

**FUNDING AGREEMENT**

This Funding Agreement (the "Agreement") is made and entered into on [DATE] by and between: [Vessel Owner/Operator], a company duly incorporated under the laws of [STATE or COUNTRY] having its principal office at [ADDRESS] (hereinafter referred to as "VO")

and

**SVITZER Salvage Americas, Inc.**, a company duly incorporated and existing under the laws of Delaware, having its principal office in One Park Square, 3470 NW 82nd Ave, Suite 650, Doral, FL 33122, USA (hereinafter referred to as "SVITZER"),

[VO] and SVITZER are hereinafter referred to as a "Party" and collectively as "Parties".

**WHEREAS**, [VO] is a [NATIONALITY] company whose vessel(s) transit through Navigable Waters of the United States.

**WHEREAS**, [VO] is required to comply with Title 33 Part 155 of the United States Code of Federal Regulations - Oil or Hazardous Material Pollution Prevention Regulations for Vessels (hereinafter referred to as the "33 CFR 155"), specifically 33 CFR 155 Subpart I for Tank Vessels and 33 CFR 155 Subpart J for Non-tank Vessels - Salvage and Marine Fire-Fighting Requirements; Vessel Response Plans for Oil (hereinafter referred to as the "Regulations");

**WHEREAS**, SVITZER is part of the SVITZER Group, which amongst others, provides harbor and terminal towage, salvage and related safety and support services worldwide;

**WHEREAS**, SVITZER is a qualified provider of salvage and marine fire-fighting services as listed in the Regulations.

**WHEREAS**, the Parties wish to agree to the terms set forth herein for the planning and provision of salvage and marine fire-fighting services as set out in this Agreement, in respect to the vessel(s) listed in **Appendix II**.

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

**ARTICLE 1 - CERTAIN DEFINITIONS**

- a. Navigable Waters of the United States: shall mean, as defined in section 502(7) of the Federal Water Pollution Control Act (hereinafter referred to as the "FWPCA"), and includes: "(1) all navigable waters of the United States, as defined in judicial decisions prior to the passage of the 1972 Amendments of the FWPCA (Pub. L. 92-500) also known as the Clean Water Act, and tributaries of such waters as; (2) interstate waters; (3) intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; and (4) intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce."
- b. Qualified individual and alternate qualified individual (hereinafter referred to as the "QI"): means a shore-based representative of a vessel owner or operator who meets the requirements of 33 CFR 155.1026; as further identified below:
  - i. Speak fluent English;
  - ii. Except as set out in paragraph (c) of this 33 CFR 155.1026, be located in the United States;
  - iii. Be familiar with the implementation of the vessel response plan; and
  - iv. Be trained in the responsibilities of the qualified individual under the response plan.

- c. Written Notification: shall mean a formal announcement of a legally, operational and/or commercial relevant fact or; an action or intent given by sending an electronic message to the electronic service address at or through which the party or other person has authorized electronic service.
- d. Reasonable: shall mean fair, proper, moderate or as otherwise required or expected under the circumstances.
- e. Out of Pocket Expenses: Out of pocket expenses shall mean all monies reasonably paid by or for and on behalf of the VO to any third party and in particular includes but not limited to the hire of men, tugs, other craft and equipment used and other expenses reasonably necessary for the operation.

## ARTICLE 2 - INTENTION AND PURPOSE

- 2.1 The purpose of this Agreement is to outline the binding terms, conditions and pre-arranged rates and/or procedures between the Parties regarding the provision of salvage and marine fire-fighting services; as set forth in 33 CFR 155.4030(a) through 33 CFR 155.4030(h).
- 2.2 SVITZER hereby consents to be named as the primary salvage and marine fire-fighting services resource provider in [VO]'s active version of their Vessel Response Plan (hereinafter referred to as the "VRP").
- 2.3 SVITZER also agrees that [VO] may disclose this Agreement to the United States Coast Guard (hereinafter referred to as the "USCG") for inspection, as provided in 33 CFR 155.4045(c) of the Regulations, and may also provide a copy of this Agreement to the vessel(s) listed in **Appendix II** and/or a QI.
- 2.4 SVITZER hereby warrants and certifies that it fully meets all of the fifteen qualifying criteria listed in 33 CFR 155.4050 of the Regulations, and is capable of providing the Services in accordance with the planned response timeframes listed in Table 155.4030(b) of the Regulations, and shall maintain such capability and is committed to meet the VRP requirements for the duration of this Agreement.

