 70 71
<i>*sub-clauses (a) and (b) are options. State agreed option in Box 41. If no option stated then sub-clause (b) shall apply.</i>	72 73
5. Extension to Cancelling Date	74
(a) Should the Tug not be ready to commence the towage at the latest at midnight on the date indicated in Box 38, the Hirer shall have the option of cancelling this Agreement and shall be entitled to claim damages for detention if due to the wilful default of the Tugowner.	75 76 77
(b) Should the Tugowner anticipate that the Tug will not be ready, he shall notify the Hirer thereof without delay stating the expected date of the Tug's readiness and ask whether the Hirer will exercise his option to cancel. Such option to cancel must be exercised within forty-eight (48) hours after the receipt of the Tugowner's notice, otherwise the third day after the date stated in the Tugowner's notice shall be deemed to be the new agreed date to commence the towage in accordance with this Agreement.	78 79 80 81 82
6. Ice Clause for Tug and Tow	83
(a) The Tug shall not be obliged to force ice, but subject to the Tugowner's prior approval having regard to its size, construction and class, it may follow ice-breakers.	84 85
(b) The Tug shall not be required to enter or remain in any ice bound port or area, nor any port or area where lights, lightships, markers or buoys have been, or are about to be withdrawn by reason of ice, nor where on account of ice there is, in the Tugmaster's sole discretion, a risk that, in the ordinary course of events, the Tug will not be able to safely enter the place of departure to connect to the Tow, or depart from the place of departure with the Tow. In addition, if, on account of ice, the Tugmaster in his sole discretion considers it unsafe to proceed to, or to enter, the place of destination for fear of the Tug and/or Tow being frozen in and/or damaged, he shall be at liberty to proceed to the nearest ice free port or safe place and there await the Hirer's instructions.	86 87 88 89 90 91 92 93
(c) Any delay, deviation or additional expenses arising out of or in connection with the performance of this Agreement caused by or resulting from ice shall be for the Hirer's account and the Tug shall remain on Hire.	94 95 96

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(d)	Any additional insurance premiums and/or calls required by the Tug's insurers due to the Tug entering or remaining in any ice bound port or area shall be for the Hirer's account.	97 98
7.	Additional Charges and Extra Costs	99
(a)	The Hirer shall appoint his agents at the place of departure and place of destination and ports of call or refuge and shall provide such agents with adequate funds as required.	100 101
(b)	The Hirer shall bear and pay as and when they fall due:	102
(i)	All port expenses, pilotage charges, harbour and canal dues and all other expenses of a similar nature, including those incurred under the provisions of Clause 22(b) (Necessary Deviation), levied upon or payable in respect of the Tug and the Tow.	103 104 105
(ii)	All taxes, (other than those normally payable by the Tugowner in the country where he has his principal place of business and in the country where the Tug is registered) stamp duties or other levies payable in respect of or in connection with this Agreement or payments of hire or other sums payable under this Agreement or services to be performed under or in pursuance of this Agreement, any Customs or Excise duties and any costs, dues or expenses payable in respect of any necessary permits or licences.	106 107 108 109 110
(iii)	The cost of the services of any assisting tugs when deemed necessary by the Tugmaster or prescribed by Port or other Authorities.	111 112
(iv)	All costs and expenses necessary for the preparation of the Tow for towing (including such costs or expenses as those of raising the anchor of the Tow or tending or casting off any moorings of the Tow).	113 114
(v)	The cost of insurance of the Tow.	115
(c)	All taxes, charges, costs, and expenses payable by the Hirer shall be paid by the Hirer direct to those entitled to them. If, however, any such tax, charge, cost or expense is in fact paid by or on behalf of the Tugowner (notwithstanding that the Tugowner shall under no circumstances be under any obligation to make such payments on behalf of the Hirer) the Hirer shall reimburse the Tugowner on the basis of the actual cost to the Tugowner upon presentation of invoice.	116 117 118 119 120
8.	War Risk Escalation Clause	121
	The rate of hire is based and assessed on all war risk insurance costs applicable to the Tugowner in respect of the contemplated voyage in effect on the date of this Agreement. In the event of any subsequent increase or decrease in the actual costs, the Hirer or the Tugowner, as the case may be, shall reimburse to the other the amount of any increase or decrease in such war risk insurance costs.	122 123 124 125
9.	Interest	126
	If any amounts due under this Agreement are not paid when due, then interest shall accrue and shall be paid in accordance with the provisions of Box 39, on all such amounts until payment is received by the party to whom it is due.	127 128 129
10.	*Financial Security	130
	The Hirer undertakes to provide, if required by the Tugowner, security to the satisfaction of the Tugowner in the form and in the sum, at the place and at the time indicated in Box 40 as a guarantee for due performance of the Agreement. Such security shall be returned to the guarantor when the Hirer's financial obligations under this Agreement have been met in full. (*Optional, only applicable if Box 40 filled in).	131 132 133 134 135
11.	Place of Departure	136
(a)	The Tow shall be tendered to the Tugowner at the Place of Departure stated in Box 23.	137
(b)	The place of connection and departure shall always be safe and accessible for the Tug to enter, to operate in and for the Tug and Tow to leave and shall be a place where such Tug is permitted to commence the towage in accordance with any local or other rules, requirements or regulations and shall always be subject to the approval of the Tugowner which shall not be unreasonably withheld.	138 139 140 141

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12. Place of Destination	142
(a) The Tow shall be accepted and taken over by the Hirer immediately upon arrival at the Place of Destination stated in Box 25.	143 144
(b) The place of disconnection shall always be safe and accessible for the Tug and Tow to enter, to operate in, and for the Tug to leave and shall be a place where such Tug is permitted to redeliver the Tow in accordance with any local or other rules, requirements or regulations and shall always be subject to the approval of the Tugowner, which shall not be unreasonably withheld.	145 146 147 148
13. Riding crew	149
(a) Riding crew for the Tow, if so requested by the Hirer, shall be provided by the party stated in Box 29. The number of riding crew shall be as stated in Box 29. All costs and expenses for such personnel will be for the account of the Hirer and such personnel shall be at all times under the orders of the Tugmaster. If the riding crew are provided by the Tugowner the Hirer shall pay to the Tugowner the amount per man per day stated in Box 30. If the riding crew are provided by the Hirer they shall not be deemed to be the servants or agents of the Tugowner. Permission for the Hirer to provide a riding crew on the Tow as well as the composition and suitability of the riding crew shall always be in the discretion of the Tugowner.	150 151 152 153 154 155 156
(b) It shall be the Hirer's responsibility to provide the riding crew with suitable accommodation, food, fresh water, life saving appliances and all other requirements as necessary to comply with the laws and regulations of the Flag of the Tug and/or Tow and of the States through the territorial waters of which the Tug will pass or enter. It is a requirement that the members of the riding crew shall be able to speak and understand a language which is mutual to the Tug and Tow.	157 158 159 160 161
(c) In the event that the Tugowner provides a riding crew for the Tow for its own purposes, all costs and expenses for such personnel shall be for the account of the Tugowner.	162 163
14. Towing Gear and Use of Tow's Gear	164
(a) The Tugowner agrees to provide free of cost to the Hirer the use of all tow wires, bridles and other towing gear carried on board the Tug for the purpose of the towage or other services to be provided under this Agreement. The Tow shall be connected up in a manner within the discretion of the Tugmaster.	165 166 167
(b) The Tugowner may make reasonable use at his discretion of the Tow's gear, power, anchors, anchor cables, radio, communication and navigational equipment and all other appurtenances free of cost during and for the purposes of the towage or other services to be provided under this Agreement.	168 169 170
(c) The Hirer shall pay for the replacement of any towing gear and accessories should such equipment become lost, damaged or unserviceable during the service(s), other than as a result of the Tugowners' negligence.	171 172 173
15. Permits and Certification	174
(a) The Hirer shall arrange at his own cost and provide to the Tugowner all necessary licences, authorisations and permits required by the Tug and Tow to undertake and complete the contractual voyage together with all necessary certification for the Tow to enter or leave all or any ports of call or refuge on the contemplated voyage.	175 176 177 178
(b) Any loss or expense incurred by the Tugowner by reason of the Hirer's failure to comply with this Clause shall be reimbursed by the Hirer to the Tugowner and during any delay caused thereby the Tug shall remain on hire.	179 180 181
16. Tow-worthiness of the Tow	182
(a) The Hirer shall exercise due diligence to ensure that the Tow shall, at the commencement of the towage, be in all respects fit to be towed from the place of departure to the place of destination.	183 184
(b) The Hirer undertakes that the Tow will be suitably trimmed and prepared and ready to be towed at the time when the Tug arrives at the place of departure and fitted and equipped with such shapes, signals, navigational and other lights of a type required for the towage.	185 186 187
(c) The Hirer shall supply to the Tugowner or the Tugmaster, on the arrival of the Tug at the place of departure a certificate of tow-worthiness for the Tow issued by a recognised firm of Marine Surveyors or Survey Organisation, provided always that the Tugowner shall not be under any obligation to perform the	188 189 190

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towage until in his discretion he is satisfied that the Tow is in all respects trimmed, prepared, fit and ready for towage but the Tugowner shall not unreasonably withhold his approval.	191 192
(d) No inspection of the Tow by the Tugowner shall constitute approval of the Tow's condition or be deemed a waiver of the foregoing undertakings given by the Hirer.	193 194
17. Seaworthiness of the Tug	195
The Tugowner will exercise due diligence to tender the Tug at the place of departure in a seaworthy condition and in all respects ready to perform the towage, but the Tugowner gives no other warranties, express or implied.	196 197 198
18. Substitution of Tugs	199
The Tugowner shall at all times have the right to substitute any tug or tugs for any other tug or tugs of adequate power (including two or more tugs for one, or one tug for two or more) at any time whether before or after the commencement of the towage or other services and shall be at liberty to employ a tug or tugs belonging to other tugowners for the whole or part of the towage or other service contemplated under this Agreement. Provided however, that the main particulars of the substituted tug or tugs shall be subject to the Hirer's prior approval, but such approval shall not be unreasonably withheld.	200 201 202 203 204 205
19. Salvage	206
(a) Should the Tow break away from the Tug during the course of the towage service, the Tug shall render all reasonable services to re-connect the towline and fulfil this Agreement without making any claim for salvage.	207 208 209
(b) If at any time the Tugowner or the Tugmaster considers it necessary or advisable to engage salvage services from any vessel or person on behalf of the Tug or Tow, or both, the Hirer hereby undertakes and warrants that the Tugowner or his duly authorised servant or agent including the Tugmaster have the full actual authority of the Hirer to accept such services on behalf of the Tow on any reasonable terms. Where circumstances permit the Tugowner shall consult with the Hirer on the need for salvage services for the Tow.	210 211 212 213 214
20. Termination by the Hirer	215
(a) At any time prior to the departure of the Tow from the place of departure the Hirer may terminate this Agreement upon payment of the termination fee set out in Box 42. If termination takes place whilst the Tug is en route to the place of departure or after the Tug has arrived at or off the place of departure then in addition to the said termination fee the Hirer shall pay any additional amounts due under this Agreement.	216 217 218 219
(b) In the event that the towage operation is terminated after departure from the place of departure, but before the Tow arrives at the place of destination without fault on the part of the Tugowner, his servants or agents, the Tugowner shall be entitled to be paid, and if already paid to retain, all sums payable according to Box 33 and any other amounts due under this Agreement. The above amounts are in addition to any damages the Tugowner may be entitled to claim for breach of this Agreement.	220 221 222 223 224
21. Termination by the Tugowner	225
(a) The Tugowner may without prejudice to any other remedies he may have, withdraw from and terminate this Agreement and leave the Tow in a place where the Hirer may take repossession of it and be entitled to payment of cancellation fee or hire, whichever is the greater, and all other payments due under this Agreement, upon any one or more of the following grounds:	226 227 228 229
(i) If there is any delay or delays (other than delay caused by the Tug) at the place of departure exceeding in aggregate fourteen (14) days.	230 231
(ii) If there is any delay or delays (other than a delay caused by the Tug) at any port or place of call or refuge exceeding in aggregate fourteen (14) days.	232 233
(iii) If the financial security as may be required according to Box 40 is not given within seven (7) running days of the Tugowner's request to provide security.	234 235
(iv) If the Hirer has not accepted the Tow within seven (7) running days of arrival at the place of destination.	236
(v) If any amount payable under this Agreement has not been paid within seven (7) running days of the date such sums are due.	237 238

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(b) Before exercising his option of withdrawing from this Agreement as aforesaid, the Tugowner shall give the Hirer 48 hours' notice of his intention so to withdraw.	239 240
22. Necessary Deviation	241
(a) If the Tug during the course of the towage or other service under this Agreement puts into a port or place or seeks shelter or is detained or deviates from the original route as set out in Box 26 because either the Tugowner or Tugmaster reasonably consider	242 243 244
(i) that the Tow is not fit to be towed; or	245
(ii) the towing connection requires rearrangement; or	246
(iii) repairs or alterations to or additional equipment for the Tow are required to safeguard the venture and enable the Tow to be towed to destination; or	247 248
(iv) it would not be prudent to do otherwise on account of weather conditions actual or forecast; or	249
because of any other good and valid reason outside the control of the Tugowner or Tugmaster, or because of any delay caused by or at the request of the Hirer, this Agreement shall remain in full force and effect.	250 251
(b) The Tug shall at all times be at liberty to go to the assistance of any vessel in distress for the purpose of saving life or property or to call at any port or place for bunkers, repairs, supplies, or any other necessities or to land disabled seamen, but if towing the Tug shall leave the Tow in a safe place and during such period this Agreement shall remain in full force and effect, including the provisions of Clause 7(b)(i), but any period so spent by the Tug in fulfilling or attempting to fulfil the purposes permitted by this sub-paragraph other than for normal replenishment of bunkers or fresh water or supplies shall not entitle the Tugowner to recover from the Hirer the Daily Rate of Hire for the said period.	252 253 254 255 256 257 258
(c) Any deviation howsoever or whatsoever by the Tug or by the Tugowner not expressly permitted by the terms and conditions of this Agreement shall not amount to a repudiation of this Agreement and the Agreement shall remain in full force and effect notwithstanding such deviation, save that no hire shall be paid for the period of such deviation, and shall be without prejudice to any other remedies which the Hirer may have against the Tugowner.	259 260 261 262 263
23. Liability and Indemnity	264
(a)	265
(i) The Tugowner will indemnify the Hirer in respect of any liability adjudged due or claim reasonably compromised arising out of injury or death of any of the following persons, occurring during the towage or other service hereunder, from arrival of the Tug at the pilot station or customary waiting place or anchorage at the Place of Departure (whichever is sooner), until disconnection at the Place of Destination, however such geographic and/or time limits shall not apply to sub-clause 25(a)(i)(2) below:	266 267 268 269 270
(1) The Master and members of the crew of the Tug and any other servant or agent of the Tugowner;	271
(2) The members of the riding crew provided by the Tugowner or any other person whom the Tugowner provides on board the Tow;	272 273
(3) Any other person on board the Tug who is not a servant or agent of the Hirer or otherwise on board on behalf of or at the request of the Hirer.	274 275
(ii) The Hirer will indemnify the Tugowner in respect of any liability adjudged due or claim reasonably compromised arising out of injury or death occurring during the towage or other service hereunder of any of the following persons:	276 277 278
(1) The Master and members of the crew of the Tow and any other servant or agent of the Hirer;	279
(2) Any other person on board the Tow for whatever purpose except the members of the riding crew or any other persons whom the Tugowner provides on board the Tow pursuant to their obligations under this Agreement.	280 281 282

