

## IN THE FAIR WORK COMMISSION

**Matter No:** AG2022/123

**Applicant:** Svitzer Australia Pty Limited T/A Svitzer Australia

### STATEMENT OF PAUL GARRETT

I, Paul Garrett, of Level 1, 365 Sussex Street, Sydney in the State of New South Wales, do hereby state:

#### *Introduction*

1. I am the Deputy Secretary of the Sydney Divisional Branch of The Maritime Union of Australia Division of the Construction, Forestry, Maritime, Mining and Energy Union (**MUA**). I have held that position since 25 January 2021. Prior to that I was the Assistant Secretary of the Sydney Divisional Branch of the MUA . I held that position from 2003 until 25 January 2021, including at the time the Maritime Union of Australia was a separate registered organisation and prior to its amalgamation with the Construction, Forestry, Maritime, Mining and Energy Union on 27 March 2018.
2. I am authorised to make this witness statement on behalf of the MUA. I make this witness statement based on my own direct observations and knowledge, save for where I say otherwise. Where I make this statement based on information provided to me, I identify the source of that information and the circumstances in which it was provided to me.
3. As part of my duties as a Sydney Divisional Branch Deputy Secretary I am responsible for the following areas of the Maritime Industry:
  - (i) Towage;
  - (ii) Shipping;

- (iii) LNG Shipping;
- (iv) Ferries;
- (v) Charter Vessels;
- (vi) Port Authority;
- (vii) Lineboats; and
- (viii) Stevedoring.

4. I have spent my entire working life around the maritime industry and am well familiar with the vessels that serve the industry. I have worked in the maritime industry since I was 18 years of age and have been employed in positions aboard ferries, charter vessels, bunker vessels, workboats, and on tugboats. I worked as a General Purpose Hand (**GPH**) on tugboats.
5. I became a MUA member in 1998.
6. Immediately prior to being elected Assistant Secretary of the Sydney Divisional Branch of the MUA, I was employed as a GPH on tugboats with **Adsteam** Harbour Pty Ltd. Adsteam was acquired by **Svitzer** Australia Pty Ltd in 2007 and Svitzer operated the tugboat business formerly operated by Adsteam from this point.
7. Subject to the direction and oversight of the MUA Division Sydney Branch Secretary, Paul Keating, I am responsible for representing the industrial interests of members of the MUA Division employed in the towage industry.
8. I am the responsible Divisional Sydney Branch official that oversees towage operations in Port Jackson (Sydney Harbour) and Port Botany.
9. In addition to my responsibilities in my role as Sydney Divisional Deputy Branch Secretary, I am the Divisional Officer of the MUA responsible for negotiating enterprise agreements with Svitzer under the direction of MUA Divisional Assistant National Secretary Jamie Newlyn.

10. I have extensive experience in dealing with safety, industrial, government and regulatory issues affecting maritime workers on tugboats, operating on or about Sydney Harbour, Port Botany and on other waterways around Australia.
11. I also have extensive experience negotiating enterprise agreements. I have been involved in the negotiation of a great many of enterprise agreements in my position as an elected officer of the MUA. I have also been involved and have had significant experience in disputes relating to the negotiation of enterprise agreements.
12. On behalf of the MUA Division and its members, I have participated in the EBA negotiations for the 2009, 2010, 2013 and 2016 enterprise agreements covering the workers employed by Svitzer. I have played a key role both in the negotiations for and drafting of these EBAs. I also led the negotiations for the MUA in the 2013 and 2016 enterprise agreements.

#### ***MUA members working at Svitzer***

13. The MUA Division has a significant number of members who are employed by Svitzer Australia.
14. The employment of MUA members is covered by the *Svitzer Australia Pty Limited National Towing Enterprise Agreement 2016 (2016 Agreement)*. The 2016 Agreement also covers employees of the Australian Maritime Officers Union (AMOU) and the Australian Institute of Marine and Power Engineers (AIMPE).
15. Employees who are MUA members are referred to as “Ratings” in the 2016 Agreement.

#### ***Responsibility for EBA Negotiations***

16. In my role, under the direction of former Assistant National Secretary Ian Bray and subsequently under Mr Newlyn’s direction, I have been responsible for leading

negotiations on behalf of the MUA for with Svitzer for a new agreement to replace the 2016 Agreement (**Replacement Agreement**).

17. In my role, I have worked in with several other MUA Officials as well as MUA Delegates employed by Svitzer from the various ports around Australia.

### ***History of Enterprise Agreements***

18. Svitzer Australia entered the Australian towage market in 2007, acquiring the business of Adsteam as I outlined above .
19. Since that time, the following EBAs have applied to Ratings in the ports subject to the present enterprise bargaining:

(i) *Adsteam Harbour / MUA Certified Agreement 2006*

(ii) *SVITZER Australia Pty Limited and MUA Certified Agreement 2009*

(iii) *SVITZER Australia Pty Limited and MUA Towage Enterprise Agreement 2010*

(iv) *SVITZER Australia Pty Limited and MUA Towage Enterprise Agreement 2013*

(v) *Svitzer Australia Pty Limited National Towage Enterprise Agreement 2016*

### ***EBA Negotiations – Pre-September 2020***

20. The 2016 Agreement reached its nominal expiry date on 31 December 2019.

21. On 9 September 2019, Svitzer issued a Notice of Employee Representational Rights (**NERR**) in accordance with s173 of the *Fair Work Act 2009 (Cth)* to employees employed under the terms of the 2016 Agreement.
22. On 12 September 2019, Svitzer served the MUA a copy of their log of claims. A copy of Svitzer's log of claims is attached and marked **PG1**.
23. On 13 September 2019, the MUA served Svitzer a copy of its log of claims. A copy of the MUA log of claims is attached and marked **PG2**.
24. Officials and Delegates of the MUA participated in negotiation meetings along with Officials and Delegates of the AMOU and Officials and Delegates of the AIMPE on the following dates:
  - (vi) 12-13 September 2019 (Rydges Hotel, Sydney Airport)
  - (vii) 8-11 October 2019 (Rydges Hotel, Sydney Airport)
  - (viii) 22-24 October 2019 (Rydges Hotel, Sydney Airport)
  - (ix) 20-22 November 2019 (Rydges Hotel, Sydney Airport)
  - (x) 16-17 December 2019 (Rydges Hotel, Sydney Airport)
  - (xi) 14-15 January 2020 (Svitzer Australia, Sydney)
  - (xii) 4-5 February 2020 (Grace Hotel, Sydney)
  - (xiii) 26 February 2020 (Svitzer Australia, Sydney)
25. During these EBA negotiations, the parties agreed for Svitzer to maintain a 'claims tracker' on the status of negotiations. There were several versions of the 'claims tracker' as it was updated regularly by Svitzer as the negotiations progressed. The

'claims tracker' was available at each meeting and formed the basis for our negotiations. It was considered a working document and subject to change.

26. On 28 February 2020, Svitzer wrote to the MUA to provide an update on the status of negotiations attaching the most recent 'claims tracker' and EBA draft. A copy of the 'claims tracker' is attached and marked **PG3**.
27. Since the time of the 'claims tracker' in February 2020 and in the bargaining of meetings to through to April 2022, the MUA has significantly moved its position in negotiations, in particular during intensive negotiation sessions which occurred on 12-14 April 2022 which I addressed in *MUA Update #25* on 20 April 2022. A copy of the update is attached and marked **PG4**.
28. On 12 March 2020, management of Svitzer and Officials of the AMOU, AIMPE and MUA participated in a teleconference to discuss the impact of COVID-19. During that call, Ms Davis (Industrial Relations Manager - East - Human Resources, Svitzer Australia) who assisted leading the negotiations for Svitzer, stated words to the effect:

*Svitzer have received force majeure notice from MSC shipping line as well as CMA CGM shipping line.*

29. I understood from the 12 March 2020 discussion that Svitzer were effectively operating in crisis mode due to the COVID-19 health pandemic that was developing, and it was foreseeable that levels of shipping would significantly reduce which would subsequently impact on towage work in the various ports. I had several conversations with various MUA Officials and MUA Delegates that day and it was agreed that the COVID-19 health pandemic would "...overtake the EBA negotiations...". I formed the view that it was inevitable that the EBA negotiations with Svitzer would slow down for the immediate future whilst Svitzer and the MUA came to terms with the effects the COVID-19 health pandemic was having on the maritime industry.

30. On 13 March 2020, Svitzer management and Officials of the AMOU, AIMPE and MUA participated in a further teleconference to discuss the impact of COVID-19. EBA negotiations at this point were effectively suspended. I recall Ms Davis was in that conversation and this was agreed.
31. On 25 March 2020, Svitzer wrote to the AMOU, AIMPE and the MUA proposing a 'roll over' agreement.
32. On 3 April 2020, the MUA wrote to Svitzer in response to their correspondence of 25 March 2020.
33. There were several informal conversations with Ms Davis following the 3 April 2020 correspondence from the MUA. I made it clear to Ms Davis that the MUA Division membership would not accept a wage freeze and a "roll over" EBA.
34. On 20 April 2020, Svitzer wrote to the MUA Division with a revised offer. A copy of the 20 April 2020 correspondence is attached and marked **PG5**.

***22 April 2020 – 'High level' meeting***

35. On 22 April 2020, a 'high level' meeting was convened between Svitzer, the MUA, AIMPE and AMOU to discuss the 20 April 2020 correspondence sent by Svitzer. I attended the meeting on behalf of the MUA Division along with Mr Bray.
36. At the 22 April 2020 meeting, I recall Mr Bray saying words to the effect:

*The MUA is not agreeing to the Works Council coming out of the Agreement.*

*And, with reference to the roll over package we didn't do this exercise to lose headline entitlements. There are non-cost items that are already agreed that form part of the package. We reserve our rights to decline the offer.*

37. I understood the reference of Mr Bray to the Workplace Council was with regards to Svitzer's attempt to remove Clause 11.2.4 of the 2016 Agreement from its proposed EBA. The Workplace Council is convened at least once during the term of the Agreement and is a forum for the exchange of views between representatives of the employees and senior management, where, in addition to local consultative processes and through sharing information about industry matters and company prospects, greater trust and respect can be (and in my experience is) established.

38. At the 22 April 2020 meeting, I recall Mr Noes saying words to the effect:

*This offer does require for you to come formally back to us by Friday. This is what we feel is a fair compromise. We could have a rollover in Bowen and take 30% off the wages in Melbourne. Svitzer could use this crisis to tear up the wages. We are trying to be transparent in the negotiations.*

39. At the 22 April 2020 meeting, I recall saying words to the effect:

*We haven't had a discussion with the crews at large and are simply not in a position to give a formal response in two days. That being said, the MUA are aware that the members are not going to accept 0% and won't be voting in favour of it.*

And:

*Svitzer need to get in front of your workforce and tell them your plan and hear them reject it for yourselves. Stop hiding. I'll organise a room and venue where we can all social distance. You need to speak to your workers. We are not going to do a decimation of the tugboat industry via Zoom. If you want to take 30% off them, you tell them. We've spoken with the Delegates, and they reject it. We don't need two days; the proposal is rejected by the MUA.*

And:



*There is no difference in your offer. The roll over is rejected and we are not going through endless bits of correspondence on the same point. Get the Delegates back together and get the negotiations moving.*

And

*We don't need two days; the proposal is rejected by the MUA.*

40. At the 22 April 2020 meeting, I also referred Svitzer back to the MUA letter of 3 April 2020 and reiterated our three key points to the effect that:

*Further to the discussion had with the MUA EBA Negotiating Committee, the MUA can advise that we do not support the EBA proposal advanced by Svitzer.*

*Notwithstanding, the MUA proposes a mutually agreeable Deed which is reviewable on a quarterly basis that incorporates the non-monetary outcomes that have been negotiated and allows the EBA negotiations to resume once the COVID-19 health pandemic has eased. This proposal of a Deed is on the basis that the MUA seeks to resume meaningful negotiations based on what has already been agreed, as soon as possible. We would expect that any interim arrangement last no longer than twelve months.*

*We also require an agreed protocol to discuss any downturn in the business with the company outlining the nature of the downturn and supporting their claim with transparent evidential data across all ports, should that situation arise.*

***Post 22 April 2020 meeting***

41. Following the 22 April 2020 meeting, the MUA was continuing to deal with the COVID-19 health pandemic and the impact it was having on the members.

42. My immediate priorities at this time across several sites were ensuring a safe workplace and ensuring the maintenance of employment.
43. I was aware that Svitzer was adapting to the changed market conditions and took the view to allow them to settle for a few weeks before we moved back into meaningful bargaining for a new EBA. This meant that negotiations with Svitzer were not progressed at this time.

*Negotiations do not occur—22 April to late June 2020*

44. Between 22 April 2020 and 17 June 2020, I participated in several informal conversations between 22 April 2020 and 17 June 2020 with Ms Davis about the resumption of negotiations. There had been no real developments on the resumption of negotiations, and I formed the view that we needed to formalise our concerns.
45. On 17 June 2020, I wrote to Ms Davis regarding the MUA's concerns about Svitzer failing to bargain in good faith. I requested a resumption of negotiations.
46. On 23 June 2020 at 1:21pm, Ms Davis wrote in response:

*Pursuant to your request, we will now write to the Unions to propose dates for recommencement of negotiations via use of video and teleconference facilities.*

47. I suspected Ms Davis's letter was a delaying tactic and on 23 June 2020, I responded to Ms Davis and advised:

*Understood.*

*We'll start preparing the application for bargaining orders.*

48. On 23 June 2020 at 1:27pm, Mr Clarence Paul (Lawyer – Industrial Relations, Svitzer Australia) responded indicating a willingness to resume EBA negotiations.

### ***Lead up to EBA negotiations on 29 June 2020***

49. On 25 June 2020 at 5:34pm, I received an email from Mr Paul (regarding logistics for the meeting scheduled for 29 June 2020).
50. On 29 June 2020 at 11:14am, Mr Paul emailed me and advised of information relating to Svitzer's operations in advance of the scheduled EBA meeting later that day.

### ***29 June 2020 – EBA Negotiations***

51. At the meeting on 29 June 2020, I stated words to the effect:

*The MUA is keen to resolve the EBA negotiations. We may have to swap people in and out, but the MUA will make ourselves available for any date.*

52. The 29 June 2020 meeting largely dealt with the 0% 'increase' that had been offered by Svitzer. At the 29 June 2020 meeting, MUA Delegate Rob Paterson raised concerns with the use of videoconference for EBA negotiations and stated words to the effect:

*We need to get back to face-to-face for these negotiations.*

53. I recall Ms Davis stating words to the effect that:

*Travel is subject to global Svitzer travel ban. Furthermore, there is issue with the cost for flights.*

54. No further meeting dates were set at this meeting. There was some discussion about wanting to meet after 20 July 2020.

*September EBA meeting dates*

55. On 24 July 2020, Ms Davis emailed me, further to the 29 June 2020 EBA negotiation meeting about further negotiations dates.

56. On 12 August 2020, I emailed Ms Davis and advised that the MUA was ready to meet whenever Svitzer was available.

On 14 August 2020, I emailed Ms Davis and advised again that the MUA was ready to meet whenever Svitzer was available.

57. On 17 August 2020 at 4:57pm, I emailed Ms Davis and advised that the MUA was ready to meet whenever Svitzer was available.

58. On 17 August 2020 at 6:13pm, Ms Davis responded and advised:

*Svitzer now proposes the following new dates:*

- *Monday 7 September between 1pm-4pm AEST; and*
- *Wednesday 9 September between 1pm-4pm AEST.*

*Can each union please advise their availability on these dates as soon as possible?*

59. On 17 August 2020 at 6:28pm, I emailed Ms Davis and stated:

*Notwithstanding, as the principal negotiator for Svitzer, you have been told in several of our discussions we are not playing the “diary game” and will simply make ourselves available for any EBA negotiation meeting.*

*We have spoken on this, and you know this.*

*The MUA is available on the dates you have proposed.*

60. On 20 August 2020 at 1:44pm, I emailed Ms Davis and stated:

*Are these dates confirmed?*

*We haven't heard back from Svitzer.*

*Is there any need to wait another 18 days for negotiations?*

61. On 20 August 2020 at 2:33pm, Ms Davis emailed me and stated:

*Svitzer will send officials calendar invites for 7 and 9 September this afternoon.*

62. Further correspondence exchange took place between Ms Davis and me regarding the proposed meeting dates.

### ***Protected Action Ballot Order***

63. Deputy President Booth made a Protected Action Ballot Order on 28 August 2020 in matter B2020/442.

64. A copy of the Protected Action Ballot Order is attached and marked **PG6**.

### ***Protected Action Ballot***

65. The Australia Electoral Commission conducted the Protected Action Ballot.

66. On 8 October 2020, the Australian Electoral Commission declared the result confirming that a majority of voters who cast a valid vote were in favour of the action in all twenty questions.

67. A copy of the declaration is attached and marked **PG7**.

*Events between September 2020 and August 2022*

68. No bargaining took place between June 2020 and September 2020.
69. On 7 September 2020, Mr Noes issued the MUA a revised log of claims from Svitzer. A copy of that letter is attached and marked **PG8**. These claims contained 30 new issues which has been virtually the sole focus of these negotiations since the time that it was issued. Since they were first issued, many of these claims have been resolved between the parties or withdrawn by Svitzer.
70. Bargaining meetings resumed in September 2020 and continued throughout 2021. EBA negotiations took place between the parties on the following dates:
  - (i) 7 September 2020
  - (ii) 9 September 2020
  - (iii) 30 September 2020
  - (iv) 22 October 2020
  - (v) 28 October 2020
  - (vi) 9 November 2020
  - (vii) 27 November 2020
  - (viii) 28 January 2021
  - (ix) 5 February 2021
  - (x) 12 February 2021
  - (xi) 1 April 2021
  - (xii) 5 May 2021
  - (xiii) 29 June 2021
  - (xiv) 30 June 2021
  - (xv) 1 July 2021
  - (xvi) 13 July 2021
  - (xvii) 15 July 2021
  - (xviii) 1 September 2021
  - (xix) 8 September 2021

- (xx) 23 November 2021
- (xxi) 24 November 2021
- (xxii) 25 November 2021
- (xxiii) 14 December 2021

***s225 Application***

- 71. In January 2022 Svitzer made an application to terminate the 2016 Agreement. The matter was allocated to Deputy President Easton.
- 72. The termination proceedings have been subject to revised directions throughout 2022. Subsequent to Svitzer filing its materials in March 2022, the timetable for the matter was varied to allow the parties to resume negotiations.

***Conciliation before Commissioner Riordan and separate EBA discussions between the parties from August 2022 to date***

- 73. As part of the s225 EBA termination in matter AG2022/123, Deputy President Easton encouraged conciliation between the parties and referred the matter for member assisted conciliation. Commissioner Riordan was issued the file and convened the parties together in an attempt to resolve the outstanding issues.
- 74. An initial conference took place before Commissioner Riordan on 11 August 2022. Following the conference, Commissioner Riordan issued a letter for distribution to the Employees who would be covered by the proposed EBA outlining the conciliation process which the parties would undertake. A copy of that letter is attached and marked **PG9**.
- 75. The parties met to continue the conciliated conference sessions before Commissioner Riordan on the following dates:
  - (i) 18 August 2022
  - (ii) 19 August 2022
  - (iii) 30 August 2022
  - (iv) 31 August 2022

(v) 1 September 2022

76. On or about 31 August 2022, the MUA identified that we would be prepared to work through an agenda over the next three months to resolve all claims. We further agreed that any issue which was not agreed would be subject to a binding recommendation process made by Commissioner Riordan. Svitzer did not agree to this process.
77. Further EBA negotiations took place between the parties before Commissioner Riordan on the following dates:
- (i) 5 September 2022
  - (ii) 6 September 2022
  - (iii) 22 September 2022
  - (iv) 23 September 2022
78. A further round of EBA negotiation meetings were held (without the assistance of Commissioner Riordan) on the following dates:
- (i) 28 September 2022
  - (ii) 29 September 2022
  - (iii) 30 September 2022
79. A further round of EBA negotiation meetings were held (without the assistance of Commissioner Riordan) on the following dates:
- (i) 18 October 2022
  - (ii) 19 October 2022
  - (iii) 20 October 2022

***20 October 2022 summary of positions***

80. On 20 October 2022, Svitzer prepared a summary of the competing bargaining positions between the parties since the commencement of process before Commissioner Riordan. A copy of the 20 October 2022 document is attached and marked **PG10**.



81. The 20 October 2022 document generally reflects the position of Svitzer against the position presented by the AMOU, AIMPE and MUA. The items marked in red 21 through to 26 reflect the issues identified by Svitzer as being outstanding.
82. The 20 October 2022 document brings together the “back and forth” of negotiations since the discussions resumed on 18 August 2022.
83. This document represented significant concessions from the MUA including but not limited to:
  - (i) Reduced quantum of redundancy package
  - (ii) Reduced payment for recall days (double time to single time)
  - (iii) “Cash only” versus payment of leave for recall days after eight days.
  - (iv) Maintenance work to be performed on the weekend
84. With further negotiation I am strongly of the view that the outstanding issues between the parties are capable of being resolved.

***Correspondence between MUA and Svitzer (25 October 2022 to 11 November 2022)***

85. Between 25 October 2022 through to 11 November 2022, Nicolaj Noes (Managing Director – Svitzer) and I emailed back and forth on the negotiations and next steps.
86. On 25 October 2022, Mr Noes emailed me announcing that Svitzer was withdrawing all previous offers and purporting to revert to the position it said it had announced with Brian Lacy. It then identified 14 claims on which the parties were apart. In relation to these claims, the parties had previously not been apart on:
  - (i) Full time recall cost reduction
  - (ii) PPT cost reduction beyond guarantee
  - (iii) Casual loading reduction
  - (iv) PoPS clauses 5.3
  - (v) Removing restriction on maintenance while on duty
  - (vi) Term of Agreement

(vii) Delegates to be paid for the days which they attended for bargaining

87. On 26 October 2022 at 7:54AM, I emailed Mr Noes in response to his email of 25 October 2022. I noted that Svitzer had moved away from many points that had been resolved in principle in the last few months as set out above. I asked Mr Noes to outline what the ‘without prejudice’ position was that Svitzer planned to revert to. I also pointed out that there was a lack of clarity in bargaining positions as a result of correspondence Svitzer was sending.
88. On 26 October 2022 at 1:56PM, Mr Noes emailed me. He referred to the offer Svitzer had made last week and said it was given in a context which assumed it would be accepted. Mr Noes said that as the offer had not been accepted and industrial action had occurred, Svitzer had determined to *withdraw its latest offer* and revert to the so-called ‘in principle’ document with adjustments. He outlined a number of ‘key claims’ in an attached enterprise agreement. A copy of that document is attached and marked **PG11**.
89. This email represented a significant shift by Svitzer. It also made it very difficult to understand what its position was.
90. On 2 November 2022 at 10:29AM, I emailed Mr Noes in response to his email of 26 October 2022 detailing that:
- a. Svitzer had changed its position;
  - b. there was a lack of clarity about Svitzer’s position;
  - c. the unions now needed to undertake a ‘gap analysis’ to determine what Svitzer’s actual position was;
  - d. Svitzer were trying to confuse negotiations to play into a narrative;
  - e. Svitzer had re-opened several claims that had previously been settled;
  - f. Svitzer were advancing a position inferior to that which had been advanced one week ago;
  - g. Svitzer were seeking to revert to negotiations via email;
  - h. the MUA called on Svitzer to resume negotiations.

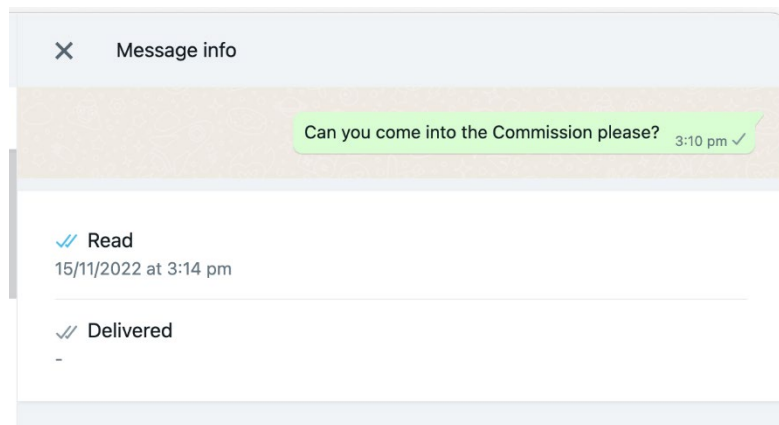
91. On 2 November 2022 at 10:36AM, I emailed Mr Noes asking when Svitzer were prepared to meet.
92. On 2 November 2022 at 1:49PM, Mr Noes emailed me and referred to the offer presented by Svitzer to the MUA at Sussex Street on 20 October 2022 which was not accepted. He asserted that Svitzer was changing its position and reverting to a previous proposal. He also detailed that Svitzer would not participate in a further bargaining session, stating that this would involve sitting and repeating entrenched positions.
93. On 8 November 2022 at 12:49PM, I emailed Mr Noes noting that MUA members had asked when Svitzer intended to next sit down and negotiate a resolution. I asked whether Svitzer was pinning everything on the enterprise agreement termination and stated that the MUA would consider bargaining orders if Svitzer did not agree to meet.
94. On 11 November 2022 at 3:44PM, Mr Noes emailed me and attached a document that was sent to Svitzer employees that was said to be a response to my email of 8 November. Attached and marked **PG12** is a copy of that company memo.
95. On 11 November 2022 at 4:04PM, I emailed Mr Noes in response to his letter stating that the parties needed to resume negotiations. I also noted that the Svitzer were not prepared to meet with the MUA. I did not receive a response to this email.
96. A copy of the email correspondence referred to in the preceding paragraphs is attached and marked **PG13**.
97. I note that the parties have not met for bargaining since 20 October 2022 and that Svitzer has refused to meet since this time.

***Conference before Commissioner Riordan on 15 November 2022***

98. A conference was listed between Svitzer and AIMPE on 25 November 2022 in matter AG2022/123.
99. At 9:01am on 15 November 2022, Commissioner Riordan called a conference on for 2:30pm the same day. The meeting was held by TEAMS videoconference.
100. At 2:30pm, I attended the conference for the MUA along with Mr Newlyn and Wendy Carr (MUA National Legal Director). The AMOU and AIMPE were represented by Jarrod Moran and Greg Yates respectively. All unions had in attendance their lead negotiators since the discussions that began in August 2022.
101. Svitzer was represented by Vivian Faraj. Ms Faraj had previously been in EBA negotiations but had not been present during the EBA sessions since August 2022. Rather they had been attended by Mr Noes and Deniz Kirdar-True.
102. During the conference Ms Faraj effectively indicated to the effect that she needed “...to get instruction.”
103. To me, it was apparent that Svitzer were attempting to frustrate the process by not having the lead negotiators available for the conference.
104. I made a statement during the conference to the effect of saying “*Well Ms Faraj keeps looking up from her screen at someone. They are clearly behind the screen.*” It appeared that Ms Faraj was looking at persons behind the computer screen.
105. Commissioner Riordan adjourned the conference and asked Ms Faraj to get instruction from Mr Noes at approximately 3:10pm.
106. I had seen Mr Noes doing media through the day and at close proximity to the conference time on ABC. I noted the tugboats and wharf in the background. Having

formerly worked in the workplace myself, I recognised the wharf as the Cooper Street Balmain wharf which is directly adjacent to the Svitzer office.

107. At 3:10pm, I sent Mr Noes a message on WhatsApp “*Can you come into the Commission please?*” Mr Noes read the message at 3:14pm, but he did not respond.



108. Before the resumption of the conference, I had been made aware that Mr Noes was sitting in the park next to the Svitzer office, on the telephone.
109. The conference before Commissioner Riordan resumed at 3:40pm. Ms Faraj advised to the effect that she “...hadn’t been able to get instruction from Nicolaj.”
110. I responded with words to the effect. “*He is in Propellor Park. He is sitting there on the telephone. He is next to your office. I sent him a text at 3:10pm and he read it at 3:14pm.*” Propellor Park is the local name for the park due to the big propellor statue that has been mounted in the middle of it.
111. As Svitzer could not get any real instruction, the conference didn’t proceed to deal with any substantive issues and was subsequently adjourned. The Commissioner indicated that he would try to contact Mr Noes.
112. In a call later in the evening I had with Mr Noes, I said words to the effect “*Come on Nicolaj, you were seen sitting in the Park. You should have been in the*

*Commission.*” Mr Noes acknowledged this and said to the effect “*Yes. I know. I was on the phone.*”

***Impact of termination or suspension of industrial action***

113. In my view, whilst bargaining is continuing it is by no means at the end of the road. The MUA has participated in bargaining through conciliation on an ongoing basis since Svitzer filed its s225 application in January 2022.
114. Since Svitzer first entered the Australian towage market in 2007, I have participated in the 2009, 2010, 2013 and 2016 EBA negotiations. Respectfully, negotiations for the Replacement Agreement are not the hardest that I have done with this company. The hardest was the 2009 EBA which was impacted severely by the Global Financial Crisis. Through hard negotiations and compromise, we managed to resolve more complex issues during those negotiations and still arrive at a mutually agreeable outcome that was endorsed by the Employees of the company.
115. In my detailed experience with these negotiations, I don't believe that there is any matter between the parties which cannot be resolved. What needs to happen is Svitzer needs to actually engage in negotiations. Svitzer has refused to do so since 20 October 2022.
116. Having my knowledge of the issues, the negotiations and the industry, I am firmly of the view that the parties have the capacity, if they actually meet and engage in bargaining, to resolve the EBA negotiations in the next few weeks.
117. I have indicated to my Branch Executive that it is my intention to prioritise my time and workload to resolve these negotiations this side of Christmas 2022. This has been agreed with by my Branch Executive.

***Protected Industrial Action since 20 October 2022***

118. Between 20 October 2022 and 11 November, the MUA issued 16 notices of intention to take Protected Industrial Action. Not all Protection Action in the notices issued was taken. Those taken are set out in the table below.