## ARTICLE 3 - PROVISION OF SERVICES

- 3.1 [VO] shall pay to SVITZER an annual retainer fee of \$(TBD) per vessel listed in **Appendix II**. Retainer fee is payable in advance and non-refundable and shall be due thirty (30) days after receipt of invoice, and in conformity to Article 8 of the Agreement. SVITZER may change this fee upon 60 days' notice to [VO] by means described in **Appendix IV**.
- 3.2 SVITZER hereby agrees to provide [VO] with the nineteen (19) salvage and marine firefighting services as set forth in 33 CFR 155.4030 of the Regulations (hereinafter referred to as the "Services"), in case of activation of the VRP. The Services shall be fulfilled in each of the Captain of the Port zone (hereinafter referred to as the "COTP") listed in **Appendix III**. Notwithstanding, [VO] understands SVITZER's resources may not be immediately available and assets from other providers and/or locations shall be mobilized, in accordance to this Agreement.
- 3.3 Services shall be pre-arranged under the terms and conditions of a BIMCO Wreckhire 2010 contract suitably amended, or any future amended version (hereinafter referred to as the "Contract"). Current edition attached hereto as **Appendix I**.
- 3.4 Notwithstanding Article 3.3, and while the Services are being executed under the Contract, at any given time Parties may, upon mutual consent, agree to continue the provision of Services under a Lloyd's Standard Form of Salvage Agreement 2011 with SCOPIC Clause incorporated, or any future amended version (hereinafter referred to as the "LOF"), or other contract mutually agreed by the parties.
- 3.5 SVITZER shall, in compliance with the National Preparedness Guidelines (the PREP), and as required by 33 CFR 155.4052, participate in the following exercises and retain in record for three years:

- (a) Shore-based salvage and shore-based marine firefighting management team tabletop exercises, to be conducted at least annually;
  - (b) Response provider equipment deployment exercises, to be conducted at least annually;
  - (c) An exercise of the entire response plan, which must be conducted every three years.
- 3.6 [VO] shall be responsible for payment of SVITZER's administrative services and exercise obligations in connection with the foregoing requirements, if and when exercises are executed in behalf of [VO]. Applicable rates for the provision of services under this Clause 3.4 are attached to the Contract as **Annex IV**.

## ARTICLE 4 - BINDING EFFECT

- 4.1 The terms of this Agreement are legally binding for the Parties, heirs, executors, administrators, successors and assignees of the Parties hereto.
- 4.2 By executing this Agreement, [VO] and SVITZER represent, warrant and covenant that they have full power and authority to execute this Agreement and each individual executing this Agreement on behalf of a Party has been duly authorized and empowered to execute and deliver the same on behalf of the respective Party.

## ARTICLE 5 - [VO] RIGHTS AND OBLIGATIONS

- 5.1 [VO] shall have the right to appoint a representative to attend the salvage and/or marine fire-fighting operation throughout the entire response. However, [VO] agrees that SVITZER is and shall be an independent contractor, and whose appointed Salvage Master or representative shall be responsible for and have overall control of the operation. Nonetheless, to the extent that circumstances allow, any proposed methods and/or procedures shall be discussed and agreed in advance with the [VO]'s representative, who shall also be entitled to be kept informed of the response's progress.
- 5.2 [VO] will name SVITZER as the primary resource provider of the Services in the [VO]'s VRP, which shall be submitted to the COTP(s) listed in **Appendix III**. The foregoing relationship between the parties shall be on an exclusive basis for the duration of this Agreement.
- 5.2 [VO] agrees to provide SVITZER with a copy of the VRP, as required by 33 CFR 155.1035(c) of the Regulations.
- 5.3 [VO] agrees to provide SVITZER with a copy of the required marine firefighting pre-fire plan and arrangements (hereinafter referred to MFP) for each vessel listed in **Appendix II**, in accordance with 33 CFR 155.4035. This information shall be made available to SVITZER at least sixty (60) calendar days prior to the date on which this Agreement is to take effect.
- If within thirty (30) calendar days of receipt of a vessel specific MFP, SVITZER finds it unacceptable, it shall notify [VO] and give a term of thirty (30) calendar days to correct the MFP.
- If within thirty (30) calendar days after notifying [VO] of the vessel specific MFP objection, [VO] does not correct the MFP, a registered letter will be sent to [VO] suspending that ship from coverage until the MFP is corrected to the satisfaction of SVITZER.
- 5.4 [VO] shall make commercially reasonable efforts to make its vessels available to SVITZER for casualty response planning purposes.