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(b)	283
(i) The following shall be for the sole account of the Tugowner without any recourse to the Hirer, his servants, or agents, whether or not the same is due to any breach of contract, negligence or any other fault on the part of the Hirer, his servants or agents:	284 285 286
(1) Save for the provisions of Clause 14 (c), loss or damage of whatsoever nature, howsoever caused to or sustained by the Tug or any property on board the Tug.	287 288
(2) Loss or damage of whatsoever nature caused to or suffered by third parties or their property by reason of contact with the Tug or obstruction created by the presence of the Tug.	289 290
(3) Loss or damage of whatsoever nature suffered by the Tugowner or by third parties in consequence of the loss or damage referred to in (1) and (2) above.	291 292
(4) Any liability in respect of wreck removal or in respect of the expense of moving or lighting or buoying the Tug or in respect of preventing or abating pollution originating from the Tug.	293 294
The Tugowner will indemnify the Hirer in respect of any liability adjudged due to a third party or any claim by a third party reasonably compromised arising out of any such loss or damage. The Tugowner shall not in any circumstances be liable for any loss or damage suffered by the Hirer or caused to or sustained by the Tow in consequence of loss or damage howsoever caused to or sustained by the Tug or any property on board the Tug.	295 296 297 298 299
(ii) The following shall be for the sole account of the Hirer without any recourse to the Tugowner, his servants or agents, whether or not the same is due to any breach of contract (including as to the seaworthiness of the Tug), negligence or any other fault on the part of the Tugowner, his servants or agents:	300 301 302
(1) Loss or damage of whatsoever nature, howsoever caused to or sustained by the Tow.	303
(2) Loss or damage of whatsoever nature caused to or suffered by third parties or their property by reason of contact with the Tow or obstruction created by the presence of the Tow.	304 305
(3) Loss or damage of whatsoever nature suffered by the Hirer or by third parties in consequence of the loss or damage referred to in (1) and (2) above.	306 307
(4) Any liability in respect of wreck removal or in respect of the expense of moving or lighting or buoying the Tow or in respect of preventing or abating pollution originating from the Tow.	308 309
The Hirer will indemnify the Tugowner in respect of any liability adjudged due to a third party or any claim by a third party reasonably compromised arising out of any such loss or damage but the Hirer shall not in any circumstances be liable for any loss or damage suffered by the Tugowner or caused to or sustained by the Tug in consequence of loss or damage howsoever caused to or sustained by the Tow.	310 311 312 313
(c) Save for the provisions of Clauses 15, (Permits & Certification); 16, (Tow-worthiness of the Tow); 17, (Seaworthiness of the Tug); 20 (Termination by the Hirer) and 21 (Termination by the Tugowner), neither the Tugowner nor the Hirer shall be liable to the other party for	314 315 316
(i) any loss of profit, loss of use or, loss of production whatsoever and whether arising directly or indirectly from the performance or non performance of this Agreement, and whether or not the same is due to negligence or any other fault on the part of either party, their servants or agents, or	317 318 319
(ii) any consequential loss or damage for any reason whatsoever, whether or not the same is due to any breach of contract, negligence or any other fault on the part of either party, their servants or agents.	320 321
(d) Notwithstanding any provisions of this Agreement to the contrary, the Tugowner shall have the benefit of all limitations of, and exemptions from, liability accorded to the owners or chartered owners of vessels by any applicable statute or rule of law for the time being in force and the same benefits are to apply regardless of the form of signatures given to this Agreement.	322 323 324 325
24. Himalaya Clause	326
All exceptions, exemptions, defences, immunities, limitations of liability, indemnities, privileges and conditions	327

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granted or provided by this Agreement or by any applicable statute rule or regulation for the benefit of the Tugowner or Hirer shall also apply to and be for the benefit of:	328 329
(a) demise charterers, sub-contractors, operators, Master, officers and crew of the Tug or Tow and,	330
(b) all bodies corporate, parent of, subsidiary to, affiliated with or under the same management as either the Tugowner or Hirer, as well as all directors, officers, servants and agents of the same and	331 332
(c) all parties performing services within the scope of this Agreement for or on behalf of the Tug or Tugowner or Hirer as servants, agents and sub-contractors of such parties.	333 334
The Tugowner or Hirer shall be deemed to be acting as agent or trustee of and for the benefit of all such persons, entities and vessels set forth above but only for the limited purpose of contracting for the extension of such benefits to such persons, bodies and vessels.	335 336 337
25. War and Other risks	338
(a) For the purpose of this Clause, the words:	339
(i) "War Risks" shall include any actual, threatened or reported:	340
war; act of war; civil war; hostilities; revolution; rebellion; civil commotion; warlike operations; laying of mines; acts of piracy; acts of terrorists; acts of hostility or malicious damage; blockades (whether imposed against all vessels or imposed selectively against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever); by any person, body, terrorist or political group, or the Government of any State whatsoever, which, in the reasonable judgement of the Master and/or the Tugowners, may be dangerous or are likely to be or to become dangerous to the Tug, her Tow, crew or other persons on board the Tug or Tow.	341 342 343 344 345 346 347
(ii) "Other Risks" shall include any actual, threatened or reported:	348
arrest or restraint of princes, rulers or people; insurrections; riots or civil commotions; disturbances; acts of God; epidemics; quarantine; labour troubles; labour obstructions; strikes; lock-outs; embargoes; seizure of the Tow under legal process or for any other cause outside the control of the Tugowner as a result of which it would be impossible or unsafe or commercially impracticable for the Tug or Tow or both to enter or attempt to enter or leave or attempt to leave the place of departure or any port or place of call or refuge or to reach or attempt to reach or enter the port or place of destination of the Tow and there deliver the Tow and leave again, all of which safely and without unreasonable delay, the Tug may leave the Tow or any part thereof at the place of departure or any other port or place where the Hirer may take repossession and this shall be deemed a due fulfilment by the Tugowner of this Agreement and any outstanding sums and all extra costs of delivery at such place and any storage costs incurred by the Tugowner shall thereupon become due and payable by the Hirer.	349 350 351 352 353 354 355 356 357 358 359
(b) The Tug, unless prior written consent of the Tugowners has first been obtained, shall not be required to continue to or through, any port, place, area or zone (whether of land or sea), or any waterway or canal, where it appears that the Tug, her Tow, the crew or other persons on board the Tug or Tow, in the reasonable judgement of the Master and/or the Tugowners, may be, or are likely to be, exposed to War or Other Risks. Should the Tug be within any such place as aforesaid, which only becomes subject to War or Other Risks, or is likely to be or to become subject to War or Other Risks, after her entry into it, she shall be at liberty to leave such place or area.	360 361 362 363 364 365 366
(c)	367
(i) The Tugowners may effect war risks insurance in respect of the Hull and Machinery of the Tug and their other interests (including, but not limited to, loss of earnings and detention, the crew and their Protection and Indemnity Risks), and the premiums and/or calls therefor shall be for their account.	368 369 370
(ii) If the Underwriters of such insurance should require payment of additional premiums and/or calls because, pursuant to the Hirers' orders, the Tug is within, or is due to enter and remain within, or pass through any area or areas which are specified by such Underwriters as being subject to additional premiums because of War Risks, then the actual additional premiums and/or calls paid shall be reimbursed by the Hirers to the Tugowners at the same time as the next payment of hire is due, or upon delivery of the Tow, whichever occurs first.	371 372 373 374 375 376

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(d) If the Tugowners become liable under the terms of employment to pay to the crew of the Tug, or any riding crew of the Tow, any War Risk related bonus or additional wages in respect of sailing into a War Risk area, then the actual War Risk related bonus or additional wages paid shall be reimbursed to the Tugowners by the Hirers at the same time as the next payment of hire is due, or upon delivery of the Tow, whichever occurs first.	377 378 379 380 381
(e) The Tug shall have liberty:-	382
(i) to comply with all orders, directions, recommendations or advice as to departure, arrival, routes, sailing in convoy, ports of call, stoppages, destinations, discharge of cargo, delivery, or in any other way whatsoever, which are given by the Government of the Nation under whose flag the Tug sails, or other Government to whose laws the Tugowners are subject, or any other Government, body or group whatsoever acting with the power to compel compliance with their orders or directions;	383 384 385 386 387
(ii) to comply with the orders, directions or recommendations of any war risks underwriters who have the authority to give the same under the terms of the war risks insurance;	388 389
(iii) to comply with the terms of any resolution of the Security Council of the United Nations, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Tugowners are subject, and to obey the orders and directions of those who are charged with their enforcement;	390 391 392 393
(iv) to call at any other port to change the crew or any part thereof or other persons on board the Tug or Tow when there is reason to believe that they may be subject to internment, imprisonment or other sanctions.	394 395
(f) If the performance of this Agreement or the voyage to the place of departure would in the ordinary course of events require the Tug and/or Tow to pass through or near to an area where after this Agreement is made there is or there appears to be danger of such area being blocked or passage through being restricted or made hazardous by the War or Other Risks then:	396 397 398 399
(i) The Tug shall not be required to pass through any blockade, whether such blockade be imposed on all vessels, or is imposed selectively in any way whatsoever against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever, or to proceed to an area where she shall be subject, or is likely to be subject to search and/or confiscation.	400 401 402 403
(ii) If the Tug has not entered such area en route to the place of departure, or having entered has become trapped therein for a period of more than fourteen (14) days, either party hereto shall be entitled to terminate this Agreement by giving notice in which event, save for liabilities already accrued, neither party shall be under any further liability to the other but the Tugowner shall not be bound to repay to the Hirer any payments already made and all amounts due shall remain payable.	404 405 406 407 408
(iii) If the Tug and Tow whilst en route to the place of destination have not entered such area during the course of the towage or other service the Hirer shall continue to pay the Daily Rate of Hire for every day by which the towage is prolonged by reason of waiting for such area to become clear and/or safe and/or by reason of proceeding by a longer route to avoid or pass such area in safety.	409 410 411 412
(iv) If the Tug and Tow whilst en route to the place of destination have become trapped in such area during the course of the towage or other service either party shall, after a period of fourteen (14) days from the commencement of such trapping, be entitled to terminate this Agreement by telex, cable or other written notice, in which event, save for liabilities already accrued, neither party shall be under any further liability to the other but the Tugowner shall not be bound to repay to the Hirer any payment already made and all amounts due shall remain payable.	413 414 415 416 417 418
(g) If in accordance with their rights under the foregoing provisions of this Clause, the Tugowners refuse to proceed from the place of departure or to the place of destination, or any one or more of them, they shall immediately notify the Hirers requesting them to nominate a place for redelivery of the Tow. Failing such nomination by the Hirers within 48 hours of the receipt of such notice and request, the Tugowners may redeliver the Tow at any place where the Hirer can take repossession of the Tow.	419 420 421 422 423
(h) If in compliance with any of the provisions of this Clause anything is done or not done, such shall not be deemed a deviation, but shall be considered as due fulfilment of this Agreement.	424 425

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26. Lien	426
Without prejudice to any other rights which he may have, whether <i>in rem</i> or <i>in personam</i> , the Tugowner, by himself or his servants or agents or otherwise shall be entitled to exercise a possessory lien upon the Tow in respect of any sum howsoever or whatsoever due to the Tugowner under this Agreement and shall for the purpose of exercising such possessory lien be entitled to take and/or keep possession of the Tow; provided always that the Hirer shall pay to the Tugowner by himself or his servants or agents or otherwise all reasonable costs and expenses and all costs of recovering same, including legal fees, howsoever or whatsoever incurred by or on behalf of the Tugowner by himself or his servants or agents or otherwise in exercising or attempting or preparing to exercise such lien and the Tugowner by himself or his servants or agents or otherwise shall be entitled to receive from the Hirer the Tug's Daily Rate of Hire throughout any reasonable delay to the Tug resulting therefrom.	427 428 429 430 431 432 433 434 435 436
27. Warranty of Authority	437
If at the time of making this Agreement or providing any service under this Agreement other than towing at the request, express or implied, of the Hirer, the Hirer is not the Owner of the Tow referred to in Box 4, the Hirer expressly represents that he is authorised to make and does make this Agreement for and on behalf of the Owner of the said Tow and agrees that both the Hirer and the Owner of the Tow are bound jointly and severally by the provisions of this Agreement.	438 439 440 441 442
28. General	443
(a) If any one or more of the terms, conditions or provisions in this Agreement or any part thereof shall be held to be invalid, void or of no effect for any reason whatsoever, the same shall not affect the validity of the remaining terms, conditions or provisions which shall remain and subsist in full force and effect.	444 445 446
(b) For the purpose of this Agreement unless the context otherwise requires the singular shall include the plural and vice versa.	447 448
29. Time for Suit	449
(a) Save for the indemnity provisions under Clause 23 (Liability and Indemnity) of this Agreement, any claim which may arise out of or in connection with this Agreement or of any towage or other service to be performed hereunder shall be notified within 6 months of delivery of the Tow or of the termination of the towage or other service for any reason whatever, and any suit shall be brought within one year of the time when the cause of action first arose. If either of these conditions is not complied with the claim and all rights whatsoever and howsoever shall be absolutely barred and extinguished.	450 451 452 453 454 455
(b) Any extension of time granted by the Tugowner to the Hirer or any indulgence shown relating to the time limits set out in this Agreement shall not be a waiver of the Tugowner's right under this Agreement to act upon the Hirer's failure to comply with the time limits.	456 457 458
30. BIMCO ISPS/MTSA Clause 2005	459
(a)	460
(i) The Tugowner shall comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) relating to the Tug and "the Company" (as defined by the ISPS Code). If trading to or from the United States or passing through United States waters, the Tugowner shall also comply with the requirements of the US Maritime Transportation Security Act 2002 (MTSA) relating to the Vessel and the "Owner" (as defined by the MTSA).	461 462 463 464 465 466
(ii) Upon request the Tugowner shall provide the Hirer with a copy of the relevant International Ship Security Certificate (or the Interim International Ship Security Certificate) and the full style contact details of the Company Security Officer (CSO).	467 468 469
(iii) Loss, damages, expense or delay (excluding consequential loss, damages, expense or delay) caused by failure on the part of the Tugowner or "the Company"/"Owner" to comply with the requirements of the ISPS Code/MTSA or this Clause shall be for the Tugowner's account, except as otherwise provided in this Agreement.	470 471 472 473
(b)	474
(i) The Hirer shall provide the Tugowner and the Tugmaster with their full style contact details and, upon request, any other information the Tugowner requires to comply with the ISPS Code/MTSA. Where sub-letting is permitted under the terms of this Agreement, the Hirer shall ensure that the contact details of all	475 476 477

PART II
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sub-hirers are likewise provided to the Tugowner and the Tugmaster. Furthermore, the Hirer shall ensure that all sub-lets they enter into during the period of this Agreement contain the following provision:	478 479
<i>"The Hirer shall provide the Tugowner with their full style contact details and, where sub-letting is permitted under the terms of the agreement, shall ensure that the contact details of all sub-hirers are likewise provided to the Tugowners".</i>	480 481 482
(ii) Loss, damages, expense or delay (excluding consequential loss, damages, expense or delay) caused by failure on the part of the Hirer to comply with this Clause shall be for the Hirer's account, except as otherwise provided in this Agreement.	483 484 485
(c) Notwithstanding anything else contained in this Agreement, all delay, costs or expenses whatsoever arising out of or related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code/MTSA including, but not limited to, security guards, launch services, vessel escorts, security fees or taxes and inspections, shall be for the Hirer's account, unless such delay, costs or expenses result solely from the negligence of the Tugowner, Tugmaster or crew. All measures required by the Tugowner to comply with the Ship Security Plan shall be for the Tugowner's account.	486 487 488 489 490 491
(d) If either party makes any payment which is for the other party's account according to this Clause, the other party shall indemnify the paying party.	492 493
31. BIMCO Dispute Resolution Clause	494
(a) *This Agreement shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced. The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.	495 496 497 498 499 500 501 502 503 504 505 506 507 508
Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.	509 510
In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.	511 512 513
(b) *This Agreement shall be governed by and construed in accordance with Title 9 of the United States Code and the Maritime Law of the United States and any dispute arising out of or in connection with this Agreement shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgment may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.	514 515 516 517 518 519
In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. current at the time when the arbitration proceedings are commenced.	520 521 522 523
(c) *This Agreement shall be governed by and construed in accordance with the laws of the place mutually agreed by the parties and any dispute arising out of or in connection with this Agreement shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there.	524 525 526
(d) Notwithstanding (a), (b) or (c) above, the parties may agree at any time to refer to mediation any difference	527