<b>Notice No.</b>	<b>Date</b>	<b>Ports affected</b>	<b>PIA notified and taken</b>
#46	20 October 2022	All ports	All members of the CFMMEU employed by Svitzer shall engage in stoppage of work for 4 hours on 26 October
#47	26 October 2022	Cairns, Lucinda, Mourilyan,	All members of the CFMMEU employed by Svitzer shall engage in stoppage of work from for 24 hours from 00:01am on 1 November 2022  All members of the CFMMEU employed by Svitzer shall engage in stoppage of work from for 24 hours 00:01am on 2 November 2022
#48	28 October 2022	Geelong, Melbourne, Westernport	All members of the CFMMEU employed by Svitzer shall engage in bans on performance of overtime, including recalls from leave, from 12:01am 4 November 22 through 11:59pm 6 November 2022
#49	28 October 2022	All ports	All members of the CFMMEU employed by Svitzer shall engage in bans on the use of 'Sertica' maintenance system from 12:01am 4 November 2022 through 11:59pm 10 November 2022

			<p>All members of the CFMMEU employed by Svitzer shall engage in bans on the use of Svitzer Australia online training courses from 12:01am 4 November 2022 through 11:59pm 10 November 2022</p> <p>All members of the CFMMEU employed by Svitzer shall engage in bans on the performance of work on Maersk shipping line vessels from 12:01am 4 November 2022 through 11:59pm 10 November 2022</p>
#50	31 October 2022	Fremantle	<p>All members of the CFMMEU employed by Svitzer shall engage in stoppage of work for 4 hours from 1:00pm on 4 November 2022</p> <p>All members of the CFMMEU employed by Svitzer shall engage in stoppage of work for 4 hours from 11:00pm on 4 November 2022</p>
#51	4 November 2022	Geraldton, Kwinana, Fremantle	<p>All members of the CFMMEU employed by Svitzer shall engage in stoppage of work for 4 hours from 8:00am on 10 November 2022</p> <p>All members of the CFMMEU employed by Svitzer shall engage in stoppage of work for 4 hours from 12:00pm on 10 November 2022</p>



			All members of the CFMMEU employed by Svitzer shall engage in stoppage of work for 4 hours from 4:00pm on 10 November 2022
#52	7 November 2022	Brisbane	All members of the CFMMEU employed by Svitzer shall engage in stoppage of work for 24 hours from 10:00pm on 12 November 2022
#53	7 November 2022	Geelong, Melbourne, Westernport	All members of the CFMMEU employed by Svitzer shall engage in bans on the performance of overtime including recalls from leave, from 12:01am 1 November 2022 through 11:59pm 13 November 2022
#54	8 November 2022	Geelong, Melbourne, Westernport	All members of the CFMMEU employed by Svitzer shall engage in stoppage of work for 4 hours from 00:01am 14 November 2022  All members of the CFMMEU employed by Svitzer shall engage in stoppage of work for 4 hours from 4:00am 14 November 2022
#55	9 November 2022	Sydney (Port Jackson), Port Botany	All members of the CFMMEU employed by Svitzer shall engage in stoppage of work for 4 hours from 8:00pm 15 November 2022  All members of the CFMMEU employed by Svitzer shall engage in stoppage of work for 4 hours from 00:01am 16 November 2022

#56	9 November 2022	Port Kembla	All members of the CFMMEU employed by Svitzer shall engage in stoppage of work for 4 hours from 4:00am 16 November 2022
#57	10 November 2022	Adelaide, Port Pirie, Spencer Gulf	All members of the CFMMEU employed by Svitzer shall engage in stoppage of work for 4 hours from 12:00pm 16 November 2022

***Withdrawal of further Protected Industrial Action***

119. On 16 November 2022, I met with the MUA Officials and Delegates who have connection with the affected Svitzer worksites. It was endorsed in our discussions for the MUA to suspend further Protected Industrial Action.
120. Later on, 16 November 2022, I wrote to Svitzer to withdraw all remaining Protected Industrial Action by MUA members. A copy of the letter withdrawing the protected industrial action is attached and marked **PG14**.

***A suspension is appropriate***

121. The MUA opposes a termination of Svitzer’s lockout. The MUA supports a suspension of Svitzer’s lockout.
122. Based on my experience bargaining for enterprise agreements, I believe that termination of industrial action would be very detrimental to the MUA and its members’ bargaining positions.

123. If industrial action is terminated, our members would have absolutely no bargaining power and there would be no real ability for our members to try and influence Svitzer to compromise on claims. We wouldn't, in my view, be able to bargain effectively at all. I understand that the ultimate outcome of termination might be the Fair Work Commission making a workplace determination under section 266 of the Fair Work Act, which would take bargaining out of the hands of the parties.
124. In my opinion based on my discussions with members and my experience in bargaining in general and in relation to this proposed agreement, the path most likely to result in an agreement being reached would be for Svitzer to engage in bargaining meetings with the MUA and other unions, including with the assistance of the Commission. Svitzer should also be required to make clear what its position in bargaining is and should cease withdrawing agreed claims and otherwise changing the goalposts. If this occurs, I do not see why agreement cannot be reached.
125. The MUA is keen to do its utmost to finalise an agreement with Svitzer. The MUA undertakes to the Commission that it will not notify any further protected industrial action this year. It also undertakes to the Commission that it will participate in conciliation before the Commission in an effort to resolve the dispute.



**Paul Garrett**

**17 November 2022**

# SVITZER AUSTRALIA PTY LIMITED NATIONAL HARBOUR TOWAGE ENTERPRISE AGREEMENT 2020 ITEMS FOR NEGOTIATION

WITHOUT PREJUDICE  
12 September 2019

Svitzer Australia Pty Ltd intends to bargain in good faith with all unions in accordance with the provisions of the Fair Work Act 2009. Svitzer will consider all genuine proposals made by the unions in relation to matters pertaining to terms and conditions of the employment of employees.

SUBJECT MATTER	CLAIM	CLAUSE REF.
Leave for PPTs 1.	Consistent agreed application of parental and personal/carers' leave entitlements.	15.3.1 15.3.2
Date range for PPT minimum guarantee 2.	Calculation of minimum guarantee to be done by dates other than calendar year.	15.3.2
Engineers' minimum qualifications 3.	Trade qualification for Engineers to be in accordance with Marine Orders 72, as amended.	16.2.1(ii)
Revalidation courses 4.	Svitzer to only meet the course costs relating to relevant training courses.	19.3.3(ii)
Prescribed training courses 5.	Clarification and consistency regarding training days.	19.3.4
Workforce Planning and Development Committee 6.	Svitzer Workforce Planning and Development Committee to be a single committee rather than a committee for each classification to reflect current practice. Svitzer Workforce Planning and Development Committee to meet half yearly.	19.4.3
Payment of salaries 7.	Total remuneration and allowances to be paid fortnightly (14 days in arrears), in line with community standards.	22.1
Masters' and Engineers' induction payment 8.	Review and amend provisions relating to Masters' and Engineers' induction payment to better accommodate working hours and training of newly recruited Masters and Engineers.	23
Trainees 9.	Trainee arrangements that better support new entrants to the industry / classification.	24.5
Accrued leave 10.	Explore options around removal or variation to accrued leave arrangements to address operational and cost implications.	24.1.3 24.2.2(ii)(b) 34
Crewing on Outside Work 11.	Efficient and cost-effective management of outside work to better align with industry standards.	31
Order of Pick 12.	Flexibility in order of pick.	41.2.7(i)



## THE MARITIME UNION OF AUSTRALIA SYDNEY BRANCH

A DIVISION OF THE CONSTRUCTION, FORESTRY, MARITIME, MINING & ENERGY UNION

Paul McAleer – Branch Secretary | Paul Keating - Deputy Branch Secretary  
Paul Garrett - Assistant Branch Secretary | Nathan Donato - Assistant Branch Secretary

Friday, 13 September 2019

Elizabeth Ferrier  
Svitzer Australia

BY EMAIL: [ELIZABETH.FERRIER@SVITZER.COM](mailto:ELIZABETH.FERRIER@SVITZER.COM)

Dear Elizabeth,

**RE: SVITZER TUGS - 2020 EBA: MUA LOG OF CLAIMS**

The Maritime Union of Australia writes with reference to the forthcoming negotiations for the proposed *Svitzer Australia Pty Ltd National Towage Enterprise Agreement 2020*.

During negotiations, the members wish to discuss with management through their representatives the matters attached in the without prejudice log of claims. Whilst this list is detailed, it does not necessarily represent an exhaustive list of issues and we reserve the right to vary this list of claims as appropriate.

We understand that Svitzer has distributed the required representation notice to your employees. We look forward to negotiating with you and your team and conclude discussions for a collective enterprise agreement that gives your employees a fair deal.

The MUA remains committed to good faith bargaining principles and expects that all parties shall negotiate with each other in good faith and shall genuinely try to reach to an agreement.

Your Sincerely,

**Paul Garrett**  
**Assistant Secretary**  
**Branch Presiding Officer**

## MUA LOG OF CLAIMS – WITHOUT PREJUDICE

### 1. TERM OF AGREEMENT

- a. The MUA will form a view on the term of the proposed *Svitzer Australia Pty Ltd National Towage Enterprise Agreement 2020*, subject to the overall package.

### 2. WAGES

- a. The MUA claims 5% per annum wage and allowance increase. Furthermore, we claim further salary adjustments in ports based on productivity changes, to be quantified during the EBA negotiations.
- b. Whyalla – 22% that was removed to be returned.
- c. Cairns - Money that was deducted through the variation to be restored.
- d. Bowen - Live aboard payment to be addressed and run money to be paid when tugs steam between locations.
- e. Sydney - Productivity payment to be addressed.
- f. Casual employees to receive 25% loading.

### 3. CONDITIONS

- a. Svitzer to provide E-Tags to ports with tollways that currently do not have them.
- b. Ensure casual employees receive per kilometre loading for travel, as well as E-Tags.
- c. Provision of fitness passport to employees, on application.

### 4. SALARY CONTINUANCE

- a. Svitzer to provide salary continuance insurance through Protect to all employees.

### 5. PERMANENT PART-TIME

- a. Comprehensive review of PPT category including whether it is being over-utilised as opposed to making the positions permanent full-time.
- b. Career path which gives PPT employees priority for any permanent full-time position, based on port seniority.
- c. PPTs to be paid out monthly as opposed to annually.
- d. Increase predictability of leave for PPTs to 16 weeks.
- e. Increase job notice time for PPTs

- f. Address problems with review of PPT percentage and the general failure of Svitzer to review PPT numbers upwards.

## **6. POPs**

- a. Amend breaks to minimum 8 hour break undisturbed, with preference to 10-hour break, contactable after 8 hours.
- b. Scheduling of work for crews to be no more than 12 hours in a 24-hour period.
- c. Get understanding of why annual POPs review is not working, what POPs are not “current” in the various ports and work through a process to address both matters.
- d. Address ports with specific POP issues that are unresolved.
- e. Minimum 2-hour notice of being required to be aboard (gate time).
- f. Work orders to be supplied by 1700 hours the day prior.

## **7. PPE**

- a. Address procurement issue with PPE been experienced in the ports.

## **8. TRAINING**

- a. 1% training budget to also include PPT and casual salaries.
- b. Transparent disclosure on how training money is expended, including on a port-by-port basis.
- c. Support and provision of Tugboat Rating training at Certificate II level.
- d. Further development of a training program to enhance the skills of Ratings, including but not limited to working aloft training, forklift and mobile crane tickets.
- e. Removal of the five training days.
- f. Provision of union training days equivalent to five days per annum for 5% of the workforce numbers.

## **9. LEAVE**

- a. Ratings to provide on only one week of notice for taking accrued leave.

## **10. COMMUNICATIONS**

- a. Index the communications allowance to \$50 per fortnight.

**11. OUTSIDE WORK**

- a. Include provisions that outside work cannot be subcontracted to subsidiary Svitzer companies and will be performed by Svitzer employees.
- b. Include provisions to cover industrial arrangements for Ship-To-Ship Operations.

**12. WORKERS COMPENSATION**

- a. Amend the workers compensation clause to ensure that Ratings on a return-to-work program continue to follow their roster, inclusive of leave.

**13. TEAMS**

- a. Include review as bonus never paid.



Paul Garrett

---

**Subject:** National EA - Updated claims tracker and mark-up EA  
**Date:** Friday, 28 February 2020 at 3:55:22 pm Australian Eastern Daylight Time  
**From:** Davis, Kate <katie.davis@svitzer.com>  
**To:** Chris Neiberding <Chris@amou.com.au>, Greg Yates AIMPE <gyates@aimpe.asn.au>, petertoohy.toohy@gmail.com <petertoohy.toohy@gmail.com>, slittlewood@aimpe.asn.au <slittlewood@aimpe.asn.au>, Paul Garrett <Paul.Garrett@mua.org.au>  
**CC:** Mather, James <james.mather@svitzer.com>, Paul, Clarence <Clarence.Paul@svitzer.com>, Perry, Andy <andy.perry@svitzer.com>, Cream, Peter <Peter.Cream@svitzer.com>, Barnes, Tully <Tully.Barnes@svitzer.com>  
**Attachments:** 20200228\_National\_HT\_EA\_Claims\_List\_Status\_Report\_28\_February\_2020.pdf, 20200228\_Svitzer\_Australia\_National\_Towage\_EA\_2016\_Mark\_Up\_Version\_3.pdf

***Without prejudice***

Hi all

I refer to our meeting on 26 February 2020 and **attached**:

1. updated version of the claims tracker (updated from version last sent on 13 February 2020); and
2. marked-up EA (with changes from version last sent on 31 January 2020 highlighted in yellow) (**Marked-Up EA**).

Marked up claims tracker

I have made the following changes to the version of the claims tracker sent on 13 February 2020:

- Title of the document has been amended to refer to the date of the update (ie. 2 March)
- Claim no. 12 (Casual loading) – the “Response required” column has been updated to “First Draft Complete” and the “Notes and Further Status Update” column has been updated to reflect that the parties have agreed drafting which provides that Svitzer will pay \$15 in circumstances where a casual Employee works 5 or more shifts in a calendar month (this is reflected in the Marked-Up EA).
- Claim no. 23 (Job notice) – the “Response required” column has been updated to “Withdrawn” and the “Notes and Further Status Update” column has been updated to note that the MUA has withdrawn this claim on the understanding that the matter will be discussed locally in Port Kembla.
- Claim no. 31 (Training Days) – the “Response required” column has been updated to “First Draft Complete” and the “Notes and Further Status Update” column has been updated to note:
  - that this agreed position is reflected in the Marked-Up EA; and
  - Svitzer has offered to reduce all PPT training days to 3 (irrespective of their guarantee) if the MUA withdraws their claim for removal of the 5 training days (refer to claim no. 61).
- Claim no. 40 (No Extra Claims) – the “Response required” column has been updated to “Withdrawn” and the “Notes and Further Status Update” has been updated to note that AIMPE is comfortable that the Marked-Up EA adequately addresses this claim.
- Claim no. 47 (Minimum notice) – the “Response required” column has been updated to “Withdrawn” and the “Notes and Further Status Update” column has been updated to note that the MUA has

withdrawn this claim on the understanding that the matter will be discussed locally in Port Kembla.

- Claim no. 57 (Disclosure of budget) – the “Response required” column has been amended to “First Draft Complete” and the notes previously contained in the “Notes and Further Status Update” column have been removed (on the basis that the agreed position is reflected in the Marked-Up EA).
- Claim no 61. (Training Days) – the “Notes and Further Status Update” column has been updated to reflect Svitzer’s offer as referred to above in relation to claim no. 31.
- Claim no. 62 (HSR training) – the “Response required” column has been amended to “First Draft Complete” and the notes previously contained in the “Notes and Further Status Update” column have been removed (on the basis that the agreed position is reflected in the Marked-Up EA).
- Claim no. 71 (Paid union support) – the “Response required” column has been amended to “First Draft Complete” and the notes previously contained in the “Notes and Further Status Update” column have been removed (on the basis that the agreed position is reflected in the Marked-Up EA).
- Claim no. 83 (Working into first day of leave) – the “Response required” column has been updated to “Withdrawn” and the “Notes and Further Status Update” column has been updated to note that the AIMPE has withdrawn this claim on the understanding that the matter will be discussed locally in Brisbane.
- Claim no. 91 (Fixed term contract) – the “Response required” column has been amended to “First Draft Complete” and the notes previously contained in the “Notes and Further Status Update” column have been removed (on the basis that the agreed position is reflected in the Marked-Up EA).
- Claim no. 92 (Employment category) – the “Notes and Further Status Update” column have been removed (on the basis that the agreed position is reflected in the Marked-Up EA).
- Claim no. 93 (Increased availability) – the “Notes and Further Status Update” column have been removed (on the basis that the agreed position is reflected in the Marked-Up EA).
- Claim no. 101 (Payment of salaries) – the “Response required” column has been amended to “First Draft Complete” and the notes previously contained in the “Notes and Further Status Update” column have been removed (on the basis that the agreed position is reflected in the Marked-Up EA).
- Claim no. 103 (Casuals – Home ports) – the “Response required” column has been amended to “First Draft Complete” and the “Notes and Further Status Update” column has been updated to reflect that the parties have agreed drafting which provides that Svitzer will pay \$15 in circumstances where a casual Employee works 5 or more shifts in a calendar month (this is reflected in the Marked-Up EA).
- Claim no. 109 (Travel) – the “Response required” column has been amended to “First Draft Complete” and the “Notes and Further Status Update” column has been updated to reflect that the parties have agreed drafting which provides that Svitzer will pay \$15 in circumstances where a casual Employee works 5 or more shifts in a calendar month (this is reflected in the Marked-Up EA).
- Claim no. 111 (Communications allowance) - the “Response required” column has been amended to “First Draft Complete” and the “Notes and Further Status Update” column has been updated to reflect that the parties have agreed drafting which provides that Svitzer will pay \$15 in circumstances where a casual Employee works 5 or more shifts in a calendar month (this is reflected in the Marked-Up EA).
- Claim no. 114 (Job Share and Recalls) - the “Response required” column has been amended to “First Draft Complete” and the “Notes and Further Status Update” column includes a note that the parties have agreed to an order of pick (this is reflected in the Marked-Up EA).

- Claim no. 120 (Provision of information) - the “Response required” column has been amended to “First Draft Complete”.
- Claim no. 127 (Schedule 3 indexing) – the “Response required” column has been amended to “First Draft Complete” and the “Notes and Further Status Update” column includes a note that the parties have agreed to indexing of Schedule 3 in line with CPI (this is reflected in the Marked-Up EA).

**Please advise us if any claim has been mischaracterised ASAP and by COB Wednesday 4 March (ie in advance of our telephone hook-up on Thursday 5 March).**

If all your union’s respective claims are correctly characterised, we ask that you send an email confirming that this is the case.

#### Marked-Up EA

All changes from the version provided on 31 January 2020 have been highlighted in yellow on the Marked-Up EA for your attention and review.

Since our meeting on 27 February, no changes have been made to the Marked-Up EA, save for as follows

- Amended the date of the version from “26 February” to “28 February”.
- Clause 15.3.8 – I have inserted the word “maximum” in between the word “total” and the word “period”.
- Clause 18.5 – I have fixed up a typo in line two of the agreement (changing “a” to “an”).


**Again, please provide any feedback in relation to the Marked-Up EA ASAP and by COB Wednesday 4 March (ie in advance of our telephone hook-up on Thursday 5 March).**

Please do not hesitate to reach out if you have any questions or require any clarification.

Kind regards  
Katie

Katie Davis  
Industrial Relations Manager - East - Human Resources

---

 SVITZER Australia Pty. Ltd. (Balmain), 7 Cooper Street, NSW 2041 Balmain, Australia  
Mobile: +61 427 945 553

Information in this e-mail and any attachments is confidential and is intended solely for the use of the intended recipient. If you are not the intended recipient, the dissemination or use of the contents of the e-mail is prohibited. Please delete the e-mail including any attachments and notify the sender that you have made a mistake.



Please consider the environment before printing this email.

The information contained in this message is privileged and intended only for the recipients named. If the reader is not a representative of the intended recipient, any review, dissemination or copying of this message or the information it contains is prohibited. If you have received this message in error, please immediately notify the sender, and delete the original message and attachments.

Svitzer will as part of our communication and interaction with you collect and process your personal data. You can read more about Svitzer's collection and processing of your personal data and your rights as a data subject in our privacy policy from our parent company <https://www.maersk.com/privacy-and-cookie-policy>

All harbour towage services provided by Svitzer Group companies are subject to the U.K. Standard Conditions for Towage and Other Services (revised 1986). These conditions are available on [www.svitzer.com/standard-conditions](http://www.svitzer.com/standard-conditions)

**Outstanding Claims and Status Report (as at 28 February 2020)**

Claim No.	Subject Matter	(Original) Masters Claim	(Original) Engineers' Claim	(Original) GPH Claim	(Original) Svitzer claim	Consolidated Union Proposal 22/11	Svitzer Proposal as at 27/11 (Version 3)	Status	Response Required	Notes and Further Status Update	
	<b>Wages</b>										
1	Overall	4.75% pa	4.5% per annum at 12month intervals.	5% per annum wage and allowance increase		21/11: 4% per annum	2.0% year one, 2.0% year two, 1.8% year three CPI Floor	Alternative wages proposal by Unions: 3.0, 3.0, 3.2%	Not agreed	On 5/2/20, Svitzer proposed offer of 2.0% in year one, 2.0% in year two and 1.9% in year three  CPI Floor	
2	Whyalla	Return of the 22% Project Management Allowance. Whyalla's wage sits around \$40,000 behind other ports who do less or similar captive hours.	Whyalla uplift	Whyalla: 22% that was removed to be returned		21/11: Svitzer proposal agreed subject to request to forward load percentages	Additional: 3.5% year 1, 3.2% year two, 3.2% year three	Proposal put by Unions 16/12 accepting Svitzer uplift proposal and seeking that if redundancies are made throughout life of EA, they are paid at 2022 rates.	Not agreed	On 4/2/20 Unions notified Svitzer that they understand Svitzer agreed to front load any redundancies in 2020 and 2021 at the 2022 rate. Svitzer informed the unions that they had not agreed to that position.  On 5/2/20 Greg Yates forwarded an email from Jude Gibson, attached to which was a letter from Stefan Risager dated 12 May 2017.  Svitzer stated that it would consider the letter from Stefan and respond in writing in relation to its position on any redundancies in Whyalla, in light of that correspondence.	
3	Cairns	Cairns - pay increases reinstated.	Cairns uplift	Cairns: Money that was deducted through the variation to be restored		21/11: Additional 1.5% per annum	Additional: 1.3% year 1, 1.3% year two, 1.3% year three	Proposal put by Svitzer 27/11;	Completed subject to drafting	Noting the signed FNQ POPS, the Unions accepted an additional uplift of Cairns of 1.3% in year one, 1.3% in year two and 1.3% in year three	
4	Bowen	Bowen - mooring allowance - <b>AMOU has agreed to Svitzer's offer of \$80 but the mechanism remains to be finalised</b>	Bowen uplift	Bowen: Live aboard payment to be addressed and run money to be paid when tugs steam between locations		21/11: Abbott Point Operational Allowance \$100 per day	\$75 per day allowance for live on board	Proposal put by Svitzer 16/12 \$80 per day when on moorings. Day equal to 24 hour period.	Not agreed	Unions maintain claim for \$100 per day and discussions ongoing in relation to the appropriate mechanism (ie reference to "overnight", etc)  AMOU has agreed to Svitzer's offer of \$80 but the mechanism remains to be finalised  AIMPE has advised direct consultation is required with Bowen delegates/crew. AIMPE have also flagged two points raised by them as follows: (i) overtime after 12 hours in a day; and (ii) if Bowen crew are on a break and it is broken by the necessity for the engineer to attend to alarms etc, continuous hours provisions apply.	
5	Sydney	Increase in productivity / increase in berths	Jackson / Botany uplift Remove footnote regarding Sydney / Botany	Sydney: Productivity payment to be addressed		21/11: 21 Crews for 1 tug captive. 6% uplift for second crew captive (MUA still reviewing numbers on salary)	Captivity allowance: \$7,400 per annum for Ratings and \$9,000 per annum for Masters and Engineers. To be paid when captivity of second tug in Port Botany implemented. Only payable so long as second captive tug is required.	Agreement to second tug captivity payment of \$10,328 pa, 2 crews claim withdrawn in context of EA negotiations, flat amount throughout EA, not payable whilst 1 tug. Agreed subject to AIMPE claim to index the allowance.	Not agreed	Unions accept the \$10,328 allowance where 2 tugs are captive (not payable whilst 1 tug captive), subject to the indexation of the allowance. Drafting still to be discussed during a separate meeting of officials and Sydney delegates on the negotiating team.  Svitzer to provide letter which confirms that if PANSW does not enforce the relevant HM direction, licence or minimum standards, Svitzer will not provide the relevant minimum standards, ie the captivity (and therefore the \$10,328 allowance will not be paid).  Note: Drafting to consider removal of the footnote regarding Sydney/Botany in Schedule 1A (Svitzer not opposed to the removal, subject to agreeing the drafting of the \$10,328 allowance.  Parties to meet on 26 February 2020 to discuss the Sydney related matters.	
6	Brisbane	Application of indexed pay increases to schedule 3 backdated to 2016 (Brisbane claim but should be indexed for all ports) 20% pay increase for Brisbane in line with the 20% productivity increase associated with the SLA. Backdated to 14/2/18.	Brisbane uplift					Make the 16th crew permanent	Proposal put by Svitzer 27/11;	Completed subject to drafting	Note indexing component of this claim is covered off in claim no. 127  16th crew to be made permanent on the Commencement Date.
7	Melbourne	Increase productivity / increase in berths Melbourne - salary and pops	Melbourne uplift						Not agreed	Withdrawn	This claim was withdrawn in the context of principle agreement being reached in relation to the Melbourne POPs

8	Fremantle/Kwinana	STS transfers need to be discussed. Allowance - discussion to take place once the STS starts	Fremantle / Kwinana uplift			21/11: Hourly rate for STS work performed (M7 Buoy); 5% uplift.	Parties to consult regarding terms and conditions relating to STS transfers pending outcome of trial.	Not agreed	Not agreed	<p>AIMPE confirmed withdrawal of Kwinana uplift claim.</p> <p>On 4/2, the Unions offered the following to settle the Fremantle related claims:  - \$55/hour STS allowance and an uplift  - Fremantle crew to be paid Kwinana rates for days where they complete STS movements on tugs crewed by a mixed crew (ie Kwinana and Fremantle crew).  - Grandfathering of PPT accrued leave arrangements (ie the arrangements pre-existing Duncan's application of the EA provisions)</p> <p>*There were mixed views between the Unions in relation to whether a leave day should also be paid at the Kwinana rate (rather than the Fremantle rate).</p> <p>On 5/2, Svitzer made the following offer to settle the Fremantle related claims:  - \$26/hour STS allowance (not to be indexed)  - No uplift  - Current PPTs to accrue leave per email to be sent 10/2  - Fremantle PPTs employed after the Commencement Date accrue leave in per the Enterprise Agreement</p> <p>Unions are considering Svitzer's position. MUA has advised claim for STS numbers to be included in EA. MUA have written to Svitzer and await a response.</p>
9	Fremantle/Kwinana	Remove the composite wage -under schedule 1. It does not exist.	Remove composite wage for Fremantle / Kwinana			Agreed to proposal 21/11	Remove Composite	Drafting	First Draft Complete	As per email of 16/1 at 8:42am, Svitzer's has agreed to the removal of the composite wage (this has been drafted).
10	Newcastle	Newcastle						No longer applicable	Withdrawn	AMOU has confirmed this claim is withdrawn
11	Port Kembla	LNG Project discussions. Crewing and manning and repositioning				22/11: Clause inserted that if LNG comes to Port Kembla in future discussions involving crewing, allowance, manning of repositioning vessels will occur.	if LNG comes to Port Kembla, parties to consult regarding terms and conditions relating to voyages between Sydney and Port Kembla. Svitzer to provide a draft clause.	Drafting	First Draft Complete	
12	Casual loading	<p>25% leave loading for casuals/25% of the daily rate</p> <p>24.4.2 re-write</p> <p>Casual employees will be paid 200% of the daily salary rate for that port for each 24hr period worked.</p> <p>24.4.3 Rewrite</p> <p>A 25% casual loading is paid instead of paid personal/carer's leave, notice of termination, redundancy benefits and other attributes of full-time or part-time employment and acknowledgement of the issues around fully irregular working hours</p> <p><b>Withdrawn by AMOU (see Note)</b></p>	Casual loading of 220% of daily port rate for days worked, pro-rated phone allowance	Casual employees to receive 25% loading - <b>Withdrawn by MUA</b>				Not agreed however discussion advanced around a potential allowance ('composite allowance') that looks to accommodate requirement for phone etc.	First Draft Complete	The Parties have agreed that Svitzer will pay \$15 in circumstances where a casual Employee works 5 or more shifts in a calendar month. Where practicable, the \$15 allowance will be payable in the next pay period following the end of the relevant month.
PPT										
13	Averaging days		Days worked to be averaged monthly (to prevent working 28 days and only being paid on the %)			Agreed to proposal 21/11	<ul style="list-style-type: none"> <li>Financial smoothing: pay out of over guarantee worked in December each year (ie half yearly 'financial true up').</li> <li>Move from calendar to financial year (subject to pro rata transition) – with consequential amendments throughout agreement</li> </ul>	Drafting	First Draft Complete	
14	PPTs providing relief in roster		Ability to block leave when on extended periods of relief / assume roster slot that the PPT is relieving					Not pressed (subject to broad agreement)	Withdrawn	
15	Count days in other ports		No manipulation of days working in adjacent ports					Svitzer agreed that all work done across ports will count towards guarantee.	First Draft Complete	
16	Working over 182 days		Periods of engagement not to exceed the roster for 100% crews					Not pressed (subject to broad agreement)	Withdrawn	
17	No obligation to work above min. guarantee		No 'availability on a string' beyond the PPT obligation					Not pressed (subject to broad agreement)	Withdrawn	
18	Accrual of leave		Accrued leave after meeting the PPT obligation					Not pressed (subject to broad agreement)	Withdrawn	
19	2013 EA provisions		Return to 2013 EA provisions					Not pressed (subject to broad agreement)	Withdrawn	

20	PPT review	PPT review		Comprehensive review of PPT category including whether it is being over-utilised as opposed to making the positions permanent full-time				Not pressed (subject to broad agreement)	Withdrawn	
21	PPTs paid out monthly			PPTs paid out months rather than annually				Not pressed (subject to broad agreement)	Withdrawn	
22	More predictable leave			Increase predictability of leave for PPTs to 16 weeks				Not pressed (subject to broad agreement)	Withdrawn	
23	Job notice			Increased job notice time				Not pressed (subject to broad agreement)	Withdrawn	The MUA has withdrawn this claim on the understanding that the matter will be discussed locally in Port Kembla.
24	PPT % review	15.3.3(ii) - Percentage review to be at the end of the financial year if agreed. % reviews not happening. Tighten up		Address problems with review of PPT percentage and the 'general failure of Svitzer to review PPT numbers upwards'		Agreed to proposal 21/11		Drafting	First Draft Complete	
25	Application of leave provisions	44 - amount of sick/carers days and other leave entitlements increases when a PPT goes past their percentage on a Pro rata amount 49.2 - Parental leave as per clause 44 the amount goes up on a pro rata basis if the PPT is past their percentage. When this occurs Place this in the table.		Leave for PPTs - Consistent agreed application of parental and personal/carers' leave entitlements		Agreed to proposal 21/11	Application of leave provisions to be included as per table presented (attached). Add in reference to dead days and travel days. Updated table to be provided.	Drafting	First Draft Complete	
26	Minimum guarantee start dates	15.3.4(iii) - timing to be at the end of the agreed calculation period either calendar or financial i.e remove ref to anniversary date have one date for all elections 24.2.2(ii) - remove reference to calendar year if agreed to use financial period instead. Parts A and B as we; again make note the company has to actually provide the work.		Date range for PPT minimum guarantee - Calculation of minimum guarantee to be done by dates other than calendar year		Agreed to proposal 21/11	Remove references to 1 January 2017	Drafting	First Draft Complete	
27	Process for election	15.3.4(iv) - to be back paid to 1st Jan/July when successful. And if they hadn't been working full time during this period. Because process of conversion took so long.				Agreed to proposal 21/11	Where election to increased percentage / full time is successful, effective date back dated to date of eligibility (1 July)	Drafting	First Draft Complete	
28	Obligation to provide the required no. of days	15.3.2 - Needs to have something written that the company must be able to provide the reqd number of days. If not PPT does not go in red. Provided their avail. Ref also 49.3 Svitzers claim				Agreed to proposal 21/11	Clarify clause 15.3.2 to provide that Svitzer is required to provide minimum guarantee	Drafting	First Draft Complete	
29	Timing of % review	15.3.3(i) - Percentage review to be at the end of the financial year if agreed.				Agreed to proposal 21/11		Drafting	First Draft Complete	
30	Tidying up drafting	15.3.4(i) and (iii) - tidying up as makes reference to 1 Jan 2017				Agreed to proposal 21/11		Drafting	First Draft Complete	
31	Training days	Clarification the amount of training days (if they remain in EA), reqd for a PPT is on a pro rata basis.						To be discussed	First Draft Complete	Svitzer has also offered to reduce all PPT training days to 3 (irrespective of their guarantee) if the MUA withdraws claim no. 61 (Training Days).
32	Payment	24.2.1 - remove "no further leave" as they go past 100% and qualify for 1+1 at 182 days; remove reference to loading. 2 days pay needs to be rewritten as eg 2 times daily salary rate; After end paragraph 2 "refuse available work", put in provided the company can provide the work!				Agreed to proposal 21/11	Removal of reference to 'no further leave'	Drafting	First Draft Complete	
33	PPT accrued leave	24.2.2(D) - put in that a PPT going into a FTE position only gets their accrued leave paid out if they reqst it new clause				Agreed to proposal 21/11	PPT going to PFT position only gets accrued leave paid out if they request Application of leave provisions to be included as per table presented. Add in reference to dead days and travel days. Updated table to be provided.	Drafting	First Draft Complete	
34	New PPT Clause	24.2.2(E) - New Clause: if percentage worked on a pro rata basis is > 100% for a part of the calculation period then they can elect to receive 1+1. Is this covered in the new table? refer back to 24.2.2 (ii) B				Not Agreed to proposal on 21/11; Alternative proposal 21/11	Leave (eg personal leave) to accrue consistent with percentage actually worked with an annual reconciliation of accruals	Agreed by Svitzer.	First Draft Complete	
35	Off duty periods for PPTs	41.2.1(iv) - dot point "must give" can be less than 3 months. Add in "by agreement" so as to cover if notice is less than 3 months						No longer applicable	First Draft Complete	The previous status "no longer applicable" is unclear. For clarity, drafting has been completed to address the claim.