## ARTICLE 6 - ACTIVATION OF VESSEL RESPONSE PLAN

- 6.1 SVITZER will commence work covered under this Agreement upon [VO] and/or QI's initiation of response to an incident site. All notifications under this Article 6 shall be done in accordance with **Appendix IV**.
- 6.2 [VO] and/or the QI, or both, shall be responsible for promptly notifying SVITZER of the VRP activation.
- 6.3 SVITZER will confirm acknowledgement of the VRP activation and will advise the [VO] and/or the QI, by phone or email and in accordance to Article 6.1, of the response mobilization.
- 6.4 Upon confirmation by SVITZER of its response mobilization under Clause 6.3, [VO] shall be deemed to have entered into a new Contract with SVITZER on behalf of the relevant vessel(s) listed in **Appendix II**, on the terms of the Contract attached hereto as **Appendix I**, which such Contract shall be effective upon the activation of the VRP. This new Contract shall be signed by or on behalf of SVITZER and [VO] as soon as reasonably practicable.

## ARTICLE 7- CHARGING AND INVOICES

- 7.1 For the avoidance of doubt, remuneration and payment matters for salvage and marine firefighting services provided by SVITZER are planned in the Contract attached hereto as **Appendix I**, which shall be entered into in respect of each incident as described in Article 6.4 and shall include the total of the tariff rates of personnel; tugs and other craft; portable salvage and firefighting equipment and out of pocket expenses. Calculation of the remuneration in respect of all personnel; tugs and other craft; and portable salvage and fire fight equipment shall be assessed on a time and materials basis in accordance with the Tariffs set out in **Annex IV** of the Contract. [VO] acknowledges that Tariffs may be subject to change by SVITZER upon thirty (30) days written notice to [VO].
- 7.2 Remuneration and payment matters for services contemplated under this Agreement are assessed hereunder Article 8.

## ARTICLE 8 - PAYMENT TERMS

- 8.1 All amounts due under this Agreement shall be payable by the due date specified in the Invoice (hereinafter referred to as the "Due Date"). Any amounts in dispute will be discussed and, failing agreement, referred to procedures as per Clause 12. In the event that all or part of a disputed amount which has not been paid is found to be valid, interest shall be paid on such sum in the amount of LIBOR +2% per annum and applied retroactively to the original Due Date.

## ARTICLE 9 – CONTRACT PARTICULARS

- 9.1 Appendices hereto are deemed to be incorporated into this Agreement and form an integral part hereof.

## ARTICLE 10 – CONFIDENTIALITY

- 10.1 None of the Parties hereto shall make any public disclosure or announcement concerning the fact that discussions are taking place, or concerning the existence of this Agreement, its contents or the status of the negotiations between [VO] and SVITZER without obtaining the prior consent of the other Party. The aforementioned shall be relevant in all cases; with the exception of information which has already been disclosed, as required by applicable law or in order for the Parties to consult with their respective insurers.
- 10.2 Parties may not make any press releases, press statements or similar in relation to this Agreement without the prior written consent of the other Party.
- 10.3 The terms of this Article 10 shall survive the termination of this Agreement for a period of three (3) years after such termination.

## ARTICLE 11 - COSTS

11.1 Each Party shall bear its own expenses in connection with this Agreement.

## ARTICLE 12 - GOVERNING LAW & ARBITRATION

12.1 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 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.

The Arbitrator on appeal shall be the person currently acting as Lloyd's Appeal Arbitrator.

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.

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.

In cases where neither the claim nor any counterclaim exceeds the sum of USD \$400,000 (or such other sum as the parties may agree), the arbitration shall be conducted in accordance with the Lloyds FCAP (Fixed Cost Arbitration Procedure) current at the time when the arbitration proceedings are commenced.

## ARTICLE 13 -EFFECTIVENESS

13.1 This Agreement shall commence on the date of its execution and be valid for a period of (TBD) and shall be automatically renewed upon expiry for an additional twelve (12) month period unless notified otherwise by either Party with sixty (60) days prior written notice.

13.2 The Parties may transfer this Agreement to any of their wholly owned subsidiaries or a parent company or an affiliate of the parent company that directly or indirectly owns 100% of the Party. A transfer to a wholly owned subsidiary or a parent company or an affiliate of the parent company may only take place upon 90 days prior written notice to the other Party. Except as provided above, this Agreement may not be assigned, in whole or in part, whether by [VO] or by SVITZER, without the prior written consent of the other Party.

