



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



This agreement is made on the **[INSERT DATE]** 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 **[INSERT COMPANY NAME]**, having its principal place of business at **[INSERT COMPANY ADDRESS]** (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 the **[INSERT DATE]** 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 99 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, ~~2000~~ 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 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 50% uplift. Reimbursement of all out of pocket expenses will be on a cost-plus-15% basis only and not subject to this 50% uplift.
 - iii) **For Category 3 situations.** On the basis of an LOF2000 2011, with the SCOPIC clause incorporated, in the format as attached to this Agreement in Annex III 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 [INSERT FEE] 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: [INSERT OWNER NAME]
 [INSERT OWNER ADDRESS]

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

 Name

 Name

 Title

 Title