36	Maximum days	41.2.5 - the FTE calc of 182 +14 recalls is based on a calendar year. Need to distinguish PPT period of calculation is financial OR is this particular calc to be over the same period as FTE?					No longer applicable	First Draft Complete	The previous status "no longer applicable" is unclear. For clarity, drafting has been completed to address the claim.	
POPs										
37	Review		Remove review clause: not intended to be renegotiation every 12 months	Get understanding of why annual POPs review is not working, what POPs are not "current" in the various ports and work through a process to address both matters		Agreed to proposal 21/11	Removal of the annual review reference	Drafting	First Draft Complete	
38	Reduction, Cessation & Growth		Changes to port to be addressed via Clause 13: Reduction Cessation and Growth.					Drafting	First Draft Complete	
39	Outstanding POPs issues			Address ports with specific POPs issues that are unresolved				POPs discussions ongoing	Other	Switzer notes that the FNQ POPs are signed and that the Melbourne POPs have reached the stage of in principle agreement
40	No Extra claims		Reference to 'no extra claims' and POPS cannot undermine agreement terms in Clause 41					Not pressed	Withdrawn	AIMPE is comfortable that the marked-up EA as circulated on 2 March adequately addresses this claim
Hours of Work, Rosters & Meals										
41	Breaks	If an employee is required to be on continuous duty for 12 or more HOURS the employee must be given a rest break of 10 hours at the cessation of that period of duty before the commencement of the next period of duty	Where 12hour shifts do not apply - Minimum 8hour break – breaks to be agreed in Port Procedures (e.g. existing Geelong/Melbourne/Westernport 10 hour break not affected) and implement 10hour break second break: must meet allocated 77hours rest in a 7 day period. And delete reference to 6 hour nominated rest periods break the continuity of a period of duty.	Amend breaks to minimum 8 hour break undisturbed, with preference to 10-hour break, contactable after 8 hours		Agreed subject to drafting 22/11	41.2.4(iv): Include in EA: • Specify in Agreement those ports that currently have minimum 8-hour break or greater, any variation to be managed through POPs process • Other ports to continue with current arrangements as to breaks with ability to vary by agreement	Drafting	First Draft Complete	Switzer is comfortable with the proposed drafting of clause 41, including the amendments made in response to a request from AIMPE
42	Duty period	A period of duty must not exceed 14 hours				Agreed 21/11	41.2.4(iii): 16 hours to 14 hours subject to an agreed implementation / transition period to be discussed and finalised.	Drafting	First Draft Complete	
43	Scheduled hours of work		Ensuring that scheduled hours of work do not exceed 12.	Scheduling of work for crews to be no more than 12 hours in a 24-hour period				Not pressed	Withdrawn	
44	Penalty Payment	Any crew that exceeds the 12th hour of continuous duty will receive penalty payment as per 34.3.1 - <b>AMOU withdrawn claim</b>						Not agreed	Withdrawn	AMOU advised it has withdrawn its claim
45	Meal break	Employees will be entitled to a meal break on completion of 5 hours duty meal breaks must be taken flexibly. The parameters for scheduling meal breaks must be set out in the port operating procedures.				Agreed subject to drafting 21/11	41.2.4(v): Remove sentence that commences 'for the avoidance of doubt' and replace with 'the parties will take all reasonable steps to ensure that the taking of meal breaks does not interrupt port operations.' Include provision that POPs will address meal breaks.	Drafting	First Draft Complete	
46	Start and finish times to be standardised		Standard definition for start and finish times for duty periods					Not pressed	Withdrawn	
47	Minimum notice			Minimum 2-hour notice of being required to be aboard (gate time)				Not agreed	Withdrawn	The MUA has withdrawn this claim on the understanding that the matter will be discussed locally in Port Kembla.
48	Work orders			Work orders to be supplied by 1700 the day prior				Not pressed	Withdrawn	We understand this clause is covered off in claim no. 23
49	Fatigue breaks		Any crew able to call a fatigue break of 12 hours without repercussions					Not pressed	Withdrawn	
50	Overtime		Overtime after 12 hours across all ports					Not agreed	Not agreed	
51	Captivity / Penalty payment		Delete clauses 34.3.2 and 34.4 relating to Sydney / Botany			Agreed subject to drafting 21/11	Clause 34.3.1 – replace 'may' with 'shall'	Drafting	Not agreed	Agreed to replace "may" with "shall".  Claim in relation to deleting 34.3.2 and moving Sydney ports into 34.3.1 to be discussed further during a separate meeting of officials and Sydney delegates on the negotiating team.
52	Definition of a day		Define / refine definition of a day to provide guidance for secondary shifts where relevant			Agreed 21/11		Not pressed	Withdrawn	
Training										



53	Classification	Further refining of the definitino to include the classification of trainee or traineeship - After a FWC conference DP noted that the definition were not clear and how that would operate under what category/classification				Agreed 21/11	Amend definition of Trainee and Traineeship to include reference to cadets and cadetships. Include definition as follows: For the purposes of clause 16.1.1: i) The respective Union is: a. For a master Trainee, the AMOU; b. For an Engineer Trainee, the AIMPE; c. For a Rating Trainee, the MUA. ii) The area of operation concerned is: a. For a Master Traineeship, the Masters; b. For an Engineer Traineeship, the Engineers; and c. For a Rating Traineeship, the Ratings.	Drafting	First Draft Complete	AMOU is content with this outcome of this claim. AIMPE notes that the reference to cadet and cadetships to be considered
54	Separate AIMPE meeting		Separate meeting has been agreed to discuss training of Engineer trainees and cadets. Reinsert the training stages and wages schedule from 2013 EA					Not agreed	Not agreed	Separate meting has been held. Svitzer has provided drafting to each Union in relation to their relevant training stages. AMOU has confirmed stages are acceptable to them. MUA to revert. AIMPE to revert including in relation to how to structure to best provide adequate engineers for the towage industry (AIMPE position).
55	Voluntary training	Training should be voluntary. Not every master is ok or comfortable with training.							Not agreed	
56	Budget			1% training budget to also include PPT and casual salaries			Casual wages to be included in training budget - methodology for prospective calculation to be worked through	Drafting	First Draft Complete	Note drafting completed outside session of drafting committee (on request of drafting committee) for union review
57	Disclosure of budget expenditure			Transparent disclosure on how training money is expended, including on a port by port basis				Not agreed	First Draft Complete	
58	Casual training	Casual master to receive 200% of port salary to receive any training. Svitzer to meet the costs				Agreed to proposal 21/11	Include provision that casuals will be paid 200% for company required training (other than revalidations). Training days do not apply to casual employees.	Drafting	First Draft Complete	
59	GPH training program			Further development of a training program to enhance the skills of Ratings, including but not limited to working aloft training, forklift and mobile crane tickets				Not agreed	Not agreed	MUA to provide detail in relation to their claim
60	Revalidation courses	Dead days for revalidation courses if courses fall on a leave day				Not Agreed to proposal on 21/11; Alternative proposal 21/11	Svitzer will only revalidate short courses required for the employee's base Certificate of Competency under which they were employed Revalidations to be rolled into training days.	Not Agreed	Not agreed	Svitzer continuing to pursue claim. Discussions between Svitzer and the AMOU progressing and are related to the Masters' Indemnity and Masters' Overriding Authority. AIMPE have confirmed they remain open to discussing this claim, noting, among other things ability to negotiate an outcome in relation to tanker endorsements and [insert].
61	Training Days	Training days to be deleted. 5 days to 0. - AMOU has withdrawn this claim		Removal of the 5 training days		AMOU: reduction to 3 per year. MUA: not pressed.		Not agreed	Not agreed	Svitzer has also offered to reduce all PPT training days to 3 (irrespective of their guarantee) if the MUA withdraws claim no. 61 (Training Days).
62	HSR training	Training to be in duty period. As per the ACT - AMOU has indicated they will provide draft clause to reflect the legislation	HSR training to be within duty periods				Cause 18.5 to be in accordance with state work health and safety legislation. Svitzer to provide draft clause.	Awaiting Response	First Draft Complete	
63	Workforce Planning & Development Committee - single committee					Agreed in principle 21/11;	Meet minimum three times per year and by agreement may jointly meet, a further meeting may be held by agreement	Drafting	First Draft Complete	
64	Workforce Planning & Development Committee - meeting frequency					Agreed in principle 21/11;		Drafting	First Draft Complete	

65	Masters' and Engineers' induction payment				Review and amend provisions relating to Masters' and Engineers' induction payment to better accommodate working hours and training of newly recruited Masters and Engineers		Review and amend provisions relating to Masters' and Engineers' induction payment to better accommodate working hours and training of newly recruited Masters and Engineers	No longer applicable	Withdrawn	
66	Trainees				Trainee arrangements that better support new entrants to the industry / classification		Amend definition of Trainee and Traineeship to include reference to cadets and cadetships.	Drafting	Not agreed	This claim is a double up on an aspect of claim no. 53. In accordance with the note for that claim - reference to cadet and cadetships to be considered  Svitzer has updated this claim to read "Not Agreed" on the basis of AIMPE's indication that it may be willing to discuss rates of pay for Trainees.
<b>Qualifications</b>										
67	Master Min Qual	Min qualifications for a Master to be unrestricted master class 4				Agreed to Masters 21/11	Agree minimum qualification Master <35m NC (current employees with restrictions to be grandfathered)	Drafting	First Draft Complete	Svitzer revert in relation to grandfathering of casuals engaged pre Commencement Date (AMOU has also asked for further reconsideration of this issue)
68	Engineers min qual.				Trade qualification for Engineers to be in accordance with Marine Orders 72, as amended		Trade qualification for Engineers to be in accordance with Marine Orders 72, as amended	No longer applicable	First Draft Complete	Svitzer has advised that it agrees with AIMPE draft clause as sent to Svitzer on 6/2.
69	GPH min qual.			Support and provision of Tugboat Rating training at Certificate II level		Not Agreed 21/11	Svitzer to consult in relation to the finalised GPH Certificate II and its potential introduction in Svitzer.	Union to provide proposed drafting.	Drafting outstanding	Unions and Svitzer have discussed a clause which requires Svitzer to consult in relation to the finalised GPH Certificate II and its potential introduction in Svitzer. This is yet to be drafted.
<b>Delegates' rights</b>										
70	Union training days			Provision of union training days equivalent to five days per annum of 5% of the workforce numbers		MUA REVISED claim: 6 days per port, per union, for life of agreement		Agreed by Svitzer 17 December.	First Draft Complete	
71	Paid union support	There needs to be an agreed list of approved forums for paid time off	Appearance at Tribunals concerning company matters is a day of duty or a dead day if on day free duty			Not Agreed 21/11	Approved forums to include: • Attendance at Fair Work Commission for one delegate in dispute matters with Svitzer • Attendance to support disciplinary processes (can be counted as a partial day) Subject to: • Reasonable efforts being made to minimise disruption and relief requirements • Dead day when attendance is on a leave day including partial day)	Not agreed	First Draft Complete	
<b>Outside Work</b>										
72	General	Clarification on Cooking if 1 Rating down			Efficient and cost-effective management of outside work to better align with industry standards	Not agreed 21/11;	• Free Running: 2 Ratings • Contract Towage, Emergency operations (or salvage work): No change Where there are insufficient Svitzer volunteers to undertake outside work, Svitzer will, in consultation with the relevant union, engage casual employees in accordance with clause 16.1.2 of the Agreement. Svitzer to provide funding for income protection insurance for Ratings in the amount of 0.5% with the balance (1.5% being funded by way of salary sacrifice or superannuation adjustment).	Not agreed	Not agreed	AMOU is monitoring
73	Masters	Voyage manning over 48 hours should have 3 masters as the current contingent are not getting real 6-hour breaks				Conduct a review of the fatigue management of Masters during outside work. Svitzer to provide draft clause.	Agreed - Svitzer to provide draft clause	Drafting	First Draft Complete	
74	Subcontracting			Include provisions that outside work cannot be subcontracted to subsidiary Svitzer companies and will be performed by Svitzer employees		Not agreed - alternative proposal put 21/11	Svitzer will not subcontract any tug movements between ports prescribed in the Enterprise Agreement (Schedule A) unless sufficient Svitzer volunteers cannot be found Unions to provide proposed drafting.	Not agreed	Not agreed	

75	Hard lay / hot bunk	Hard lying allowance or Hot bunking allowance. - AMOU claim for \$200 per day				\$80 per day Agreed. Circumstances under which payment is made is not agreed 21/11; Non exclusive list	Hard Lay allowance payable where sharing of bunks is required ('hot bunking') Allowance: \$80 per calendar day	Proposal put by Svitzer 27/11; To be discussed further	Not agreed	MUA and AIMPE each provided separate draft clauses for consideration by Svitzer. Svitzer rejected the clauses and maintained offer of \$80 per calendar day where sharing of bunks is required during Outside Work.
76	Nominated voyages	Schedule 2 nominated voyages Sydney to Port Kembla to be deleted						Not pressed	Withdrawn	Note claim no. 11
77	Ship to Ship			include provisions to cover industrial arrangements for Ship-to Ship operations				Not agreed	Not agreed	Refer to Note in claim no. 8
Leave										
78	Armed forces leave	Armed forces leave as per the ACT				Agreed 21/11	in accordance with the provisions of the Defence Reserve Service (Protection) Act 2001, Svitzer employees who are Australia Defence Force reservists are entitled to be absent from work on Defence service. Australian Defence Force reservists undertaking Defence service will receive " Defence Leave" for the period that they are absent on Defence service (subject to a maximum of 20 days per annum). Defence Leave will be without pay for any day of rostered duty that falls during their absence on Defence service. For extended Defence service deployments (when an employee is engaged by Defence on Continuous Full Time Service) the even time leave principal will be applied (subject to a maximum of 20 days). Defence service deployments will be managed by: <ul style="list-style-type: none"> <li>both the employee and employer agreeing, in writing, to the last day of paid work prior to the reservist deploying,</li> <li>both the employee and employer agreeing, in writing, to the paid return to work date once the</li> </ul>	Drafting	First Draft Complete	
79	Notice			Ratings to provide only one week of notice for taking accrued leave		Agreed 21/11	CI 41.2.1(iv): Leave can be taken with notice of less than 3 months by agreement	Drafting	First Draft Complete	
80	Leave lines in larger ports	Masters on leave to be increased in the larger ports. Currently it is running at 2.				Agreed 21/11	CI 43.2.1 amend '2 or more employees' to '2 or 10% or more permanent employees of the same classification in the port, whichever is the greater (rounded down to the nearest whole number)'	Drafting	First Draft Complete	
81	AMSA Medical	AMSA medical to be dead day						Not pressed	Withdrawn	AMOU have withdrawn this claim
82	Recalls on LIR		Recalls whilst on days designated leave in LIR arrangements should be regarded as a recall – not 1 day back.					Not pressed (not EA issue)	Withdrawn	
83	Working into first day of leave		Working into the first day of leave / days free of duty to be paid as a dead day: accrue one day					Not pressed (POPs / Local issue)	Withdrawn	AIMPE has withdrawn this claim on the understanding that the matter will be discussed locally in Brisbane.
84	Personal leave		When a medical is failed the employee is entitled to sick leave.					Not pressed	Withdrawn	
85	Accrued leave Discharge		Discharge of accrued leave: address restriction to be specified in the POPs					Not pressed	Withdrawn	
86	Accrued leave - carry over		Carry over of accrued leave increased to 21					Not pressed	Withdrawn	
87	Travel days	Travel days should be paid as a "dead day"				Agreed 21/11	Where Svitzer requires a permanent, casual or fixed-term employee to travel on a day of leave, that day will be restored to the employee (that is, the day will be treated as a dead day) and no additional compensation will be paid for that day	Drafting	First Draft Complete	
88	Accrued leave - general				Explore options around removal or variation to accrued leave arrangements to address operational and cost implications	Not Agreed 21/11	CI24.1.3: The Employee's election to take one day's pay plus one day of accrued leave to be capped at ten days per annum. Similar amendment to clause 24.2.2(ii)(B) Cap does not apply to dockings, ie, Engineer undertaking duty at dockings pursuant to clause 17.2.1(xv)	Svitzer revised position 17/11/19: cap at 10 days per annum carving out Harbour Towage Only - Svitzer to revert on its position re STS.	Not agreed	MUA and AMOU accepted Svitzer's claim of capping the number of times an employee can elect to accrue leave for harbour towage at 10 days. AIMPE rejected Svitzer's claim, noting that they would accept a 14 day cap (referencing the entitlement to 182 days free of duty). Svitzer revised its position as follows: capping the number of times an employee can elect to accrue leave for harbour towage at 11 days. AIMPE rejected this position and restated their position of a 14 day cap. AMOU has advised that it is seeking instructions from members in relation to Svitzer's revised position.
Miscellaneous										
89	Term	TBC	No less than 3 years - longer subject to security provided in the EA	TBC			Svitzer proposed 3 year term 24/10	Subject to overall agreement	Other	

90	Interpretation	Clause is not in accordance with the ACT. Needs to be rewritten - AMOU has withdrawn this claim, satisfied with the current EA drafting						Drafting	Withdrawn	AMOU has withdrawn this claim
91	Fixed term contracts		No rolling fixed term engagements. Consultation within port to determine necessity for fixed term engagements and continuation					Not agreed	First Draft Complete	
92	Employment category	Job share needs to be added to employment categories	Refine definition to ensure a distinction between true PPT and JS status			Agreed in principle subject to drafting including proposed wording "another permanent full-time or part time employee" 21/11		Drafting	First Draft Complete	
93	Increased availability		Including ability to make a job share arrangement with any category of employee after exhausting options with permanent full time employees					agreed	First Draft Complete	
94	Priority in full time recruitment			Career path which gives PPT employees priority for any permanent full time position, based on port seniority		Subject to seniority weighting. Separate agreement for MUA/AMOU 21/11		Not Agreed	Not agreed	Unions to confirm respective positions in writing for consideration by Svitzer.
95	Priority for PPTs and casuals		Amend recruitment process for first consideration of PPT and/or casuals					As above	Not agreed	Unions to confirm respective positions in writing for consideration by Svitzer.
96	Masters overriding authority	Master's overriding authority - the AMOU has previously provided						To be discussed further	Drafting outstanding	AMOU provided further draft to Svitzer on 7/2. Svitzer to consider and revert.
97	Dry Dock arrangements		Agree accommodation including cooking facilities			Agreed 21/11		Drafting	First Draft Complete	
98	Familiarisation		Check off Engineers					Not pressed	Withdrawn	
99	Termination	Misconduct to be replaced with Serious misconduct				Agreed 21/11		Drafting	First Draft Complete	
100	Transfer and relocation	The words 'by agreement' only to be added to the clause						Not pressed	Withdrawn	
101	Payment of salaries				Total remuneration and allowance to be paid fortnightly (14 days in arrears), in line with community standards	Not Agreed to proposal on 21/11; Alternative proposal 21/11		Not agreed	First Draft Complete	
102	Deductions and overpayment	Deductions without agreement are unlawful. This clause does not apply with the act				Not Agreed 21/11		Not pressed	Withdrawn	
103	Casual conversion	Trigger point for casuals to PPTs	Inclusion of the Casual Conversion clause from the Marine Towage Award 2010			Agreed 21/11		Drafting	First Draft Complete	
104	Casuals - other employment	Discussion point - Svitzer should not be employing casual Masters with permanent employment elsewhere - AMOU has withdrawn this claim, noting that the underlying concern is not one for resolution via the EA but one which will be pursued outside the EA	Inclusion of the Casual Conversion clause from the Marine Towage Award 2010					Not pressed	Withdrawn	AMOU has withdrawn their claim, noting that the underlying concern is not one for resolution via the EA but one which will be pursued outside the EA The Engineer's claim is a double up of claim no. 103

105	Casuals - Home ports		Casuals must have a nominated home port					Not agreed	First Draft Complete	The Parties have agreed that Svitzer will pay \$15 in circumstances where a casual Employee works 5 or more shifts in a calendar month. Where practicable, the \$15 allowance will be payable in the next pay period following the end of the relevant month.
106	Superannuation	Company Superannuation payments to individuals should be deposited fortnightly				Agreed as part of proposal 21/11	Superannuation paid fortnightly	Drafting	First Draft Complete	
107	TEAMS			Include review as bonus never paid		Agreed 21/11	TEAMS to be reviewed during life of Agreement. Note: Svitzer's view is that TEAMS KPIs are most appropriately applied on a port by port basis, however to be discussed as part of review.	Drafting	First Draft Complete	
108	Redundancies		No manipulation of redundancies via "early retirement packages"					Not pressed	Withdrawn	
109	Travel			Per Kilometre loading for travel, as well as E Tags for casuals				Not agreed	First Draft Complete	The Parties have agreed that Svitzer will pay \$15 in circumstances where a casual Employee works 5 or more shifts in a calendar month. Where practicable, the \$15 allowance will be payable in the next pay period following the end of the relevant month.
110	Procurement			Address procurement issue with PPE experienced in ports			Employee may elect to purchase own boots from Svitzer approved vendors in consultation with local port management: • subject to HMS requirements; and • subject to maximum value of \$150 (including GST) Other provisions of the Agreement continue to apply Svitzer currently procures Steel Blue Argyle (compliant with PPE Policy) at \$146 inclusive of GST. Currently retail at approximately \$225 inclusive of GST.	Drafting	First Draft Complete	Note drafting completed outside session of drafting committee (on request of drafting committee) for union review
111	Communications allowance	Communication allowance to go up to \$50 To go up by WAGE INCREASE Casuals and fixed term contractors to be included in the communication allowance. <b>See note</b>	Comms allowance to increase to \$50 per fortnight - <b>AIMPE has withdrawn this claim</b>	Index the communications allowance to \$50 per fortnight - <b>MUA has withdrawn this claim</b>				Not agreed	First Draft Complete	The Parties have agreed that Svitzer will pay \$15 in circumstances where a casual Employee works 5 or more shifts in a calendar month. Where practicable, the \$15 allowance will be payable in the next pay period following the end of the relevant month.
112	Penalty Payment	Agreement states that the employee "may" be paid as accrued leave if they elect to do so. To avoid any ambiguity, we wish to change it to the employee "shall" be paid at the election of the employee. - <b>This claim has been dealt with in drafting (see Note)</b>  34.3.1 penalty payment for every hour worked over 12 hrs - <b>AMOU has withdrawn this claim</b>						Not agreed	First Draft Complete	AMOU has advised the claim is "First Draft Complete" on the basis of the amendment to "shall". Claim in relation to work over 12 hours has been withdrawn.
113	Loss of certificate of competency table		Revise age 67 from 60			Agreed 21/11	Cl: 40.2 Additional row to table: 60 but less than 65: 3 months 65 and over: Nil	Drafting	First Draft Complete	
114	Job Share and Recalls		Job share are excluded from the recalls order of pick unless the job share opts to be available for recalls			Agreed 21/11; MUA claim that Ratings don't have PPT access to job share arrangements	Job share able to be entered into with PPT (if full time job share partner cannot be found)	Drafting	First Draft Complete	The Parties have agreed to an order of pick.
115	Order of pick / relief arrangements	Relief arrangements - order of pick. 1st - PPT 2nd - casual 3rd - PPT on rostered leave 4th - full time employees on leave 5th JOB SHARE Change to ensure to endeavour Numbers of		Flexibility in order of pick		Not Agreed to proposal on 21/11; Alternative proposal 21/11		Unions to confirm proposed order of pick re job share	First Draft Complete	See draft circulated during negotiations by email on 5 February 2020.
116	Extreme weather watch	Captive crew should also be entitled to the Extreme weather watch allowance and E/M						Not agreed	Withdrawn	The AMOU withdrew this claim on 4/2.
117	Transfers	Employees who are transferred should be able to carry their leave entitlements with them. Currently it is cashed out.				Agreed 21/11	Employees will not be required to cash out accrued leave in circumstances where they transfer to another port	Drafting	First Draft Complete	



**WITHOUT PREJUDICE**  
**SUBJECT TO COMMENTS AND REVIEW**  
**FROM SVITZER**  
**(PROVIDED TO MANAGEMENT AT THE SAME**  
**TIME) - Version 3, 28 February**

**SVITZER AUSTRALIA PTY LIMITED NATIONAL  
TOWAGE ENTERPRISE AGREEMENT 20~~16~~<sup>2016</sup>**

**Table of Contents**

<b>PART 1 - APPLICATION AND OPERATION.....</b>	<b>3</b>
1. Title .....	3
2. Operation of Agreement .....	3
3. Definitions and Interpretation.....	3
4. Application .....	<del>54</del>
5. Operation and Relationship with other Industrial Instruments .....	5
6. No Extra claims.....	<del>65</del>
7. Variation of this Agreement .....	6
8. Enterprise flexibility.....	6
9. Renegotiation of this Agreement .....	7
<b>PART 2 – CONSULTATION AND DISPUTE RESOLUTION .....</b>	<b>8</b>
10. Continuity of Operations and Dispute Resolution Procedure.....	8
11. Consultation, Communication and Information Sharing .....	9
12. Authorised Meetings .....	<del>12</del> <sup>11</sup>
13. Reduction, Cessation or Growth in Business .....	<del>12</del> <sup>11</sup>
14. Rights and Responsibilities of Delegates .....	12
<b>PART 3 - ENGAGEMENT AND TERMINATION OF EMPLOYMENT .....</b>	<b><del>14</del><sup>13</sup></b>
15. Categories of Employment and Engagement.....	<del>14</del> <sup>13</sup>
16. Selection and Recruitment.....	<del>18</del> <sup>15</sup>
17. Employee Duties.....	<del>21</del> <sup>18</sup>
18. Work Health and Safety.....	<del>25</del> <sup>22</sup>
19. Training and Skill Development.....	<del>26</del> <sup>22</sup>
20. Termination of Employment.....	<del>29</del> <sup>26</sup>
21. Redundancy.....	<del>30</del> <sup>27</sup>
<b>PART 4 – SALARIES, ALLOWANCES AND RELATED MATTERS .....</b>	<b><del>34</del><sup>30</sup></b>
22. Payment of Salaries.....	<del>34</del> <sup>30</sup>
23. Induction Payment – Masters and Engineers.....	<del>34</del> <sup>30</sup>
24. Salaries .....	<del>35</del> <sup>31</sup>
25. Superannuation .....	<del>39</del> <sup>33</sup>

26.	Tug Efficiency and Management Systems (TEAMS) Bonus .....	4135
27.	Travel Expenses .....	4236
28.	Industrial and Protective Clothing .....	4337
29.	Communications .....	4438
30.	Nominated Voyages Allowance .....	4538
31.	Outside Work .....	4538
32.	Salvage Work .....	4841
33.	Emergency maintenance .....	4841
34.	Penalty payment - extended hours .....	4942
35.	Extreme weather alert allowance .....	5042
36.	Port-specific allowances and deductions .....	5043
37.	Compensation for Personal Effects Lost .....	5043
38.	Accident Pay .....	5043
39.	Counselling Services .....	5144
40.	Compensation for Loss of Certificate of Competency .....	5144
<b>PART 5 - HOURS OF WORK AND RELATED MATTERS .....</b>		<b>5346</b>
41.	Hours of Work, Rosters and Meals .....	5346
<b>PART 6 – LEAVE .....</b>		<b>5850</b>
42.	Leave .....	5850
43.	Discharge of accrued leave .....	5850
44.	Personal/Carer’s Leave .....	5951
45.	Personal Leave Bonus .....	6152
46.	Compassionate Leave .....	6153
47.	Unpaid Leave .....	6153
48.	Community Service Leave .....	6253
49.	Parental Leave .....	6254
50.	Long Service Leave .....	6254
<b>PART 7 – EXECUTION .....</b>		<b>6955</b>
51.	Signatures .....	6955
<b>SCHEDULES .....</b>		<b>i</b>
Schedule 1 – Salaries (Refer clause 24) .....		i
Schedule 1A – Training Salaries (Refer clause 24.5) .....		ii
Schedule 2 - National Allowances .....		iii
Schedule 2A - Nominated Voyages Allowance (refer clause 30) .....		iii
Schedule 2B - Allowance for Outside work and Salvage work (refer clauses 31 and 32) .		iv
Schedule 2C – Emergency Maintenance Allowance (refer clause 33) .....		iv
Schedule 2D - Penalty payment - extended hours (refer clause 34) .....		iv
Schedule 2E - Extreme weather alert allowance (refer clause 35) .....		iv
Schedule 3– Port Specific Allowances and Deductions (refer clause 36) .....		v



## PART 1 - APPLICATION AND OPERATION

### 1. Title

This Agreement is entitled the Svitzer Australia Pty Limited National Towage Enterprise Agreement 20~~20~~<sup>16</sup> ("Agreement").