13.3 Parties may not modify this Agreement without written notification and signature by both Parties executing this instrument, inspection and approval of the USCG.

## ARTICLE 14 - SEVERABILITY OF PROVISIONS

14.1 If any provision of this Agreement or the application thereof to any situation or circumstance shall be invalid or unenforceable, the remainder of this Agreement shall not be affected, and each remaining provision shall be valid and enforceable to the fullest extent. In the event of such partial invalidity, the Parties agree to, in good faith, replace any such legally invalid or unenforceable provision with valid and enforceable provisions that, from an economic viewpoint, most nearly and fairly approach the effect of the invalid or unenforceable provision.

14.2 The headings to the articles of this Agreement are to facilitate reference only, do not form a part of this Agreement and shall not in any way affect the interpretation hereof.

## ARTICLE 15 – GENERAL PROVISIONS

- 15.1 In the event [VO] sells or disposes of any of the vessels listed in **Appendix II** and gives written certification that the vessel in question will not trade in United States waters as part of the [VO] fleet for the duration of this Agreement, SVITZER agrees to delete that vessel from this Agreement and de-obligates the [VO] from any future payments related to the deleted vessel, except for those payments accrued prior to above-mentioned certification.
- 15.2 This Agreement and all addenda and exhibits attached hereto, signed and/or initialed by the Parties hereto, constitute the entire agreement between the Parties. This Agreement shall not be amended, changed or extended except by written instrument signed by both parties hereto.
- 15.3 Notwithstanding any other provision hereof, should any law or regulation, or any governmental ruling, order, policy, or request (such as import or export restrictions, license requirements, exchange controls, or request on any document for certification or statements) effectively restrict any Party from implementing any portion of this Agreement, then such Party shall use their best reasonable efforts to reduce the effect of such restriction.
- 15.4 Each Party agrees to perform any further acts and execute and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.
- 15.5 The Parties agree that the Services to be provided hereunder, including those of the personnel, equipment and/or ships/craft offered by SVITZER to [VO] are not exclusively offered to [VO] and that SVITZER is free to contract with others for the provision of any services, including without limitation any similar response services.
- 15.6 This Agreement is in the English language only, which language is controlling in all respects.
- 15.7 SVITZER shall carry, or cause to be carried, with an insurance company acceptable to [VO], insurance coverage with limits of not less than USD\$2,000,000, such insurance cover including Contractor's Liability assumed under this contract. A certificate of insurance will be furnished to [VO] upon request.

## ARTICLE 16 - NOTICE

- 16.1 Each party will appoint a person to serve as the official contact for this Agreement and for ensuring that up to date contact details for coordination of response activities of their organization are maintained. All notifications under this Article shall be done pursuant to **Appendix IV**.

**IN WITNESS WHEREOF**, the parties have duly executed this document on the date stipulated in the 1<sup>st</sup> paragraph of this Agreement.

SVITZER Salvage Americas, Inc.

Vessel Owner/Operator

By: \_\_\_\_\_

By: \_\_\_\_\_

Name/Title: Maurice Denis  
Regional Manager

Name/Title: \_\_\_\_\_

APPENDIX I: WRECKHIRE





**BIMCO**



# 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

Copyright, published by BIMCO  
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:	
(ii) Compliance with orders of competent authorities (state party to obtain confirmation):	
9. Extra costs of disposal of Vessel (Cl. 14)	10. Bonus payment/Reduced hire (Cl. 11, 12)
(i) state which party is responsible for costs and/or division between the parties:	(i) Amount of Bonus (state either total amount or percentage of the total payable under Agreement)
(ii) handling charge, if applicable (state percentage):	(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)
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)) See Annex IV (RATESHEET)	(ii) Daily Working Rate for Personnel (Cl. 10(a)) See Annex IV (RATESHEET)
(iii) Daily Standby Rate for Craft and Equipment (Cl. 7) See Annex IV (RATESHEET)	(iv) Daily Standby Rate for Personnel (Cl. 7) See Annex IV (RATESHEET)
(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: <b>N/A</b>	(a) Commencing from: <b>N/A</b>
(b) Daily Working Rate for Personnel: <b>N/A</b>	(b) and continuing until: <b>N/A</b>
(c) Daily Standby Rate for Craft and Equipment: <b>N/A</b>	(c) with a minimum payment of hire in any event (state number

continued

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(d) Daily Standby Rate for Personnel:	of days hire)
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)  <b>London. Clause 21(a) applies</b>	16. Number of Additional Clauses covering special provisions, if agreed  <b>N/A</b>