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and/or dispute arising out of or in connection with this Agreement.	528
In the case of a dispute in respect of which arbitration has been commenced under (a), (b) or (c) above, the following shall apply:	529 530
(i) Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the "Mediation Notice") calling on the other party to agree to mediation.	531 532 533
(ii) The other party shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.	534 535 536 537 538 539
(iii) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties.	540 541 542
(iv) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest.	543 544
(v) Either party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.	545 546 547
(vi) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator's costs and expenses.	548 549
(vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.	550 551 552
<i>(Note: The parties should be aware that the mediation process may not necessarily interrupt time limits.)</i>	553
(e) If Box 43 is not appropriately filled in, sub-clause (a) of this Clause shall apply. Sub-clause (d) shall apply in all cases.	554 555
<i>*Note: Sub-clauses (a), (b) and (c) are alternatives; indicate alternative agreed in Box 43.</i>	556
32. Security for Claims	557
Either party shall have the option to bring proceedings <i>in rem</i> , but only to obtain security or other similar remedy for claims arising under this Agreement against any vessel or property owned by the other party in any state or jurisdiction where such vessel or property may be found.	558 559 560
33. BIMCO Notices Clause	561
(a) All notices given by either party or their agents to the other party or their agents in accordance with the provisions of this Agreement shall be in writing.	562 563 564
(b) For the purposes of this Agreement, "in writing" shall mean any method of legible communication. A notice may be given by any effective means including, but not limited to, cable, telex, fax, e-mail, registered or recorded mail, or by personal service.	565 566 567

**ANNEX A (VESSEL SPECIFICATION)
INTERNATIONAL OCEAN TOWAGE AGREEMENTS
CODENAMES: TOWCON 2008/TOWHIRE 2008**

1. General	
(a) Vessel's name	Previous name(s):
(b) Builder:	Year:
(c) Type:	Modification(s):
(d) Classification and Society:	
(e) Flag:	Port of registry:
(f) Date of next scheduled drydocking:	
(g) LR/IMO number:	

2. Performance			
(a) Bollard pull (tonnes):		Certificate date:	
(b) Speed/Consumption (in ballast). Daily fuel consumption in fair weather, per 24 hours:			
Maximum speed:	knots	tonnes plus	litres lubeoil
Economic speed:	knots	tonnes plus	litres lubeoil
Standby (main engines secured):		tonnes plus	litres lubeoil
(c) Type(s) and grade of fuel and lubeoil used:			

**ANNEX A (VESSEL SPECIFICATION)
 INTERNATIONAL OCEAN TOWAGE AGREEMENTS
 CODENAMES: TOWCON 2008/TOWHIRE 2008**

3. Dimensions and capacities		
(a) L.O.A. (metres):	Breadth (metres):	Depth (metres):
Max draught, metres:		Minimum draught, metres:
(b) Deadweight (metric tonnes):	(c) GT/NT:	
(d) Suez/Panama tonnages:	Certificate(s):	
(e) Tank capacities (cubic metres):		
Fuel maximum:		
Fresh water:		

SAMPLE COPY

**ANNEX A (VESSEL SPECIFICATION)
INTERNATIONAL OCEAN TOWAGE AGREEMENTS
CODENAMES: TOWCON 2008/TOWHIRE 2008**

4. Machinery
(a) BHP/Number of engines:
(b) Engine builder:
(c) Generators:
(d) Bow thruster(s):
(e) Stern thruster(s):
(f) Propellers/Rudders:

SAMPLE COPY

**ANNEX A (VESSEL SPECIFICATION)
 INTERNATIONAL OCEAN TOWAGE AGREEMENTS
 CODENAMES: TOWCON 2008/TOWHIRE 2008**

5. Towing equipment	
(a) (i) Towing winches (type/make):	
(ii) Stern roller:	
(iii) Shark jaws:	(iv) Towing pins:
(b) Towing wires and equipment:	
(i) Towing wires and equipment:	(ii) Certificate numbers and dates:
(c) Main tow wires:	
(d) Spare tow wires(s) (state if on/off winch):	
(e) Pennants, chains, bridles and other towing equipment:	

SAMPLE COPY

**ANNEX A (VESSEL SPECIFICATION)
INTERNATIONAL OCEAN TOWAGE AGREEMENTS
CODENAMES: TOWCON 2008/TOWHIRE 2008**

6. Navigation and communication equipment:			
Radar 1:		Radar 2:	
DGPS navigator:		AIS:	
SSAS:		ECDIS:	
Chart plotter:			
Echo sounder:		Gyro compass:	
Magnetic compass:		Speed log:	
SSB:		VHF:	
GMDSS:			
Satcom:	Tel:	Fax:	E-mail:
Mobile phone(s):			
Other e.g., Navtex:			

**ANNEX A (VESSEL SPECIFICATION)
 INTERNATIONAL OCEAN TOWAGE AGREEMENTS
 CODENAMES: TOWCON 2008/TOWHIRE 2008**

7. Fire fighting equipment:	
(a) Class:	Water spray.
(b) Portable:	
(c) Monitors:	

8. Accommodation:	
(a) Crew:	(b) Passengers:
(c) Cabins:	(d) Air conditioned (yes/no)
(e) Heating:	
(f) Hospital:	

9. Standby/Rescue and safety equipment:
Lifeboat(s)/Workboat:
Zodiac/RIB:
Survival suits and equipment:

ANNEX 2
BIMCO WRECKHIRE CONTRACT

- I. Additional clauses from Schedule C are incorporated herein.



BIMCO



**INTERNATIONAL
SALVAGE UNION**

WRECKHIRE 2010

INTERNATIONAL WRECK REMOVAL AND
MARINE SERVICES AGREEMENT (DAILY HIRE)

PART I

First published 1993, Revised 1999 and 2010
Approved by the International Salvage Union (ISU)

Printed by BIMCO's Idea

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International Salvage Union (ISU)

1. Place and Date of Agreement	
2. Contractor/Place of Business (Cl. 1)	3. Company/Place of Business (Cl. 1)
4. Vessel Specifications (Cl. 1, 2, 4)	
(i) Name	(ii) Flag
(iii) IMO Number	(iv) Place of Registry
(v) Length/Beam/Depth	(vi) Maximum Draft
(vii) GT/NT/DWT	(viii) Details and Nature of Cargo
(ix) P&I Club/insurer(Cl. 23 (b))	(x) Any other Vessel details relevant to this Agreement
5. Condition of Vessel (Cl. 2, 4)	6. Position of Vessel and Condition of Worksite (Cl. 1, 2, 4)
7. Nature of Services (Cl. 1, 2, 4, 10(c))	8. Place of Delivery and/or Disposal of Vessel (Cl.9(a), 9(c),12)
(i) Nature of services:	10. Bonus payment/Reduced hire (Cl. 11, 12) (i) Amount of Bonus (state either total amount or percentage of the total payable under Agreement) (ii) Full bonus (state applicable date or commencement date/event and subsequent period in days for full bonus) (iii) Pro rata bonus/reduced hire (state applicable date or commencement date/event and subsequent period in days for pro rata bonus after which reduced hire to apply)
(ii) Compliance with orders of competent authorities (state party to obtain confirmation):	
9. Extra costs of disposal of Vessel(Cl. 14) (i) state which party is responsible for costs and/or division between the parties: (ii) handling charge, if applicable (state percentage):	
11. Payment and Rates of Hire (Cl. 7, 8(a), 8 (c), 10(a), 12)	
(i) Daily Working Rate for Craft and Equipment (Cl.10(a))	(ii) Daily Working Rate for Personnel (Cl.10(a))
(iii) Daily Standby Rate for Craft and Equipment (Cl. 7)	(iv) Daily Standby Rate for Personnel (Cl. 7)
(v) Reduced Daily Rates of Hire (Cl. 10(a), 12)	(vi) Payment of the appropriate Working Rate of Hire is to be made in advance every (state number of days)
(a) Daily Working Rate for Craft and Equipment:	(a) Commencing from:
(b) Daily Working Rate for Personnel:	(b) and continuing until:
(c) Daily Standby Rate for Craft and Equipment:	(c) with a minimum payment of hire in any event (state number of days hire)
(d) Daily Standby Rate for Personnel:	

continued

12. Payment Details (Cl. 10(e))	
(i) Currency	
(ii) Bank	(iii) Address
(iv) Account Number	(v) Account Name
13. Time of Payment and Interest (state period within which sums must be received by the Contractor and rate of interest per month) (Cl. 10(g))	14. Extra Costs (state percentage to be applied) (Cl. 13) (i) General handling charge (Cl. 13(a)-13(h)) (ii) Fuels and lubricants handling charge (Cl. 13(i))
15. Arbitration and Mediation (state Cl. 21 (a), 21 (b) or 21 (c) of Cl. 21 as agreed; if 21 (c) agreed, also state place of arbitration) (Cl. 21) (if not appropriately filled in, Clause 21(a) shall apply)	16. Number of Additional Clauses covering special provisions, if agreed

It is agreed that this Agreement shall be performed subject to the Terms and Conditions which consist of PART I, including Additional Clauses, if any agreed, and PART II, as well as Annex I (SCHEDULE OF PERSONNEL, CRAFT AND EQUIPMENT), Annex II (METHOD OF WORK AND ESTIMATED TIME SCHEDULE), and Annex III (CONTRACTOR'S DAILY REPORTS) or any other Annexes attached to this Agreement.

In the event of a conflict of terms and conditions, the provisions of PART I including Additional Clauses, if any agreed, shall prevail over those of PART II to the extent of such conflict but no further.

The undersigned warrant that they have full power and authority to sign this Agreement on behalf of the parties they represent.

Signature (for and on behalf of the Contractor)	Signature (for and on behalf of the Company)
---	--

Sample Copy

continued

WRECKHIRE 2010 - International Wreck Removal and Marine Services Agreement (Daily Hire)
PART II

1. Definitions	1
“Company” means the party stated in Box 3 .	2
“Contractor” means the party stated in Box 2 .	3
“Services” means the services stated in Box 7 .	4
“Vessel” means any vessel, craft, property, or part thereof, of whatsoever nature, including anything contained therein or thereon, such as but not limited to cargo and bunkers, as described in Box 4 .	5 6
“Worksite” means the position of the Vessel stated in Box 6 .	7
2. The Services	8
The Contractor agrees to exercise due care in rendering the Services which shall include, if applicable, the delivery and/or disposal of the Vessel. Insofar as it is not inconsistent with the nature of the Services to be rendered under this Agreement, the Contractor will also exercise due care to prevent and minimise damage to the environment.	9 10 11 12
The Contractor shall provide the Personnel, Craft and Equipment set out in Annex I of this Agreement which the Contractor deems necessary for the Services based upon the Specifications, Condition and Position of the Vessel and Worksite set out in Boxes 4, 5 and 6 .	13 14 15
The Contractor’s Method of Work and Estimated Time Schedule shall be as described in Annex II, utilising the Personnel, Craft and Equipment described in Annex I.	16 17
The Contractor shall consult with the Company if there is any need for substantial change in the Method of Work and/or Personnel, Craft or Equipment. (See Clause 4 (Change of Method of Work and/or Personnel, Craft and Equipment) hereof).	18 19 20
The Contractor shall provide the Company representative with daily reports in accordance with Annex III.	21
The party identified in Box 7(ii) of this Agreement shall be given all reasonable assistance by the other party in connection with obtaining confirmation from the competent authorities that the Company has complied with any orders issued by them.	22 23 24
3. Company Representative	25
The methods and procedures to be employed in the Services shall at all times be discussed and agreed between the Company and the Contractor.	26 27
The Company representative will be available during the performance of the Services with the full authority to act on behalf of the Company. The Company Representative shall have full and unfettered access at all times to the site and to the Contractor’s craft and equipment, unless such access is reasonably refused by the Contractor.	28 29 30 31
In addition, the Company will provide at its sole risk and expense sufficient officers or their equivalents, who are fully conversant with the cargo system and/or layout of the Vessel, and who should be in attendance when reasonably required during the performance of the Services in order to provide advice as and when requested by the Contractor.	32 33 34 35
4. Change of Method of Work and/or Personnel, Craft and Equipment	36
The Rates of Hire stated in Box 11 are based upon the Nature of the Services, as set out in Box 7 , Method of Work, and Personnel, Craft and Equipment, as set out in Annexes I and II, and the Description, Specifications, Position, Condition of the Vessel and the Worksite, as set out in Boxes 4, 5 and 6 .	37 38 39
(a) If before or during the performance of the Services, and without fault on the part of the Contractor, there is a substantial change in the Services, and/or in the Personnel, Craft and Equipment required to undertake the Services due to any misdescription by the Company or error in the specification provided by the Company, upon which the Contractor has relied, or a material change in the position and/or condition of the Vessel or the Worksite:	40 41 42 43 44
(i) The Contractor shall forthwith give notice in writing thereof to the Company and of the estimated additional costs to effect the Services;	45 46
(ii) Any and all substantial changes to the nature of such Services which are agreed between the Contractor and the Company shall be drafted into a variation order by the Company, which shall be signed by the parties;	47 48
(iii) The parties shall, without delay, consult each other to reach agreement on the amount of the additional costs to be added to the Rates of Hire and any agreement shall be incorporated into the variation order.	49 50
(b) If, as a result of a material change in the position and/or condition of the Vessel or the Worksite, subsequent to entering into this Agreement, the Services become easier to perform in terms of the work and/or Personnel, Craft and/or Equipment requirements, then:	51 52 53
(i) The Company may, subject to the provisions of Clause 10(d) hereof, seek a reduction in respect of the monies	54

WRECKHIRE 2010 - International Wreck Removal and Marine Services Agreement (Daily Hire)
PART II

payable pursuant to Clause 10(a) hereof;	55
(ii) All such material changes which are agreed by the Contractor and the Company shall be drafted into a variation order by the Company, which shall be signed by the parties;	56 57
(iii) The parties shall, without delay, consult each other to reach agreement on the amount of the costs to be deducted from the Rates of Hire and any agreement shall be incorporated into the variation order.	58 59
(c) Alternatively either party may refer the matter to expert evaluation in accordance with Clause 20 (Expert Evaluation) or to arbitration or mediation pursuant to Clause 21 (Arbitration and Mediation) for a decision on the reasonableness and quantum of such costs, or the claim by the Company for a reduction in remuneration, which shall be incorporated into the variation order.	60 61 62 63
In the event the matter is referred either to expert evaluation or arbitration or mediation the Contractor will continue to provide the Services, without prejudice to any claim for an adjustment to the remuneration.	64 65
5. Miscellaneous	66
(a) The Company shall arrange and pay for any marking of the Vessel and cautioning required. The Contractor shall arrange and pay for any marking or cautioning required in respect of its own equipment during the Services under this Agreement.	67 68 69
(b) The Contractor may make reasonable use of the Vessel's machinery, gear, equipment, anchors, chains, stores and other appurtenances during and for the purposes of these Services free of expense but shall not unnecessarily damage, abandon or sacrifice the same or any property which is the subject of this Agreement.	70 71 72
(c) Subject to approval of the Company which shall not be unreasonably withheld, and subject to it being permitted by the competent authorities, the Contractor shall be entitled to remove, dispose of or jettison cargo, or parts of the Vessel, or equipment from the Vessel if such action is considered by the Contractor to be reasonably necessary to perform the Services under this Agreement.	73 74 75 76
(d) The Company will use its best endeavours to provide the Contractor with such plans and drawings of the Vessel, cargo manifests, stowage plans, etc., and such other information as the Contractor may reasonably require for the performance of the Services.	77 78 79
6. Permits	80
All necessary licences, approvals, authorisations or permits required to undertake and complete the Services without let or hindrance shall be obtained and maintained by the Contractor (see Clause 13(e)).	81 82
The Company shall provide the Contractor with all reasonable assistance in connection with the obtaining of such licences, approvals, authorisations or permits.	83 84
7. Delays	85
(a) Adverse Weather and Other Delays	86
In the event that the Contractor is prevented from progressing the Services due to adverse weather or sea conditions or any other reason outside the Contractor's control, the Standby Rate (Box 11(iii) and (iv)) shall apply. In such circumstances where there is a partial reduction in Services, there shall be an adjustment to the Daily Working Rate between the Working Rate and the Standby Rate to be agreed between the Contractor and the Company Representative.	87 88 89 90 91
(b) Contractor's Equipment and/or Personnel	92
If there is a breakdown of any of the Contractor's equipment or non-availability of personnel, the Company Representative and the Contractor shall consult each other to reach agreement on the amount of time lost as a result, if any. The Standby Rate shall apply for the agreed period.	93 94 95
(c) Hired-in Equipment and/or Personnel	96
The Contractor shall use its best efforts to ensure that appropriate standby rates of hire are agreed in any sub-contract agreement in the event of breakdown of their equipment or non-availability of their personnel. If there is a breakdown of equipment or non-availability of personnel, the Company Representative and the Contractor shall consult each other to reach agreement on the amount of time lost as a result, if any. The sub-contract standby rate shall only apply for the agreed period if such standby rates have been agreed with sub-contractors. The Contractor shall pass on to the Company the benefit of any off-hire or reduction in the rate of hire in respect of equipment or personnel hired-in by the Contractor.	97 98 99 100 101 102 103
(d) The Company Representative shall promptly advise the Contractor of all periods when they consider that Standby Rates shall apply and shall at the same time confirm same in writing to the Company and the Contractor.	104 105 106
(e) Sub-clauses 7(b) and 7(c) shall not apply for individual delays unless such delays exceed six (6) consecutive hours when the Standby Rate shall apply to the whole agreed delay period.	107 108
(f) In the event that the parties cannot reach agreement in respect of the applicable reductions, in Sub-clauses 7(a) , 7(b) or 7(c) above to the Daily Rates of Hire or the duration of such reduction then the issue may	109 110