### 2. Operation of Agreement

- 2.1 This agreement comes into operation on the Commencement Date.
- 2.2 The nominal expiry date of this Agreement is 31 December 20~~22~~<sup>19</sup>.

### 3. Definitions and Interpretation

#### 3.1 Definitions

- 3.1.1 **Act** means the *Fair Work Act 2009* (Cth) or its successor.
- 3.1.2 **AIMPE** means the Australian Institute of Marine and Power Engineers.
- 3.1.3 **AMOU** means the Australian Maritime Officers Union.
- 3.1.4 **Award** means the Marine Towage Award 2010, as varied or replaced.
- 3.1.5 **Commencement Date** means the date when this Agreement comes into operation as provided in the Act.
- 3.1.6 **Contract towage** means when a tug is towing a vessel from one location to another location, where that tow or other services of a non-emergency nature has been contracted for and pre-planned by the employer.
- ~~3.1.7~~ **Dead Day** means a day of leave which is restored to an Employee in accordance with the terms of this Agreement.
- ~~3.1.7~~~~3.1.8~~ **Emergency maintenance work** means work which is necessary to reinstate into service a tug which would otherwise be out of service.
- ~~3.1.8~~~~3.1.9~~ **Emergency operations** means when a tug is called on at short notice to leave a port to assist a vessel broken down or in distress (excluding salvage work).
- ~~3.1.9~~~~3.1.10~~ **Employee** means an employee of Svitzer Australia Pty Limited to whom this Agreement applies, who is employed in the classification of Master, Engineer or Rating.
- 3.1.11 **Financial Year** means each year commencing 1 July and ending 30 June.
- ~~3.1.10~~~~3.1.12~~ **FWC** means Fair Work Commission or its successor.
- ~~3.1.11~~~~3.1.13~~ **MUA** means Maritime Union of Australia Division of the Construction, Forestry, Maritime, Mining and Energy Union.

- 3.1.123.1.14 **NES** means the National Employment Standards as contained in the *Fair Work Act 2009* (Cth).
- 3.1.133.1.15 **Nominated Voyage** means a free-running voyage as specified in clause 30 and Schedule 2A of this Agreement.
- 3.1.143.1.16 **Outside Work** means work on a tug which proceeds to sea on a special voyage outside the limits of bays, rivers or regulated port boundaries or limits but within Australian territorial waters, excluding Nominated Voyages.
- 3.1.153.1.17 **Parties** means Svitzer Australia Pty Limited, a Union covered by this Agreement, and the Employees covered by this Agreement.
- 3.1.163.1.18 **Port Operating Procedures** or POPs means the operating procedures applying in a particular port, which set out details in respect of the matters referred to in clause 41.2 for that particular Port.
- 3.1.19 **PPT Guarantee** means the prescribed proportion (%) of full time employment (less than 100%) as agreed between Svitzer and the Employee and reviewed and adjusted in accordance with the terms of this Agreement.
- 3.1.173.1.20 **Salvage work** means work performed under a contract for salvage or under the Lloyd's Open Form of Salvage Agreement.
- 3.1.183.1.21 **Special Voyage** means a voyage for which it is necessary to set watches including any special free running voyage, delivery voyage, contract towage or emergency operations.
- 3.1.193.1.22 **Svitzer** means Svitzer Australia Pty Limited (ACN 000 045 009).
- 3.1.203.1.23 **Tug and Barge operations** means the movement of contract cargoes by combined tug and barge (up to a maximum of 10,000 tonnes) between different ports or locations in Australia.
- 3.1.213.1.24 **Trainee** means an ~~employee~~ **Employee** of Svitzer who is employed as a Trainee under clause 15.6 and who is sponsored by Svitzer to undergo a Traineeship.
- 3.1.223.1.25 **Traineeship** means a structured course of accredited training, under which a Trainee acquires skills and competence and relevant qualifications to become eligible to work on Svitzer's tug fleet under this Agreement.
- 3.1.233.1.26 **Union** means the AMOU or AIMPE or MUA respectively.
- 3.1.243.1.27 **Unions** means the AMOU, AIMPE and MUA collectively.

## 3.2 Interpretation

- 3.2.1 It is the intention of the parties that all of the provisions of this Agreement pertain to the employment relationship [or are ancillary thereto] and the Agreement will be given that effect wherever possible. It is also the intention of the parties that if any clause or sub-clause is found not to pertain to the employment relationship [or be ancillary thereto] or otherwise found not to be enforceable, then the particular clause or sub-clause will be inoperative but the remainder of the Agreement will continue in force.
- 3.2.2 A reference in this Agreement to an instrument includes a reference to the instrument as amended or varied from time to time.

#### 4. Application

4.1 The Agreement covers and binds:

4.1.1 Svitzer Australia Pty Limited; and

4.1.2 The AMOU, AIMPE and MUA providing that, in approving the Agreement, FWC notes that the Agreement covers the respective Union; and

4.1.3 Employees and Trainees employed by Svitzer, in relation to work performed by Employees on tug boats in or about the ports specified in Schedule 1.

4.2 Exclusions

4.2.1 This Agreement does not cover ~~employees~~ **Employees** employed by Svitzer:

- (i) in work covered by the Dredging Industry Award 2010 or its successor;
- (ii) in work on lines boats and mooring launches;
- (iii) in all tugboat operations in the port of Darwin or any other port not specified in Schedule 1;
- (iv) the tug and barge operations at the Koolan Island Project (WA).
- (v) Contract towing or Tug and Barge operations that are the subject of another enterprise agreement.

#### 5. Operation and Relationship with other Industrial Instruments

5.1 Interaction with Award

5.1.1 The Award and its terms have no effect in relation to work described in clause 4.1.3 unless otherwise provided in this Agreement.

5.2 Interaction with other Agreements

5.2.1 This Agreement replaces ~~each of the following enterprise agreements: Svitzer Australia Pty Limited National Towing Enterprise Agreement 2016.~~

- ~~(i) Svitzer Australia Pty Limited and AMOU Towing Enterprise Agreement 2013;~~
- ~~(ii) Svitzer Australia Pty Limited and AIMPE Towing Enterprise Agreement 2013; and~~
- ~~(iii) Svitzer Australia Pty Limited and MUA Towing Enterprise Agreement 2013.~~

5.2.2 This Agreement excludes any other agreement that may otherwise cover the Parties in relation to work described in clause 4.1.3.

5.3 Interaction with POPs

5.3.1 The POPs are incorporated as a term of this Agreement for the particular Port concerned. However, this Agreement prevails over applicable Port Operating

Procedures, which have no effect to the extent of any inconsistency with any term of this Agreement.

**6. No Extra claims**

6.1 Subject to this Agreement, from the Commencement Date until the nominal expiry date, there will not be any extra claims, with respect to the terms and conditions of employment of ~~employees~~Employees bound by this Agreement.

**7. Variation of this Agreement**

7.1 This Agreement may be varied prior to its nominal expiry date either to reflect agreements reached in response to changed circumstances as provided in clause 13, for the purposes of ensuring appropriate consistency with the terms and conditions granted to other comparable ~~employees~~Employees in the Company's towage operations, or otherwise.

**8. Enterprise flexibility**

8.1 Notwithstanding any other provision of this Agreement, Svitzer and an individual ~~employee~~Employee may agree to vary the application of certain terms of this Agreement to meet the genuine individual needs of the Company and the individual ~~employee~~Employee. The terms Svitzer and the individual ~~employee~~Employee may agree to vary the application of are those concerning:

8.1.1 arrangements for when work is performed or leave taken;

8.1.2 the cashing out of an ~~employee~~Employee's entitlements to paid leave under this Agreement. However any such agreement must ensure the ~~employee~~Employee retains the minimum leave balances stipulated by the Act, and that the ~~employee~~Employee be paid at least the full amount that would have been payable to the ~~employee~~Employee had the ~~employee~~Employee taken the leave that the ~~employee~~Employee has forgone;

8.1.3 for Masters and Engineers, the performance of additional functions such as management support functions.

8.2 Svitzer and the individual ~~employee~~Employee must have genuinely made the agreement without coercion or duress.

8.3 The agreement between Svitzer and the individual ~~employee~~Employee must:

8.3.1 be confined to a variation in the application of one or more of the terms listed in clause 8.1; and

8.3.2 result in the ~~employee~~Employee being better off overall than the ~~employee~~Employee would have been if no individual flexibility agreement had been agreed to.

8.4 The agreement between Svitzer and the individual ~~employee~~Employee must also:

8.4.1 be in writing, name the parties to the agreement and be signed by Svitzer and the individual ~~employee~~Employee;

- 8.4.2 state each term of this Agreement that Svitzer and the individual ~~employee~~Employee have agreed to vary;
- 8.4.3 detail how the application of each term has been varied by agreement between Svitzer and the individual ~~employee~~Employee;
- 8.4.4 detail how the agreement results in the individual ~~employee~~Employee being better off overall in relation to the individual ~~employee~~Employee's terms and conditions of employment; and
- 8.4.5 for an agreement under clause 8.1.2, each cashing out of a particular amount of paid leave must be documented in a separate written agreement;
- 8.4.6 state the date the agreement commences to operate.
- 8.5 Svitzer must give the individual ~~employee~~Employee a copy of the agreement and keep the agreement in the ~~employee~~Employee's individual records.
- 8.6 Except as provided in clause 8.4.1 the agreement must not require the approval or consent of a person other than Svitzer and the individual ~~employee~~Employee.
- 8.7 The agreement may be terminated:
- (i) by Svitzer or the individual ~~employee~~Employee giving four weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
  - (ii) at any time, by written agreement between Svitzer and the individual ~~employee~~Employee.
- 8.8 The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between Svitzer and an individual ~~employee~~Employee contained in any other term of this Agreement.

## 9. Renegotiation of this Agreement

- 9.1 The parties agree to commence negotiations for an agreement to replace this Agreement at least three (3) months prior to the nominal expiry date of this Agreement.

## PART 2 – CONSULTATION AND DISPUTE RESOLUTION

### 10. Continuity of Operations and Dispute Resolution Procedure

- 10.1 The following procedure shall apply to settle disputes about any matters arising under this Agreement and in relation to the NES.
- 10.2 The parties to a dispute must genuinely attempt to resolve the dispute at the workplace level as follows.
- 10.2.1 As soon as practicable after a dispute arises an ~~employee~~Employee must speak to his or her immediate supervisor or manager and give the supervisor or manager an opportunity to resolve the dispute.
- 10.2.2 If the dispute remains unresolved, the ~~employee~~Employee may request a representative, which may be a Union delegate or officer, to progress the matter with the immediate supervisor or manager.
- 10.2.3 Where the delegate or representative of the Union on the tug becomes aware of any such matter he or she may take it up with the local manager.
- 10.2.4 In the case of a matter arising at federal level, the ~~employee~~Employee's representative or relevant federal official of the union concerned and the appropriate regional or national company representative concerned shall discuss the matter and endeavour to resolve it.
- 10.2.5 If the matter cannot be settled it shall be referred to FWC for conciliation and/or arbitration.
- 10.3 Dispute Settlements - The above steps shall not preclude the right of any party to refer a dispute to the Fair Work Commission. In these circumstances, FWC shall retain its discretion to either refer the parties back to a continuation of this procedure (where FWC considers that course as appropriate), or conduct conciliation proceedings and where the FWC cannot settle the matter by conciliation, determine the matter.
- 10.4 Work shall continue pending determination of any matter or dispute in accordance with the above procedures except in circumstances where an ~~employee~~Employee holds a reasonable concern about an imminent risk to his or her health or safety. Subject to relevant provisions of work health and safety law, even if the ~~employee~~Employee has a reasonable concern about an imminent risk to his or her health or safety, the ~~employee~~Employee must not unreasonably fail to comply with a direction by Svitzer to perform other available work that is safe and appropriate for the ~~employee~~Employee to perform. The fact that the ~~employee~~Employee continues to work will not prejudice the ~~employee~~Employee or Svitzer.
- 10.5 Continuity of Operations
- Pending the completion of the procedure set out in this clause, work shall continue without interruption. No party shall engage in unlawful action and pending the resolution of the dispute the status quo shall apply. The rights of individuals or parties under the Act shall not be prejudiced by the fact that work has continued under this process normally and without interruption.

## 11. Consultation, Communication and Information Sharing

### 11.1 General

11.1.1 The parties agree that effective consultation and communication under this Agreement, based on the following principles, is essential in ensuring the Agreement contributes to the success of the Company:

- (i) consultation and communication must provide opportunities for participation of all work groups or ranks in respect of common matters under this Agreement;
- (ii) fair and equitable treatment of ~~employees~~Employees ensured - for individuals, members of their particular work group or rank, and all tugboat crew members in a port;
- (iii) ~~employees~~Employees' respective representational rights and obligations under clause 14 must be respected;
- (iv) dispute resolution mechanisms under this Agreement, including clause 10 must be adhered to.

11.1.2 Information sharing will be achieved through both formal and informal means, such as presentations, newsletters and other appropriate avenues.

11.1.3 It is agreed between the parties that consultation will occur between management and the ~~employees~~Employees principally at the port level. Formal structures will be established to enable consultation to take place between Svitzer, the ~~employees~~Employees and the Unions representing all ~~employees~~Employees on a regular basis. This will occur in the following forums:

- (i) National Advisory Board;
- (ii) Port Advisory Group;
- (iii) Tug Efficiency and Management Systems ("TEAMS");
- (iv) Workplace Council;
- (v) Svitzer Workforce Planning and Development Committee established for each classification or work group.

### 11.2 Consultation Forums

#### 11.2.1 National Advisory Board:

(i) This comprises Senior Management and two representatives from each of the three Maritime Unions, and is the senior consultative forum where detailed commercial issues will be discussed which enables union officials to appreciate the commercial and operational requirements of the business. The National Advisory Board operates in accordance with its Charter made on 17 February 2012.

(ii) On and from the first meeting of the National Advisory Board in 2021, Svitzer shall at each meeting of the National Advisory Board, provide an updated report of actual expenditure as against the budget referred to in clause 19.5.1.

(iii) Svitzer will make best endeavours to meet the obligation referred to in clause (ii) above prior to the first meeting of the National Advisory Board in 2021.

(iv) Svitzer will consult with the National Advisory Board in relation to the structure of the report referred to in (ii) above.

#### 11.2.2 Port Advisory Group:

(i) This is the forum for local communication and information sharing to enable all towing employees to have input in the local daily operation of the business. The Port Advisory Group shall comprise representatives of each department and Svitzer management.

(ii) As part of the Port Advisory Group, the following information with respect to the preceding period will be provided by Svitzer:

A. crew recalls;

B. casual usage;

C. scratch crew usage;

D. port volumes;

E. unplanned absences;

F. permanent part-time Employee utilisation; and

G. accrued leave banks.

(iii) Svitzer will provide a delegate or Union official with the information referred to in paragraph (ii) above upon request from that delegate or Union official and in that circumstance the delegate or Union official must keep that information confidential.

#### 11.2.3 Tug Efficiency and Management Systems (“TEAMS”)

- (i) The basis for the operation of TEAMS and its co-ordinating committee is established by the TEAMS Framework Memorandum.
- (ii) The purpose of TEAMS is to:
  - A. manage controllable cost and improve performance through engaging the workforce and using their skills in the management of the business; and
  - B. to ensure a sustainable future for Svitzer and its towing employees by being the preferred provider of marine services and an employer of choice to the maritime labour market.
- (iii) In the above respects, TEAMS shall ensure that maintenance, tug safety and crew member duties and responsibilities shall not be compromised by an initiative to cut costs.
- (iv) If a disagreement arises involving a matter relating to the operation of TEAMS:



- A. the matter may be referred to the Port Advisory Group (if it is a matter affecting the operation of one Port); or
  - B. the matter may be referred to the National Advisory Board if it is a matter affecting the operation of more than one Port, the TEAMS Framework Memorandum, or a matter that could not be resolved by discussion at the Port Advisory Group.
  - C. The matter will not be referred to the Dispute Resolution procedure in clause 10, until the preceding steps have been taken.
- (v) The parties agree to review the operation of TEAMS during the life of this Agreement.

#### 11.2.4 Workplace Council

- (i) The workplace council will meet at least once during the term of this Agreement. The workplace council is not a forum for the discussion of industrial disputes or individual grievances, but rather provides a forum for the exchange of views between representatives of the ~~employees~~Employees and senior management, where, in addition to local consultative processes and through sharing information about industry matters and company prospects, greater trust and respect can be established.
- ~~(ii)~~ The workplace council will comprise one representative from each Port specified in Schedule 1 for each classification specified in clause 24.1.1, and a national officer of each Union.
- ~~(iii)~~(iii) ~~It is anticipated that~~The workplace council ~~shall~~would be scheduled over two (2) days and will occur between 1 June 2021 and 31 August 2021.
- ~~(iii)~~(iv) Svitzer will ensure that appropriate members of the senior management, corporate staff and port manager/s attend the meeting to enable detailed and open discussion of the issues.
- ~~(iv)~~(v) The cost of travel, meals and accommodation required to facilitate attendance at the workplace council meeting will be met by Svitzer.
- ~~(v)~~(vi) It is agreed that as a requirement of participation in this process, the participants will convey the information received at the council to the relevant ~~employees~~Employees within their region fairly and impartially, unless the information is identified as being confidential by Svitzer, in which case the representative will respect such confidentiality.

#### 11.2.5 Svitzer Workforce Planning and Development Committee

Clause 19.4 describes the composition, functions and operation of this Committee.

### 11.3 Consultation and new class of vessel

- 11.3.1 When Svitzer proposes to introduce a harbour tug into the Australian fleet it will advise the Unions.
- 11.3.2 Senior Management will then consult with the relevant ~~employee~~Employee representatives including the officials of the Unions regarding the vessel, and where appropriate and agreed, the extent and nature of any inspection trip to be undertaken by ~~employees~~Employees and/or ~~employee~~Employee organisation

representatives, and the program for introducing the new vessel at the destination Port.

- 11.3.3 Svitzer will arrange for an independent and internationally reputable asbestos surveyor to inspect each new vessel for asbestos, and provide the Union with a copy of the inspection report, prior to the arrival of the new vessel in Australia. Any remedial action shall be undertaken as per the requirements of Svitzer's Asbestos Management Plan which has been developed to manage all obligations in all circumstances under all applicable regulatory frameworks for asbestos management, using a single and nationally consistent approach.

## 12. Authorised Meetings

### 12.1 Meetings of ~~employees~~Employees

Meetings of ~~employees~~Employees will be allowed without loss of salary, provided that the meetings and their duration are arranged so as to avoid any disruption whatsoever to operations.

## 13. Reduction, Cessation or Growth in Business

- 13.1 The parties have entered into this Agreement in the expectation that the terms of this Agreement will apply for the life of the Agreement.
- 13.2 However, if circumstances affecting the business, either across the board or in a particular port will lead to a reduction, cessation or growth of port business, Svitzer and the Union will confer in an attempt to resolve any issues arising from the change in circumstances. The parties will attempt to resolve such issues in accordance with the dispute resolution procedure, clause 10 of this Agreement, including by reference to FWC to have FWC determine the reasonableness of any proposals to address the changed circumstances. Where found to be reasonable by FWC, the Company proposals will be implemented.
- 13.3 In the event of substantial changes in roster arrangements (which may include roster arrangements providing for the introduction of "captivity" for a port) or the level of towing operations or other relevant circumstances, the parties agree to review, and where necessary, adjust the salaries referred to in clause 24 of this Agreement.
- 13.4 If, as a result of the review referred to above, it is necessary to alter salary levels, the parties agree to take such steps as are required by the Act and clause 7 to vary this Agreement accordingly.

## 14. Rights and Responsibilities of Delegates

- 14.1 The parties to this Agreement believe that good workplace relations are essential for the well being of ~~employees~~Employees and as a pre-requisite for a safe and productive enterprise.
- 14.2 Part of this includes acknowledgement of the role of workplace delegates and in enhancing efficiency the following principles are agreed:
- The delegate has the right to fair treatment and to perform their role without discrimination in their employment.

- The delegate has the right to formal recognition by the company and its representatives.
- The delegate has the right to consult with workplace staff and management and will be given reasonable access around the workplace to facilitate this.
- The delegate has the right to reasonable paid time off to participate in approved forums and meetings with the company during the ~~employees~~Employees normal duty cycle, and all reasonable endeavours will be made to schedule these activities when the delegate is at work, shipping requirements permitting. Where a delegate is required to attend a scheduled forum or meeting during a leave day, the day of leave will be restored to that delegate.
- The delegate has the right to relevant training as agreed.
- The delegate has the right to reasonable access to workplace equipment such as facsimile, photocopying, e-mail, internet etc. provided that this does not interfere with the normal operations of other staff.
- The delegate has the right to place necessary union information on company noticeboards.
- The delegate has the right to take reasonable leave without pay to work with the Union at a time agreed with the company.

14.3 It is acknowledged by the parties that in carrying out their role workplace delegates also have a number of responsibilities. These include:

- Acting in a courteous and professional manner in their role;
- The responsibility to raise workplace issues in a timely fashion and work co-operatively with the Company to resolve issues.
- Workplace delegates must deal in a professional manner with all ~~employees~~Employees, regardless of union membership status.
- Adhere to Svitzer policies and procedures whilst carrying out their role. This includes using equipment made available in a manner consistent with Svitzer policies on acceptable use of e-mail and internet, harassment and discrimination.

14.4 Where a Union is a party to a dispute with Svitzer under this Agreement and is required to attend the Fair Work Commission in relation to that dispute, Svitzer will either:

14.4.1 release one (1) delegate from roster to facilitate their attendance at the Fair Work Commission (subject to relief being available in the port); or

14.4.2 give one (1) delegate a Dead Day to facilitate their attendance at the Fair Work Commission.

14.5 Subject to clause 14.6, where an Employee is required to attend a meeting with Svitzer to respond to a letter of allegation or letter of show cause and their elected delegate (one only) volunteers to come in from leave to support that attendance, Svitzer will provide that delegate 1/3<sup>rd</sup> of a Dead Day to compensate for their attendance.

14.414.6 The Parties agree that reasonable efforts must be made to minimise disruption and that the preference, where possible, is for response meetings referred to in clause 14.5 to be conducted in between shipping and without attendance by a delegate on leave.

## PART 3 - ENGAGEMENT AND TERMINATION OF EMPLOYMENT

### 15. Categories of Employment and Engagement

#### 15.1 Employment Categories

15.1.1 An ~~employee~~Employee under this Agreement may be engaged in one of the following employment categories:

- permanent full time,
- permanent part time,
- ~~employee~~Employee engaged for a specified period of time / task, or
- casual employment,

in accordance with clauses 15.2 to 15.6 respectively.

15.1.2 At the time of engagement an ~~employee~~Employee will be advised in writing of:

- (i) the category of employment in which the person is employed and
- (ii) as appropriate, the duration or expected duration of the engagement and the specified period of time or task;
- (iii) any requirement and likely duration of induction in relation to clause 23.

#### 15.2 Full-time employment

15.2.1 A permanent full time ~~employee~~Employee is an ~~employee~~Employee who is engaged to work on a full time basis in accordance with this Agreement and the Port Operating Procedures in the port in which the ~~employee~~Employee is engaged.

#### 15.3 Permanent Part-time employment

15.3.1 Subject to the terms of this Agreement, a part time ~~employee~~Employee receives, on a pro-rata basis, equivalent salary and conditions as a full-time ~~employee~~Employee.

15.3.2 A permanent part time ~~employee~~Employee is an ~~employee~~Employee:

(i) \_\_\_\_\_ who is engaged for a PPT Guarantee prescribed proportion (%) of full time employment (less than 100%), and who is; and

(ii) \_\_\_\_\_ required to work at least the PPT Guarantee number of corresponding days per annum Financial Year. (For example, an ~~employee~~Employee who is engaged within a 50% PPT Guarantee permanent part-time role will be required to work at least 91 days per annum Financial Year.)

15.3.3 Subject to the terms of this Agreement, Svitzer guarantees that a permanent part-time Employee will be provided work for the equivalent of at least the PPT Guarantee during each Financial Year.

~~15.3.4~~ Where Svitzer has not provided an Employee the equivalent of at least the PPT Guarantee during a Financial Year, that Employee will not be required to work the PPT Guarantee to the extent Svitzer has not provided it.

~~15.3.5~~ For the purpose of this clause 15.3, days worked outside an Employee's home port must be included when calculating the days provided by the Company and required to be worked by the Employee.

~~15.3.2~~~~15.3.6~~ Review of permanent part time employeeEmployee's percentage(%)PPT Guarantee

- (i) ~~Svitzer must conduct a review of t~~The proportionality of the engagement PPT Guarantee of each permanent part-time employeeEmployee will be reviewed each year on the employee's anniversary date1 July.
- (ii) The review will include consideration of the proportion of days worked by the employee permanent part-time Employees in the previous Financial Year, and the reasons for any major divergence between the a permanent part-time employeeEmployee's PPT Guaranteepercentage and the proportion of work actually performed by the permanent part-time Employee.
- ~~(iii)~~ If there is major divergence between the employeepermanent part-time Employee's percentage-PPT Guarantee and the proportion of work actually performed by the employeepermanent part-time Employee, the employeeEmployee's percentage PPT Guarantee will be either increased or decreased for the next 12 months to reflect the previous Financial Year's work activity, unless there are exceptional circumstances that explain the divergence; an adjustment to the percentage-PPT Guarantee will not fall below the prescribed percentage-PPT Guarantee(%) of full time employment under which the employeeEmployee was first engaged.
- ~~(iv)~~ Where an adjustment is made to a permanent part-time Employee's PPT Guarantee in accordance with this clause 15.3.6, the adjustment will take effect from 1 July.
- ~~(iii)(v)~~ For the avoidance of doubt, a dispute may be brought about any matter arising under this clause 15.3.6 in accordance with the procedure in clause 10 of this Agreement.

~~15.3.3~~~~15.3.7~~ Conversion of permanent part-time employment to permanent full-time employment

- ~~(i)~~ This clause 15.3.4 commences operation on 1 January 2017.
- ~~(iii)(i)~~ If a permanent part-time employeeEmployee worked, on average in a Financial Year, at least the number of days ordinarily worked by a full-time employeeEmployee (100%) annually, the employeeEmployee may make an election on 1 July each year to convert their employment to full-time employment, if the employment is to continue beyond the conversion process, in accordance with this clause 15.3.715.3.4.

Note: Conversion to full-time employment under this clause 15.3.715.3.4 does not guarantee predictable rostered leave.

- ~~(iii)~~ Availability and Timing of election:
  - A. For permanent part time employees who were in permanent part-time employment on the Commencement Date: on

~~1 January 2017 for 2017, and after 2017, annually on the employee's anniversary date; or~~

~~B. For permanent part-time employees not covered by paragraph A: on the employee's anniversary date.~~

~~(iv)(ii) Process for election to convert to full-time employment~~

~~A. A permanent part-time employeeEmployee, who has met the requirements in paragraph (i)(iii), may provide Svitzer with written notice electing to convert their contract of employment to full-time employment within four (4) weeks after the date specified in that paragraph (iii).~~

~~B. Within four (4) weeks of receiving such notice the Company must consent to or refuse the election but must not unreasonably so refuse.~~

~~B-C. Where Svitzer consents to the election, the conversion will take effect from the date of election.~~

~~C-D. Once a permanent part-time employeeEmployee has elected to become and been converted to a full-time employeeEmployee, the employeeEmployee may only revert to permanent part-time employment by written agreement between Svitzer and the employeeEmployee.~~

~~E. An employeeEmployee must not be engaged and re-engaged to avoid any obligation under this clause 15.3.7+15.3.4.~~

~~(v)(iii) For the avoidance of doubt, a dispute may be brought about any matter arising under this clause 15.3.7 in accordance with the procedure in clause 10 of this Agreement.~~

#### 15.3.415.3.8 Job sharing

Job sharing arrangements between permanent full-time employeesEmployees may be implemented where there has been mutual agreement between the employeesEmployees concerned and the Company, and consultation has occurred with the Union.

(i) The Parties agree that job sharing arrangements are generally for the purpose of supporting Employees transitioning to retirement or Employees that have legitimate reasons that do not allow them to maintain their permanent positions, such as, compassionate reasons, returning to work from parental leave and family caring responsibilities.

(ii) On and from Commencement Date:

A. job sharing arrangements for Masters and Engineers may only be entered into between permanent Employees; and

B. job sharing arrangements for Ratings may only be entered into between two permanent full time Employees.

(iii) Subject to clauses (i) and (ii) above, Svitzer may agree to Employees entering into a job share arrangement subject to the following:

A. the job sharing arrangement being at the instigation of one or more of the relevant Employees; and

B. Svitzer consulting with the relevant Employees and relevant Union in relation to the appropriateness, terms and conditions of the job share arrangement.

(iv) Should an Employee party to a job share arrangement change their status of employment with Svitzer, Svitzer will consult with the remaining Employees in the relevant job share arrangement and the relevant Union, in relation to the role which was the subject of the relevant job share arrangement.

(v) This clause is not intended to prejudice job share arrangements (including the terms and conditions of those arrangements) which commenced prior to the Commencement Date.

(vi) Notwithstanding clause (v) above, Svitzer agrees that job share arrangements which commenced prior to the Commencement Date will be subject to the consultation referred to in clause (iv) above.

#### 15.4 Employment for a specified period of time or specified task

15.4.1 An ~~employee~~Employee engaged for a specified period of time or a specified task is an ~~employee~~Employee who works on either a permanent full time or permanent part time basis, but is engaged for a specified period of time or specified task.