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), **Annex IV (RATE SHEET)**, 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 <b>the Contractor</b> )	Signature (for and on behalf of <b>the Company</b> )
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**ANNEX I (SCHEDULE OF PERSONNEL, CRAFT AND EQUIPMENT)  
INTERNATIONAL WRECK REMOVAL AND MARINE SERVICES AGREEMENT (DAILY HIRE)  
CODE NAME: WRECKHIRE 2010**

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Dated:

Vessel:

Schedule of Personnel, Craft and Equipment ([Cl. 2, 4](#) and [13\(a\)](#))

**As the Operation requires**

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**

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Dated:

Vessel:

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

**As the Operation requires**

continued

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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)			
Sw ell direction & height (m)			
Wave height & max w ave 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
<i>Demobilised, inoperative or injured – insert under "Remarks"</i>					

<b>Areas of concern:</b> Health & safety  Environmental  Other
---

<b>Comments:</b> Contractor's Representative  Company Representative
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Signed:			
Company Representative			
Contractor's Representative			
	Name	Position	Signature

Contractor's Daily Reports ([Cl. 2](#)).

continued

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

<b>1. Definitions</b>	<b>1</b>
"Company" means the party stated in <a href="#">Box 3</a> .	2
"Contractor" means the party stated in <a href="#">Box 2</a> .	3
"Services" means the services stated in <a href="#">Box 7</a> .	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 <a href="#">Box 4</a> .	5
"Worksite" means the position of the Vessel stated in <a href="#">Box 6</a> .	7
<b>2. The Services</b>	<b>8</b>
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 <a href="#">Boxes 4, 5 and 6</a> .	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 <a href="#">Clause 4</a> (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 <a href="#">Box 7(ii)</a> 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
<b>3. Company Representative</b>	<b>25</b>
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
<b>4. Change of Method of Work and/or Personnel, Craft and Equipment</b>	<b>36</b>
The Rates of Hire stated in <a href="#">Box 11</a> are based upon the Nature of the Services, as set out in <a href="#">Box 7</a> , 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 <a href="#">Boxes 4, 5 and 6</a> .	37 38 39
<b>(a)</b> 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
<b>(i)</b> The Contractor shall forthwith give notice in writing thereof to the Company and of the estimated additional costs to effect the Services;	45 46
<b>(ii)</b> 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
<b>(iii)</b> 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>(b)</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
<b>(i)</b> The Company may, subject to the provisions of <a href="#">Clause 10(d)</a> hereof, seek a reduction in respect of the monies	54



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payable pursuant to <a href="#">Clause 10(a)</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 <a href="#">Clause 20</a> (Expert Evaluation) or to arbitration or mediation pursuant to <a href="#">Clause 21</a> (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
<b>5. Miscellaneous</b>	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
<b>6. Permits</b>	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 <a href="#">Clause 13(e)</a> ).	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
<b>7. Delays</b>	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 ( <a href="#">Box 11(iii)</a> and <a href="#">(iv)</a> ) 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) <a href="#">Sub-clauses 7(b)</a> and <a href="#">7(c)</a> 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 <a href="#">Sub-7(b)</a> or <a href="#">7(c)</a> above to the Daily Rates of Hire or the duration of such reduction, then the issue may	109 110



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be referred to expert evaluation in accordance with <a href="#">Clause 20</a> (Expert Evaluation) or to arbitration or mediation pursuant to <a href="#">Clause 21</a> (Arbitration and Mediation).	111 112
<b>8. Suspension or Termination</b>	<b>113</b>
<b>(a)</b> 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 <a href="#">Box 11</a> .	114 115 116 117
<b>(b)</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
<b>(c)</b> 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 <a href="#">Box 11</a> 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
<b>9. Delivery and/or Disposal</b>	<b>126</b>
<b>(a)</b> 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 <a href="#">Box 8</a> . 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>(b)</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
<b>(c)</b> 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 <a href="#">Box 8</a> ).	147 148 149
<b>10. Payment</b>	<b>150</b>
<b>(a)</b> The Company shall pay the Contractor the Daily Working and Standby Rates of Hire for Personnel, Craft and Equipment set out in <a href="#">Box 11(i)-(iv)</a> and, if applicable, Reduced Daily Rates of Hire in accordance with <a href="#">Box 11(v)</a> .	151 152
<b>(b)</b> Such hire shall be fully and irrevocably earned on a daily basis and shall be non-returnable.	153
<b>(c)</b> Within 14 days of termination or completion of the Services set out in <a href="#">Box 7</a> the Contractor shall return any overpayments to the Company.	154 155
<b>(d)</b> 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
<b>(e)</b> All payments to the Contractor shall be made in the currency and to the bank account stipulated in <a href="#">Box 12</a> .	158
<b>(f)</b> 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 <a href="#">Clause 15</a> (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