WRECKHIRE 2010 - International Wreck Removal and Marine Services Agreement (Daily Hire)
PART II

be referred to expert evaluation in accordance with Clause 20 (Expert Evaluation) or to arbitration or mediation pursuant to Clause 21 (Arbitration and Mediation).	111 112
8. Suspension or Termination	113
(a) The Company has the right to suspend or terminate the Services to be carried out under this Agreement at any time, provided always that notice of such suspension or termination is given to the Contractor in writing. In such event the Contractor is entitled to be paid all sums due at the time of suspension or termination in accordance with the provisions of Box 11 .	114 115 116 117
(b) Such suspension or termination of the Services will be carried out with all reasonable despatch by the Contractor, subject always to the safety of Personnel, Craft and Equipment involved in the Services. Any additional direct expenses arising as a consequence of the instructions to suspend or terminate the Services shall be for the account of the Company.	118 119 120 121
(c) If permission to suspend or terminate is not given by the competent authorities, the Contractor shall be paid by the Company at the appropriate rate set out in Box 11 for Personnel, Craft and Equipment during any standby period, and the Company shall be liable for the Contractor's reasonable and necessary costs of continuing with the Services.	122 123 124 125
9. Delivery and/or Disposal	126
(a) If applicable, the Vessel shall be accepted forthwith and taken over by the Company or its duly authorised representative at the Place of Delivery indicated in Box 8 . References to delivery or the Place of Delivery shall include disposal or the Place of Disposal, if applicable.	127 128 129
The Place of Delivery and/or Disposal shall always be safe and accessible for the Contractor's own or hired-in craft and the Vessel to enter and operate in and shall be a place where the Contractor is permitted by governmental or other authorities to deliver and/or dispose of the Vessel.	130 131 132
In the event the Vessel is not accepted forthwith by the Company or delivery is prevented or delayed by action of governmental or other authorities outside the control of the Contractor, all costs necessarily incurred by the Contractor from the moment of the tender for delivery shall be for the account of the Company, and the Rates of Hire shall continue to be payable to the Contractor.	133 134 135 136
(b) If the Company fails, on completion of the Services, to take delivery of the Vessel within five (5) days of the Contractor tendering written notice of delivery or, if in the opinion of the Contractor the Vessel is likely to deteriorate, decay, become worthless or incur charges whether for storage or otherwise in excess of its value, the Contractor may, without prejudice to any other claims the Contractor may have against the Company, without notice and without any responsibility whatsoever attaching to the Contractor, sell or dispose of the Vessel and apply the proceeds of sale in reduction of the sums due to the Contractor from the Company under this Agreement. Any remaining proceeds will be refunded to the Company.	137 138 139 140 141 142 143
In the event that such sale or other disposal of the Vessel fails to raise sufficient net funds to pay the monies due to the Contractor under the terms of this Agreement, then the Company shall remain liable to the Contractor for any such shortfall.	144 145 146
(c) Reference to delivery and/or disposal of the Vessel shall include parts of the Vessel and/or cargo and/or any other thing emanating from the Vessel and such delivery may take place at different times and different places (see Box 8).	147 148 149
10. Payment	150
(a) The Company shall pay the Contractor the Daily Working and Standby Rates of Hire for Personnel, Craft and Equipment set out in Box 11(i)-(iv) and, if applicable, Reduced Daily Rates of Hire in accordance with Box 11(v) .	151 152
(b) Such hire shall be fully and irrevocably earned on a daily basis and shall be non-returnable.	153
(c) Within 14 days of termination or completion of the Services set out in Box 7 the Contractor shall return any overpayments to the Company.	154 155
(d) All monies due and payable to the Contractor under this Agreement shall be paid without any discount, deduction, set-off, lien, claim or counterclaim.	156 157
(e) All payments to the Contractor shall be made in the currency and to the bank account stipulated in Box 12 .	158
(f) If any amount payable under this Agreement has not been paid within seven (7) days of the due date, or if the security required in accordance with Clause 15 (Security) is not provided within five (5) banking days following the request by the Contractor, then at any time thereafter the Contractor shall be entitled to terminate this Agreement without prejudice to the sums already due to the Contractor and to any further rights or remedies which the Contractor may have against the Company, provided always that the Contractor shall give the	159 160 161 162 163

WRECKHIRE 2010 - International Wreck Removal and Marine Services Agreement (Daily Hire)
PART II

Company at least three (3) working days' written notice of its intention to exercise this right.	164
(g) The Contractor shall promptly invoice the Company for all sums payable under this Agreement. If any sums which become due and payable are not actually received by the Contractor within the period specified in Box 13 , they shall attract interest in accordance with the rate set out in Box 13 .	165 166 167
11. Bonus	168
If the Contractor completes the Services to the satisfaction of the Company:	169
(a)	170
(i) before the date or within the period stated in Box 10(ii) , the Company shall pay the Contractor the bonus set out in Box 10(i) ; or	171 172
(ii) on or after the date or outside the period stated in Box 10(ii) , but before the date or within the period stated in Box 10(iii) , the Company shall pay the bonus set out in Box 10(i) reduced pro-rata on a daily basis from 100 per cent (100%) on the date or period stated in Box 10(ii) down to zero on or after the date or period stated in Box 10(iii) .	173 174 175 176
(b) Delays (Clause 7) shall not affect the dates or periods to be applied for the purposes of this Clause 11 .	177
12. Reduced Daily Rates of Hire	178
If the Contractor fails to complete the Services and, if applicable, deliver and/or dispose of the Vessel at the place(s) indicated in Box 8 within the period or on or before the date stated in Box 10(iii) , the Daily Rates of Hire shall be reduced in accordance with Box 11(v) . Delays (Clause 7) shall not affect the dates or periods to be applied for the purposes of this Clause 12 .	179 180 181 182
13. Extra Costs	183
The following shall be paid by the Company as and when they fall due:	184
(a) all port expenses, pilotage charges, harbour and canal dues and all other expenses of a similar nature levied upon or payable in respect of the Vessel and the Contractor's own or hired-in craft;	185 186
(b) the costs of the services of any assisting tugs when reasonably deemed necessary by the Contractor or prescribed by port or other authorities;	187 188
(c) all costs in connection with clearance, agency fees, visas, guarantees and all other expenses of such kind;	189
(d) all taxes and social security charges (other than those normally payable by the Contractor in the country where it has its principal place of business), stamp duties, or other levies payable in respect of or in connection with this Agreement, any Import - export dues and any customs or excise duties;	190 191 192
(e) all costs incurred in obtaining and maintaining licences, approvals, authorisations or permits required to undertake and complete the Services in accordance with Clause 6 (Permits);	193 194
(f) all costs incurred due to requirements of governmental or other authorities or unions over and above those costs which would otherwise be reasonably incurred by the Contractor in the execution of the Agreement;	195 196
(g) all reasonable costs of transportation of equipment and the travel and accommodation costs of Personnel identified in Annex I, (other than the crews of craft utilised in the Services);	197 198
(h) all costs incurred by the Contractor in respect of portable salvage equipment, materials, or stores which are lost, damaged or consumed during the Services;	199 200
(i) all costs in respect of fuels and lubricants consumed during the Services, unless included in the Daily Rates.	201
If any such costs are in fact paid by or on behalf of the Company by the Contractor, the Company shall reimburse the Contractor on the basis of the actual cost to the Contractor plus a handling charge of the percentage amount indicated in Box 14(i) for Clause 13(a) - (h) costs or Box 14(ii) for Clause 13(i) costs, upon presentation of invoice.	202 203 204 205
14. Extra Costs of disposal of Vessel	206
All extra costs incurred resulting from the disposal of the Vessel shall be for the account of the party stated in Box 9(i) . If the Company is the party stated in Box 9(i) and any such costs are paid by or on behalf of the Company by the Contractor, the Company shall reimburse the Contractor on the basis of the actual cost to the Contractor plus a handling charge of the percentage amount indicated in Box 9(ii) upon presentation of invoice.	207 208 209 210
15. Security	211
The Company shall provide on signing this Agreement an irrevocable and unconditional security in a form and amount as agreed between the parties.	212 213
If required by the Contractor and also in the event that initially no security is requested, the Company shall	214

WRECKHIRE 2010 - International Wreck Removal and Marine Services Agreement (Daily Hire)
PART II

provide security or further security in a form and amount as agreed between the parties for all or part of any amount which may be or become due under this Agreement. Such security shall be given on one or more occasions as and when reasonably required by the Contractor.	215 216 217
16. Liabilities	218
(a) The Contractor will indemnify and hold the Company harmless in respect of any liability adjudged due or claim reasonably compromised arising out of injury or death occurring during the Services hereunder to any of the following persons:	219 220 221
(i) any servant, agent or sub-contractor of the Contractor;	222
(ii) any other person at or near the site of the operations for whatever purpose on behalf or at the request of the Contractor.	223 224
(b) The Company will indemnify and hold the Contractor harmless in respect of any liability adjudged due or claim reasonably compromised arising from injury or death occurring during the Services hereunder to any of the following persons:	225 226 227
(i) any servant, agent or sub-contractor of the Company;	228
(ii) any other person at or near the site of the operations for whatever purpose on behalf or at the request of the Company.	229 230
(c) Neither the Company nor its servants, agents or sub-contractors shall have any liability to the Contractor for loss or damage of whatsoever nature sustained by the Contractor's owned or hired-in craft or equipment (excluding portable salvage equipment, materials or stores which are lost, damaged, or consumed during the Services), whether or not the same is due to breach of contract, negligence or any other fault on the part of the Company, its servants, agents or sub-contractors.	231 232 233 234 235
(d) Neither the Contractor nor its servants, agents or sub-contractors shall have any liability to the Company for loss or damage of whatsoever nature sustained by the Vessel, whether or not the same is due to breach of contract, negligence or any other fault on the part of the Contractor, its servants, agents or sub-contractors.	236 237 238
(e) Neither party shall be liable to the other party for:	239
(i) any loss of profit, loss of use or loss of production whatsoever and whether arising directly or indirectly from the performance or non-performance of this Agreement, and whether or not the same is due to negligence or any other fault on the part of either party, their servants, agents or sub-contractors; or	240 241 242
(ii) any consequential loss or damage for any reason whatsoever, whether or not the same is due to any breach of contract, negligence or any other fault on the part of either party, their servants, agents or sub-contractors.	243 244
17. Himalaya Clause	245
All exceptions, exemptions, defences, immunities, limitations of liability, indemnities, privileges and conditions granted or provided by this Agreement for the benefit of the Contractor or the Company shall also apply to and be for the benefit of their respective sub-contractors, operators, the Vessel's owners (if the Company is the demise/bareboat charterer), masters, officers and crews and to and be for the benefit of all bodies corporate parent of, subsidiary to, affiliated with or under the same management as either of them, as well as all directors, officers, servants and agents of the same and to and be for the benefit of all parties performing Services within the scope of this Agreement for or on behalf of the Contractor or the Company as servants, agents and sub-contractors of such parties. The Contractor or the Company shall be deemed to be acting as agent or trustee of and for the benefit of all such persons, entities and Vessels set forth above but only for the limited purpose of contracting for the extension of such benefits to such persons, bodies and Vessels.	246 247 248 249 250 251 252 253 254 255
18. Lien	256
Without prejudice to any other rights which the Contractor may have, whether <i>in rem</i> or <i>in personam</i> , the Contractor shall be entitled to exercise a possessory lien upon the Vessel in respect of any amount howsoever or whatsoever due to the Contractor under this Agreement and shall for the purpose of exercising such possessory lien be entitled to take and/or keep possession of the Vessel, provided always that the Company shall pay to the Contractor all reasonable costs and expenses howsoever or whatsoever incurred by or on behalf of the Contractor in exercising or attempting or preparing to exercise such lien.	257 258 259 260 261 262
19. Time for Suit	263
Any claim which may arise out of or in connection with this Agreement or any of the Services performed hereunder shall be notified to the party against whom such claim is made, within twelve (12) months of completion or termination of the Services hereunder, or within twelve (12) months of any claim by a third party, whichever is later. Any suit shall be brought within twelve (12) months of the notification to the party against whom the claim is made. If either of these conditions is not complied with, the claim and all rights whatsoever	264 265 266 267 268

WRECKHIRE 2010 - International Wreck Removal and Marine Services Agreement (Daily Hire)
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and howsoever shall be absolutely barred and extinguished.	269
20. Expert Evaluation	270
(a) If the parties are unable to agree the alteration to costs or rates under <u>Clause 4(a)</u> or <u>Clause 4(b)</u> or the adjustment to the Daily Working Rate or the time lost under <u>Clauses 7(a)</u> , <u>7(b)</u> or <u>7(c)</u> , then either party may request an expert evaluation in accordance with the following procedure:	271 272 273
(i) The party seeking the evaluation shall propose three (3) experts from the persons currently on the Panel of Special Casualty Representatives maintained by the Salvage Arbitration Branch of the Corporation of Lloyd's to the other party in writing having checked that the proposed experts are available and willing to be appointed. The other party may select one of the proposed experts by responding in writing within twenty-four (24) hours. The party seeking the evaluation will then, as soon as possible (and in any event in less than twelve (12) hours) appoint the expert selected by the other party or, if none has been selected, one of the three (3) experts proposed (hereinafter "the Expert").	274 275 276 277 278 279 280
(ii) Both parties shall provide short written statements to the Expert setting out their arguments within forty-eight (48) hours of their acceptance of instructions and shall provide copies of their statement to the other party.	281 282
(iii) The Expert shall, within seventy-two (72) hours of receipt of written statements, advise the parties in writing of the alteration to costs and/or rates or of the adjustment to the Daily Working Rate or time lost. The Expert may also provide short reasons explaining the evaluation.	283 284 285
(iv) The Expert's rate of remuneration shall be the applicable rate plus bonus as set from time to time by the SCOPIC Committee for a Salvage Master. The costs of the Expert shall be paid by the party seeking the expert evaluation, but such party shall then be entitled to recover fifty per cent (50%) of the Expert's fees from the other party.	286 287 288 289
(b) If the Expert's evaluation is not agreed by both parties, the Company shall in any event make payments to the Contractor calculated in accordance with the evaluation. Such payments shall be on a provisional basis and without prejudice to the parties' rights to seek a determination in accordance with <u>Clause 21</u> (Arbitration and Mediation).	290 291 292 293
21. Arbitration and Mediation	294
This <u>Clause 21</u> applies to any dispute arising under this Agreement.	295
(a) *This Agreement shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.	296 297 298 299
The reference shall be to a sole arbitrator ("Arbitrator"), to be selected by the first party claiming arbitration from the persons currently on the Panel of Lloyd's Salvage Arbitrators with a right of appeal from an award made by the Arbitrator to either party by notice in writing to the other within twenty-eight (28) days of the date of publication of the original Arbitrator's Award.	300 301 302 303
The Arbitrator on appeal shall be the person currently acting as Lloyd's Appeal Arbitrator.	304
No suit shall be brought before another Tribunal, or in another jurisdiction, except that either party shall have the option to bring proceedings to obtain conservative seizure or other similar remedy against any assets owned by the other party in any state or jurisdiction where such assets may be found.	305 306 307
Both the Arbitrator and Appeal Arbitrator shall have the same powers as an Arbitrator and an Appeal Arbitrator under LOF 2000 or any standard revision thereof, including a power to order a payment on account of any monies due to the Contractor pending final determination of any dispute between the parties hereto.	308 309 310
In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.	311 312 313
In cases where the claim or any counterclaim exceeds the sum agreed for the LMAA Small Claims Procedure and neither the claim nor any counterclaim exceeds the sum of US\$400,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Intermediate Claims Procedure current at the time when the arbitration proceedings are commenced.	314 315 316 317
(b) *This Agreement shall be governed by and construed in accordance with Title 9 of the United States Code and the Maritime Law of the United States and any dispute arising out of or in connection with this Agreement shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgement may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.	318 319 320 321 322 323