15.4.2 Svitzer must consult with the relevant Union prior to engaging an Employee for a specified period of time or specified task (or extending such arrangement).

~~15.4.1~~15.4.3 Unless otherwise agreed by Svitzer and the relevant Union, the total maximum period Svitzer may engage an Employee under clause 15.4.1 (inclusive of extensions) is 12 months).

#### 15.5 Casual employment

15.5.1 A casual ~~employee~~Employee is an ~~employee~~Employee who is not regularly rostered to work, but is engaged daily for periods of one day or more.

##### 15.5.2 Terms of casual engagement

(i) Subject to clause 15.5.2(ii), daily start and finish times and the timing and duration of breaks for casual ~~employees~~Employees will align with those times that apply to permanent ~~employees~~Employees in the port.

(ii) Where Svitzer requires the casual ~~employee~~Employee(s) to work at different times due to unusual operational requirements, the start time will commence at the start time notified.

(iii) Where the start time notified is brought ahead and the casual ~~employee~~Employee is available for duty then the casual engagement will commence from the new start time.

##### 15.5.3 Casual allowance

(i) Svitzer will pay a casual Employee \$15 in circumstances where they work 5 or more shifts in a calendar month.

~~(iii)~~(ii) Any amounts payable in accordance with clause (i) will be payable, where practicable, in the next pay period following the relevant month.

#### 15.6 Trainees

- 15.6.1 A person may be engaged as a Trainee. Remuneration and conditions of Trainees are set out in clause 24.5.
- 15.6.2 When Trainees satisfactorily complete their Traineeship, they will become eligible to apply to Svitzer for available employment as an ~~Employee~~Employee under one of the employment categories specified in clauses 15.2 to 15.5 above. However, there is no implied right for Trainees to be so engaged.

## 16. Selection and Recruitment

### 16.1 Interpretation

For the purpose of clause 16.2:

16.1.1 the 'respective Union' is:

- (i) for a Master (including a Master Trainee), the AMOU;
- (ii) for an Engineer (including an Engineer Trainee), the AIMPE; and
- (iii) for a Rating (including a Rating Trainee), the MUA.

16.1.2 The 'area of operation' concerned is:

- (i) for a Master position (including a Master Traineeship), the Masters; and
- (ii) for an Engineer position (including an Engineering Traineeship), the Engineers; and
- (iii) for a Rating position (including a Rating Traineeship), the Ratings.

### ~~16.1~~16.2 Recruitment

~~16.1~~16.2.1 Process for recruitment of permanent ~~employees~~Employees and trainees

Where Svitzer intends to recruit permanent ~~employees~~Employees and Trainees it will:

- (i) Advertise the position (the respective Union will be advised of this or be given a copy of the advertisement and it may identify candidates for consideration);
- (ii) Screen and interview applicants (an agreed ~~employee~~Employee from the area of operation concerned agreed by Svitzer and the respective Union will be invited to participate in the shortlisting and interview process);
- (iii) Check references and medical fitness for the job;

~~16.1~~16.2.2 Process for recruitment of casual ~~employees~~Employees

To facilitate selection and engagement of suitable and qualified casual ~~employees~~Employees, Svitzer will, in consultation with the respective Union:

- (i) develop and maintain a list of suitably qualified casual candidates;



- (ii) screen and interview candidates for potential or actual casual employment (an agreed ~~employee~~**Employee** from the area of operation concerned will be invited to participate in the interview process);
- (iii) check references and medical fitness for the job.

~~16.216.3~~ Selection:

~~16.2.116.3.1~~ Svitzer must choose the successful applicant on the basis of merit, qualifications (certification) and experience. The table below contains:

- (i) For Masters and Ratings, the criteria particular to the classification of ~~employees~~**Employees**;
- (ii) For Engineers the agreed certification requirements.

Masters	Engineers	Ratings
<p>(i) <u>From the Commencement Date, Svitzer agrees to only employ or engage Masters with a minimum qualification of Master &lt;35m NC (without restriction).</u></p> <p>(ii) Specific skills and competencies relating to the towage industry or potential to develop them;</p> <p>(iii) Demonstrated personal attributes of teamwork, communication, problem solving, suitability and ability to meet the requirements of the position;</p> <p>(iv) A detailed knowledge of International/National/State legislation as it applies to the towage industry.</p>	<p>(i) Svitzer agrees to engage permanent engineer <del>employees</del> <u>Employees</u> who possess either class 1, class 2, or class 3 Certificates of Competency as required to meet the needs of the business. In the case of the holder of a class 3 Certificate of Competency, that person will also hold a trade qualification as either a fitter and turner, diesel fitter, electrical fitter or other relevant or equivalent engineering trade.</p> <p>(ii) Casual <del>employees</del> <u>Employees</u> engaged under this Agreement must possess, as a minimum, a Class 3 certificate of competency with a relevant engineering trade qualification.</p> <p>(iii) The Traineeship will be structured so as to enable a Trainee to meet at least the minimum certification requirement of Class 3 with a relevant trade qualification.</p>	<p>(i) Specific skills and competencies relating to the towage industry or potential to develop them;</p> <p>(ii) Demonstrated personal attributes of teamwork, communication, problem solving, suitability and ability to meet the requirements of the position.</p>

16.2.216.3.2 The decision of management in selecting the successful permanent or casual employment candidate will be final.

16.316.4 Probation for permanent ~~employees~~ Employees

16.3.116.4.1 Specified Probationary periods are as follows:

- (i) in the case of Masters a six (6) month period of probation; or
- (ii) in the case of other ~~employees~~ Employees a three (3) month period. (Provided that where Svitzer considers that the performance of the ~~employee~~ Employee was not satisfactory during the probationary period it may, at its discretion, extend the probationary period for one month.)

~~16.3.2~~16.4.2 At the conclusion of the period of probation Svitzer will, subject to the satisfactory performance of the ~~employee~~Employee during the probationary period, confirm the appointment.

~~16.3.3~~16.4.3 If the performance of the ~~employee~~Employee during the initial period or the extended period of probation is deemed unsatisfactory by Svitzer it may terminate the ~~employee~~Employee's employment at that time with one week's notice (or payment in lieu).

~~16.3.4~~16.4.4 It is agreed that the process set out in this clause is reasonable, and must be agreed to in advance, by any prospective ~~employee~~Employee.

#### ~~16.4~~16.5 Fitness for duty

It is a requirement that ~~employees~~Employees, once recruited, remain fit for duty. In this respect ~~employees~~Employees will attend for medical examination as required by Svitzer and at Svitzer's expense.

#### ~~16.5~~16.6 Security clearance for duty

~~16.5.1~~16.6.1 ~~Employees~~Employees must have security clearance for work in the form of a valid and current Maritime Security Identification Card (MSIC) issued by the relevant government authority.

~~16.5.2~~16.6.2 Where a permanent ~~employee~~Employee must obtain a MSIC in order to take up an offer of employment by Svitzer, the cost of the issue and the periodic renewal of the MSIC will be met by the Company. Where a MSIC card is lost and there is a valid reason for the loss the Company will meet the cost of replacement for one lost card during the term of this Agreement.

~~16.5.3~~16.6.3 Where a casual ~~employee~~Employee must obtain a MSIC in order to take up an offer of employment by Svitzer, the cost of the issue will be met by the Company.

## 17. Employee Duties

The duties of ~~employees~~Employees under this Agreement are set out in clauses 17.1 to 17.3 below by reference to the respective classification of the ~~employee~~Employee:

### 17.1 Masters Duties

17.1.1 To achieve maximum flexibility, tug ~~employees~~Employees shall work as a team with each ~~employee~~Employee working as reasonably required to the level of their classification, job description, skills, training, competence, certification and applicable legislation in a co-operative effort, to ensure the safe and efficient operation of the tug. Where necessary, ~~employees~~Employees will undertake training in order to maintain and enhance their skills.

17.1.2 The master (acting as Ship Security Officer) will fill the role of the SSO Designate under the Maritime Transport Security Act 2003.

17.1.3 The duties of a master include, but are not limited to:

- (i) The command of the tug and its crew;

- (ii) Act as tug manager and coordinating the attendance of crew as required for operations, the provision of stores, and ensuring readiness for operations;
- (iii) Compliance with policies and procedures authorized by Svitzer, including Quality control;
- (iv) Assurance and I.S.M. systems and procedures;
- (v) Management of disciplinary procedures relating to tug crews as required;
- (vi) Supervision and assistance with tug maintenance as necessary;
- (vii) Where required, the preparation of operational reports;
- (viii) Induction training of visitors, ~~employees~~Employees and other persons authorised by Svitzer to access the vessel;
- (ix) Monitoring and review of work health and safety standards and procedures associated with tug operations and reporting as appropriate;
- (x) Ensuring compliance with relevant environmental regulations.
- (xi) Participation in operational improvement exercises, including but not limited to towage simulation exercises, advisory support during discussions with port authorities, pilots and other parties, and liaison with Svitzer management regarding the improvement of operational procedures;
- (xii) Compliance with roster arrangements and Svitzer's Standing Orders;
- (xiii) Participation in safety training;
- (xiv) For designated trainers in accordance with clause 19.3.4, conducting on-the-job training for Trainee masters;
- (xv) Participation in skills and competency training including the training of other crew members, and Trainees.

17.1.4 In the application of this clause, for the avoidance of doubt, it is agreed that nothing in the making of this Agreement is intended to reduce, diminish or detract from the scope of the existing duties of Masters covered by this Agreement, as detailed in this clause 17.1 (for example, duties associated with the command of the tug and its crew, supervision and assistance with tug maintenance, monitoring and review of work health and safety standards and procedures associated with tug operations and reporting) or as elsewhere detailed in this Agreement (for example, duties associated with the introduction of Tug Efficiency and Management Systems).

## 17.2 Engineers Duties

17.2.1 Engineers will be in charge of and responsible for all maintenance in accordance with the planned maintenance system as agreed by the company with its Engineering ~~employees~~Employees and the duties include, but are not limited to:

- (i) The performance of statutory functions;
- (ii) Compliance with port operating procedures agreed between the parties, including quality assurance and ISM procedures in so far as they relate to the engineer's duties;

- (iii) Maintenance and repair of marine plant and equipment, including emergency maintenance work;
  - (iv) Tug maintenance in accordance with the agreed programmed maintenance schedule and budget;
  - (v) Supervision of personnel undertaking and assisting in the engineering function;
  - (vi) Responsibility for signing off on maintenance work completed;
  - (vii) Preparation of maintenance and operational reports as required;
  - (viii) To be responsible for the safe operation of the vessels engines, generators and associated machinery and equipment whilst on towage services;
  - (ix) To ensure that all machinery (deck and engine) is maintained to operational standards at all times;
  - (x) To carry out routine maintenance and repairs as and when necessary, and to take responsibility for ensuring that the agreed Planned Maintenance System is carried out onboard.
  - (xi) Participation in agreed safety training, including the training of other crew members;
  - (xii) Participation in agreed skills and competency training;
  - (xiii) Assisting other crew members on deck as agreed;
  - (xiv) Monitoring and review of relevant work health and safety standards and procedures and reporting as appropriate;
  - (xv) Undertaking duty at dockings, including monitoring and supervising other personnel as necessary and appropriate.
  - (xvi) Wear the industrial and protective clothing provided in accordance with clause 28, as well as any additional protective equipment agreed between the parties as necessary.
  - (xvii) Ensuring day to day compliance with relevant environmental regulations;
  - (xviii) Participation in operational improvement exercises and liaison with Svitzer management regarding improved operational procedures, leading to a culture of continuous improvement.
- 17.2.2 In addition to the above, ~~employees~~Employees will undertake such duties as are reasonably agreed by the parties, provided that the duties are within the skills, competence and training of the ~~employee~~Employee concerned to undertake.
- 17.2.3 Where required, ~~employees~~Employees will undertake training in order to maintain and enhance their skills.
- 17.2.4 ~~Employees~~Employees must maintain and keep valid any certificate required by them to perform their duties. The cost and leave will be provided by Svitzer.
- 17.2.5 **Note:** This clause 17.2 - Engineers Duties, under this Agreement is interpreted in accordance with an exchange of correspondence between Svitzer and the AIMPE

in February 2014, as if references in that correspondence to the *Svitzer Australia Pty Limited and AIMPE Towage Enterprise Agreement 2013* were a reference to this Agreement.

### 17.3 Ratings Duties

17.3.1 The duties of a rating include, but are not limited to:

- (i) Deck and General Purpose duties of harbour, free running and outside towage work;
- (ii) Marine and salvage operations;
- (iii) Operation of fire fighting equipment and the provision of assistance to firefighting personnel;
- (iv) Operation of oil spill and other environmental protection equipment;
- (v) Maintenance of tugs, towage equipment, firefighting and environmental protection equipment and relevant shore based facilities;
- (vi) The handling of stores and equipment including fork lift operations;
- (vii) Assistance in the engine room;
- (viii) Compliance with policies and operating procedures authorised by Svitzer and consistent with statutory obligations, including safety, Quality Assurance and ISM procedures;
- (ix) Cooking during outside work;
- (x) General seamanship duties; and
- (xi) As required, watch keeping duties, and where appropriately qualified acting in the capacity of mate;
- (xii) Participation in safety training;
- (xiii) Participation in skills and competency training;
- (xiv) For designated trainers in accordance with clause 19.3.4 conducting on-the-job training for Trainee ratings;
- (xv) The training of other crew members, and Trainee ratings, where ~~employees~~Employees have the appropriate skills and qualifications to do so;
- (xvi) Wear the industrial and protective clothing provided in accordance with clause 28, as well as any additional protective equipment deemed necessary by the Company.
- (xvii) Ensuring day to day compliance with relevant environmental regulations;
- (xviii) Participation in operational improvement exercises and liaison with Svitzer management regarding improved operational procedures, leading to a culture of continuous improvement.

- 17.3.2 In addition to the above, ~~employees~~Employee will undertake such duties as are reasonably required by the Company, provided that the duties are within the skills, competence and training of the ~~employee~~Employee concerned to undertake.
- 17.3.3 Where required, ~~employees~~Employees will undertake training in order to maintain and enhance their skills.
- 17.3.4 In the application of this clause, for the avoidance of doubt, it is agreed that nothing in the making of this Agreement is intended to reduce, diminish or detract from the scope of the existing duties of Ratings covered by this Agreement, as detailed in this clause 17.3 (for example, duties associated with the maintenance of tugs, towage equipment, fire fighting and environmental protection equipment and relative shore based facilities) or as elsewhere detailed in this Agreement (for example, duties associated with the introduction of Tug Efficiency and Management Systems).

17.4 In the application of this clause 17, for the avoidance of doubt Svitzer will have regard to its work health and safety obligations under law.

## 18. Work Health and Safety

- 18.1 This Agreement will not conflict with relevant Work Health and Safety laws which confer a duty of care on the parties.
- 18.2 Work Health and Safety legislation requires Svitzer to provide a safe working environment by taking reasonable measures to minimize the risks associated with identified hazards, providing ~~employees~~Employees with training in safe work methods and by being rigorous in investigating all hazardous occurrences and incidents. It also requires ~~employees~~Employees to comply with all reasonable requirements of the Company in these respects.
- 18.3 Work Health and Safety Committees
  - 18.3.1 Svitzer will provide tools and training to Work Health and Safety Committees to enable regular assessment of the incidence of fatigue and fatigue mitigation strategies. The parties will continue to consult at a senior level so as to ensure that fatigue is managed appropriately.
  - 18.3.2 Wherever possible the Committee meeting must be arranged on a day when the majority of ~~employee~~Employee members are on-duty (and programmed around shipping requirements). If, in order to create a quorum of ~~employee~~Employee representatives, an ~~employee~~Employee representative must attend a Committee meeting during a leave day the day of leave will be restored to that ~~employee~~Employee.
- 18.4 Svitzer will provide expert injury management services in order to expedite the full recovery and the earliest possible return to work of an injured ~~employee~~Employee.
- 18.5 Health and Safety Representative (HSR) Training

Where applicable Work Health and Safety laws require an ~~Employee~~Employee HSR to undertake a HSR course of training, that HSR training must be undertaken during duty periods to the extent it is practical to do so. To the extent the HSR course of training must be undertaken or completed on a day that falls during an off-duty period **and the HSR agrees to attend that training on a day that falls on an off-duty period**, that day of HSR training will be restored to the Employee (that is, such training day will be treated as a “dead day”) **a Dead Day and without anyno** additional compensation **will be paid**.

18.6 Employees must exercise duty of care to both themselves and others in the workplace. If an injury occurs ~~employees~~Employees will do all that is within their capacity to participate in injury management and rehabilitation programs in order to achieve full recovery and an early return to work. ~~Employees~~Employees will cooperate fully in all safety initiatives implemented by Svitzer.

## 19. Training and Skill Development

### 19.1 Skill Enhancement

#### 19.1.1 Principles

A well trained, skilled competent and flexible workforce is essential to meet the objectives of any modern company. It serves a number of purposes including:

- (i) Enhancing the ~~employee~~Employee's capacity to perform within his or her classification;
- (ii) Providing the ~~employee~~Employee with opportunities for promotion to shore based management functions and specialist positions within the company;
- (iii) Providing the ~~employee~~Employee with opportunities for personal and professional growth and career progression.

#### 19.1.2 Training will be delivered and undertaken in accordance with the following:

- (i) ~~Employees~~Employees will be trained so as to ensure that the current and future needs of Svitzer and Salvage are met;
- (ii) ~~Employees~~Employees will gain access to training on their merit and according to the perceived potential of the ~~employee~~Employee;
- (iii) Training will be made available in order to meet the requirements of State and Federal legislation.

### 19.2 Trainees (new entrants)

To further ensure that the future needs of Svitzer are met, regarding access to an appropriate number of properly qualified Trainees, Svitzer commits to the engagement of Trainees in accordance with the principles set out in this sub-clause.

#### 19.2.1 The principles for the Traineeship are as follows:

- (i) Upon the commencement of this Agreement, Svitzer will commence recruitment of Trainees consistent with its operational needs.
- (ii) Training wages will be in accordance with clause 24.5;
- (iii) Certification objectives will be in accordance with clause ~~16.3~~16.2.

### 19.3 Training Conditions

19.3.1 Svitzer will meet the costs of study, including course costs, and ancillary reasonable travel / accommodation and victualling costs for any study or training course that Svitzer requires the ~~employee~~Employee to undertake. To avoid doubt, this clause also applies to revalidation courses.



19.3.2 Where Svitzer appoints an ~~employee~~Employee to conduct designated on-the-job training the Employee will receive recognised (formerly described as 'train the trainer') training at no cost to the ~~employee~~Employee.

19.3.3 Revalidation courses

- (i) When an Employee is required to attend a training course for the purposes of revalidation of certificate on a day when the Employee is rostered for duty, that day will be regarded as a normal ~~employee~~Employee day. Where the course falls on a day of leave the leave day will not be reinstated.
- (ii) The course costs relating to revalidation courses for an Employee will be met by Svitzer up to the standard at which the ~~employee~~Employee was engaged.

19.3.4 Prescribed training courses

In this clause 19.3.4, a prescribed training course means an approved training course or program that will enhance the Employee's ability to perform their prescribed duties in a safe, skilful and competent manner, including:

- A. Workplace health and safety training and drills;
- B. First aid training;
- C. IT training where applicable to the Employee's role;
- D. technology training to support the performance of an Employee's duties;
- E. Computerised planned maintenance system training;
- F. Safety management system on-line training;
- G. Any other training that arises from agreed business improvement initiatives, including any training identified through the Port Advisory Groups and the Svitzer Workforce Planning and Development Committee for the respective classification.

To avoid any doubt, a prescribed training course does not include revalidation courses, or "train the trainer" training, or "SCOPE" training courses.

Where a prescribed training course falls during a period of leave:

(ii) ~~permanent full-time~~ Employees will be available to undertake such training course without additional payment or compensation on up to five (5) leave days per calendar year (which will not accumulate from year to year); ~~and~~

(iii) ~~the number of leave days per Financial Year on which permanent part-time Employees will be available to undertake such training course without additional payment or compensation will not accumulate from year to year and will be calculated as follows:~~

~~Number of leave days = PPT Percentage Guarantee as at the start of the Financial Year x 5, rounded up to the nearest day.~~

After the first ~~leave~~5 days per year are utilised, each leave day during which a prescribed training course is undertaken will be ~~a Dead Day and no, restored to the Employee (that is, such training day will be treated as a "dead day")~~ without any

additional compensation will be paid. In respect of Health and Safety Representative (HSR) Training, refer to clause 18.5.

For the avoidance of doubt, clause 19.3.4 does not apply to casual Employees.

19.3.5 Other Training conditions particular to ~~to~~ Employee's classification

For Masters: Svitzer, following appropriate consultation with Masters employed within the port or region, agrees to appoint a Master or Masters as Check Master/s who will be responsible for the training/assessment of new and existing tug masters.

19.3.6 Where a casual Employee is required by Svitzer to undertake a day of training (other than training required for revalidation (refer to clause ) that day will be regarded as a day worked.

19.4 Svitzer Workforce Planning and Development Committee (for each classification)

19.4.1 Charter and Composition of the Committee

- (i) The National Advisory Board described in clause 11.1 operates in accordance with its Charter made on 17 February 2012. The Charter sets out the Board's objectives, which include discussion on Workforce Planning, Training and Skills and Qualifications for Svitzer ~~employees~~Employees.
- (ii) At Agreement commencement, a Svitzer Employee Workforce Planning and Development Committee will be established for each classification under this Agreement and will comprise two (2) Employee representatives, the Fleet Director and Technical Management representative.

19.4.2 Functions of the Committee

- (i) Consistently with the Company's current and future workforce requirements, the Committee will exercise the following functions:
  - A. Consult with and communicate with the National Advisory Board concerning Svitzer Workforce Planning and Development matters;
  - B. Review current and future workforce requirements for the respective ~~employee~~Employee classification;
  - C. Develop and implement a plan for Employee training;
  - D. Review training required for tugs and tug technology;
  - E. Review the impact of the National Law regulating commercial vessels to identify issues impacting on Employee certificates of competency, make recommendations to address issues, including interim arrangements and develop recruitment standards to meet the operational requirements of a tug and port that meets requirements specified at clause ~~16.3+6.2~~ in this Agreement;
- (ii) Consider and make recommendations for allocating training budgets and expenditure pursuant to this clause 19.4 and clause 19.5.

19.4.3 Operation of the Committee

- (i) Svitzer shall make available relevant information and data to carry out the above functions.
- ~~(ii)~~ The Committee may agree to meet jointly.
- ~~(ii)(iii)~~ The Committee shall meet at least quarterly three times per year, and a further meeting may be held by agreement.
- ~~(iii)(iv)~~ The Union may be consulted by the Committee.
- ~~(iv)(v)~~ The National Advisory Board will be provided with the opportunity to comment on the reviews conducted and recommendations made by the Committee.
- ~~(v)(vi)~~ Svitzer and the Union shall meet to discuss the implementation of recommendations from the Committee.

19.5 Training Expenditure

As from the Commencement Date, and for each calendar year until the nominal expiry date of this Agreement, Svitzer will, consistently with the Company’s current and future workforce requirements:

- 19.5.1 set aside a training budget equal to one (1) per cent of its wages bill for Employees (based on the annual Port Salary under Schedule 1 for each Full-Time Equivalent [FTE]) under this Agreement and the annual wages bill for casuals;
- 19.5.2 in consultation with the relevant Svitzer Workforce Planning and Development Committee, undertake and direct this expenditure towards relevant training that is described in this clause 19;
- 19.5.3 implement agreed recommendations made by that Committee in relation to the allocation of this training expenditure.

20. Termination of Employment

20.1 Notice of termination by employer—permanent ~~employees~~ Employees

20.1.1 In order to terminate the employment of a permanent ~~employee~~ Employee, Svitzer must give to the ~~employee~~ Employee respective classification the following written notice:

Period of continuous service	Tug Masters	Engineers	Ratings
	[Weeks]		
1 year or less	2	2	1
More than 1 year but not more than 3 years	4	4	2*

More than 3 years but not more than 5 years	6	6	3*
More than 5 years	8	8	4*

\* The above period of notice will be increased by 1 week if the employeeEmployee is over 45 years old and he or she has completed at least 2 years of continuous service with Svitzer.

20.1.2 Payment instead of the notice prescribed in clause 20.1.1 may be made.

20.1.3 Svitzer may terminate an employeeEmployee's employment by giving part of the notice prescribed in clause 20.1.1 and part payment instead thereof.

20.1.4 In calculating any payment instead of notice, the salary an employeeEmployee would have received in respect of ordinary time the employeeEmployee would have worked during the period of notice if the employeeEmployee's employment had not been terminated must be used.

20.2 Job search entitlement

Where Svitzer has given notice of termination to an employeeEmployee, the employeeEmployee must be allowed up to one day's time off without loss of pay, which may be a day of leave, for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the employeeEmployee after consultation with the Company.

20.3 Termination without notice

Despite the provisions of this clause, Svitzer may terminate the employment of an employeeEmployee without notice, or payment in lieu of notice, for serious misconduct.

20.4 Notice of termination—permanent employeesEmployees

20.4.1 An employeeEmployee other than a casual employeeEmployee may terminate his or her employment by giving Svitzer the following written notice:

- A. In the case of Tug Masters and Engineers – 4 weeks notice;
- B. In the case of Ratings - 2 weeks notice.

20.4.2 If an employeeEmployee fails to give the required notice Svitzer may withhold from any monies due to the employeeEmployee on termination under this Agreement, an amount not exceeding the amount the employeeEmployee would have been paid under this Agreement in respect of the period of notice required by this clause less any period of notice actually given by the employeeEmployee.

20.5 Casual employeesEmployees

The employment of a casual employeeEmployee terminates at the end of each period of duty.

21. Redundancy

21.1 This clause applies to Permanent Full Time and Permanent Part Time Employees and does not apply to employeesEmployees engaged for a specified period of time / task, or to casual employeesEmployees.

21.2 Redundancy Process

- 21.2.1 Where an **employeeEmployee** is surplus to company requirements and Svitzer decides that the **employeeEmployee**'s position is redundant, the following process will be followed:
- 21.2.2 Svitzer will notify and consult with the **employeesEmployees** and the Union in relation to the number of proposed redundancies and the reason/s why they are to occur;
- 21.2.3 Following consultation, expressions of interest will be sought in the port where the redundancies are to occur;
- 21.2.4 If insufficient expressions of interest are received, **employeesEmployees** in adjacent ports may, at Svitzer's discretion, be offered voluntary redundancy as a means to avoid compulsory redundancies. In this circumstance **employeesEmployees** in the port where the redundancies occur will, as a pre requisite agree to transfer, and this will be discussed with the Union;
- 21.2.5 If there remain insufficient expressions of interest in voluntary redundancies, Svitzer will implement redundancies on a last on first off basis in the port where the reduction in numbers is required.

21.3 Redundancy pay

- 21.3.1 In circumstances where a permanent **employeeEmployee** is or would be entitled to Redundancy Pay under the NES, Redundancy Pay for that **employeeEmployee** will be calculated according to the following table:

Years of continuous service	Weeks pay per year
0 – 15	4 weeks
16 – 25	3 weeks
26 – 30	2 weeks
31 years and over	1 week

- 21.3.2 Redundancy will be calculated at the **employeeEmployee**'s port salary (pro-rata for permanent part-time **employeesEmployees**) as defined in Schedule 1.

21.4 Job search entitlement

- 21.4.1 An **employeeEmployee** given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay, which may be a day of leave, during each week of notice for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the **employeeEmployee** after consultation with the Company.
- 21.4.2 If the **employeeEmployee** has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the **employeeEmployee** must, at the request of the Company, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.
- 21.4.3 This entitlement applies instead of clause 20.2.

21.5 Transfer to lower paid duties

Where, by agreement between the Company and a permanent **employeeEmployee**, the **employeeEmployee** is transferred to lower paid duties by reason of redundancy, the same period of notice must be given as the **employeeEmployee** would have been entitled to if the employment had been terminated and Svitzer may, at the Company's option, make payment instead of an amount equal to the difference between the former salary and the salary for the number of weeks of notice still owing. In these circumstances, the **employeeEmployee** is not entitled to redundancy pay.

#### 21.6 Transfer and Relocation

This clause 21.6 applies when an **employeeEmployee** remains in employment but is permanently transferred from one operational location to another by virtue of the **employeeEmployee**'s position becoming redundant.

21.6.1 Svitzer shall reimburse an **employeeEmployee** for out of pocket expenses where that **employeeEmployee** is permanently transferred from one operational location to another in circumstances where the Svitzer **employeeEmployee** is surplus in one port and is transferred to another port to fill a vacancy.

Reimbursement will be in accordance with clause 21.6.2 to clause 21.6.6.

21.6.2 Svitzer shall pay to the **employeeEmployee** in respect of any reasonable time spent travelling between the two ports (for the purpose of relocation) a travelling allowance of \$43.31 per day for the **employeeEmployee** and a further \$36.10 per day for each dependent of the **employeeEmployee** including the **employeeEmployee**'s spouse.

21.6.3 Svitzer shall pay to such **employeeEmployee** by way of a resettlement allowance the amount of \$11804 if the **employeeEmployee** has a spouse and/or dependent children, or the amount of \$3760 if the **employeeEmployee** is single and without dependants.

21.6.4 The amounts contained in clauses 21.6.2 and 21.6.3 above shall be adjusted each twelve months at the beginning of the calendar year or as soon as figures become available in accordance with movements in the Consumer Price Index for the preceding calendar year. These amounts shall be included on the **employeesEmployees** group certificate for taxation purposes.

21.6.5 The resettlement allowance contained in clause 21.6.3 above will include but not be limited to costs incurred in respect of:

- (i) Agent's commission on sale of house, legal fees on sale of house, any advertising or auction fees/expenses associated with the sale of the property and disposal of perishables, i.e. food, pot plants, etc.;
- (ii) Any expenses incurred on a "preliminary" visit to the new Port by **employeeEmployee** and/or family including fares and accommodation;
- (iii) Any storage costs associated with personal effects being stored in the destination Port or Port of origin;
- (iv) Any costs associated with transfer of goods from storage in the destination or origin Port/s to the new residence.
- (v) Any accommodation charges on arrival in the destination Port pending more suitable longer-term accommodation being, obtained.
- (vi) Any costs associated with the purchase of a new home in the destination Port.

21.6.6 Removal Expenses

Employees shall be entitled to reimbursement of reasonable removal expenses subject to the following:

- (i) Reimbursement of removal expenses shall include all personal effects including one motor vehicle only and no boats, caravans or trailers.
- (ii) Storage charges or the cost of transfer of personal effects to or from the storage shall be deemed to form part of the resettlement allowance and shall not be reimbursed as a removal expenses.
- (iii) Employees shall obtain two quotes from reputable removalists and submit them to Svitzer.