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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 <a href="#">Box 13</a> , they shall attract interest in accordance with the rate set out in <a href="#">Box 13</a> .	165 166 167
<b>11. Bonus</b>	<b>168</b>
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 <a href="#">Box 10(ii)</a> , the Company shall pay the Contractor the bonus set out in <a href="#">Box 10(i)</a> ; or	171 172
(ii) on or after the date or outside the period stated in <a href="#">Box 10(ii)</a> , but before the date or within the period stated in <a href="#">Box 10(iii)</a> , the Company shall pay the bonus set out in <a href="#">Box 10(i)</a> reduced pro-rata on a daily basis from 100 per cent (100%) on the date or period stated in <a href="#">Box 10(ii)</a> down to zero on or after the date or period stated in <a href="#">Box 10(iii)</a> .	173 174 175 176
(b) Delays ( <a href="#">Clause 7</a> ) shall not affect the dates or periods to be applied for the purposes of this <a href="#">Clause 11</a> .	177
<b>12. Reduced Daily Rates of Hire</b>	<b>178</b>
If the Contractor fails to complete the Services and, if applicable, deliver and/or dispose of the Vessel at the place(s) indicated in <a href="#">Box 8</a> within the period or on or before the date stated in <a href="#">Box 10(iii)</a> , the Daily Rates of Hire shall be reduced in accordance with <a href="#">Box 11(v)</a> . Delays ( <a href="#">Clause 7</a> ) shall not affect the dates or periods to be applied for the purposes of this <a href="#">Clause 12</a> .	179 180 181 182
<b>13. Extra Costs</b>	<b>183</b>
The following shall be paid by the Company 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 <a href="#">Clause 6</a> (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 <a href="#">Box 14(i)</a> for <a href="#">Clause 13(a) - (h)</a> costs or <a href="#">Box 14(ii)</a> for <a href="#">Clause 13(i)</a> costs, upon presentation of invoice.	202 203 204 205
<b>14. Extra Costs of disposal of Vessel</b>	<b>206</b>
All extra costs incurred resulting from the disposal of the Vessel shall be for the account of the party stated in <a href="#">Box 9(i)</a> . If the Company is the party stated in <a href="#">Box 9(i)</a> 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 <a href="#">Box 9(ii)</a> upon presentation of invoice.	207 208 209 210
<b>15. Security</b>	<b>211</b>
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



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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
<b>16. Liabilities</b>	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
<b>17. Himalaya Clause</b>	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
<b>18. Lien</b>	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
<b>19. Time for Suit</b>	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

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and howsoever shall be absolutely barred and extinguished.	269
<b>20. Expert Evaluation</b>	270
(a) If the parties are unable to agree the alteration to costs or rates under <a href="#">Clause 4(a)</a> or <a href="#">Clause 4(b)</a> or the adjustment to the Daily Working Rate or the time lost under <a href="#">Clauses 7(a), 7(b) or 7(c)</a> , 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 <a href="#">Clause 21</a> (Arbitration and Mediation).	290 291 292 293
<b>21. Arbitration and Mediation</b>	294
This <a href="#">Clause 21</a> 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
<del>(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.</del>	318 319 320 321 322 323



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<del>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.</del>	324 325 326
<del>(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.</del>	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 <u>Box 15</u> in PART I is not appropriately filled in, <u>Sub-clause 21(a)</u> of this Clause shall apply. <u>Sub-clause 21(d)</u> shall apply in all cases.	355 356 357
<i>*Sub-clauses 21(a), 21(b) and 21(c) are alternatives; indicate alternative agreed in <u>Box 15</u>.</i>	358
<b>22. Notices Clause</b>	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 <u>Boxes 2</u> and <u>3</u> 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 <u>Sub-clause 22(a)</u> .	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 <sup>th</sup> ) 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
<b>23. Insurance</b>	373

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(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 <a href="#">Box 4(ix)</a> and shall comply with all the requirements of the policy.	377 378 379
<b>24. Pollution</b>	<b>380</b>
(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
<b>25. Rotation and Replacement of Craft, Equipment and Personnel</b>	<b>392</b>
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
<b>26. General Provisions</b>	<b>396</b>
(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