WRECKHIRE 2010 - International Wreck Removal and Marine Services Agreement (Daily Hire)
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In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. current at the time when the arbitration proceedings are commenced.	324 325 326
(c) *This Agreement shall be governed by and construed in accordance with the laws of the place mutually agreed by the parties and any dispute arising out of or in connection with this Agreement shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there.	327 328 329
(d) Notwithstanding 21(a), 21(b) or 21(c) above, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Agreement. In the case of a dispute in respect of which arbitration has been commenced under 21(a), 21(b) or 21(c) above, the following shall apply:	330 331 332
(i) Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the "Mediation Notice") calling on the other party to agree to mediation.	333 334 335
(ii) The other party shall thereupon within fourteen (14) calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further fourteen (14) calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitrator or such person as the Arbitrator may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.	336 337 338 339 340 341
(iii) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties.	342 343
(iv) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest.	344 345
(v) Either party may advise the Arbitrator that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Arbitrator may take the mediation timetable into account when setting the timetable for steps in the arbitration.	346 347 348
(vi) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator's costs and expenses.	349 350
(vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Arbitrator except to the extent that they are disclosable under the law and procedure governing the arbitration.	351 352 353
<i>(Note: The parties should be aware that the mediation process may not necessarily interrupt time limits.)</i>	354
(e) If Box 15 in PART I is not appropriately filled in, Sub-clause 21(a) of this Clause shall apply. Sub-clause 21(d) shall apply in all cases.	355 356 357
<i>*Sub-clauses 21(a), 21(b) and 21(c) are alternatives; indicate alternative agreed in Box 15.</i>	358
22. Notices Clause	359
(a) All notices given by either party or their agents to the other party or their agents in accordance with the provisions of this Agreement shall be in writing and shall, unless specifically provided in this Agreement to the contrary, be sent to the address for that other party as set out in Boxes 2 and 3 or as appropriate or to such other address as the other party may designate in writing.	360 361 362 363
A notice may be sent by registered or recorded mail, facsimile, electronically or delivered by hand in accordance with this Sub-clause 22(a) .	364 365
(b) Any notice given under this Agreement shall take effect on receipt by the other party and shall be deemed to have been received:	366 367
(i) if posted, on the seventh (7 th) day after posting;	368
(ii) if sent by facsimile or electronically, on the day of transmission; or	369
(iii) if delivered by hand, on the day of delivery.	370
And in each case proof of posting, handing in or transmission shall be proof that notice has been given, unless proven to the contrary.	371 372
23. Insurance	373

WRECKHIRE 2010 - International Wreck Removal and Marine Services Agreement (Daily Hire)
PART II

(a) The Contractor warrants that throughout the period of this Agreement it will maintain full cover against normal P&I risks including salvors' liabilities as evidenced by a Certificate of Entry issued by a P&I Club or insurer acceptable to the Company and shall comply with all the requirements of the policy.	374 375 376
(b) The Company warrants that throughout the period of this Agreement it will maintain full cover against normal P&I risks for the Vessel as evidenced by a Certificate of Entry issued by a P&I Club or insurer stated in <u>Box 4(ix)</u> and shall comply with all the requirements of the policy.	377 378 379
24. Pollution	380
(a) The Contractor shall exercise due care throughout the performance of the Services to prevent and minimise damage to the environment and shall also put in place, maintain and implement throughout the Services a pollution response plan which meets the requirements of the competent authorities and the Company Representative. The Contractor shall provide the Company with a copy of the pollution response plan on request by the Company.	381 382 383 384 385
(b) The Company shall indemnify and hold the Contractor harmless in respect of any and all consequences of any pollution which results from any discharge or escape of any pollutant from the Vessel except where such pollution arises as a consequence of the negligence of the Contractor, its sub-contractors, its agents and/or servants.	386 387 388 389
(c) The Contractor shall indemnify and hold the Company harmless in respect of any and all consequences of any pollution which results from any discharge or escape of any pollutant from its own or from hired-in craft.	390 391
25. Rotation and Replacement of Craft, Equipment and Personnel	392
The Contractor shall have the right to rotate and replace any craft, equipment and personnel with other suitable replacement craft, equipment and personnel subject to the approval of the Company Representative, which shall not be unreasonably withheld.	393 394 395
26. General Provisions	396
(a) Severability	397
If, in any legal proceedings, it is determined that any provision of this Agreement is unenforceable under applicable law, then the unenforceable provision shall automatically be amended to conform to that which is enforceable under the law. In any event, the validity or enforceability of any provision shall not affect any other provision of this Agreement, and this Agreement shall be construed and enforced as if such provision had not been included.	398 399 400 401 402
(b) Third Party Beneficiaries	403
Except as specifically provided for elsewhere in this Agreement, this Agreement shall not be construed to confer any benefit on any third party not a party to this Agreement nor shall this Agreement provide any rights to such third party to enforce any provision of this Agreement.	404 405 406
(c) Waiver	407
No benefit or right accruing to either party under this Agreement shall be waived unless the waiver is reduced to writing and signed by both the Contractor and the Company. The failure of either party to exercise any of its rights under this Agreement, including but not limited to either party's failure to comply with any time limit set out in this Agreement, shall in no way constitute a waiver of those rights, nor shall such failure excuse the other party from any of its obligations under this Agreement.	408 409 410 411 412
(d) Warranty of Authority	413
The Contractor and the Company each warrant and represent that the person whose signature appears in Part I above is its representative and is duly authorized to execute this Agreement as a binding commitment of such party.	414 415 416
(e) Singular/Plural	417
The singular includes the plural and vice versa as the context admits or requires.	418
(f) Headings	419
The headings to the clauses and appendices to this Agreement are for convenience only and shall not affect its construction or interpretation.	420 421

**ANNEX I (SCHEDULE OF PERSONNEL, CRAFT AND EQUIPMENT)
INTERNATIONAL WRECK REMOVAL AND MARINE SERVICES AGREEMENT (DAILY HIRE)
CODE NAME: WRECKHIRE 2010**

Dated:

Vessel:

Schedule of Personnel, Craft and Equipment (Cl. 2, 4 and 13(g))

Sample copy

continued

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**ANNEX II (METHOD OF WORK AND ESTIMATED TIME SCHEDULE)
INTERNATIONAL WRECK REMOVAL AND MARINE SERVICES AGREEMENT (DAILY HIRE)
CODE NAME: WRECKHIRE 2010**

Dated:

Vessel:

Method of Work and Estimated Time Schedule ([Cl. 2](#) and [4](#))

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**ANNEX III (CONTRACTOR'S DAILY REPORTS)
INTERNATIONAL WRECK REMOVAL AND MARINE SERVICES AGREEMENT (DAILY HIRE)
CODE NAME: WRECKHIRE 2010**

Date		Report no
Status of wreck:		
Vessel		
Cargo		
Bunkers		
Status of wreck site:		

Weather on location:			
	1200	2400	Forecast next 24 hours
Wind direction & speed (Bft)			
Swell direction & height (m)			
Wave height & max wave height (m)			
Long range forecast (5 days):			

Services:
- performed in last 24 hours:
- planned for next 24 hours:

Vessels:					
Name	On hire	Standby rate	Reduced rate	Off hire	Remarks
<i>Demobilised, inoperative or damaged – insert under "Remarks"</i>					

Equipment:					
Description	On hire	Standby rate	Reduced rate	Off hire	Remarks
<i>Demobilised, inoperative, consumed, lost or damaged – insert under "Remarks"</i>					

continued

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Personnel:					
Name	On hire	Standby rate	Reduced rate	Off hire	Remarks

Demobilised, inoperative or injured – insert under "Remarks"

Areas of concern:

Health & safety

Environmental

Other

Comments:

Contractor's Representative

Company Representative

Signed:

Company Representative

Contractor's Representative

Name

Position

Signature

Contractor's Daily Reports (Cl. 2)

continued

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ANNEX 3

**LLOYD'S STANDARD FORM OF SALVAGE AGREEMENT (LOF) 2011
SCOPIC CLAUSE INCORPORATED**



LLOYD'S STANDARD FORM OF SALVAGE AGREEMENT

(Approved and Published by the Council of Lloyd's)

NO CURE - NO PAY

<p>1. Name of the salvage Contractors:</p> <p>(referred to in this agreement as "the Contractors")</p>	<p>2. Property to be salvaged:</p> <p>The vessel:</p> <p>her cargo freight bunkers stores and any other property thereon but excluding the personal effects or baggage of passengers master or crew</p> <p>(referred to in this agreement as "the property")</p>
<p>3. Agreed place of safety:</p>	<p>4. Agreed currency of any arbitral award and security (if other than United States dollars)</p>
<p>5. Date of this agreement</p>	<p>6. Place of agreement</p>
<p>7. Is the Scopic Clause incorporated into this agreement? State alternative : Yes/No</p>	
<p>8. Person signing for and on behalf of the Contractors</p> <p>Signature:</p>	<p>9. Captain</p> <p>or other person signing for and on behalf of the property</p> <p>Signature:</p>

A Contractors' basic obligation: The Contractors identified in Box 1 hereby agree to use their best endeavours to salvage the property specified in Box 2 and to take the property to the place stated in Box 3 or to such other place as may hereafter be agreed. If no place is inserted in Box 3 and in the absence of any subsequent agreement as to the place where the property is to be taken the Contractors shall take the property to a place of safety.

B Environmental protection: While performing the salvage services the Contractors shall also use their best endeavours to prevent or minimise damage to the environment.

C Scopic Clause: Unless the word "No" in Box 7 has been deleted this agreement shall be deemed to have been made on the basis that the Scopic Clause is not incorporated and forms no part of this agreement. If the word "No" is deleted in Box 7 this shall not of itself be construed as a notice invoking the Scopic Clause within the meaning of sub-clause 2 thereof.

- D Effect of other remedies:** Subject to the provisions of the International Convention on Salvage 1989 as incorporated into English law ("the Convention") relating to special compensation and to the Scopic Clause if incorporated the Contractors services shall be rendered and accepted as salvage services upon the principle of "no cure - no pay" and any salvage remuneration to which the Contractors become entitled shall not be diminished by reason of the exception to the principle of "no cure - no pay" in the form of special compensation or remuneration payable to the Contractors under a Scopic Clause.
- E Prior services:** Any salvage services rendered by the Contractors to the property before and up to the date of this agreement shall be deemed to be covered by this agreement.
- F Duties of property owners:** Each of the owners of the property shall cooperate fully with the Contractors. In particular:
- (i) the Contractors may make reasonable use of the vessel's machinery gear and equipment free of expense provided that the Contractors shall not unnecessarily damage abandon or sacrifice any property on board;
 - (ii) the Contractors shall be entitled to all such information as they may reasonably require relating to the vessel or the remainder of the property provided such information is relevant to the performance of the services and is capable of being provided without undue difficulty or delay;
 - (iii) the owners of the property shall co-operate fully with the Contractors in obtaining entry to the place of safety stated in Box 3 or agreed or determined in accordance with Clause A.
- G Rights of termination:** When there is no longer any reasonable prospect of a useful result leading to a salvage reward in accordance with Convention Articles 12 and/or 13 either the owners of the vessel or the Contractors shall be entitled to terminate the services hereunder by giving reasonable prior written notice to the other.
- H Deemed performance:** The Contractors' services shall be deemed to have been performed when the property is in a safe condition in the place of safety stated in Box 3 or agreed or determined in accordance with clause A. For the purpose of this provision the property shall be regarded as being in safe condition notwithstanding that the property (or part thereof) is damaged or in need of maintenance if (i) the Contractors are not obliged to remain in attendance to satisfy the requirements of any port or harbour authority, governmental agency or similar authority and (ii) the continuation of skilled salvage services from the Contractors or other salvors is no longer necessary to avoid the property becoming lost or significantly further damaged or delayed.
- I Arbitration and the LSSA Clauses:** The Contractors' remuneration and/or special compensation shall be determined by arbitration in London in the manner prescribed by Lloyd's Standard Salvage and Arbitration Clauses ("the LSSA Clauses") and Lloyd's Procedural Rules in force at the date of this agreement. The provisions of the said LSSA Clauses and Lloyd's Procedural Rules are deemed to be incorporated in this agreement and form an integral part hereof. Any other difference arising out of this agreement or the operations hereunder shall be referred to arbitration in the same way.
- J Governing law:** This agreement and any arbitration hereunder shall be governed by English law.
- K Scope of authority:** The Master or other person signing this agreement on behalf of the property identified in Box 2 enters into this agreement as agent for the respective owners thereof and binds each (but not the one for the other or himself personally) to the due performance thereof.
- L Inducements prohibited:** No person signing this agreement or any party on whose behalf it is signed shall at any time or in any manner whatsoever offer provide make give or promise to provide or demand or take any form of inducement for entering into this agreement.

IMPORTANT NOTICES

- 1 Salvage security.** As soon as possible the owners of the vessel should notify the owners of other property on board that this agreement has been made. If the Contractors are successful the owners of such property should note that it will become necessary to provide the Contractors with salvage security promptly in accordance with Clause 4 of the LSSA Clauses referred to in Clause I. The provision of General Average security does not relieve the salvaged interests of their separate obligation to provide salvage security to the Contractors.
- 2 Incorporated provisions.** Copies of the applicable Scopic Clause, the LSSA Clauses and Lloyd's Procedural Rules in force at the date of this agreement may be obtained from (i) the Contractors or (ii) the Salvage Arbitration Branch at Lloyd's, One Lime Street, London EC3M 7HA.
- 3 Awards.** The Council of Lloyd's is entitled to make available the Award, Appeal Award and Reasons on www.lloydsagency.com (the website) subject to the conditions set out in Clause 12 of the LSSA Clauses.
- 4 Notification to Lloyd's.** The Contractors shall within 14 days of their engagement to render services under this agreement notify the Council of Lloyd's of their engagement and forward the signed agreement or a true copy thereof to the Council as soon as possible. The Council will not charge for such notification.

Tel.No. + 44(0)20 7327 5408/5407
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E-mail: lloyds-salvage@lloyds.com
www.lloydsagency.com

SCOPIC CLAUSE**1. General**

This SCOPIC clause is supplementary to any Lloyd's Form Salvage Agreement "No Cure - No Pay" ("Main Agreement") which incorporates the provisions of Article 14 of the International Convention on Salvage 1989 ("Article 14"). The definitions in the Main Agreement are incorporated into this SCOPIC clause. If the SCOPIC clause is inconsistent with any provisions of the Main Agreement or inconsistent with the law applicable hereto, the SCOPIC clause, once invoked under sub-clause 2 hereof, shall override such other provisions to the extent necessary to give business efficacy to the agreement. Subject to the provisions of sub-clause 4 hereof, the method of assessing Special Compensation under Convention Article 14(1) to 14(4) inclusive shall be substituted by the method of assessment set out hereinafter. If this SCOPIC clause has been incorporated into the Main Agreement the Contractor may make no claim pursuant to Article 14 except in the circumstances described in sub-clause 4 hereof. For the purposes of liens and time limits the services hereunder will be treated in the same manner as salvage.

2. Invoking the SCOPIC Clause

The Contractor shall have the option to invoke by written notice to the owners of the vessel the SCOPIC clause set out hereafter at any time of his choosing regardless of the circumstances and, in particular, regardless of whether or not there is a "threat of damage to the environment". The assessment of SCOPIC remuneration shall commence from the time the written notice is given to the owners of the vessel and services rendered before the said written notice shall not be remunerated under this SCOPIC clause at all but in accordance with Convention Article 13 as incorporated into the Main Agreement ("Article 13").