## PART 4 – SALARIES, ALLOWANCES AND RELATED MATTERS

### 22. Payment of Salaries

22.1 All salaries, related payments and allowances will be paid fortnightly (one week in advance and one week in arrears for permanent ~~employees~~Employees, and in arrears for permanent part-time ~~employees~~Employees paid under clause 24.2.1 and casual ~~employees~~Employees). No ~~employee~~Employee will be disadvantaged as a result of the implementation of this sub-clause. During the nominal term of the Agreement, the parties may hold discussions concerning the operation of the pay system.

22.2 Fortnightly and daily salaries are calculated as follows:

22.2.1 The fortnightly rate is the annual salary rate divided by 26;

22.2.2 The daily rate is the fortnightly rate divided by 14.

22.3 Deductions and payroll corrections

22.3.1 Svitzer may deduct from any amount payable to an ~~employee~~Employee the amount of any overpayment of wages or allowances, and any other amount that is refundable to the Company under this Agreement. Overpayments of wages or allowances will be repaid on the basis that, unless Svitzer and the ~~employee~~Employee agree otherwise:

- (i) no less than 14 days written notice will be given to the ~~employee~~Employee of the amount it seeks to recover;
- (ii) the deduction will not exceed 10 per cent of the ~~employee~~Employee's gross salary per fortnight.

22.3.2 Payroll corrections: Payroll errors will be rectified as a matter of priority.

22.3.3 Svitzer and the Unions will consult during the term of the Agreement:

(i) in the first instance through the National Advisory Board; and

(ii) then depending on the outcome of the consultation referred to in (i), on a state by state or port by port basis;

with an intent to agree to have all salaries, related payments and allowances paid to Employees fortnightly (two weeks in arrears).

22.3.22.3.4 Notwithstanding clause 22.3.3, Svitzer or a Union, consulting in good faith, is not obliged to agree to have all salaries, related payments and allowances paid to Employees fortnightly (two weeks in arrears).

### 23. Induction Payment – Masters and Engineers

23.1 A Tug Master or Engineer newly recruited into Svitzer's towing operations under this Agreement who is engaged in the port on a supernumerary basis (that is, other than as part of the normal crew complement), because the said Employee is required to complete a period of induction:



23.1.1 in order to comply with any local knowledge requirements imposed by the relevant port authority or other regulatory authority on a Tug Master, or

23.1.2 to complete a necessary period of familiarisation with a new class of vessel

will be paid the amount set out in clause 23.2 for each day worked during the induction period. The induction period under this clause 23.1 will not exceed:

- (i) one (1) month for Engineers; or
- (ii) three (3) months for Masters.

This payment will be paid in lieu of the otherwise applicable salary under clause 24.

23.2 The induction payment in clause 23.1 is an amount equivalent to 75% of the prevailing annual salary that would apply to a full-time Master or Engineer in the port under clause 24.1 and Schedule 1.

## 24. Salaries

### 24.1 Salaries - Permanent full-time ~~employees~~Employees

24.1.1 Full-time ~~employees~~Employees will be paid a salary relevant to the ~~employee~~Employee's home port in accordance with Schedule 1.

24.1.2 If Svitzer requires a permanent ~~employee~~Employee to temporarily work in an outport, the ~~employee~~Employee will be entitled to the salary applicable to the outport or the salary applicable to the ~~employee~~Employee's home port, whichever is the greater, in respect of that temporary work.

24.1.3 An ~~employee~~Employee who is recalled from a period of leave will be paid 200% of the daily salary rate for the relevant port for each day of recall work (in addition to the ~~employee~~Employee's salary). An ~~employee~~Employee may elect to receive this payment as follows:

- (i) in cash; or
- (ii) as one day's pay plus one day of accrued leave.

### 24.2 Salaries - Permanent part-time ~~employees~~Employees

24.2.1 Permanent part time ~~employees~~Employees will be paid two (2) days' pay (that is, the daily salary rate relevant to the ~~employee~~Employee's home port in accordance with Schedule 1, plus a loading of 100% of the daily salary rate), for each day worked. This payment incorporates payment for leave (including annual leave); ~~and no further leave will accrue.~~

The permanent part time ~~employee~~Employee will be paid no less than their pro rata annual salary as at the ~~Financial Year~~ ~~employee~~Employee's anniversary date, provided the permanent part-time ~~employee~~Employee does not unreasonably refuse available work.

Alternatively, permanent part time ~~employees~~Employees may elect to be paid in accordance with clause 24.2.2.

#### 24.2.2 Guaranteed Salary Option

A permanent part-time ~~employee~~Employee may make a written election to receive their salary as a fortnightly pro-rata ~~G~~guaranteed ~~S~~salary in accordance with this clause 24.2.2, as follows:

- (i) The permanent part time ~~employee~~Employee will be paid pro rata the equivalent salary as full time ~~employees~~Employees. The part-time ~~employee~~Employee's pro-rata salary will be paid in equal fortnightly instalments according to the ~~PPT Guarantee~~prescribed proportion of full-time employment agreed with the employee under clause 15.3.1 or 15.3.3 (**Guaranteed Salary**).

*Example: A permanent part time ~~employee~~Employee with a 50% PPT Guarantee who is engaged to work 50% of the days worked by a full time ~~employee~~Employee, will be paid an annual salary of 50% of the annual salary that would apply to the full-time ~~employee~~Employee in the port under clause 24.1.1 and Schedule 1.)*

- (ii) If the permanent part time ~~employee~~Employee has worked the minimum number of days for the ~~calendar~~Financial Year that correspond to their pro-rata Guaranteed Salary, then:
- A. for the remainder of the ~~calendar~~Financial Year during their employment, the permanent part-time ~~employee~~Employee will receive two (2) days' pay (that is, the daily salary rate relevant to the ~~employee~~Employee's home port in accordance with Schedule 1, plus a loading of 100% of the daily salary rate), for each day worked;
- B. provided that, in respect of each day worked above 182 days in the ~~calendar~~Financial Year, the permanent part-time ~~employee~~Employee may make a further written election to receive their entitlement as one day's pay plus one day of accrued leave.

*Example: When a permanent part-time ~~employee~~Employee with a 75% PPT Guarantee who is engaged to work 75% of the days worked by a full time ~~employee~~Employee works 137 days per year Financial Year then, for each additional day worked in the same year Financial Year, the ~~employee~~Employee will receive:*

- 2 days pay (no leave accrual);
- provided that, after 182 days of work in that year, the ~~employee~~Employee may elect in writing to receive their entitlement as 1 day's pay plus one day's accrued leave.

- (iii) The pro-rata Guaranteed Salary remains payable in accordance with clause 24.2.2(i), irrespective of the number of days worked by the permanent part-time ~~employee~~Employee, provided the permanent part-time ~~employee~~Employee does not unreasonably refuse available work.

#### Financial smoothing

- (iv) Financial smoothing provisions included below only come into effect from 1 July 2020.

- (v) Financial smoothing is not available to permanent part-time Employees on a leave in running roster.

- (iii)(vi) A permanent part-time Employee (who has elected to have a Guaranteed Salary in accordance with the first paragraph of sub-clause 24.2.2 may

subject to sub-clause (vii) make an election to have all days worked in the period 1 July to 31 December in excess of the pro rata PPT Guarantee for that corresponding period, paid at 200% of the daily salary rate (Financial Smoothing).

(vii) Financial Smoothing is conditional on the following:

- A. the permanent part-time Employee making an election for Financial Smoothing to their Port Manager in writing by 30 November in the relevant Financial Year;
- B. the permanent part-time Employee is employed as at 31 December of the relevant Financial Year;
- C. the maximum days a permanent part-time Employee can have paid under sub-clause (vi) above is calculated in accordance with the following formula:

Maximum days for smoothing = 198 – A

Where:

A = PPT Guarantee / 2 (rounded up to the nearest whole number)

Examples

<u>PPT Guarantee</u>	<u>Maximum days for financial smoothing under clause (vi) above</u>
<u>50%</u>	<u>52.50</u>
<u>60%</u>	<u>43.40</u>
<u>75%</u>	<u>29.75</u>
<u>80%</u>	<u>25.20</u>

D. for the avoidance of doubt, a permanent part-time Employee must make a separate Financial Smoothing election in accordance with sub-clause (vii)A above for each relevant Financial Year.

(viii) Svitzer will make any required payments as a result of Financial Year Smoothing by 31 January each Financial Year (in one pay period).

By way of example:

A permanent part-time Employee with a 50% PPT Guarantee who has elected the pro-rata Guaranteed Salary option is paid at 50% of the relevant salary throughout the Financial Year and is required to work 91 days.

If that permanent part-time Employee works 61 days between 1 July 2020 and 31 December 2020, then they will receive (subject to them having elected Financial Smoothing by 30 November 2020), in addition to their Guaranteed Salary, 15 of those days at 200% of the daily salary rate

**Commented [DK1]:** Typo – 98 is half of 196

Two decimal places as this is how payroll accrues and pays days and leave etc

(to be paid by Svitzer by 31 January 2021). [Note: the 15 days is calculated as follows: 61 days (days worked) – 46 days (50% of 91 rounded up) = 15 days]

For the period between 1 January 2021 and 30 June 2021

- the permanent part-time Employee is required to work a further 45 days without any extra payment (to take them to 106<sup>7</sup> days in the Financial Year) [Note: the 45 days is calculated as follows: 91 days – 46 days = 45 days];
- at the conclusion of the 45 days referred to in the bullet point above, the permanent part-time Employee can make themselves unavailable for any further shifts [Note: At this point the permanent part-time Employee has worked 61+45 days = 106 days];
- on and from the 46<sup>th</sup> day worked between 1 January 2021 and 30 June 2021, up to and including the 122<sup>1st</sup> day worked between 1 January 2021 and 30 June 2021, the permanent part-time Employee will be paid, in addition to their Guaranteed Salary, 200% of the daily salary rate [Note: At the conclusion of the 121<sup>st</sup> day worked in this example, the permanent part-time Employee has worked 182 days in the Financial Year (being 46+15+121(121 being, 45+76) = 182); and
- on and from the 122<sup>nd</sup> day worked between 1 January 2021 and 30 June 2021 (that is, their 183<sup>rd</sup> in the Financial Year), the permanent part-time Employee will be paid, in addition to their Guaranteed Salary 200% of the daily salary rate. The permanent part-time Employee can elect for any of these days to be paid in cash or as one day's pay plus one day of accrued leave.

(iv)(ix) Cessation of Guaranteed Salary Option

The Guaranteed Salary ~~o~~Option (and accordingly any Financial Smoothing) under this clause 24.2.2 ceases:

- A. By a permanent part-time ~~employee~~Employee giving the Company three (3) months written notice after which time the Guaranteed Salary Option ceases to operate;
- B. At any time, by written agreement between Svitzer and the individual ~~employee~~permanent part-time Employee; or
- C. By the cessation of the ~~employee~~Employee's part-time employment.

Upon the cessation of the Guaranteed Salary ~~o~~Option, the salary payments received by the permanent part-time employeeEmployee (including those made as a result of application of Financial Smoothing) will be reconciled to ensure that such payments were no less than the salary that would have been paid to the ~~employee~~Employee under clause 24.2.1. Thereafter salary payments will be made in accordance with clause 24.2.1.

Note: refer also to clause 15.3.

- 24.2.3 Note: permanent part-time ~~employees~~Employees sharing a full-time position are not subject to the averaging arrangements described above.

24.3 Salaries - Employees engaged for a specified period of time or specified task

Employees engaged for a specified period of time or specified task will be paid as a permanent full time ~~employee~~Employee or as a permanent part time ~~employee~~Employee, depending on their mode of engagement.

24.4 Salaries - casual ~~employees~~Employees

24.4.1 A casual ~~employee~~Employee's salary will be calculated per day, as from the start time described in clause 15.5.2, in 24 hour blocks from that time.

24.4.2 Casual ~~employees~~Employees will be paid a casual loading of 100% of the daily salary rate, in addition to the daily salary rate, for that part for each day worked.

24.4.3 The casual loading is paid instead of leave (including annual leave), paid personal/carer's leave, notice of termination, redundancy benefits and the other attributes of full-time or part-time employment.

24.5 Trainees (new entrants)

Trainees will be paid a training salary, based on each stage of their Traineeship, as set out in the table in Schedule 1A.

24.6 All inclusive salary

24.6.1 The salaries and payments under Part 4 of this Agreement (including the Schedules) include all allowances, disabilities and penalty payments payable to ~~employees~~Employees for all work performed, and no further amounts will be payable except as explicitly provided for in this Agreement.

**25. Superannuation**

25.1 Superannuation Contributions

25.1.1 Svitzer and its ~~employees~~Employees who are members of the Svitzer Defined Benefit Plan will contribute to the fund in accordance with the Trust Deed. The plan is a sub plan of the Seafarers' Retirement Fund (the Defined Benefit Plan). The Defined Benefit Plan is closed to new members.

Note: Under the Trust Deed, Defined Benefit Plan members (upon retirement after attaining the age of 60 years or between the ages of 55 years and 60 years with the consent of the Company), are entitled to the greater of their notional Accumulation Benefit and their individual Defined Benefit entitlement (including accumulation component). However the terms of the Trust Deed are in no way to be taken as an express or implied term of this Agreement.

25.1.2 For ~~employees~~Employees who were members of the Adsteam Superannuation Fund Accumulation Plan as at 24 March 2006 (and who are not members of the Defined Benefit Plan) Svitzer will contribute 14% of their salary under Schedule 1. In addition, Svitzer, through the fund, will continue to meet the cost of death and total and permanent disablement insurance cover; temporary disablement insurance cover; and, administration costs of the fund, for this group of ~~employees~~Employees.

25.1.3 For ~~employees~~Employees not covered by clauses 25.1.1 or 25.1.2, Svitzer will contribute 15.5% of their salary under Schedule 1, which will be in full satisfaction

of all or any obligations upon Svitzer to make contributions, meet the cost of administration, salary continuance and death and disability or other insurance.

25.1.4 The calculation of contributions in respect of Permanent Part Time ~~employees~~Employees and casual ~~employees~~Employees will be based on gross earnings provided that employer contributions in a calendar year will not exceed the contributions that would have been payable to a full-time ~~employee~~Employee of the same classification in the port where the ~~employee~~Employee primarily worked.

25.1.5 The contributions made by Svitzer in compliance with this clause 25 are inclusive of all contributions required by statute.

25.1.6 Svitzer will remit contributions on a ~~monthly~~fortnightly basis.

## 25.2 Choice of Fund

25.2.1 To the extent permitted by law, contributions under clause 25.1.3 will be made into one of the following complying funds of the ~~employees~~Employees' choice:

- Svitzer's current complying fund (other than for casual ~~employees~~Employees); or
- Maritime Super for Masters and Ratings or;
- Australian Retirement Fund for Masters; or
- Maritime Officers Superannuation Trust (accumulation fund) for Engineers; or
- The ~~employees~~Employees' current complying fund; or
- Another complying fund by agreement between Svitzer and the ~~employee~~Employee.

25.2.2 Employees who receive contributions under clause 25.1.2 may elect to have contributions made in accordance with clause 25.1.3. Where an Employee makes such an election, the obligation of Svitzer to make contributions in accordance with clause 25.1.2 is permanently extinguished.

25.2.3 Svitzer at all times retains a right of refusal where the fund of the ~~employees~~Employees choice requires the Company to enter into any form of binding agreement unacceptable to the Company as a condition precedent to making such contributions, if the fund proposed is not a complying fund or if as a result of the ~~employees~~Employees choice the Company would be required to incur any unreasonable additional cost.

25.2.4 Where an ~~employee~~Employee neglects to exercise a choice the default fund will be:

- (i) Svitzer's complying fund for Masters and Engineers; and
- (ii) Maritime Super for Ratings.

## 25.3 Salary Sacrifice

25.3.1 Employees may elect, in writing, to sacrifice a specified proportion of their earnings into their superannuation account as additional employer contributions. These salary sacrificed amounts may be subject to differential tax treatment depending upon the amount sacrificed. The tax effect of such sacrificed contributions is a

matter for the ~~employee~~Employee concerned. In this regard ~~employees~~Employees are encouraged to seek independent financial advice.

- 25.3.2 The amount sacrificed will be paid into the complying superannuation fund which receives superannuation contributions on behalf of the ~~employee~~Employee under clause 25.2.
- 25.3.3 The ~~employee~~Employee may make an election once in each quarter. The election must be made in writing on a prescribed form and will take effect at the commencement of the next quarter commencing on one of the following dates: 1 January, 1 April, 1 July or 1 September.
- 25.3.4 The ~~employee~~Employee must advise Svitzer of the election at least one month before the election taking effect.
- 25.3.5 Employees may cancel the salary sacrifice arrangements at any time.
- 25.3.6 The effect of such a salary sacrifice arrangement on an ~~employee~~Employee's salary is as follows-
- (i) For the purposes of pay and leave pay the reduced salary will be used to calculate the amount payable.
  - (ii) For the purposes of long service leave entitlement (on cashing out or employment being terminated), redundancy, payment in lieu of the period of notice on termination of employment and calculating defined benefit superannuation retirement benefits, the salary before any salary sacrifice will be used.

## 26. Tug Efficiency and Management Systems (TEAMS) Bonus

### 26.1 Application and Eligibility

- 26.1.1 This clause applies to permanent ~~employees~~Employees who are and remain in full-time or permanent part-time employment as at:
- (i) 31 December 20~~20~~16 (in respect of the 20~~21~~17 TEAMS Bonus); and
  - (ii) 31 December 20~~21~~17 (in respect of the 20~~22~~18 TEAMS Bonus); and
  - (iii) 31 December 20~~22~~18 (in respect of the 20~~23~~19 TEAMS Bonus).
  - ~~(iv) 31 December 2019 (in respect of the 2020 TEAMS Bonus).~~
- 26.1.2 Provided that an eligible ~~employee~~Employee may include a permanent ~~employee~~Employee who has medically retired or a permanent ~~employee~~Employee who has deceased in the preceding year, where the ~~employee~~Employee or their estate as the case may be applies to the Company to be treated as an eligible ~~employee~~Employee.

### 26.2 TEAMS Bonus

- 26.2.1 A bonus payment pursuant to clause 26.2.3 and clause 26.2.4 is payable to eligible ~~employees~~Employees as a flat dollar (non-compounded) bonus, following release of financial results for the preceding calendar year (TEAMS Bonus).

26.2.2 The TEAMS Bonus is payable as follows:

- (i) 30 January 20~~21~~<sup>17</sup> in respect of the 20~~20~~<sup>16</sup> TEAMS Bonus;
- (ii) 30 January 20~~22~~<sup>18</sup> in respect of the 20~~21~~<sup>17</sup> TEAMS Bonus;
- ~~(iii)~~ 30 January 20~~23~~<sup>19</sup> in respect of the 20~~22~~<sup>18</sup> TEAMS Bonus
- ~~(iv)~~<sup>(iii)</sup> 30 January 2020 in respect of the 2019 TEAMS Bonus (or the nominal expiry date of this Agreement if the Agreement ceases to apply after that date).

26.2.3 The TEAMS Bonus is calculated under a formula which distributes to each eligible ~~employee~~<sup>Employee</sup> one-half (½) of the savings, in operating costs (Opex) achieved nationally in the preceding year, apportioned in accordance with clause 26.2.4, based on business efficiency criteria devised by TEAMS.

26.2.4 The TEAMS Bonus is distributed according to the eligible ~~employee~~<sup>Employee</sup>'s proportional continuous service during the preceding calendar year. (For example, a permanent part-time ~~employee~~<sup>Employee with a 50% PPT Guarantee who is engaged on a 50% basis</sup>, or a permanent full-time ~~employee~~<sup>Employee</sup> who has 6 months continuous service in the preceding year, will receive one-half (½) of the standard TEAMS Bonus that is declared for each eligible permanent full-time ~~employee~~<sup>Employee</sup>.)

26.2.5 Superannuation payments will be deducted from the TEAMS Bonus.

26.3 Personal Leave Bonus – refer clause 45.

## 27. **Travel and Travel Expenses**

27.1 Employees will be entitled to reasonable travel and accommodation expenses in the following circumstances:

- (i) where travel is undertaken at the requirement of Svitzer for any reason; or
- (ii) where the ~~employee~~<sup>Employee</sup>'s service begins or ends elsewhere than at the ~~employee~~<sup>Employee</sup>'s home port

and Svitzer does not provide transport or accommodation.

Unless otherwise agreed with the ~~employee~~<sup>Employee</sup>, the relevant amounts determined from time to time by the Australian Taxation Office will be used to calculate reasonable amounts for domestic travel allowance expenses under this clause. (For reference refer the ATO website at

<http://law.ato.gov.au/ato/view.htm?Docid=TXD/TD201217/NAT/ATO/00001&Pit=99991231235958>.)

27.2 Travel by air will be economy class, and be booked by Svitzer. Accommodation will be of a standard equal to that generally provided in major motel chains.

27.3 Where Svitzer authorises an ~~employee~~<sup>Employee</sup> (prior to the ~~employee~~<sup>Employee</sup> undertaking the travel) to utilise the ~~employee~~<sup>Employee</sup>'s personal vehicle to undertake travel under clause 27.1, the ~~employee~~<sup>Employee</sup> will be entitled to receive the applicable kilometre rate applied by the Australian Taxation Office (ATO) from time to time in respect of such travel. At the Commencement Date the ATO rate was \$0.76 / \$0.77 per kilometre.



- 27.4 A permanent ~~employee~~Employee who volunteers to undertake outside work or required to travel overseas on Svitzer business, will be entitled to be reimbursed their out-of-pocket passport expenses. A list for this purpose will be maintained in each Port.
- 27.5 Travel and reasonable expenses may be withheld by Svitzer where an ~~employee~~Employee's employment is terminated on the grounds of misconduct on the part of the ~~employee~~Employee.
- ~~27.6~~ Notwithstanding the provision for the payment of travel and reasonable expenses (in lieu of victualling and accommodation allowances) as set out in this clause, alternative arrangements may be applied by agreement between Svitzer and an ~~employee~~Employee in special circumstances.
- ~~27.7~~ Where Svitzer requires an Employee (other than a casual) to travel on a day of leave that day of leave will be a Dead Day and no additional compensation will be paid for that day.
- ~~27.6~~27.8 Where Svitzer requires a casual Employee to travel on a day, that day of travel will be treated as a day of work.

## 28. Industrial and Protective Clothing

- 28.1 Svitzer will issue the following industrial and protective clothing suitable for the environment in which the tug operates to all permanent Employees on engagement and replace these items without cost to the ~~employee~~Employee on a fair wear and tear basis.
- 4 x Shirts (long sleeved, short sleeved or polo);
  - 3 x Shorts or Trousers;
  - 2 x Overalls (white for Engineers) - cotton or tropical;
  - 2 x Pairs of Safety Boots;
  - 1 x Pair of Sea Boots;
  - 1 x Cold Weather Jacket;
  - 1 x Safety Helmet;
  - 1 x Hat for sun protection;
  - 1 x ¾ Length Wet Weather Coat;
  - 1 x Pair of Wet Weather Trousers;
  - 1 x Jumper.
- N.B. Employees may elect to take an additional two overalls in lieu of the shirts and shorts/trousers listed above.
- 28.2 In addition to the above Svitzer will supply:
- UV lotion as required; and
  - 1 x Pair of sunglasses of Australian UV standard quality suitable for maritime use. Clip-ons will be provided as required. Where an ~~employee~~Employee uses prescription safety

sunglasses or glasses Svitzer will reimburse the ~~employee~~Employee up to \$272 per annum, on presentation of a receipt showing the expenditure.

- 28.3 Casual ~~employees~~Employees will be provided with a reasonable issue of clothing sufficient to perform their work with adequate protection.
- 28.4 The items specified in this clause will be replaced on production of evidence that they are worn out. Lost items must be replaced by the ~~employee~~Employee at the ~~employee~~Employee's own cost unless the ~~employee~~Employee can demonstrate that the loss was in no way due to the negligence of the ~~employee~~Employee.
- 28.5 Employees must wear the industrial and protective clothing provided in accordance with this clause, as well as any additional protective equipment deemed necessary by Svitzer. Failure to do so may result in disciplinary action being taken.
- 28.6 Notwithstanding the provisions of this clause, where a port manager is satisfied that additional personal protective equipment is warranted, such additional items of equipment may be provided at the manager's discretion.

~~28.7 An Employee may arrange their own replacement safety boots or sea-boots (as referred to in clause 28.1) and Svitzer will reimburse the Employee for that replacement subject to the following:~~

- ~~(i) prior to the purchase of the relevant safety boots, the Employee demonstrating to the Port Managers satisfaction, that the relevant safety boots:
  - ~~A. are worn out; or~~
  - ~~B. if lost, the loss was in no way due to the negligence of the Employee;~~~~
- ~~(ii) the Employee providing a tax invoice evidencing the purchase of the relevant safety boots from a Svitzer approved vendor;~~
- ~~(iii) the relevant safety boots being ankle length with a side zipper and meeting the minimum standard AS 2210.3:2019 (as amended or replaced); and~~
- ~~(iv) Svitzer only reimbursing the Employee for the relevant safety boots up to a maximum of \$150 (including GST).~~

## 29. Communications

- 29.1 Mobile Telephones (personal communications device)
- 29.1.1 Svitzer will pay a communications allowance of \$37.50 per fortnight to a permanent ~~employee~~Employee. (For the absence of doubt, the national corporate network plan will cease to apply and ~~employees~~Employees must migrate to their own personal account.)
- 29.1.2 The purpose of this clause is to enable and require ~~employees~~Employees to
- (i) purchase, maintain and insure for personal loss or damage the necessary communications device or devices for electronic communications between the Company and the ~~employee~~Employee; and

- (ii) be and remain reasonably contactable by mobile phone and SMS messaging in accordance with clause 41 and the Port Operating Procedures.

29.1.3 The Company will not be liable for any additional costs or charges associated with maintaining a mobile phone or communications device(s), including:

- call charges,
- SMS messaging,
- network access or rental,
- excess usage charges or
- loss or damage to mobile communications devices and related insurance.

29.1.4 The allowance in clause 29.1.1 includes an amount to enable the ~~employee~~Employee to take out insurance for personal loss or damage to their mobile communications device or devices. For the absence of doubt, Svitzer will not provide any compensation for personal loss or damage to an ~~employee~~Employee's communications device and clause 37 [Compensation for Personal Effects Lost] has no application to the ~~employee~~Employee's mobile communications devices.

29.2 Access to internet and email onboard tugs

29.2.1 During the nominal term of this Agreement Svitzer will continue to implement reasonable internet and email access within the Australian fleet.

29.2.2 The issue and use of the communications equipment described in this clause 29 will be subject to compliance with Svitzer Information Technology (IT) policy as determined by Svitzer from time to time. This policy will be available to ~~employees~~Employees at the nearest port or on Svitzer's vessels.

### 30. Nominated Voyages Allowance

30.1 For each hour during which an ~~employee~~Employee is engaged on a Nominated Voyage between two locations specified in Schedule 2A (Nominated Voyages), the ~~employee~~Employee will be paid the allowance specified in the table in Schedule 2A.

30.2 The allowance in clause 30.1 is not payable with respect to the Nominated Voyages which are identified with an asterisk (\*) in Schedule 2A.

### 31. Outside Work

31.1 Application

This clause does not apply to Salvage work which work is covered by clause 32 or to work on a Nominated Voyage under clause 30.

31.2 Crewing on Outside Work

31.2.1 When tugs are required to perform Outside Work additional personnel will be engaged and crewing will be in accordance with the following tables:

(i) Masters:

Type of Voyage	UMS Tug on a voyage less than 72 hours	Non-UMS Tug on voyage less than 72 hours	Voyage more than 72 hours
Free running	2	2	3
Contract towage	2	2	3
Emergency operations (or Salvage work)	2	3	3

(ii) Engineers:

Type of Voyage	UMS Tug	Non UMS Tug
Free running	2	2*
Contract towage	2	2*
Emergency operations (or Salvage work)	2	2**

\* If the voyage is to exceed 72 hours, a third engineer will be engaged.

\*\* If the voyage is to exceed 48 hours, a third engineer will be engaged.

(iii) Ratings:

Type of Voyage	Number of Ratings
Free running (subject to cl.31.2.2):	
• Up to 24 hours	3
• More than 24 hours	4
Contract towage	5
Emergency operations (or Salvage work)	6

31.2.2 In the application of clause 31.2.1 Svitzer will at all times have regard to the following matters:

- (i) the views of crew members;
- (ii) obligations under relevant maritime and other laws;
- (iii) the duration of the voyage;
- (iv) operational requirements;
- (v) fatigue management;
- (vi) previous voyages of a similar nature; and
- (vii) the weather forecast for the area of operations.

31.2.3 Employees engaged on Outside Work (other than on a Nominated Voyage) will be so engaged on a voluntary basis.

31.2.4 If Svitzer elects to engage a contractor to internally relocate a tug under a free running voyage, including an international relocation, Svitzer will ensure that, during such relocation, ~~employees~~Employees of the contractor are employed on terms and conditions that are no less favourable than the terms and conditions set out in this Agreement.

### 31.3 Allowance for Outside work

31.3.1 An Employee who performs Outside Work on any day (including Saturdays, Sundays and Public holidays) on an irregular basis will be entitled to payment in accordance with the relevant table in Schedule 2B, in lieu of the salary provided under clause 24 or Schedule 1 for that day.

31.3.2 The amounts contained in clause 31.3.1 will only be payable to ~~employees~~Employees from the time that the tug leaves the wharf to proceed to sea until it ties up at the wharf on return.

31.3.3 Outside Work commitments do not affect a permanent ~~employee~~Employee's entitlements to "even-time leave" under clause 42.3.

### 31.4 Masters' review

31.4.1 During the term of this Agreement, Svitzer will conduct a review of the arrangements in place to manage and mitigate the impacts of Masters' fatigue whilst undertaking Outside Work between 48 hours and 72 hours in duration.

~~31.3~~31.4.2 Svitzer will consult with the AMOU regarding the terms of reference and process for such review, including to ensure appropriate involvement of Masters.

## **32. Salvage Work**

### **32.1 Performance of Salvage work**

32.1.1 Employees may perform salvage work on a voluntary basis.

32.1.2 Work health and safety considerations under clause 18, and the training principles under clause 19, have particular application to training for salvage work.

### **32.2 Crewing for Salvage work**

When tugs are required to perform salvage work additional personnel will be engaged and crewing will be in accordance with the respective crewing tables for Emergency Operations (Salvage work) in clause:31.2.1, and the principles in clause 31.2.2.