**PERSONNEL**

FUNCTION	RATE (USD)
<b>Salvage Personnel</b>	
Salvage Master	USD 1,900
Salvage Officer	USD 1,585
Salvage Technician	USD 1,585
Naval Architect	USD 1,585
Dive Supervisor	USD 1,275
Salvage Diver	USD 1,140
Shore Coordinator	USD 1,140
Office Administration	USD 1,275
<b>Firefighting personnel</b>	
Fire Assessor	USD 2,700
Marine Incident Manager	USD 2,700
Lead Firefighter	USD 2,700
Firefighter	USD 2,300
Maintenance Technician	USD 1,900
Safety Officer / Industrial Hygienist	USD 1,600
Logistics / Finance Officer	USD 1,800

**EQUIPMENT**

QTY	ITEM	RATE per Unit (USD)
<b>Generators</b>		
1	Up to 50 kW	USD 75
2	121 to 300 kW	USD 253
<b>Distribution Boards</b>		
1	Up to 50 kW	USD 75
2	121 to 300 kW	USD 253
<b>Compressors</b>		
1	185 Cfm	USD 190
1	600 Cfm	USD 317
2	Air Manifold	USD 30
1	Blower; 1,500m <sup>3</sup> /min.	USD 1,076



**ANNEX IV: RATES**



Hoses: Per 6 Metres or 20 Feet		
6	¾" Air Hose	USD 5
10	2" Air Hose	USD 10
20	3" Layflat	USD 17
10	6" Layflat	USD 25
2	2" Rigid	USD 19
30	3" Rigid	USD 22
30	6" Rigid	USD 32
<b>Miscellaneous Equipment</b>		
2	Air Bags, less than 5 tons lift	USD 50
4	Air Bags 5 to 15 tons lift	USD 253
2	Air Lift 3"	USD 95
1	Air Lift 6"	USD 253
2	Air Tugger, up to 3 tons	USD 95
2	Chain Saw	USD 25
1	Container handling package	USD 200
1	Communications package	USD 200
4	Echo Sounder, portable	USD 32
2	Extension Ladder	USD 25
1	Hydraulic Jack, up to 50 tons	USD 50
1	Hydraulic Hand Pump	USD 7
2	Hydraulic Powerpack up to 40kW (Electric)	USD 60
4	Hydraulic Powerpack 75kW (Electric)	USD 95
2	Pressure washer, steam	USD 570
1	Rigging Package, heavy ca.	USD 506
1	Rigging Package, light ca.	USD 253
2	Tirfors, up to 5 tonnes	USD 14
1	Thermal Imaging Camera	USD 316
1	Tool Package, per set	USD 220
2	Ventilation Package	USD 14
6	VHF Radio	USD 14
<b>Diving Equipment</b>		
1	Mobile dive station	USD 700
1	High Pressure Compressor 3500 psi/17 Cfm	USD 200
1	High Pressure Compressor 5500 psi/5 Cfm	USD 115
1	Decompression Chamber with Medical Lock	USD 325
6	Underwater Magnets, Miko Magnet	USD 25
1	Underwater Drill	USD 30

**ANNEX IV: RATES**



1	Shallow Water Dive Spread	USD	285
1	PEER Hottap Set	USD	1,270
<b>Protective Clothing/Safety Equipment</b>			
4	Breathing Gear	USD	64
6	Hazardous Environment Suit	USD	12
1	Cooler; Evaporative; 36", 9800 Cfm, 110v	USD	100
2	Heater 55,000/110,000 Btu	USD	250
6	Gas Monitor; Four Gas Types	USD	175
4	PPE; Ascending/Descending package: 4 Man (Set)	USD	350
4	PPE; Bunker Gear Pkg: 1 Man	USD	125
2	PPE; Chemical Suit Pkg: Class A: 1 Man	USD	145
2	PPE; Chemical Suit Pkg: Class B: 1 Man	USD	25
6	PPE; Cold Weather 1st Response Kit	USD	35
1	PPE; Confined Space Entry 2 Man package, with Communication	USD	525
2	PPE; Survival Suit, Immersion	USD	10
2	Ventilation Pkg: Vane Axial: 1,500 Cfm	USD	100
4	Ventilation Pkg: Venturi Type: 4,000 Cfm	USD	115
<b>Pollution Control Equipment</b>			
40	Oil Boom, 24" per 10 meters	USD	39
2	Ballast/Fuel Storage Bins (10,000 lts.)	USD	75
<b>Pumping Equipment</b>			
<i>Air</i>			
2	2"	USD	95
3	3"	USD	110
<i>Diesel</i>			
4	3" (Trash Pump)	USD	86
<i>Electrical Submersible</i>			
4	3"	USD	143
2	6"	USD	759
<i>Hydraulic</i>			
2	3"	USD	500
4	6"	USD	759
<b>Lighting system</b>			