3. Security for SCOPIC Remuneration

- (i) The owners of the vessel shall provide to the Contractor within 2 working days (excluding Saturdays and Sundays and holidays usually observed at Lloyd's) after receiving written notice from the contractor invoking the SCOPIC clause, a bank guarantee or P&I Club letter (hereinafter called "the Initial Security") in a form reasonably satisfactory to the Contractor providing security for his claim for SCOPIC remuneration in the sum of US\$3 million, inclusive of interest and costs.
- (ii) If, at any time after the provision of the Initial Security the owners of the vessel reasonably assess the SCOPIC remuneration plus interest and costs due hereunder to be less than the security in place, the owners of the vessel shall be entitled to require the Contractor to reduce the security to a reasonable sum and the Contractor shall be obliged to do so once a reasonable sum has been agreed.
- (iii) If at any time after the provision of the Initial Security the Contractor reasonably assesses the SCOPIC remuneration plus interest and costs due hereunder to be greater than the security in place, the Contractor shall be entitled to require the owners of the vessel to increase the security to a reasonable sum and the owners of the vessel shall be obliged to do so once a reasonable sum has been agreed.
- (iv) In the absence of agreement, any dispute concerning the proposed Guarantor, the form of the security or the amount of any reduction or increase in the security in place shall be resolved by the Arbitrator.

4. Withdrawal

If the owners of the vessel do not provide the Initial Security within the said 2 working days, the Contractor, at his option, and on giving notice to the owners of the vessel, shall be entitled to withdraw from all the provisions of the SCOPIC clause and revert to his rights under the Main Agreement including Article 14 which shall apply as if the SCOPIC clause had not existed. PROVIDED THAT this right of withdrawal may only be exercised if, at the time of giving the said notice of withdrawal the owners of the vessel have still not provided the Initial Security or any alternative security which the owners of the vessel and the Contractor may agree will be sufficient.

5. Tariff Rates

- (i) SCOPIC remuneration shall mean the total of the tariff rates of personnel; tugs and other craft; portable salvage equipment; out of pocket expenses; and bonus due.
- (ii) SCOPIC remuneration in respect of all personnel; tugs and other craft; and portable salvage equipment shall be assessed on a time and materials basis in accordance with the Tariff set out in Appendix "A". This tariff will apply until reviewed and amended by the SCOPIC Committee in accordance with Appendix B(1)(b). The tariff rates which will be used to calculate SCOPIC remuneration are those in force at the time the salvage services take place.
- (iii) "Out of pocket" expenses shall mean all those monies reasonably paid by or for and on behalf of the Contractor to any third party and in particular includes the hire of men, tugs, other craft and equipment used and other expenses reasonably necessary for the operation. They will be agreed at cost, PROVIDED THAT:
 - (a) If the expenses relate to the hire of men, tugs, other craft and equipment from another ISU member or their affiliate(s), the amount due will be calculated on the tariff rates set out in Appendix "A" regardless of the actual cost.
 - (b) If men, tugs, other craft and equipment are hired from any party who is not an ISU member and the hire rate is greater than the tariff rates referred to in Appendix "A" the actual cost will be allowed in full, subject to the Special Casualty Representative ("SCR") being satisfied that in the particular circumstances of the case, it was reasonable for the Contractor to hire such items at that cost. If an SCR is not appointed or if there is a dispute, then the Arbitrator shall decide whether the expense was reasonable in all in the circumstances.
 - (c) Any out of pocket expense incurred during the course of the service in a currency other than US dollars shall for the purpose of the SCOPIC clause be converted to US dollars at the rate prevailing at the termination of the services.
- (iv) In addition to the rates set out above and any out of pocket expenses, the Contractor shall be entitled to a standard bonus of 25% of those rates except that if the out of pocket expenses described in sub-paragraph 5(iii)(b) exceed the applicable tariff rates in Appendix "A" the Contractor shall be entitled to a bonus such that he shall receive in total
 - (a) The actual cost of such men, tugs, other craft and equipment plus 10% of the cost, or
 - (b) The tariff rate for such men, tugs, other craft and equipment plus 25% of the tariff rate whichever is the greater.

6. Article 13 Award

- (i) The salvage services under the Main Agreement shall continue to be assessed in accordance with Article 13, even if the Contractor has invoked the SCOPIC clause. SCOPIC remuneration as assessed under sub-clause 5 above will be payable only by the owners of the vessel and only to the extent that it exceeds the total Article 13 Award (or, if none, any potential Article 13 Award) payable by all salvaged interests (including cargo, bunkers, lubricating oil and stores) before currency adjustment and before interest and costs even if the Article 13 Award or any part of it is not recovered.
- (ii) In the event of the Article 13 Award or settlement being in a currency other than United States dollars it shall, for the purposes of the SCOPIC clause, be exchanged at the rate of exchange prevailing at the termination of the services under the Main Agreement.

- (iii) The salvage Award under Article 13 shall not be diminished by reason of the exception to the principle of "No Cure - No Pay" in the form of SCOPIC remuneration.

7. Discount

If the SCOPIC clause is invoked under sub-clause 2 hereof and the Article 13 Award or settlement (before currency adjustment and before interest and costs) under the Main Agreement is greater than the assessed SCOPIC remuneration then, notwithstanding the actual date on which the SCOPIC remuneration provisions were invoked, the said Article 13 Award or settlement shall be discounted by 25% of the difference between the said Article 13 Award or settlement and the amount of SCOPIC remuneration that would have been assessed had the SCOPIC remuneration provisions been invoked on the first day of the services.

8. Payment of SCOPIC Remuneration

- (i) The date for payment of any SCOPIC remuneration which may be due hereunder will vary according to the circumstances.
 - (a) If there is no potential salvage award within the meaning of Article 13 as incorporated into the Main Agreement then, subject to Appendix B(5)(c)(iv), the undisputed amount of SCOPIC remuneration due hereunder will be paid by the owners of the vessel within 1 month of the presentation of the claim. Interest on sums due will accrue from the date of termination of the services until the date of payment at the US prime rate plus 1%.
 - (b) If there is a claim for an Article 13 salvage award as well as a claim for SCOPIC remuneration, subject to Appendix B(5)(c)(iv), 75% of the amount by which the assessed SCOPIC remuneration exceeds the total Article 13 security demanded from ship and cargo will be paid by the owners of the vessel within 1 month and any undisputed balance paid when the Article 13 salvage award has been assessed and falls due. Interest will accrue from the date of termination of the services until the date of payment at the US prime rate plus 1%.
- (ii) The Contractor hereby agrees to give an indemnity in a form acceptable to the owners of the vessel in respect of any overpayment in the event that the SCOPIC remuneration due ultimately proves to be less than the sum paid on account.

9. Termination

- (i) The Contractor shall be entitled to terminate the services under the SCOPIC clause and the Main Agreement by written notice to owners of the vessel with a copy to the SCR (if any) and any Special Representative appointed if the total cost of his services to date and the services that will be needed to fulfil his obligations hereunder to the property (calculated by means of the tariff rate but before the bonus conferred by sub-clause 5(iii) hereof) will exceed the sum of:
 - (a) The value of the property capable of being salvaged; and
 - (b) All sums to which he will be entitled as SCOPIC remuneration
- (ii) The owners of the vessel may at any time terminate the obligation to pay SCOPIC remuneration after the SCOPIC clause has been invoked under sub-clause 2 hereof provided that the Contractor shall be entitled to at least 5 clear days' notice of such termination. In the event of such termination the assessment of SCOPIC remuneration shall take into account all monies due under the tariff rates set out in Appendix A hereof including time for demobilisation to the extent that such time did reasonably exceed the 5 days' notice of termination.
- (iii) The termination provisions contained in sub-clause 9(i) and 9(ii) above shall only apply if the Contractor is not restrained from demobilising his equipment by Government, Local or Port Authorities or any other officially recognised body having jurisdiction over the area where the services are being rendered.

10. Duties of Contractor

The duties and liabilities of the Contractor shall remain the same as under the Main Agreement, namely to use his best endeavours to save the vessel and property thereon and in so doing to prevent or minimise damage to the environment.

11. Article 18 – 1989 Salvage Convention

The Contractor may be deprived of the whole or part of the payment due under the SCOPIC clause to the extent that the salvage operations thereunder have become necessary or more difficult or more prolonged or the salvaged fund has been reduced or extinguished because of fault or neglect on its part or if the Contractor has been guilty of fraud or other dishonest conduct.

12. Special Casualty Representative ("SCR")

Once this SCOPIC clause has been invoked in accordance with sub-clause 2 hereof the owners of the vessel may at their sole option appoint an SCR to attend the salvage operation in accordance with the terms and conditions set out in Appendix B. Any SCR so appointed shall not be called upon by any of the parties hereto to give evidence relating to non-salvage issues.

13. Special Representatives

At any time after the SCOPIC clause has been invoked the Hull and Machinery underwriter (or, if more than one, the lead underwriter) and one owner or underwriter of all or part of any cargo on board the vessel may each appoint one special representative (hereinafter called respectively the "Special Hull Representative" and the "Special Cargo Representative" and collectively called the "Special Representatives") at the sole expense of the appointor to attend the casualty to observe and report upon the salvage operation on the terms and conditions set out in Appendix C hereof. Such Special Representatives shall be technical men and not practising lawyers.

14. Pollution Prevention

The assessment of SCOPIC remuneration shall include the prevention of pollution as well as the removal of pollution in the immediate vicinity of the vessel insofar as this is necessary for the proper execution of the salvage but not otherwise.

15. General Average

SCOPIC remuneration shall not be a General Average expense to the extent that it exceeds the Article 13 Award; any liability to pay such SCOPIC remuneration shall be that of the Shipowner alone and no claim whether direct, indirect, by way of indemnity or recourse or otherwise relating to SCOPIC remuneration in excess of the Article 13 Award shall be made in General Average or under the vessel's Hull and Machinery Policy by the owners of the vessel.

- 16. Any dispute arising out of this SCOPIC clause or the operations thereunder shall be referred to Arbitration as provided for under the Main Agreement.

APPENDIX A (SCOPIC)

1. PERSONNEL

- (a) The daily tariff rate, or pro rata for part thereof, for personnel reasonably engaged on the contract, including any necessary time in proceeding to and returning from the casualty, shall be as follows:
- | | |
|---|-----------|
| Office administration, including communications | US\$1,275 |
| Salvage Master | US\$1,900 |
| Naval Architect or Salvage Officer/Engineer | US\$1,585 |
| Assistant Salvage Officer/Engineer | US\$1,270 |
| Diving Supervisor | US\$1,270 |
| HSE qualified diver or his equivalent but excluding saturation or mixed gas drivers
(whose rate should be agreed with the SCR or determined by the Arbitrator) | US\$1,140 |
| Salvage Foreman | US\$ 950 |
| Riggers, Fitters, Equipment Operators | US\$ 760 |
| Specialist Advisors – Fire Fighters, Chemicals, Pollution Control | US\$1,275 |
- (b) The crews of tugs, and other craft, normally aboard that tug or craft for the purpose of its customary work are included in the tariff rate for that tug or craft but when because of the nature and/or location of the services to be rendered, it is a legal requirement for an additional crew member or members to be aboard the tug or craft, the cost of such additional crew will be paid.
- (c) The rates for any personnel not set out above shall be agreed with the SCR or, failing agreement, be determined by the Arbitrator.
- (d) For the avoidance of doubt, personnel are "reasonably engaged on the contract" within the meaning of Appendix A sub-clause 1(a) hereof if, in addition to working, they are eating, sleeping or otherwise resting on site or travelling to or from the site; personnel who fall ill or are injured while reasonably engaged on the contract shall be charged for at the appropriate daily tariff rate until they are demobilised but only if it was reasonable to mobilise them in the first place.
- (e) SCOPIC remuneration shall cease to accrue in respect of personnel who die on site from the date of death.

2. TUGS AND OTHER CRAFT

- (a) (i) Tugs, which shall include salvage tugs, harbour tugs, anchor handling tugs, coastal/ocean towing tugs, off-shore support craft, and any other work boat in excess of 500 b.h.p., shall be charged at the following rates, exclusive of fuel or lubricating oil, for each day, or pro rata for part thereof, that they are reasonably engaged in the services, including proceeding towards the casualty from the tugs location when SCOPIC is invoked or when the tugs are mobilised (whichever is the later) and from the tugs position when their involvement in the services terminates to a reasonable location having due regard to their employment immediately prior to their involvement in the services and standing by on the basis of their certificated b.h.p.:
- | | |
|--|----------|
| For each b.h.p. up to 5,000 b.h.p. | US\$2.80 |
| For each b.h.p. between 5,001 & 12,000 b.h.p. | US\$2.00 |
| For each b.h.p. between 12,001 & 20,000 b.h.p. | US\$1.40 |
| For each b.h.p. over 20,000 b.h.p. | US\$0.70 |
- (ii) Any tug which has aboard certified fire fighting equipment shall, in addition to the above rates, be paid:
- | |
|---|
| US\$690 per day, or pro rata for part thereof, if equipped with Fi Fi 0.5 |
| US\$1,375 per day, or pro rata for part thereof, if equipped with Fi Fi 1.0 |
- for that period in which the tug is engaged in fire fighting necessitating the use of the certified fire fighting equipment.
- (iii) Any tug which is certified as "Ice Class" shall, in addition to the above, be paid US\$1,375 per day, or pro rata for part thereof, when forcing or breaking ice during the course of services including proceeding to and returning from the casualty.
- (iv) For the purposes of paragraph 2(a)(i) hereof tugs shall be remunerated for any reasonable delay or deviation for the purposes of taking on board essential salvage equipment, provisions or personnel which the Contractor reasonably anticipates he shall require in rendering the services which would not normally be found on vessels of the tugs size and type.
- (b) Any launch or work boat of less than 500 b.h.p. shall, exclusive of fuel and lubricating oil, be charged at a rate of US\$4.15 for each b.h.p.
- (c) Any other craft, not falling within the above definitions, shall be charged out at a market rate for that craft, exclusive of fuel and lubricating oil, such rate to be agreed with the SCR or, failing agreement, determined by the Arbitrator.
- (d) All fuel and lubricating oil consumed during the services shall be paid at cost of replacement and shall be treated as an out of pocket expense.
- (e) For the avoidance of doubt, the above rates shall not include any portable salvage equipment normally aboard the tug or craft and such equipment shall be treated in the same manner as portable salvage equipment and the Contractors shall be reimbursed in respect thereof in accordance with Appendix A paragraphs 3 and 4(i) and (ii) hereof.
- (f) SCOPIC remuneration shall cease to accrue in respect of tugs and other craft which become a commercial total loss from the date they stop being engaged in the services plus a reasonable period for demobilisation (if appropriate) PROVIDED that such SCOPIC remuneration in respect of demobilisation shall only be payable if the commercial total loss arises whilst engaged in the services and through no fault of the Contractors, their servants, agents or sub-contractors.