### **32.3 Payments for Salvage work**

32.3.1 An Employee who performs salvage work on any day (including Saturdays, Sundays and Public holidays) will be entitled to payment in accordance with the relevant table in Schedule 2B, in lieu of the salary provided under clause 24 and Schedule 1 for each such day.

32.3.2 The amounts contained in clause 32.3.1 will only be payable from the time that the tug leaves the wharf to proceed to sea on any salvage work voyage until it ties up at the wharf on return.

32.3.3 Salvage Work commitments do not affect a permanent ~~employee~~Employee's entitlements to "even-time leave" under clause 42.3, such that:

- (i) for a permanent ~~employee~~Employee whose leave periods are rostered under the prevailing port roster at the time the ~~employee~~Employee proceeds on Salvage Work, the ~~employee~~Employee receives a day of leave for each day of Salvage Work that falls on a day the ~~employee~~Employee would have been rostered-off (off-duty);
- (ii) for other permanent ~~employees~~Employees, the ~~employee~~Employee proportionally receives a day of leave in respect of each day of Salvage Work, as part of their "even-time leave" entitlement.

## **33. Emergency maintenance**

### **33.1 Application and definition**

33.1.1 The allowance specified in clause 33.2 does not apply to ~~employees~~Employees specifically engaged to undertake emergency maintenance work, ~~employees~~Employees performing duty at dockings, ~~employees~~Employees in receipt of a Nominated Voyage allowance under clause 30, a payment for outside work under clause 31, salvage work under clause 32, or a penalty payment under clause 34 on a particular day.

33.1.2 For the purposes of this clause 33, Ordinary Hours means:

- (i) for tug crews working 12-hour "captive" shifts – 12 hours per day 7 days per week;
- (ii) for all other tug crews – a spread of 8 hours between 0700 and 1700, 5 days per week, Monday to Friday (excluding public holidays).

33.2 Emergency Maintenance

An Employee who performs emergency maintenance work on board a tug, as required or requested by the Company, outside Ordinary Hours, will be paid an additional allowance in accordance with the amount specified in the relevant table in Schedule 2C.

#### 34. Penalty payment - extended hours

34.1 The penalty specified in this clause 34 does not apply to ~~employees~~ ~~Employees~~ in receipt of payment for Outside work under clause 31, Salvage work under clause 32, an emergency payment allowance under clause 33, or an extreme weather alert under clause 35, on a particular day.

34.2 Where Svitzer requires an ~~employee~~ ~~Employee~~ to work continuously:

34.2.1 in the ports referred to in clause 34.3, for more than 12 hours subject to the conditions specified in that clause for the respective ports; or

34.2.2 in other circumstances, more than 14 hours,

to meet operational requirements, the ~~employee~~ ~~Employee~~ will receive a penalty payment for each hour or part thereof by which those hours are exceeded. The penalty payment will be calculated in accordance with the relevant table in Schedule 2D.

34.3 In:

34.3.1 the port of Brisbane and in Victorian Ports, the penalty payment referred to in clause 34.2.1 and Schedule 2D ~~may~~ ~~shall~~, at the election of the ~~employee~~ ~~Employee~~, be paid as accrued leave at the rate of one hour of accrued leave for each additional half-hour actually worked. Accrued leave must be taken in full days. Twelve (12) hours of accrued leave will constitute a full day of accrued leave under this sub-clause.

34.3.2 Port Botany Sydney, where an employee works continuously for more than 12 hours during a Captive Shift the penalty payment referred to in clause 34.2.1 and Schedule 2D will apply after 12 hours. In this clause 34.3.2, a Captive shift means a duty shift worked by a crew member which requires the crew member to crew a tugboat for shipping or an unexpected emergency, on immediate response, pursuant to the operating or licence conditions that are imposed by the Port Authority of New South Wales from time to time.

34.4 Leave is reserved for the Parties to discuss the application of clause 34.3.2 in respect of ports that newly introduce "captive" shifts requiring employees to work continuously for more than 12 hours.

**35. Extreme weather alert allowance**

- 35.1 In this clause “an extreme weather event” means a watch or warning issued by the Australian Government Bureau of Meteorology or its State/Territory counterparts, involving “Storm Force” wind-speeds or above (including a cyclone alert and warning), a flood or tsunami alert, and a Port Harbour Master directs Svitzer, or Svitzer determines, to deploy **employeesEmployeees** on board a tug in response to that event.
- 35.2 For each hour (including during Saturdays, Sundays and public holidays) on which an **employeeEmployee** is on board a tug and available for the performance of any duty during an extreme weather event, an **employeeEmployee** will be paid an allowance in accordance with the table in Schedule 2E.
- 35.3 Where tug crews work a 12-hour “captive” shift, this allowance will not be payable during that “captive” shift.

**36. Port-specific allowances and deductions**

Employees will be entitled to the port-specific allowances referable to the port in which they are engaged as set out in Schedule 1, where the **employeeEmployee** meets the conditions for the payment of such allowance.

**37. Compensation for Personal Effects Lost**

If an **employeeEmployee** should sustain loss of, or damage to, personal effects or equipment at work, Svitzer will compensate the **employeeEmployee** for such damage or loss by cash payment to the equivalent value of the loss or damage up to a maximum of \$2400, provided that the maximum compensation for the loss of or damage to any single item will be \$903. Refer also to clause 29.1.4.

**38. Accident Pay**

- 38.1 In the event of an **employeeEmployee** requiring time off work as a result of an accident where workers' compensation is paid, including any period off work as a result of a recurrence or aggravation of the injury, the **employeeEmployee** will be paid for a total period of up to 52 weeks at the **employeeEmployee's** daily salary rate.
- 38.2 After 52 weeks' payment, continuing benefits will be provided in accordance with statutory entitlements applicable under State Workers' Compensation Law. At this point Svitzer may review the continuing employment of the **employeeEmployee**, taking into account the available medical advice as to the likelihood of a return to full duties and the requirements of the relevant State Workers' Compensation Law. On completion of the review Svitzer will decide whether or not it is appropriate to continue the **employeeEmployee's** employment and take appropriate action.
- 38.3 Svitzer will provide equivalent insurance cover for accidents occurring on the journey, via the most direct route, between the **employeeEmployee's** home and place of employment where the Workers' Compensation Scheme in the relevant State no longer provides such cover. Car pooling arrangements that have been approved by local management will be deemed to be the direct route for the purposes of this clause.



- 38.4 If an **employeeEmployee** receives a lump sum payment in redemption of weekly payments under the legislation, Svitzer's liability to pay Accident makeup pay under this clause ceases from the date of the redemption.
- 38.5 If the **employeeEmployee** recovers damages from Svitzer or from a third party in respect of the injury, independently of the legislation, the **employeeEmployee** must repay to Svitzer the component referable to loss of income up to the date of settlement, and the **employeeEmployee** will not be entitled to any further Accident make-up pay.

### 39. Counselling Services

Svitzer has engaged the services of an independent counselling organization, Hunterlink, to provide assistance to **employeesEmployees** where personal, financial or health related problems affect the **employeeEmployee** or his or her immediate family. The service is free and confidential and where the parties identify an **employeeEmployee** who may benefit from such a service, it is agreed that they will encourage the **employeeEmployee** to take advantage of it.

### 40. Compensation for Loss of Certificate of Competency

- 40.1 A permanent full-time or part-time **EmployeeEmployee** who is unable to carry out the duties required by the Company because he/she has been refused revalidation of his/her certificate of competency by the appropriate Authority because of failure on examination to comply with the medical requirements prescribed by legislation (or any Regulations or Orders made thereunder) and has failed to satisfy the appropriate authority that he/she can, notwithstanding his/her inability to comply with such medical requirements, satisfactorily perform the duties appropriate to the certificate and who:
- (i) is found by further independent medical examination to be permanently unable to carry out their required duties and to revalidate a certificate of competency; or
  - (ii) is found by further independent medical examination to comply with the above medical requirements and/or to be capable of carrying out their required duties but is still unable to satisfy the appropriate Authority that his/her certificate should be revalidated.

shall be entitled to compensation in the manner and on the conditions set out below.

- 40.2 Subject to clauses 40.4 and 40.5 hereof, an Employee to whom clause 40.1 applies shall be entitled to receive on the termination of his/her employment under this Agreement, a payment at the appropriate Port salary in accordance with the following table:

Age	Number of months salary (full-time employeeEmployee)
Under 30	24 months
30 but less than 35	21 months
35 but less than 40	18 months
40 but less than 45	15 months
45 but less than 50	12 months
50 but less than 55	9 months
55 but less than 60	6 months
60 but less than 65 and over	3 months Nil
65 and over	Nil

- 40.3 Where an Employee suffers an illness or injury entitling him/her to any compensation, damages or other benefits (called "benefits") from the Company and/or any third party under any applicable legislation (whether Federal or State) and/or at common law and/or equity and/or under any contract, deed or other arrangement and such benefits include a component referable to loss of earnings, then the value of that component shall be deducted from the amount payable to the Employee under clause 40.2. Svitzer shall value the amount of any such component to be taken into account.
- 40.4 An **employeeEmployee** shall not be entitled to the benefit of clause 40.2 where:
- 40.4.1 He/she dies;
- 40.4.2 His/her failure to comply with the prescribed medical requirement arises from any one of the following:
- (i) self-inflicted or self-induced illness or injury; or
  - (ii) an illness or injury suffered whilst he/she is voluntarily involved in or in connection with any activity for financial reward or gain or which unnecessarily subjects him/her to risk of injury and which activity is substantially unrelated to his/her employment; or
  - (iii) He/she is offered reasonably suitable alternative employment, suitable to the individuals' skills and abilities, (provided however that Svitzer may in any such case defer for a period of six months from the date of acceptance of the alternative employment the question of entitlement to compensation under this Scheme).
- 40.5 An **employeeEmployee** shall not be entitled to receive the benefits for Loss of Certificate of Competency more than once.
- 40.6 Where a disagreement arises as to the entitlement of an **employeeEmployee** to compensation under this clause, the matter will be dealt with in accordance with clause 10 Disputes Procedure of this Agreement.

## PART 5 - HOURS OF WORK AND RELATED MATTERS

### 41. Hours of Work, Rosters and Meals

41.1 There will be a set of Port Operating Procedures in each port. Port Operating Procedures ~~must~~ be reviewed ~~as required but any review must be in accordance with clause 41.4 at least annually.~~ Svitzer will prepare and distribute to the Unions a report on the status of the Port Operating Procedures by 31 March. ~~Subject to clause 41.4, the annual review must be completed by 30 April. Following the review Svitzer will prepare another status report by 14 May.~~

41.2 The Port Operating Procedures (when made or varied) will set out details in respect of the following subject matter, which provide a foundation for the guidance to the parties in developing Port Operating Procedures:

#### 41.2.1 Port rosters

- (i) Towage operations are carried out over 24 hours per day on every day of the year;
- (ii) rosters will as far as practicable include the detail of work days, the component of predictable leave days, and the number of crews on duty and on leave required to man the roster;
- (iii) Off-duty periods for permanent full-time ~~employees~~ **Employees**:
  - A. leave for permanent full-time ~~employees~~ **Employees** should to the greatest practical extent be predictable;
  - B. leave in running arrangements may be implemented where it is impracticable to predict leave periods to their full extent or (notwithstanding clause 15.2.1) when an ~~employee~~ **Employee's** employment is converted to full-time employment under clause ~~15.3.7~~ **15.3.4**.
- (iv) Off-duty periods for permanent part-time ~~employees~~ **Employees**:

Permanent full-time ~~employees~~ **Employees** are the main source of crewing the port roster and permanent part-time ~~employees~~ **Employees** supplement the roster. Where a port cannot support a roster for permanent part-time ~~employees~~ **Employees**, off-duty periods will be programmed as follows:

  - A. Permanent part-time ~~employees~~ **Employees** may nominate to take seven (7) days free of duty each month (non-cumulative); or
  - B. Permanent part-time ~~employees~~ **Employees** instead may make an annual election to take five (5) days free of duty each month (non cumulative) PLUS one off-duty period of 25 days, amounting to a "30 day block-out duty free period" per calendar year. Where agreement between Svitzer and the ~~employee~~ **Employee** is not possible on the programming of the "30 day block-out duty free period":

- the ~~employee~~Employee must give the Company 3 months' notice of their requested nominated "30 day block-out duty free period" (or less where Svitzer and the Employee agree); and
- Svitzer must not unreasonably refuse the ~~employee~~Employee's request.

Permanent part-time ~~employees~~Employees must otherwise be available for relief work duty in accordance with clause 41.2.7(i)A.

41.2.2 Work orders:

- (i) should include details of the procedures to be used for the giving, receipt and acknowledgement of work orders;
- (ii) SMS messages may be used to communicate orders for the purpose of minimising off-duty disruption to ~~employees~~Employees;
- (iii) Employees should not be contacted unnecessarily during breaks.
- (iv) Allocation of work.

41.2.3 Availability

The objective of any duty roster is to ensure that sufficient ~~employees~~Employees are available at any time to satisfy customers' requirements on no more than 2 hours notice, unless the Port Operating Procedures specify otherwise to meet those requirements.

41.2.4 Hours of work, regular duty requirements and off-duty periods

- (i) Scheduled hours of work should not exceed 12 hours. That is:
  - A. under the Port Operating Procedures, the last towage job in a period of continuous duty must not be scheduled more than 11 hours and 45 minutes after that period has commenced; and
  - B. jobs commenced prior to the 12th hour shall be completed.The parameters for scheduling the last job in the period must be set out in the Port Operating Procedures.
- (ii) If an ~~employee~~Employee is required to be on continuous duty for 14 hours or more, the ~~employee~~Employee must be given a rest break of 10 hours at the cessation of that period of duty before the commencement of the next period of duty.
- (iii) A period of continuous duty must not exceed 146 hours.

(iv) A nominated ~~rest~~ break of:

A. uninterrupted rest break of 6 hours or more breaks the continuity of a period of duty for Schedule 1 ports with a 6-hour break in their Port Operating Procedures as at the Commencement Date; and

B. rest break of 8 hours or more breaks the continuity of a period of duty for Schedule 1 ports with an 8-hour or more break in

**Commented [KD2]:** This word was introduced by the Unions during the drafting session on 13 and 14 January 2020.

Svitzer can agree to an uninterrupted rest break of 6 hours or more. However, Svitzer maintains that the ports with breaks of 8 hours or more will continue as per their respective Port Operating Procedures.

**Commented [KD3]:** Svitzer acknowledges the Unions preference not to specify the ports which fall into A and B, however, will require an exchange of emails to ensure that there is clear understanding regarding which ports fall into which category.

their Port Operating Procedures as at the Commencement Date.

subject to variation in the relevant Port Operating Procedures.

(iv)(v) Employees will be entitled to a meal break on completion of 5 hours' duty. Meal breaks must be taken flexibly. For the avoidance of doubt meal breaks must not be taken in a manner or at a time that would interrupt port operations. The Parties will take all reasonable steps to ensure that the taking and timing of meal breaks will be further addressed in each port's Port Operating Procedures.

#### 41.2.5 Maximum days

(i) Employees (other than permanent part-time Employees)

Employees (other than permanent part-time Employees) must not work more than 14 days in excess of the number of days a full-time employee is required to work in a calendar year under the operating roster in the port (Maximum Days).

(ii) Permanent part-time Employees

A. Subject to sub-clause (ii)B below, a permanent part-time Employee must not work more than 196 days in a Financial Year under the operating roster in the port.

B. During the period 1 January 2020 to 30 June 2020, permanent part-time Employees must not work more than 98 days.

(iii) Rules for calculating days worked for this clause 41.2.5

A. Days worked outside an employee's home port will be included when calculating the days worked in the relevant year; and

A-B. For the purpose of this clause 41.2.5, the following days will be disregarded in calculating the Maximum Days worked in the relevant year:

- Work days when the employee does not perform ship-assist operations on a tug boat in any port (harbour towing);
- days when an employee attends shoreside meetings;
- Outside Work days;
- days attending emergencies, and
- days undertaking docking work.

41.2.541.2.6 The parties will keep fatigue management and the operation of the roster under review in each port, through the local Work Health and Safety committee, so as to ensure the proper and efficient management of fatigue. Because of the unpredictability of vessel movements the strict application of the STCW Code as above may not always be possible, however, an employee must be provided with minimum aggregate rest of 77 hours in 7 days consistently with Marine Orders Part 28, section 4.

41.2.641.2.7 Relief arrangements to be utilised in the Port and casual usage.

Variation to the following order of pick shall only occur following agreement between Svitzer and the relevant Union. Where such agreement is reached, that agreement shall be reflected in the relevant port's Port Operating Procedures.

- (i) Relief work requirements to supplement the roster ~~will usually~~ shall be covered:
- A. first call – permanent part-time ~~employees~~ Employees who have not met their PPT Percentage Guarantee and are not on rostered/nominated leave (other than during an off-duty period pursuant to clause 41.2.1(iv), or when they are otherwise unavailable under this Agreement);
- B. second call – permanent part-time Employees who have met their PPT Percentage Guarantee and are not on rostered/nominated leave and have not worked 182 days that Financial Year. For the avoidance of doubt, rostered permanent part time Employees whose roster delivers their PPT Percentage Guarantee fall within the second call;
- B.C. third call - casual ~~employees~~ Employees;
- D. fourth call – permanent part-time Employees who have not worked 182 days that Financial Year who are on rostered/nominated leave; and
- G.E. ~~third~~ fifth call - permanent full-time ~~employees~~ Employees on rostered leave; permanent part-time Employees who have exceeded 182 days of duty that Financial Year; and Employees who are under an arrangement referred to in clause 15.3.8 (job sharing).
- (ii) Permanent full-time ~~employees~~ Employees on rostered leave and Employees who are under an arrangement referred to in clause 15.3.8 (job sharing) are not obliged to be available for relief work, however subject to clause 41.2.5, every ~~employee~~ Employee and the Unions will make best endeavours to ensure that, under normal circumstances as described in the Port Operating Procedures, the port operations are not compromised by unavailability of relief personnel to cover short term or unplanned absences.
- (iii) Casual usage:
- The incidence of relief days, measured over a representative period (say 6 months), shall be reviewed in conjunction with the annual review of the Port Operating Procedures.

41.2.741.2.8 Other issues of an operational nature, specific to the Port.

Port Operating Procedures should not prevent or unreasonably restrict Svitzer's ability to meet customer and port requirements on Saturdays, Sundays or Public Holidays.

- 41.3 Port Operating Procedures must be signed by the Port Manager and authorised union representatives.
- 41.4 Changes to Port Operating Procedures may be made by agreement following consultation, or as follows:

- (i) Where Svitzer is proposing the change it will notify the Union in writing of the proposed changes and where the Union is proposing the change it will likewise notify Svitzer in writing;
- (ii) The parties will commence consultation at a local level about the matters set out above within seven days of such notification.
- (iii) Consultation at local level will continue with a view to reaching consensus about the changes, and then at national level if the matter cannot be resolved locally (~~where consideration will be given to clause 13 (Reduction, Cessation of Growth in Business)~~).
- (iv) In the event that the parties cannot achieve a consensus within a reasonable timeframe, the party proposing the change may give 28 days notice requiring that the change be implemented.
- (v) During the notice period, either party may make application in accordance with the Dispute Resolution Procedure and if such application is made, the status quo will remain until the matter is settled.

41.5 A copy of this Agreement and the Port Operating Procedures will be kept in a convenient location at the Port.

41.6 During the term of this Agreement, the Company and the Unions will meet to develop a Port Operating Procedures template.

## PART 6 – LEAVE

### 42. Leave

- 42.1 This clause operates in conjunction with the NES. The provisions of this clause are intended to satisfy the provisions in the NES concerning maximum weekly hours of work, annual leave and public holidays.
- 42.2 The roster that prevails in the port under the applicable Port Operating Procedures will provide for the number of days free of duty set out in clause 42.3 averaged over the applicable roster cycle.
- 42.3 Entitlement to leave (“even-time leave”)
- 42.3.1 A permanent full-time Employee will be entitled to 182 days free of duty in each year (which may be averaged over the applicable roster cycle), or to proportionate leave for any continuous service of less than a year.
- 42.3.2 A permanent part-time Employee will be entitled to the leave granted to a full-time Employee on a pro-rata basis. (For example, an ~~permanent part-time Employee with a 50% PPT Guarantee who is engaged in a 50% permanent part-time role~~ will be entitled to 91 days free of duty in each year of continuous service.)
- 42.3.3 An Employee who is engaged for a specified period of time or a specified task, will be entitled pro-rata, to the leave granted to a full-time Employee based on the period of the respective engagement.
- 42.4 The leave prescribed in this clause 42 includes the following entitlements of full-time ~~employees~~ Employees (who may otherwise have been engaged on a Monday to Friday basis in accordance with the terms of the Award):
- (i) 104 days of leave, being in lieu of weekends;
  - (ii) 5 weeks of paid annual leave for shiftworkers;
  - (iii) public holiday entitlements;
  - (iv) an additional 28 days leave in recognition of the 35-hour week.
- 42.5 For each day of absence referred to in clause 38, an ~~employee~~ Employee’s leave entitlement under this clause 42 will be debited by one day.

### 43. Discharge of accrued leave

- 43.1 Where a permanent ~~employee~~ Employee accumulates leave that is not discharged under the prevailing roster (accrued leave), the ~~employee~~ Employee may discharge the accrued leave by taking the leave in accordance with clause 43.2, or by cashing out the leave in accordance with clause 43.3.
- 43.2 Taking accrued leave
- 43.2.1 Any accrued leave may be applied for and taken at the permanent ~~employee~~ Employee’s request as follows:



(i) upon the ~~employee~~Employee giving the Company three (3) months written notice (~~or less where Svitzer and the Employee agree~~) - at any time, unless 2 ~~or 10%~~ or more ~~employees~~permanent Employees of the same classification in the port, ~~whichever is the greater (rounded down to the nearest whole number)~~, have already been granted approval to take their leave on the same day(s); or

(ii) ~~\_\_\_\_\_~~ otherwise, subject to management approval which will not be unreasonably withheld.

43.2.2 ~~For the avoidance of doubt, an Employee cannot take accrued leave on a day which an Employee has agreed to work a recall.~~

#### 43.3 Cashing out accrued leave

~~The~~Accrued leave may ~~only~~ be discharged as a cash amount, at the permanent ~~employee~~Employee's written election, as follows:

43.3.1 For accrued leave generated as a result of Salvage Work pursuant to clause 32.3.3(i), each day of rostered leave that would have fallen during a period of Salvage Work may be cashed-out at the rate of two (2) days pay for each leave day discharged (at the ~~employee~~Employee's home port daily salary rate in Schedule 1). This election must be exercised within 30 days of the completion of the Salvage Work.

43.3.2 For accrued leave generated otherwise (including as a result of call-backs pursuant to clause 24.1.3, or as a result of the application of clause 34.3), each day of accrued leave may be cashed out at the rate of one day's pay for each leave day discharged (at the ~~employee~~Employee's home port daily salary rate in Schedule 1).

43.3.3 Any accrued leave may be salary sacrificed in advance to the ~~employees~~Employees' superannuation account (at the ~~employee~~Employee's home port daily salary rate in Schedule 1).

~~43.4 For the avoidance of doubt, any cashing out of accrued leave in the following circumstances must be in accordance with this clause 43.3:~~

~~43.4.1 upon a permanent part time Employee converting to full time employment; and~~

~~43.4.2 upon an Employee permanently transferring from one Schedule 1 port to another.~~

~~43.4.3~~ As at 1 December each year, all accrued leave balances (excluding leave which has been approved under clause 43.2) will be automatically cashed out, save for a maximum balance of 14 days. Any accrued leave that is discharged under this clause (including leave that is not cashed out by an election under clause 43.3), is cashed out at the rate of one day's pay for each leave day discharged (at the ~~employee~~Employee's home port daily salary rate in Schedule 1).

#### 44. Personal/Carer's Leave

##### 44.1 Personal leave under NES

44.1.1 In accordance with the National Employment Standards, a permanent full-time ~~employee~~Employee is entitled to paid personal leave of 10 days per year of service, if the leave is taken:

- (i) because the **employeeEmployee** is not fit for work because of a personal illness or injury affecting the **employeeEmployee** (sick leave), or
- (ii) to provide care or support to a member of the **employeeEmployee's** immediate family or household who requires care or support because of a personal illness, personal injury or an unexpected emergency affecting the member.

44.1.2 Personal leave under clause 44.1.1 accumulates progressively during a year of service and accumulates from year to year.

#### 44.2 Carer's leave

44.2.1 In addition to Personal leave under clause 44.1, a permanent full-time **employeeEmployee** will be entitled to 5 days Carers leave in any one year without loss of pay. Leave under this clause 44.2 may be taken for the purpose specified in clause 44.1.1(ii), or in a domestic violence situation under clause 44.2.2.

##### 44.2.2 Domestic Violence situation

Carers leave under this clause 44.2.2 includes leave that the **employeeEmployee** reasonably needs:

- (i) to obtain medical or professional attention as a result of having suffered domestic violence; or
- (ii) to care for or support a member of the **employeeEmployee's** immediate family or household because of domestic violence affecting the member.

Svitzer will need to be satisfied, on reasonable grounds, that domestic violence has occurred and may require proof presented in the form of a document issued by the Police Force, a Court, a Doctor, a Domestic Violence Support Service or Lawyer, to grant a leave benefit under this clause 44.2.2.

44.2.3 For reference, it is noted that support in cases of domestic violence is available under the counselling service described in clause 39.

44.2.4 Carer's leave under this clause does not accumulate from year to year. Carer's leave under this clause is used before Personal leave.

#### 44.3 Unpaid Carer's Leave

In the case of an **employeeEmployee** who is required to care for an immediate family member who is suffering a long term illness, the **employeeEmployee** may, with the consent of the Company, take unpaid leave for the purpose of providing care to that immediate family member. While unpaid leave is taken there will be no break in the continuity of employment of the **employeeEmployee**, however, no entitlements based on length of service will apply in relation to that period.

#### 44.4 Notification

44.4.1 Employees must notify their Manager as soon as practicable of any absence for personal / carer's leave, and the expected duration of the absence.

44.4.2 Svitzer may require an **employeeEmployee** to provide evidence in the form of a medical certificate (if reasonably practicable), or a statutory declaration, that the personal / carer's leave is being taken for a reason specified in clauses 44.1 - 44.3. Svitzer will not require the **employeeEmployee** to produce a medical certificate in relation to an absence due to personal illness of two (2) days or less unless the

employeeEmployee's personal / carer's leave record or the circumstances under which the leave was claimed, reasonably justifies such a requirement.

44.4.3 An employeeEmployee is not entitled to take personal/carers leave unless the employeeEmployee complies with this clause 44.4.

44.5 This clause does not apply to any period during which the employeeEmployee is entitled to workers compensation payments.

#### **45. Personal Leave Bonus**

45.1 The eligibility criteria and the frequency for crediting the personal leave bonus will be the same as that which apply for payment of the TEAMS bonus under clause 26.

45.2 The Company will distribute the annual savings resulting from reduced personal leave absences among the national Towage crew workforce, in the form of a personal leave bonus that will be credited annually (as days and part-days) to an eligible employeeEmployee and be payable on termination of employment.

45.3 The annual savings will be measured against the national benchmark of average personal leave absences for Towage crews (FTEs – that is, permanent "full-time equivalent" employeesEmployees) in calendar year 2012.

45.4 The formula for distributing the savings and crediting the personal leave bonus will be devised by a sub-committee of TEAMS. Such formula must be equitable and reflect the proportionate personal leave entitlements of the permanent employeeEmployee.

#### **46. Compassionate Leave**

46.1 This clause incorporates compassionate leave entitlements available under applicable legislation and is to be read subject to legislation.

46.2 Compassionate leave relates to occasions when a member of the employeeEmployee's immediate family or household contracts or develops a personal illness that poses a serious threat to their life, or sustains a personal injury that poses a serious threat to their life, or dies. This incorporates bereavement leave.

46.3 An employeeEmployee is entitled to compassionate leave of up to 3 days without deduction of salary. In the case of bereavement leave, the employeeEmployee is entitled to a further 4 days compassionate leave to be taken in one continuous period after the death of the member of the employeeEmployee's immediate family or household.

46.4 Svitzer may require the employeeEmployee to provide reasonable evidence that the leave is to be taken for such an incident.

46.5 This clause does not apply during any period of leave.

#### **47. Unpaid Leave**

47.1 An employeeEmployee may request to take unpaid leave for a specified period of time. The request must be in writing and set out the details of, and reasons for, the leave sought.

47.2 Svitzer may place such conditions on the granting of the request as it thinks appropriate. (Ordinarily one condition will be that the ~~employee~~Employee must first exhaust their paid leave entitlements other than long service leave.) The Company may refuse the request for unpaid leave on reasonable business grounds.

#### 48. Community Service Leave

48.1 Community service leave (which includes leave to attend jury service) is available under, and in accordance with, the terms and conditions, set out in the NES under the Act.

#### 49. Parental Leave

49.1 An ~~employee~~Employee is entitled to parental leave (maternity and paternity leave and adoption leave) as specified in applicable legislation. This clause is to be read subject to legislation.

49.2 Each permanent ~~employee~~Employee will be entitled to two (2) weeks paid parental leave which must commence from the date of the birth or at the time of adoption of a child, and must be taken in one continuous period (~~excluding off-duty periods for permanent part-time Employees~~). For reference, unpaid parental leave is available under the National Employment Standards in the Act.

49.3 This clause does not apply during any period of leave.

Example:

A permanent part-time Employee with a 50% PPT Guarantee is rostered or available to work 1 November 2022 to 4 November 2022 and on rostered leave from 5 November 2022 to 9 November 2022.

The permanent part-time Employee's child is born on 31 October 2022.

The permanent part-time Employee will:

- take paid parental leave between 1 November 2022 and 4 November 2022 (4 days);

- take their rostered leave between 5 November 2022 and 9 November 2022; and

- take paid parental leave between 10 November 2022 and 12 November 2022 (3 days).

#### 50. Long Service Leave

50.1 Long Service Leave will accrue in accordance with the relevant State Long Service Leave legislation. For the purpose of administration, where the legislation refers to an entitlement in weeks, each week shall be equal to 5 days.

50.2 The Long Service Leave entitlement of each ~~employee~~Employee who qualifies for Long Service Leave will be reduced by 1 day for each day of rostered duty taken as Long Service Leave.

50.3 Where a public holiday falls during a period of Long Service Leave, the period of Long Service Leave will not be extended. (This is due to the fact that the leave entitlement under clause 42 of this Agreement already includes public holiday entitlements.)