**ANNEX IV: RATES**

2	Halogen System (500W portable)	USD	100
4	Lighting String, per 50 feet	USD	32
1	Underwater Lighting System, 1,000 watts	USD	95
<b>Winches</b>			
2	Up to 10 tons, including 50 metres of wire	USD	175
<b>Fenders (Yokohama)</b>			
2	2.50m. x 5.50m.	USD	190
<b>Shackles</b>			
10	Up to 50 tonnes	USD	13
6	51 to 120 tonnes	USD	25
<b>Welding and Cutting Equipment</b>			
2	Oxy-acetylene Surface cutting gear (compl. Set)	USD	32
1	Underwater Cutting Gear (compl. Set)	USD	64
1	Underwater Welding Gear (compl. Set)	USD	64
1	250 Amp Welder (e.g. Miller Co 250 Diesel)	USD	190
<b>Standard boxes</b>			
1	Standard Welding Dry	USD	550
1	Standard Welding Wet	USD	550
1	Standard General set	USD	550
<b>Emergency Towing Vessels</b>			
Emergency Towing Vessels will be charged at cost plus 15% uplift			

**NOTES**

- I. Personnel day rates are based on a 12 hour working period.
- II. Personnel and equipment day rates will be charged at the rates indicated + 25% uplift. The applicable standby rate will be 50% of the daily rate (plus uplift).
- III. All third party resources, such as but not limited to, personnel, crafts and rental equipment will be charged at cost plus 15% uplift.
- IV. All Out of Pocket expenses, such as but not limited to, boarding & lodging, transport and equipment repairs/replacement will be charged at cost plus 15%
- V. Personnel & Equipment are billed at 100% of their daily rate during mobilization and demobilization.



APPENDIX III: CAPTAIN OF THE PORT ZONE LIST



COTP ZONES
Baltimore
Boston
Buffalo
Charleston
Columbia River
Corpus Christie
Delaware Bay
Detroit
Duluth
Guam
Hampton Rds.
Honolulu
Houston-Galveston
Jacksonville
Key West
Lake Michigan
Long Island Sound
Los Angeles-Long Beach
Lower Mississippi
Miami

COTP ZONES
Mobile
Morgan City
New Orleans
New York
North Carolina
Northern New England
Ohio Valley
Port Arthur
Prince William Sound
San Diego
San Francisco
San Juan
Sault Ste. Marie
Savannah
Seattle (Puget Sound)
Southeastern New England
South East Alaska (Juneau)
St. Petersburg
Upper Mississippi
Western Alaska

**APPENDIX IV: NOTIFICATION****I. Initiation of Emergency Response Mobilization:**

- EMERGENCY NUMBERS:
  - ✓ **24-HOUR EMERGENCY NUMBER:** +1 305 209 6020
  - ✓ **SECONDARY EMERGENCY NUMBERS:**
    1. +1 855 269 5620
    2. +31 255 56 2666
    3. +1 305 342 7417
    4. +1 786 338 8836
    5. +1 786 449 0606
    6. +1 305 322 9202
- The person initiating the response shall provide SVITZER with:
  - His/hers Name and Title
  - [VO] Representative name, address and telephone number
  - Vessel Name
  - Coordinates of location of incident (latitude/longitude)
  - Nature and Scope of incident
  - Approximate time incident occurred
  - Any other pertinent information relating to the incident

**II. Notice: Official Contacts:**

SVITZER Salvage Americas, Inc.

Att. Mr. Maurice Denis

Address: 3470 NW 82nd Ave., Ste. 650

Doral, FL 33122

Email: [maurice.denis@svitzer.com](mailto:maurice.denis@svitzer.com)

Mobile: +1 786 338 8836

Fax: +1 305 779 1037

COMPANY NAME

Att. CONTACT

Address: ADDRESS

CITY, STATE, ZIPCODE

Email: CONTACT EMAIL

24 Hour Phone: PHONE

Fax: NUMBER