3. PORTABLE SALVAGE EQUIPMENT

(a) The daily tariff, or pro rata for part thereof, for all portable salvage equipment reasonably engaged during the services, including any time necessary for mobilisation and demobilisation, shall be as follows:

<u>Equipment</u>	<u>Rate – US\$</u>	<u>Equipment</u>	<u>Rate – US\$</u>
<u>Generators</u>		<u>Protective Clothing/Safety Equipment</u>	
Up to 50 kW	75	Breathing Gear	64
51 to 120 kW	158	Hazardous Environment Suit	126
121 to 300 kW	253	Cooler; Evaporative; 36", 9800 Cfm, 110v	100
Over 301 kW	443	Heater 55,000/110,000 Btu	250
		Gas Monitor; Four Gas Types	175
		Nitrogen Generator – 1500 SCFH @ 96%, 220v	2,450
<u>Compressors</u>		PPE; Ascending/Descending package: 4 Man	350
185 Cfm	190	PPE; Bunker Gear Pkg: 1 Man	125
600 Cfm	317	PPE; Chemical Suit Pkg: Class A: 1 Man	145
1200 Cfm	506	PPE; Chemical Suit Pkg: Class B: 1 Man	25
Air Manifold	13	PPE; Cold Weather 1 st Response Kit	35
Blower; 1,500m ³ /min.	1,076	PPE; Confined Space Entry 2 Man package, with Communications	525
		PPE; Survival Suit, Immersion	10
<u>Distribution Boards</u>		Ventilation Pkg: Vane Axial: 1,500 Cfm	100
Up to 50 kW	75	Ventilation Pkg: Venturi Type: 4,000 Cfm	115
51 to 120 kW	158		
121 to 300 kW	253	<u>Pollution Control Equipment</u>	
Over 301 kW	443	Hot Tap Machine, including support equipment	1,265
		Oil Boom, 24", per 10 metres	39
<u>Hoses: Per 6 Metres or 20 Feet</u>		Oil Boom, 36", per 10 metres	126
<u>Air Hose</u>		Oil Boom, 48", per 10 metres	246
¾"	5	Ballast/Fuel storage Bins upto 10,000 litres	75
2"	10	Ballast/Fuel storage Bins 10,000 to 25,000 litres	100
<u>Layflat</u>		Ballast/Fuel storage Bins 25,000 to 50,000 litres	126
2"	14		
4"	19	<u>Pumping Equipment</u>	
6"	25	<u>Air</u>	
<u>Rigid</u>		1"	65
2"	19	2"	95
3"	22	3"	110
4"	25	<u>Diesel</u>	
6"	32	2"	64
8"	38	4"	114
		6"	152
<u>Miscellaneous Equipment</u>		<u>Electrical Submersible</u>	
Air Bags, less than 5 tons lift	50	2"	64
Air Bags 5 to 15 tons lift	253	4"	190
Air Lift 4"	126	6"	759
Air Lift 6"	253	<u>Hydraulic</u>	
Air Lift 8"	379	3"	500
Air Tugger, up to 3 tons	95	6"	759
Chain Saw	25	8"	1,265
Container handling package	200		
Communications package	200	<u>Lighting Systems</u>	
Damage Stability Computer and Software	315	Halogen system	100
Echo Sounder, portable	32	Lighting String, per 50 feet	32
Extension Ladder	25	Light Tower	64
Hydraulic Jack, up to 50 tons	50	Underwater Lighting System, 1,000 watts	95
Hydraulic Jack, up to 120 tons	95		
Hydraulic Powerpack up to 40kW	60	<u>Winches</u>	
Hydraulic Powerpack 75kW	95	Up to 5 tons, including 50 metres of wire	150
Pressure washer, water	316	Up to 10 tons, including 50 metres of wire	175
Pressure washer, steam	570	Up to 20 tons, including 50 metres of wire	250
Rigging Package, heavy	506		
Rigging Package, light	253	<u>Fenders</u>	
Steel band Saw	25	<u>Yokohama</u>	
Tirfors, up to 5 tonnes	14	1.00m. x 2.00m.	95
Thermal Imaging Camera	316	2.50m. x 5.50m.	190
Tool Package, per set	220	3.50m. x 6.50m.	317
Ventilation Package	25	<u>Low Pressure Inflatable</u>	
VHF Radio	14	3 metres	89
Z Boat, including outboard up to 14 feet	253	6 metres	89
Z Boat, including outboard over 14 feet	443	9 metres	190
		12 metres	316
<u>Diving Equipment</u>		16 metres	316
High Pressure Compressor 3500 psi/17 Cfm	200		
High Pressure Compressor 5500 psi/5 Cfm	115	<u>Shackles</u>	
Decompression Chamber with Medical Lock	325	Up to 50 tonnes	13
Decompression Chamber: Two Man, including compressor	632	51 to 120 tonnes	25
Decompression Chamber: Four Man, including compressor	885	121 to 200 tonnes	39
Hot Water Diving Assembly	316	Over 200 tonnes	64
Underwater Magnets	25		
Underwater Drill	25		
Shallow Water Dive Spread	285		

<u>Equipment</u>	<u>Rate – US\$</u>	<u>Equipment</u>	<u>Rate – US\$</u>
<u>Welding & Cutting Equipment</u>		<u>Storage Equipment</u>	
Bolt Gun	380	12' Container	32
Oxy-acetylene Surface Cutting Gear	32	20' Container	50
Underwater Cutting Gear	64		
Underwater Welding Kit	64		
250 Amp Welder	190		
400 Amp Welder	253		

- (b) Any portable salvage equipment engaged but not set out above shall be charged at a rate to be agreed with the SCR or, failing agreement, determined by the Arbitrator.
- (c) The total charge (before bonus) for each item of portable salvage equipment, owned by the contractor, shall not exceed the manufacturer's recommended retail price on the last day of the services multiplied by 2.0.
- (d) Compensation for any portable salvage equipment lost or destroyed during the services shall be paid at the replacement cost. (Provided that the total of such compensation and the daily tariff rate (before bonus) in respect of that item does not exceed the actual cost of replacing the item at the Contractor's base with the most similar equivalent new item multiplied by 2.5.)
- (e) All consumables such as welding rods, boiler suits, small ropes etc. shall be charged at cost and shall be treated as an out of pocket expense.
- (f) The Contractor shall be entitled to remuneration at a stand-by rate of 50% of the full tariff rate plus bonus for any portable salvage equipment reasonably mobilised but not used during the salvage operation provided
- (i) It has been mobilised with the prior agreement of the owner of the vessel or its mobilisation was reasonable in the circumstances of the casualty, or
- (ii) It comprises portable salvage equipment normally aboard the tug or craft that would have been reasonably mobilised had it not already been aboard the tug or craft.
- (g) SCOPIC remuneration shall cease to accrue in respect of portable salvage equipment which becomes a commercial total loss from the date it ceases to be useable plus a reasonable period for demobilisation (if appropriate) PROVIDED that such SCOPIC remuneration in respect of demobilisation shall only be payable if the commercial total loss arises while it is engaged in the services and through no fault of the Contractors, their servants, agents or sub-contractors.

4. DOWNTIME

If a tug or piece of portable salvage equipment breaks down or is damaged without fault on the part of the Contractor, his servants, agents or sub-contractors and as a direct result of performing the services it should be paid for during the repair while on site at the stand-by rate of 50% of the tariff rate plus uplift pursuant to sub-clause 5(iv) of the SCOPIC clause.

If a tug or piece of portable salvage equipment breaks down or otherwise becomes inoperable without fault on the part of the Contractor, his servants, agents or sub-contractors and as a direct result of performing the services and cannot be repaired on site then:

- (i) If it is not used thereafter but remains on site then no SCOPIC remuneration is payable in respect of that tug or piece of portable salvage equipment from the time of the breakdown.
- (ii) If it is removed from site, repaired and reasonably returned to the site for use SCOPIC remuneration at the standby rate of 50% of the tariff rate plus bonus pursuant to sub-clause 5(iv) of the SCOPIC clause shall be payable from the breakdown to the date it is returned to the site.
- (iii) If it is removed from the site and not returned SCOPIC remuneration ceases from the breakdown but is, in addition, payable for the period that it takes to return it directly to base at the stand-by rate of 50% of the tariff rate plus bonus pursuant to sub-clause 5(iv) of the SCOPIC clause.

APPENDIX B (SCOPIC)

1. (a) The SCR shall be selected from a panel (the "SCR Panel") appointed by a Committee (the "SCOPIC Committee") comprising of representatives appointed by the following:
 - 3 representatives from the International Group of P and I Clubs
 - 3 representatives from the ISU
 - 3 representatives from the IUMI
 - 3 representatives from the International Chamber of Shipping
- (b) The SCOPIC Committee shall be responsible for a triennial review of the tariff rates as set out in Appendix A.
- (c) The SCOPIC Committee shall meet once a year in London to review, confirm, reconfirm or remove SCR Panel members.
- (d) Any individual may be proposed for membership of the SCR Panel by any member of the SCOPIC Committee and shall be accepted for inclusion on the SCR Panel unless at least four votes are cast against his inclusion.
- (e) The SCOPIC Committee may also set and approve the rates of remuneration for the SCRs.
- (f) Members of the SCOPIC Committee shall serve without compensation.
- (g) The SCOPIC Committee's meetings and business shall be organised and administered by the Salvage Arbitration Branch of the Corporation of Lloyd's (hereinafter called "Lloyds") who will keep the current list of SCR Panel members and make it available to any person with a bona fide interest.
- (h) The SCOPIC Committee shall be entitled to decide its own administrative rules as to procedural matters (such as quorums, the identity and power of the Chairman etc.).
2. The primary duty of the SCR shall be the same as the Contractor, namely to use his best endeavours to assist in the salvage of the vessel and the property thereon and in so doing to prevent and minimise damage to the environment.
3. The Salvage Master shall at all times remain in overall charge of the operation, make all final decisions as to what he thinks is best and remain responsible for the operation.
4. The SCR shall be entitled to be kept informed by or on behalf of the Salvage Master or (if none) the principal contractors' representative on site (hereinafter called "the Salvage Master"). The Salvage Master shall consult with the SCR during the operation if circumstances allow and the SCR, once on site, shall be entitled to offer the Salvage Master advice.
5. (a) Once the SCOPIC clause is invoked the Salvage Master shall send daily reports (hereinafter called the "Daily Salvage Reports") setting out:-
 - the salvage plan (followed by any changes thereto as they arise)
 - the condition of the casualty and the surrounding area (followed by any changes thereto as they arise)
 - the progress of the operation
 - the personnel, equipment, tugs and other craft used in the operation that day.
- (b) Pending the arrival of the SCR on site the Daily Salvage Reports shall be sent to Lloyd's and the owners of the vessel. Once the SCR has been appointed and is on site the Daily Salvage Reports shall be delivered to him.
- (c) The SCR shall upon receipt of each Daily Salvage Report:-
 - (i) Transmit a copy of the Daily Salvage Report by the quickest method reasonably available to Lloyd's, the owners of the vessel, their liability insurers and (if any) to the Special Hull Representative and Special Cargo Representative (appointed under clause 12 of the SCOPIC clause and Appendix C) if they are on site; and if a Special Hull Representative is not on site the SCR shall likewise send copies of the Daily Salvage Reports direct to the leading Hull Underwriter or his agent (if known to the SCR) and if a Special Cargo Representative is not on site the SCR shall likewise send copies of the Daily Salvage Reports to such cargo underwriters or their agent or agents as are known to the SCR (hereinafter in this Appendix B such Hull and Cargo property underwriters shall be called "Known Property Underwriters").
 - (ii) If circumstances reasonably permit consult with the Salvage Master and endorse his Daily Salvage Report stating whether or not he is satisfied and

- (iii) If not satisfied with the Daily Salvage Report, prepare a dissenting report setting out any objection or contrary view and deliver it to the Salvage Master and transmit it to Lloyd's, the owners of the vessel, their liability insurers and to any Special Representatives (appointed under clause 12 of the SCOPIC clause and Appendix C) or, if one or both Special Representatives has not been appointed, to the appropriate Known Property Underwriter.
 - (iv) If the SCR gives a dissenting report to the Salvage Master in accordance with Appendix B(5)(c)(iii) to the SCOPIC clause, any initial payment due for SCOPIC remuneration shall be at the tariff rate applicable to what is in the SCR's view the appropriate equipment or procedure until any dispute is resolved by agreement or arbitration.
- (d) Upon receipt of the Daily Salvage Reports and any dissenting reports of the SCR, Lloyd's shall distribute upon request the said reports to any parties to this contract and any of their property insurers of whom they are notified (hereinafter called "the Interested Persons") and to the vessel's liability insurers.
- (e) As soon as reasonably possible after the Salvage services terminate the SCR shall issue a report (hereinafter call the "SCR's Final Salvage Report") setting out:
- the facts and circumstances of the casualty and the salvage operation insofar as they are known to him.
 - the tugs, personnel and equipment employed by the Contractor in performing the operation.
 - A calculation of the SCOPIC remuneration to which the contractor may be entitled by virtue of this SCOPIC clause.
- The SCR's Final Salvage Report shall be sent to the owners of the vessel and their liability insurers and to Lloyd's who shall forthwith distribute it to the Interested Persons.
6. (a) The SCR may be replaced by the owner of the vessel if either:
- (i) the SCR makes a written request for a replacement to the owner of the vessel (however the SCR should expect to remain on site throughout the services and should only expect to be substituted in exceptional circumstances); or
 - (ii) the SCR is physically or mentally unable or unfit to perform his duties; or
 - (iii) all salvaged interests or their representatives agree to the SCR being replaced.
- (b) Any person who is appointed to replace the SCR may only be chosen from the SCR Panel.
- (c) The SCR shall remain on site throughout the services while he remains in that appointment and until the arrival of any substitute so far as practicable and shall hand over his file and all other correspondence, computer data and papers concerning the salvage services to any substitute SCR and fully brief him before leaving the site.
- (d) The SCR acting in that role when the services terminate shall be responsible for preparing the Final Salvage Report and shall be entitled to full co-operation from any previous SCR's or substitute SCR's in performing his functions hereunder.
7. The owners of the vessel shall be primarily responsible for paying the fees and expenses of the SCR. The Arbitrator shall have jurisdiction to apportion the fees and expenses of the SCR and include them in his award under the Main Agreement and, in doing so, shall have regard to the principles set out in any market agreement in force from time to time.
8. Any SCR appointed pursuant to this Agreement shall not be called by any of the parties hereto to give evidence relating to non-salvage issues.

APPENDIX C (SCOPIC)

The Special Representatives

1. The Salvage Master, the owners of the vessel and the SCR shall co-operate with the Special Representatives and shall permit them to have full access to the vessel to observe the salvage operation and to inspect such of the ship's documents as are relevant to the salvage operation.
2. The Special Representative shall have the right to be informed of all material facts concerning the salvage operation as the circumstances reasonably allow.
3. If an SCR has been appointed the SCR shall keep the Special Representatives (if any and if circumstances permit) fully informed and shall consult with the said Special Representatives. The Special Representatives shall also be entitled to receive a copy of the Daily Salvage Reports direct from the Salvage Master or, if appointed, from the SCR.
4. The appointment of any Special Representatives shall not affect any right that the respondent ship and cargo interests may have (whether or not they have appointed a Special Representative) to send other experts or surveyors to the vessel to survey ship or cargo and inspect the ship's documentation or for any other lawful purpose.
5. If an SCR or Special Representative is appointed the Contractor shall be entitled to limit access to any surveyor or representative (other than the said SCR and Special Representative or Representatives) if he reasonably feels their presence will substantially impede or endanger the salvage operation.



ANNEX 4

CERTIFICATION OF CAPABILITY

DONJON-SMIT is a joint venture between SMIT Salvage Americas, Inc and Donjon Marine Co, Inc. Both companies are qualified salvage and marine firefighting organizations as defined in 33 CFR 155.4050. Specifically, DONJON-SMIT's two partners, with over 230 years of combined corporate history, certify that each:

1. Is currently working in the response services needed;
2. Has a documented history of participation in successful salvage and marine firefighting operations; including equipment deployments;
3. Through DONJON-SMIT, has contracts for equipment needed to perform response services;
4. Has personnel with documented training certification and degree experience;
5. Maintains a 24-hour availability of personnel and equipment, with a history of response times compatible with the time requirements in the regulation;
6. Maintains an ongoing continuous training program, including marine firefighting, in the fields in which they operate; they, and/or DONJON-SMIT's firefighting subcontractor, meet the training guidelines in NFPA 1001, 1005, 1021, 1405, and 1561.
7. Through DONJON-SMIT, maintains a successful record of participation in drills and exercises;
8. Has marine firefighting and salvage plans actually used and approved during real incidents;
9. Maintains membership in the American Salvage Association and the International Salvage Union;
10. Maintains insurance that covers for the salvage and marine firefighting services contracted herein to provide;
11. Maintains access to sufficient upfront capital to support an operation;
12. Maintains equipment and has experience to work in the specific regional geographical environment(s) that the vessels listed in Schedule A operate in,;
13. Maintains the logistical and transportation support capability required to sustain operations for extended periods of time in arduous sea states and conditions;
14. Maintains the capability to implement the necessary engineering, administrative, and personal protective equipment controls to safeguard the health and safety of their workers when providing salvage and marine firefighting services; and
15. Through DONJON-SMIT, maintains a familiarity with the salvage and marine firefighting protocols contained in the local ACPs for each COTP zone listed in Schedule B.

ANNEX 5 – RATESHEET

I. PERSONNEL

The daily tariff rate for personnel reasonably engaged on the contract, including any necessary time in proceeding to and returning from the casualty, shall be as follows:

	Rate US
Office Administration, including communications	\$1,275
Salvage Master	\$1,900
Naval Architect or Salvage Officer/Engineer	\$1,585
Assistant Salvage Officer/Engineer	\$1,270
Diving Supervisor	\$1,270
HSE qualified diver or his equivalent but excluding saturation or Mixed gas divers (whose rate should be agreed with the client Representative or determined by the Arbitrator)	\$1,140
Salvage Forman	\$950
Riggers, Fitters, Equipment Operators	\$760
Specialist Advisors – Fire Fighters, Chemicals, Pollution Control	\$1,275

II. TUGS AND OTHER CRAFT

(a) Tugs which shall include salvage tugs, harbor tugs, anchor handling tugs, coastal/ocean towing tugs, off-shore support craft, and any other work boat in excess of 500 BHP shall be charged for at the following rates, exclusive of fuel or lubricating oil, for each day, or pro rata for part thereof, that they are reasonably engaged in the services, including proceeding towards the casualty from the tugs location when the contract response is invoked or when the tugs are mobilized (whichever is the later) and from the tugs position when their involvement in the services Terminates to a reasonable location having due regard to their employment immediately prior to their involvement in the services and standing by on the basis of their certificated brake horsepower (BHP)

	Rate US\$
For each BHP up to 5,000 BHP	\$2.80
For each BHP between 5,001 to 12,000 BHP	\$2.00
For each BHP between 12,001 to 20,000 BHP	\$1.40
For each BHP over 20,000 BHP	\$0.70

(b) Any tug that has aboard certified firefighting (FIFI) equipment shall be charged for, in addition to the above rates, as follows:

	Rate US\$
Price per day if equipped with FIFI .5	\$690
Price per day if equipped with FIFI 1.0	\$1,375
For that period in which the tug is engaged in firefighting necessitating the use of the certified FIF equipment	

- (c) Any tug that is certified as "Ice Class" shall be charged for, in addition to the above rates, at U.S. \$1,250 per day, or pro rata for part thereof, when forcing or breaking ice during the course of services including proceeding to and returning from the casualty.

	Rate US\$		Rate US\$
Generators		Welding & Cutting Equipment	
Up to 50kW	75	Bolt Gun	380
51 to 120kW	158	Gas Detector	115
121 to 30kW	253	Hot Tap Machine, including supporting equipment	1,150
Over 301 kW	443	Oxy-acetylene Surface Cutting Gear	32
Portable Inert Gas Systems		Underwater Cutting Gear	64
1,000m 3/hour	1,380	Underwater Welding Kit	64
1,500m 3/hour	1,610	250 Amp Welder	190
Compressors		400 Amp Welder	253
High Pressure	115	Pollution Control Equipment	
185 CFM	190	Hot Tap Machine, Including support equipment	1,265
600 CFM	317	Oil Boom 24" per 10 meters	39
1200 CFM	506	Oil Boom 36" per 10 meters	126
Air Manifold	13	Oil Boom 48" per 10 meters	224
Blower 1,500 m3/min	1,076	Ballast/Fuel Storage Bins up to 10,000 litres	75
Pumping Equipment		Ballast/Fuel Storage Bins 10,000 to 25,000 litres	100
<u>Air Manifold</u>		Ballast/Fuel Storage Bins 25,000 to 50,000 litres	126
1"	65	Lighting Systems	
2"	95	Halogen System	100
3"	110	Lighting String, per 50 feet	32
<u>Diesel</u>		Light Tower	64
2"	64	Underwater Lighting System, 1,000 watts	95
4"	114	Winches	
6"	152	Up to 5 tons, including 50 meters of wire	150
Electrical Submersible		Up to 10 tons, including 50 meters of wire	175
2"	64	Up to 20 tons, including 50 meters of wire	250
4"	190	Storage Equipment	
6"	759	12' Container	32
Hydraulic		20' Container	50
3"	500		
6"	759		
8"	1,265		

- (d) Any launch or work boat of less than 500 BHP shall, exclusive of fuel and lubricating oil, be charged for at a rate of US \$3.75 for each BHP.

III. PORTABLE SALVAGE EQUIPMENT

- (a) The daily tariff for all portable salvage equipment reasonably engaged during the services, including any time necessary for mobilization and demobilization, shall be as follows:

Hoses	Rate US\$	Miscellaneous Equipment	Rate US\$
<u>Air Hose</u>		Air Bags less than 5 tons lift	50
3/4"	5	5 to 15 tons lift	253
2" per 30 meters or 120 feet	10	Air Lift - 4"	126
<u>Layflat</u>		6"	253
2" per 6 meters or 20 feet	14	8"	379
4" per 6 meters or 20 feet	19	Air Tugger, up to 3 tons	95
6" per 6 meters on 20 feet	25	Ballast/Fuel Oil Storage Bins- 50,000 Liters	115
<u>Rigid</u>		Chain Saw	25
2" per 6 meters or 20 feet	19	Containier Handling Package	200
4" per 6 meters or 20 feet	25	Communications Package	200
6" per 6 meters on 20 feet	32	Damage Stability Computer and Software	315
8" per 6 meters on 20 feet	38	Echo Sounder, portable	32
Fenders		Extension Ladder	25
<u>Yokohama</u>		Hydraulic Jack, up to 50 tons	50
1.00m x 2.00m	95	Hydraulic Jack, up to 120 tons	95
2.50m x 5.50m	190	Hydraulic Powerpack up to 40kW	
3.50m x 6.50m	317	Hydraulic Powerpack 75kW	95
<u>Low Pressure Inflatable</u>		Pressure Washer - Water	316
3 meters	89	Pressure Washer - Steam	570
6 meters	89	Rigging Package Heavy	506
9 meters	190	Rigging Package Light	253
12 meters	316	Rock Drill	58
16 meters	316	Rock Splitter	460
Shackles		Steel Saw	25
Up to 50 tons	13	Tirfors, up to 5 tons	14
51 to 120 tons	25	Thermal Imaging Camera	316
121 to 200 tons	39	Tool Package, per set	220
Over 200 tons	64	Ventilation Package	25
Distribution Boards		VHF Radio	25
Up to 50kW	75	Z Boat, Including outboard	
51 to 120kW	158	up to 14 feet	253
121 to 300kW	253	over 14 feet	443
Over 301kW	443	Protective Clothing	
Diving Equipment		Breathing Gear	64
High Pressure Compressor 3500 psi/17 Cfm	200	Hazardous Environment Suit	126
High Pressure Compressor 5500 psi/5 Cfm	115	Cooler; Evaporative 36" 9800 Cfm, 110v	100
Decompression Chamber with Medical Lock	325	Heater 55,000/110,000 Btu	250
Decompression Chamber		Gas Monitor, Four Gas Types	175
2 man, including compressor	632	Nitrogen Generator - 1500 SCFH @ 96%, 220v	2,450
4 man, including compressor	885	PPE: Ascending/Descending Pkg 4 man	350
Hot Water Diving Assembly	316	PPE: Bunker Gear Pkg: 1 man	125
Underwater Magnets	25	PPE: Chemical Suit Pkg, Class A; 1 man	145
Underwater Drill	25	PPE: Chemical Suit Pkg, Class B; 1 man	25
Shallow Water Dive Spread	285	PPE: Cold Weather 1st Response Kit	35
		PPE: Confined Space Entry 2 man Pkg with	
		Communications	525
		PPE: Survival Suit, Immersion	10
		Ventilation Pkg. Vane Axial: 1,500 Cfm	100
		Ventilation Pkg. Venturi Type: 4,000 Cfm	115



SCHEDULE B – LIST OF COVERED CAPTAIN OF THE PORT (COTP) ZONES

Northern New England	Savannah, GA	Corpus Christi, TX	Guam
Boston, MA	Jacksonville, FL	San Diego, CA	Buffalo, NY
Southeastern New England	Miami, FL	Los Angeles/Long Beach, CA	Detroit MI
Long Island Sound, CT	Key West, FL	San Francisco Bay	Lake Michigan
New York, NY	San Juan, PR	Portland, OR	Sault Saint Marie, MI
Delaware Bay	St. Petersburg, FL	Puget Sound, WA	Duluth, MN
Baltimore, MD	Mobile, AL	Southeast Alaska	Pittsburgh, PA
Hampton Roads, VA	New Orleans, LA	Prince William Sound	Ohio Valley
North Carolina	Morgan City, LA	Western Alaska	Upper Mississippi
Cape Fear River	Port Arthur, TX	Honolulu, HI	Lower Mississippi
Charleston, SC	Houston-Galveston, TX		

Local Public Firefighting Resources

Northern New England	Portland Fire Department		San Francisco Fire Department
Boston	Boston Fire Department	San Francisco, CA	Port of Humboldt Bay/ Humboldt Fire Dept
Southeastern New England	Providence Fire Department		Oakland Fire Department
Long Island Sound, CT	Bridgeport Fire Department Battalion		Port of Portland Fire Dept.
	New Haven Fire Department		Coos Bay Fire Department
New York	Newark Fire Department, Washington St.	Portland, OR	Siletz Fire Department
	Newark Fire Department, 8th Ave.		Astoria Fire Department
Delaware Bay	Wilmington Fire Department		Seattle Fire Department
	Philadelphia Fire Department		Bellingham Fire Department
Baltimore, MD	Baltimore City Fire Department		Vancouver Fire Department
	Richmond Fire Station		Everett Fire Department
Hampton Roads, VA	Norfolk Fire Department	Seattle, WA	Fife Fire Department
	Newport News Fire Department		Bremerton Fire Department
NC/Cape Fear River, NC	Morehead City Fire & EMS		Olympia Fire Department
	Tol Fire Department, West Port Station		Anacortes Fire Department
Charleston, SC	Charleston Fire Department	SE Alaska	City of Ketchikan Fire Department
Savannah, GA	Savannah Fire Department	Prince William Sound	City of Valdez Fire Department
	Port Canaveral Fire Station, Columbia Rd.		Alyeska Marine Terminal Fire Team
Jacksonville, FL	Port Canaveral Fire Station, Jackson Ave.	Western Alaska	City of Anchorage Fire Department
	Jacksonville Fire and Rescue		City of Unalaska Fire Department
Miami, FL	Fire Rescue Station # 106	Honolulu, HI	Honolulu Fire Department
	Miami Fire Department		Hawaii County Fire Dept.
Key West, FL	Key West Fire Department	Guam	Guahan Fire Department
San Juan, PR	Puerto Rico Fire Department		Sloan Fire Department
St. Petersburg, FL	Lakewood Fire Station	Buffalo, NY	Oswego Fire Department
	City of Mobile Fire Department		Cleveland Fire Department, Engine 1
Mobile, AL	Northwest side Volunteer Fire Department		Detroit Fire Department
	Gulfport Fire Department	Detroit, MI	Toledo Fire and Rescue Operations
New Orleans, LA	Harbor Police		Duluth Fire Department
Morgan City, LA	Morgan City Fire Department	Lake Michigan	Chicago Police Marine Unit
Port Arthur, TX	Port Arthur Fire Station		Milwaukee Fire Department
	Galveston Fire Station Central	Sault Saint Marie, MI	Sault Fire Department
Houston-Galveston, TX	Houston Fire Station 7	Duluth, MN	Duluth Fire Department
	Freeport Fire Station #1	Pittsburgh, PA	Pittsburgh Fire Bureau
	Texas City Fire Department, Station #2		Pleasure Ridge Fire Department
Corpus Christi, TX	Corpus Christi Fire Department	Ohio Valley	City of Paducah Fire Dept
	Refinery Terminal Fire Company		Cincinnati Fire Department
	City of Brownsville Fire Department	Upper Mississippi	St. Louis Fire Department
San Diego, CA	Port of San Diego		Minneapolis Fire Department
Los Angeles/Long Beach	Port of Long Beach Command / Control	Lower Mississippi	Memphis Fire Services
	City of Morro Bay Fire Department		

Local Private Firefighting Resources

See <http://www.donjon-smit.com/geographic-specific-annexes/>

Facilities

See <http://www.donjon-smit.com/geographic-specific-annexes/>

Emergency Towing Vessels

See <http://www.donjon-smit.com/geographic-specific-annexes/>

SCHEDULE C – SPECIFIC RATE INFORMATION APPLICABLE TO ANNEXES 1 AND 2

I. PERSONNEL

- a) The crews of tugs and other craft normally on board that tug or craft for the purpose of its customary work are included in the tariff rate for that tug or craft but when, because of the nature and/or location of the services to be rendered, it is a legal requirement for an additional crew member or members to be on board the tug or craft, the cost of such additional crew members will be paid by OWNER.
- b) The rates for any personnel not set out above shall be agreed with the client representative or, failing agreement, be agreed through mediation or determined by Arbitration.
- c) For the avoidance of doubt, personnel are “reasonably engaged on the contract” when, in addition to working, they are eating, sleeping or otherwise resting on site or travelling to or from the site; personnel who fall ill or are injured while reasonably engaged on the contract shall be charged for at the appropriate daily tariff rate until they are demobilized but only if it was reasonable to mobilize them in the first place.
- d) Remuneration shall cease to accrue in respect of personnel who die on site from the date of death.

II. TUGS AND OTHER CRAFT

- a) For the purpose of the rates listed in these annexes, tugs shall be charged for because of and during any reasonable delay or deviation for the purposes of taking on board essential salvage equipment, provisions or personnel which DONJON-SMIT reasonably anticipates it shall require in rendering the services which would not normally be found on vessels of the tug’s size and type
- b) Any other craft not falling within the above definitions shall be charged for at a market rate for that craft, exclusive of fuel and lubricating oil, such rate to be agreed with the client representative or, failing agreement, determined by Arbitration.
- c) All fuel and lubricating oil consumed during the services provided shall be considered an out of pocket expense and as such shall be limited to the cost-plus-15 % reimbursement limitation discussed in Article 6.
- d) For the avoidance of doubt, the above rates shall not include any portable salvage equipment normally on board the tug or craft and such equipment shall be treated in the same manner as warehoused portable salvage equipment and DONJON-SMIT shall be reimbursed in respect thereof in accordance with the portable salvage equipment sections of the appropriate Annex hereof.
- e) Remuneration shall cease to accrue in respect of tugs and other craft which become a commercial total loss from the date they stop being engaged in the services plus a reasonable period for demobilization (if appropriate) PROVIDED that such remuneration in respect of demobilization shall only be payable if the commercial total loss arises whilst engaged in the services and through no fault of DONJON-SMIT, its servants, agents or sub-contractors.

III. PORTABLE SALVAGE EQUIPMENT

- a) Any portable salvage equipment engaged but not set out above shall be charged for at a rate to be agreed with the client representative or, failing agreement, determined by Arbitration.
- b) All consumables shall be charged for at cost plus 15 % and shall be treated as an out of pocket expense.
- c) Remuneration shall cease to accrue in respect of portable salvage equipment which becomes a commercial total loss from the date it ceases to be useable plus a reasonable period for demobilization (if appropriate) PROVIDED that such remuneration in respect of demobilization shall only be payable if the commercial total loss arises while it is engaged in the services and through no fault of the DONJON-SMIT, its servants, agents or sub-contractors.

IV. DOWNTIME

If a tug or piece of portable salvage equipment breaks down or is damaged without fault on the part of the DONJON-SMIT, its servants, agents or sub-contractors and as a direct result of performing the services it should be paid for during the repair while on site at the stand-by rate of 50% of the tariff rate plus uplift (if any). If a tug or piece of portable salvage equipment breaks down or otherwise becomes inoperable without fault on the part of DONJON-SMIT, its servants, agents or sub-contractors and as a direct result of performing the services and cannot be repaired on site then:

- (a) If it is not used thereafter but remains on site, then no remuneration is payable in respect to that tug or piece of portable salvage equipment from the time of the breakdown.
- (b) If it is removed from site, repaired and reasonably returned to the site for use, remuneration at the standby rate of 50% of the tariff rate plus bonus (if any) shall be payable from the breakdown to the date it is returned to the site.
- (c) If it is removed from the site and not returned, remuneration ceases from the breakdown but is, in addition, payable for the period that it takes to return it directly to base at the stand-by rate of 50% of the tariff rate plus bonus (if any).