- 50.4 Discharge of Long Service Leave must be in blocks of days that conform with the roster pattern applicable in the port concerned. Long Service Leave can only be taken during periods when the ~~employee~~Employee is rostered on for duty.
- 50.5 In ports where the system of work relies upon leave in running (unrostered leave), the days on which long service leave is taken will be deemed to have been work days. For example, when a full 13 weeks long service leave entitlement (65 days) is taken in a year, the ~~employee~~Employee will only be required to work on 118 days.

## 51. Defence Leave

51.1 In accordance with the provisions of the Defence Reserve Service (Protection) Act 2001, an Employee who is an Australian Defence Force reservist (**Reservist**) is entitled to be absent from work on unpaid defence leave for the period where they are engaged by the Australian Defence Force (**Defence Leave**).

51.2 Reservists on Defence Leave will be treated as follows:

51.2.1 Defence Leave will be without pay for any day of rostered duty that falls within the period; and

51.2.2 Where Defence Leave is taken:

(i) the even time leave principle will be applied; and

(ii) the Reservist will not be deducted pay as a result of the even time principle.

subject to a maximum of twenty (20) days in each year of service (which is not cumulative).

51.2.3 Notification of Defence Leave

(i) Employees must provide 3 months' notice of the requirement to take Defence Leave and where that is not possible, as much notice as is practicable.

(ii) At the time of providing the notice referred to in sub-clause (i) above, the Employee must:

A. to the extent practicable, notify the expected duration of the absence; and

B. in accordance with the Defence Reserve Service (Protection) Act 2001, provide Svitzer with an AE380, Tri Service Notice Reserve Service.

## 52. Union Training and Education Leave

52.1 Subject to the terms of this clause 52, Svitzer will provide ~~an~~ Employees paid trade union training and education leave equivalent to six (6) days over the term of the Agreement (**Union Training and Education Leave**). The Union Training and Education Leave will be per classification, per Schedule 1 port. For example, Brisbane Masters will be entitled to six (6) days of Union Training and Education Leave over the term of the Agreement.

52.2 An Employee may apply for Training and Education Leave, subject to the following:

**Commented [DK4]:** The number of days presumes a three year term. If we negotiate an alternate term, this clause will require amendment.

52.2.1 An official of the relevant Union for that Employee, must provide fourteen (14) days' written notice to the relevant Port Manager of the application for leave under this clause (Training Notification). The Training Notification must include details of the time, dates, venue and description of the relevant union training and education; and

52.2.2 The Port Manager approves the application for Union Training and Education Leave in writing by written notice to the relevant Union within 5 days from the date of the Training Notification (noting such approval must not be unreasonably withheld).

52.3 For the purpose of clause 52.2.2, the Port Manager's approval will not be unreasonably withheld if the consequences of approving the Union Training and Education Leave would result, if granted, in the operations of the relevant port being unduly affected by the Employee's absence.

52.4 Without limiting the generality thereof, Union Training and Education Leave may be for purposes including to attend structure training under the direction of qualified training staff, conferences, meetings and/or workshops conducted by the Union or by external agencies approved by the Union which contribute to the Employee's understanding of workplace issues and enhance the development of constructive relationships within Svitzer. Nothing in this clause precludes join Union/management training and education as agreed between the Parties.

### **53. Permanent Part-Time Employee leave**

53.1 Subject to the terms of this Agreement, a permanent part-time Employee accrues, on a pro rata basis, equivalent leave as a permanent full-time Employee accrues.

53.2 Where a permanent part-time Employee works above their PPT Guarantee in a year of service, for each extra day worked up to 182 days, their leave entitlement will accrue on a pro rata basis.

53.3 A permanent part-time Employee will not accrue leave in a year of service after they have worked the equivalent days a permanent full-time Employee would be required to work over a year of service.

53.4 A reference to leave in this clause 53 does not include a reference to leave as described in clause 42.3.2restered leave.

#### Example:

A permanent part-time Employee with a 50% PPT Guarantee works 182 days over a year of service.

The permanent part-time Employee will accrue:

(a) Over the first 91 days of work:

A total of 5 days personal leave (see clauses 15.3.1 and 44.1)

A total of 2.5 days carers' leave (see clauses 15.3.1 and 44.2.1).

A total of 1 week parental leave (see clause 49.2)

Long service leave in accordance with clause 50.

(b) Over the second 91 days of work (to total 182 days in the year of service):

A total of 5 days personal leave (see clauses 15.3.1 and 44.1).

A total of 2.5 days carers' leave (see clauses 15.3.1 and 44.2.1).

A total of 1 week parental leave (see clause 49.2).

Long service leave in accordance with clause 50.

Note: Entitlements to unpaid carers' leave (clause 44.3), compassionate leave (clause 46), unpaid leave (clause 47), community service leave (clause 48) and parental leave (clause 49) do not accrue by reference to service. Accordingly, the permanent part-time Employee does not increase their entitlement to these forms of leave by working in excess of their 91 days.

#### 53.5 Permanent part-time Employees on a Guaranteed Salary taking accrued leave

53.5.1 Where immediately prior to the day of accrued leave, a permanent part-time Employee has worked days in any of the following circumstances, those days of accrued leave (provided the permanent part-time Employee is rostered to work) will count towards days worked for the purpose of clause 15.3.2, 41.2.5 and 51 of this Agreement:

- (i) where the days are less than the pro rata PPT Guarantee for the Financial Year (as at the date of the accrued leave), the Employee will be compensated for that day of accrued leave through receipt of the Guaranteed Salary and no additional payment will be made: and
- (ii) where the days are equal to or in excess of the pro rata PPT Guarantee for the Financial Year (as at the date of the accrued leave), the Employee will be paid 200% of the daily salary rate for the relevant port for that day of accrued leave (this payment is in addition to their Guaranteed Salary).

#### 53.6 Permanent part-time Employees on a Guaranteed Salary taking personal leave

53.6.1 Where immediately prior to the day of personal leave, a permanent part-time Employee has worked days in any of the following circumstances, those days of personal leave (provided the permanent part-time Employee is rostered to work on the day of personal leave) will count towards days worked for the purpose of clauses 15.3.2, 41.2.5 and 57~~56~~ of this Agreement and:

- (i) where the days are less than the pro rata PPT Guarantee for the Financial Year (as at the date of personal leave), the Employee will be compensated for that day of personal leave through receipt of the Guaranteed Salary and no additional payment will be made: and
- (ii) where the days are equal to or in excess of the pro rata PPT Guarantee for the Financial Year (as at the date of the personal leave), the Employee will be paid 200% of the daily salary rate for the relevant port for that day of personal leave (this payment is in addition to their Guaranteed Salary).

#### 53.7 Permanent part-time Employees on a Guaranteed Salary taking parental leave

53.7.1 Where immediately prior to the day of parental leave, a permanent part-time Employee has worked days in any of the following circumstances, those days of parental leave (irrespective of whether the permanent part-time Employee was rostered to work or not) will count towards days worked for the purpose of clauses 15.3.2, 41.2.5 and 57~~56~~ of this Agreement and:

- (i) where the days are less than the pro rata PPT Guarantee for the Financial Year (as at the date of personal leave), the Employee will be compensated for that day of parental leave through receipt of the Guaranteed Salary and no additional payment will be made; and
- (ii) where the days are equal to or in excess of the pro rata PPT Guarantee for the Financial Year (as at the date of the parental leave), the Employee will be paid 200% of the daily salary rate for the relevant port for that day of parental leave (this payment is in addition to their Guaranteed Salary).

53.7.2 Where immediately prior to the day of parental leave, the permanent part-time Employee has worked days which are equal to or in excess of 182 days in the Financial Year, then:

- (i) if rostered to work that day, that day of parental leave will count towards days worked for the purpose of clauses 15.3.2, 41.2.5 and 5756 of this Agreement and the Employee will be paid 200% of the daily salary rate for the relevant port for that day of parental leave (this payment is in addition to their Guaranteed Salary).
- (ii) if not rostered to work that day, that day of parental leave will not count towards days worked for the purpose of clauses 15.3.2, 41.2.5 and 5756 of this Agreement and the Employee will not receive any additional payment.

53.8 Permanent part-time Employees on a Guaranteed Salary taking long service leave

53.8.1 Where immediately prior to the day of long service leave, a permanent part-time Employee has worked days in any of the following circumstances, those days of long service leave (provided the permanent part-time Employee is rostered to work on the day of long service leave) will count towards days worked for the purpose of clauses 15.3.2, 41.2.5 and 5756 of this Agreement and:

- (i) where the days are less than the pro rata PPT Guarantee for the Financial Year (as at the date of long service leave), the Employee will be compensated for that day of long service leave through receipt of the Guaranteed Salary and no additional payment will be made; and
- (ii) where the days are equal to or in excess of the pro rata PPT Guarantee for the Financial Year (as at the date of the personal leave), the Employee will be paid 200% of the daily salary rate for the relevant port for that day of long service leave (this payment is in addition to their Guaranteed Salary).

## **PART 7 - OTHER**

### **54. Port Kembla**

Where Svitzer enters into an arrangement to support the operation of a floating regassification unit in Port Kembla, the Parties will consult with respect to the terms and conditions relating to voyages between Sydney and Port Kembla.



**55. Accommodation for Dry Docking**

Where an Engineer is engaged for a dry docking and requires accommodation for that docking, Svitzer and the Engineer will agree on the accommodation for the duration of the dry dock.

**56. Workers Compensation**

56.1 Except as provided in clause 44.2, Svitzer must ensure an Employee returning to work after accessing a statutory entitlement applicable under a State Workers' Compensation Law:

56.1.1 receives their entitlement to even-time leave in accordance with clause 42.3; and

56.1.2 if rostered and completing a return to work plan, is not required as part of their return to work plan to work days which are not part of their roster.

56.2 Notwithstanding clause 56.1.255-1-2, an Employee returning to work after accessing a statutory entitlement applicable under State Workers' Compensation Law and completing a return to work plan which requires the Employee to work days which are not part of their roster, subject to:

56.2.1 the Employee's nominated treated doctor or specialist informing the relevant return to work plan supporting that roster; and

56.2.2 the Employee agreeing to that roster; and

56.2.3 the Employee receiving their days free of duty as per clause 42.3.

**57. Transitional Arrangements for Permanent Part-Time Employees**

57.1 Application

The transitional arrangements in this clause 5756 apply to all permanent part-time Employees employed between the period 1 January 2020 and 30 June 2020 (Transitioning PPTs).

57.2 Transitioning PPTs – salaries

57.2.1 On 1 July 2020, Svitzer will conduct a reconciliation with respect to the Transitioning PPTs and identify any Transitioning PPTs who have worked days in excess of their pro rata PPT Guarantee for the period 1 January 2020 to 30 June 2020 (Affected Transitioning PPTs).

57.2.2 Affected Transitioning PPTs will receive an additional payment of 200% of the daily salary rate relevant to the permanent part-time Employee's home port in accordance with Schedule 1 for each day worked in excess of their pro rata PPT Guarantee for the period 1 January 2020 to 30 June 2020.

57.2.3 Svitzer will make any required payments under this clause 5756 to Affected Transitioning PPTs by the later of:

(i) 31 July 2020; and

(ii) the date which is one (1) month after the Commencement Date.

Example 1: A permanent part-time Employee with a 50% PPT Guarantee employed on 1 January 2020 and remaining employed as at 30 June 2020, works 60 days between 1 January 2020 and 30 June 2020. -

- the pro rata PPT Guarantee for the period 1 January 2020 to 30 June 2020 is equal to 50% of 182 days divided by 2, being 45.5 days.

- the permanent part-time Employee is an Affected Transitioning PPT.

- The permanent part-time Employee has worked 14.5 days in excess of their pro rata PPT Guarantee for the period 1 January 2020 to 30 June 2020 and therefore under the transitional arrangements, will receive a payment from Svitzer equivalent to 14.5 days at 200% of their daily salary rate.

Example 2: A permanent part-time Employee with a 50% PPT Guarantee, commenced employment 1 March 2020 and remains employed as at 30 June 2020, works 40 days between 1 March 2020 and 30 June 2020.

- the pro rata PPT Guarantee for the period 1 March 2020 to 30 June 2020 is equal to 50% of 182 days divided by 2 and multiplied by the number of days between 1 March 2020 and 30 June 2020 (122 days), being 30.5 days.

- the permanent part-time Employee is an Affected Transitioning PPT.

- the permanent part-time Employee has worked 9.5 days in excess of their pro rata PPT Guarantee for the period 1 March 2020 to 30 June 2020 and therefore under the transitional arrangements, will receive a payment from Svitzer equivalent to 9.5 days at 200% of their daily salary rate.

### 57.3 Transitioning PPTs – other

57.3.1 From 1 July 2020, the PPT Guarantee for all permanent part-time Employees will be pro-rated over the Financial Year in accordance with this Agreement.

57.3.2 A permanent part-time Employee who has not met their pro rata PPT Guarantee by 30 June 2020 will not be required to do so.

**PART 7 – EXECUTION**

**51-58. Signatures**

<b>FOR Svitzer Australia Pty Limited</b>	<b>FOR Engineers / Australian Institute of Marine and Power Engineers</b>
_____ Signed	_____ Signed
_____ Name in full (printed)	_____ Name in full (printed)
_____ Title in full	_____ Title in full
	_____ <i>insert an explanation of the person's authority to sign the workplace agreement</i>
Date: _____	Date: _____
_____ Witnessed by (signature)	_____ Witnessed by (signature)
_____ Witness name in full (printed)	_____ Witness name in full (printed)
<b>FOR Masters / Australian Maritime Officers Union</b>	<b>FOR Ratings / Maritime Union of Australia <u>Division of the Construction, Forestry, Maritime, Mining and Energy Union</u></b>
_____ Signed	_____ Signed
_____ Name in full (printed)	_____ Name in full (printed)
_____ Title in full	_____ Title in full
Date: _____	Date: _____
_____ Witnessed by (signature)	_____ Witnessed by (signature)
_____ Witness name in full (printed)	_____ Witness name in full (printed)

**SCHEDULES**  
**Schedule 1 – Salaries (Refer clause 24)**

**Annual Salaries 2016-2019 - See Note<sup>1</sup> as to adjustments to Port Salaries**

Port	Annual Salaries per Classification			
	1 January 2017		1 July 2017	
	Masters and Engineers	Ratings	Masters and Engineers	Ratings
Adelaide	\$200,780	\$122,210	\$200,780	\$122,210
Albany	\$172,514	\$104,962	\$172,514	\$104,962
Bowen	\$189,127	\$130,086	\$189,127	\$130,086
Brisbane <sup>2</sup>	\$199,097	\$133,563	\$199,097	\$133,563
Bundaberg				
Cairns	\$160,125	\$120,945	\$148,916	\$112,479
Eden	\$126,877	\$91,787	\$126,877	\$91,787
Fremantle	\$183,245	\$111,996	\$183,245	\$111,996
<b>Fremantle (composite)</b>	<b>\$186,386</b>	<b>\$117,820</b>	<b>\$186,386</b>	<b>\$117,820</b>
Geelong	\$201,931	\$145,656	\$201,931	\$145,656
Geraldton	\$181,140	\$110,211	\$181,140	\$110,211
Gladstone				
Kwinana	\$190,345	\$123,008	\$190,345	\$123,008
Mackay				
Melbourne	\$201,850	\$145,656	\$201,850	\$145,656
Mourilyan	\$160,125	\$120,945	\$148,916	\$112,479
Newcastle	\$204,173	\$133,454	\$204,173	\$133,454
Port Kembla	\$198,711	\$126,661	\$198,711	\$126,661
Spencer Gulf <sup>3</sup>	\$161,239	\$102,354	\$161,239	\$102,354
Sydney <sup>4</sup>	\$191,893	\$123,846	\$191,893	\$123,846
Townsville				
Weipa				
Westernport	\$194,931	\$134,576	\$194,931	\$134,576

Notes		
1	National	The salaries prescribed in the table in Schedule 1 will be adjusted on and from 1 January each year commencing on 1 January 2017 (and thereafter during the term of this Agreement) by the <b>annual percentage movement in the Consumer Price Index</b> (Cat No. 6401.0) [weighted average of the eight (8) capital cities] <b>for the 12 months ending September</b> ("CPI") in the preceding year.
2	Brisbane	Salary includes bridge toll and telephone allowance
3	Spencer Gulf Commuters	Employees who elect to receive accommodation provided by Svitzer will incur a deduction from their salary as prescribed in Schedule 3.
4	Sydney	The salaries in the above table are in full satisfaction of any requirement from the Port of Sydney for immediate response in ("Captive") and Captive shifts in Port Botany, Sydney.
5	Cairns, Mourilyan	Salaries will be reduced by 7% effective 1 July 2017. There will be no salary increase in Cairns and Mourilyan for the year commencing 1 January 2018 or the year commencing 1 January 2019 if the CPI increase for each year is 1.5% or less. If the CPI increase for each individual year is greater than 1.5%, the salary will increase for that year by the difference between the CPI increase and 1.5%. For example: • If the CPI increase for the year commencing 1 January 2018 is 2%, Svitzer will increase the employees' salary in Cairns and Mourilyan by 0.5%. • If the CPI increase for the year commencing 1 January 2019 is 1.6%, Svitzer will increase the employees' salary in Cairns and Mourilyan by 0.1%.

	<ul style="list-style-type: none"> <li>If the CPI increase for either year is 1.5% or less, the employees' <del>Employees'</del> salary in Cairns and Mourilyan will not increase.</li> </ul>
--	---

## Schedule 1B – Training Salaries (Refer clause 24.5)

Note: The Training Wages contained in the table in Schedule 1A will be adjusted proportionally on and from 1 January each year based on the adjustment in Salaries as described in Schedule 1.

Masters and Engineers	% of full-time Masters / Engineers salary *	Training Salaries	
		Prior to Commencement Date	From Commencement Date
Trainee Stage 1 (Entry level)	50%	\$59,910	\$62,501
Trainee Stage 2 (Intermediate Stage).	60%	\$71,891	\$75,001
Trainee Stage 3 (Final Stage)	75%	\$89,864	\$93,752

\*Based on the lowest Master / Engineer rate for the relevant period.

Ratings	% of full-time Ratings salary *	Training Salaries	
		Prior to Commencement Date	From Commencement Date
Trainee Stage 1 (Entry level)	50%	\$39,014	\$45,215
Trainee Stage 2 (Intermediate Stage).	60%	\$46,816	\$54,259
Trainee Stage 3 (Final Stage)	75%	\$58,520	\$67,823

\*Based on the lowest Ratings rate for the relevant period.

## Schedule 2 - National Allowances

**Note:** The Allowances contained in the tables in Schedules 2A to Schedule 2E below will be adjusted on and from 1 January each year (commencing on 1 January 2017 and thereafter during the term of this Agreement) by the annual percentage movement in the Consumer Price Index (Cat No. 6401.0) [weighted average of the eight (8) capital cities] for the 12 months ending September in the preceding year.

### Schedule 2A - Nominated Voyages Allowance (refer clause 30)

State	Travel Between	And	Allowance (per Hour)
SA	Port Adelaide	Stanvac	\$26
	Port Adelaide	Giles Point	
	Port Adelaide	Kleins Point	
	Port Adelaide	Ardrossan	
	Port Adelaide	Port Lincoln	
	Port Pirie	Port Bonython	
	Port Pirie	Whyalla	
	Whyalla	Port Bonython	
Vic.	Melbourne	Westernport	\$26
	Geelong	Westernport	
NSW	Port Jackson	Botany Bay	\$26
	Port Jackson or Botany Bay	Newcastle or Port Kembla	
	Port Kembla	Newcastle	
QLD	Gladstone	Rockhampton	\$26
	Half tide Harbour**	Mackay**	
	Gladstone	Bundaberg	\$26
	Mourilyan Harbour**	Lucinda**	
	Mourilyan Harbour#	Townsville #	\$26
	Mourilyan Harbour*	Cairns*	
	Townsville	Cairns	\$26
	Townsville**	Lucinda**	
	Cairns**	Lucinda**	
	Cairns#	Euston Reef #	\$26
Brisbane**	Towage requirements between M7 buoy and Port Limits**		
Bowen*	Abbot Point*		

**Notes:**

\* The allowances that previously attached to Nominated Voyages marked with an asterisk (\*) are no longer payable separately as they have been incorporated into relevant salaries.

\*\* This allowance is not payable under this Schedule.

# No longer payable separately to Ratings/GPHs as allowances have been incorporated into their relevant salaries.

**Schedule 2B - Allowance for Outside work and Salvage work (refer clauses 31 and 32)**

Outside Work (and Salvage work)	Outside Work Payment (Daily)			
	Prior to Commencement Date		From Commencement Date	
	Masters and Engineers	Ratings	Masters and Engineers	Ratings
Free Running Voyage and Delivery Voyage	\$824	\$514	\$837	\$522
Contract Towage	\$1,015	\$704	\$1,030	\$714
Emergency Operations (and Salvage work)	\$1,219	\$896	\$1,237	\$910

**Schedule 2C – Emergency Maintenance Allowance (refer clause 33)**

Emergency Maintenance Allowance	Emergency Maintenance Allowance ( Hourly)			
	Prior to Commencement Date		From Commencement Date	
	Masters and Engineers	Ratings	Masters and Engineers	Ratings
	\$88	\$53	\$89	\$54

**Schedule 2D - Penalty payment - extended hours (refer clause 34)**

Penalty Payment	Penalty Payment (Hourly)			
	Prior to Commencement Date		From Commencement Date	
	Masters and Engineers	Ratings	Masters and Engineers	Ratings
	\$88	\$53	\$89	\$54

**Schedule 2E - Extreme weather alert allowance (refer clause 35)**

Extreme Weather Alert Allowance	Extreme Weather Alert Allowance (Hourly)			
	Prior to Commencement Date		From Commencement Date	
	Masters and Engineers	Ratings	Masters and Engineers	Ratings
	\$88	\$53	\$89	\$54

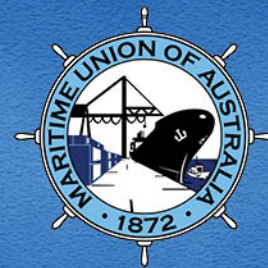
### Schedule 3– Port Specific Allowances and Deductions (refer clause 36)

**Note:** The Allowances contained in the table in Schedule 3 below (excluding the Rental deduction (Spencer Gulf Commuters)) will be adjusted on and from 1 January each year (commencing on 1 January 2020 and thereafter during the term of this Agreement) by the annual percentage movement in the Consumer Price Index (Cat No. 6401.0) [weighted average of the eight (8) capital cities] for the 12 months ending September in the preceding year].

State	Port	Description of Allowance	Eligibility and Application	From the Commencement Date
QLD	Brisbane	Voyage beyond M7 Buoy	Allowance is payable when towage assistance is rendered beyond the M7 buoy to the geographical limits of the Port of Brisbane. Payable per hour per hour from departure to return to base.	\$87.93
	Bowen / Abbott Point	Watchkeeping allowance (Ratings)	Allowance payable where SVITZER requires a rating to perform the functions of a wheelhouse watchkeeper under its Standing Orders, on a voyage between Bowen and Abbott Point, and the rating is qualified to do so and performs that function during the course of a duty period. The watchkeeping allowance is payable per duty period but it will not be payable more than once per day.	\$79.00
	Cairns and Mourilyan	Lucinda Voyage allowance (Masters and Engineers only)	Allowance is payable for any free-running voyage undertaken at Svitzer's requirement, between Cairns and Lucinda, and Mourilyan Harbour and Lucinda. Payable per day (or part thereof) from the time tug leaves the wharf.	\$205.24
SA	Spencer Gulf	Higher Duties Allowance	On any day when Svitzer requires a Rating/ General Purpose Hand who holds a valid "Master up to 35 metres Near Coastal" Certificate [previously known as a Certificate IV in Maritime Operations] ), to relieve the Master and perform duties of a Master, the <del>employee</del> Employee will be entitled to a daily higher duties allowance differential that equates to the difference between 75% of the daily Master's salary and the daily Ratings / GPH salary.	
SA	Spencer Gulf	Rental deduction (Spencer Gulf Commuters)	Applies to <del>employees</del> Employees who receive company-provided accommodation. The deduction will be made fortnightly from the <del>employee</del> Employee's wages on the basis specified below: (Casual <del>employees</del> Employees' deduction will be calculated pro-rata.) <i>per fortnight:</i>	\$60.00



State	Port	Description of Allowance	Eligibility and Application	From the Commencement Date
WA	Fremantle and Kwinana	Gale Watch	<p>Where:</p> <ul style="list-style-type: none"> <li>Fremantle Ports or the Harbour Master requires Svitzer to deploy a tug in the Outer and/or Inner Harbours in response to a Bureau of Meteorology warning involving Gale Force winds that is current and applicable in the port area; and</li> <li>an <del>employee</del>Employee crews that tug outside ordinary hours (for this purpose - before 0700 or after 1500 Monday to Friday excluding public holidays), during the warning,</li> </ul> <p>the <del>employee</del>Employee will receive the said allowance.</p> <p>This allowance will not be payable where an <del>employee</del>Employee is entitled to an Extreme weather alert allowance under clause 35.</p>	<p>Master and Engineer: \$89;                      Rating / GPH: \$54.</p>



## PG4

Wednesday, 20 April 2022

MUA Members - Svitzer Tugs

Dear Members,

### **SVITZER TUGS – 2020 EBA: UPDATE #25**

The MUA writes further to the round of EBA negotiations that took place between Svitzer, AMOU, AIMPE and MUA on 12-14 April 2022.

#### **Svitzer “savings” package options**

After another round of heavy discussions regarding the conditions, Svitzer finally presented two “savings” packages to the unions to settle the EBA negotiations. Those two options presented by the company were as follows:

<b>Package 1</b>	<b>Package 2</b>
<ol style="list-style-type: none"><li>1. Current offer (8 hour engagement) as discussed</li><li>2. 0% salary increase from 1 January 2022; 1 Jan 2023 and subsequent years until the expiry (higher of 1.5% and CPI)</li><li>3. 52 week cap for redundancy plus EOI to remain as per current EA</li><li>4. Outside work (either Option 1 or 2 as sent on 30<sup>th</sup> of March)</li></ol>	<ol style="list-style-type: none"><li>1. 100% for full-time recalls</li><li>2. PPTs: 125% when they are engaged above their guarantee (up to 182 days); after 182 they get treated the same as full time (i.e. they can decide to pick the day of accrued leave or get 100%)</li><li>3. Order of Pick (the higher of 75% and contracted hours for PPT to be engaged first)</li><li>4. Conversion of PPT to full time removed</li><li>5. Salary increase 2% from 1 January 2022; 1 Jan 2023 and subsequent years until the expiry (higher of 1.5% and CPI)</li><li>6. 60 week cap for redundancy plus EOI to remain as per current EA</li><li>7. Outside work (either Option 1 or 2 as sent on 30<sup>th</sup> of March)</li></ol>

Both positions put by Svitzer were not accepted by the three unions.



## Points of resolution in the EBA negotiations

Following further negotiations during the three-day session, the three unions managed to improve on what was being pushed by Svitzer, against a background of Svitzer moving to terminate the EBA.

Svitzer summarised the points discussed as follows:

1. Full time employees to receive 100% when recalled from leave (either accrued leave or cash)
2. Permanent part time employees to receive 150% salary when they are engaged beyond their minimum guarantee (up to 182 days). After the 182 days it reverts back to 100% loading which they can choose to receive by way of accrued leave (or cash should they choose)
3. Some words to give comfort that Svitzer would give preference (all things being equal) to current PPTs for permanent jobs in the port.
4. Casual loading to be reduced to 50%
5. Order of pick: First order of pick is for PPTs (until the higher of 75% and their contracted hours). After this, the company has discretion on the order of pick engagement. PPTs will continue as per the terms of the current agreement to be available for relief unless they are on nominated leave
6. Conversion of PPT to full time to be removed
7. Review of PPT % - Svitzer will introduce new words to put in a stronger mechanism for PPTs to review their percentage upwards and commit the company to act reasonably
8. Salary increase of 1.5% from 1 January 2022; and thereafter the higher of CPI and 1.5% until expiry of the agreement
9. 70 week cap for redundancy while maintaining EOI; Svitzer will include aspirational words aimed at emphasizing that employees should not be incentivised by the high redundancy amounts and that it's our common interest to avoid redundancy and instead reach agreements to avoid loss of jobs
10. EBA Duration of 4 years
11. Engineers duties clause – Updated clause
12. Engineers minimum qualification – Updated clause
13. Maintenance clause: Updated clause for when maintenance is performed.
14. Outside work: Free running up to 18 hours: 2 ratings; more than 18 hours: 3 ratings.

15. PoPs clause: As per the agreement in the last bargaining session subject obviously to tidy up and cross referencing once included in the full EA (same applies to all clauses)
16. Recruitment: If an employee attends interviews on their day off, it will be at their cost and the process is subject to the company complying with applicable privacy laws and policies as per the drafts circulated previously.

These outcomes represent a change in conditions for tugboat workers. They are set against a background of industry destabilisation, an EBA termination application which has a prospect of success and a company that has track form of going to partnerships and outsourcing work like what was seen in Geelong.

Svitzer have acted like Qantas, Patricks and so many other companies that have used a section of the *Fair Work Act 2009 (Cth)* that was designed to deal with non-operative EBAs. Instead of negotiation genuinely, Svitzer is another company that has weaponised section 225 to attack the terms and conditions of workers by terminating EBAs. This is another example of why there needs to be a change of Government and then a massive overhaul of the industrial relations laws, swinging the balance back in the favour of workers.

On redundancies, the cap of 70 weeks was not an easy position to arrive at. But frankly, there should not be redundancies as a pay out on the way out. As custodians of the job, it is our responsibility to hand the job over to the next generation.

On recalls, the condition is 182 days leave. That is what the unions have fought for over many decades. Leave gives time away from the workplace whilst also creating jobs. Coming in for copious amounts of recalls is contrary to the position that the unions have fought.

#### **s225 EBA termination application**

On the basis of the above being resolved, Svitzer has agreed to adjourn the termination case and push it back so the parties have opportunity to draft these positions into a new EBA. There is no doubt that there will need to be close focus to the wording to ensure extra issues are slipped in by the company.

\* \* \*

The MUA is meeting with Delegates today for a more comprehensive report back. A fuller meeting of MUA members will be called soon.

On behalf of the MUA EBA Negotiating Committee.

Yours Sincerely,



**Paul Garrett**  
**Deputy Secretary (Sydney Branch)**



Chris Neiberding, Australian Maritime Officers Union (AMOU): [chris@amou.com.au](mailto:chris@amou.com.au)

Greg Yates, Australian Institute of Marine and Power Engineers (AIMPE): [gyates@aimpe.asn.au](mailto:gyates@aimpe.asn.au)

Paul Garrett, Construction Forestry Maritime Mining and Energy Union (MUA): [paul.garrett@mua.org.au](mailto:paul.garrett@mua.org.au)

20 April 2020

**Without prejudice**

Dear Sirs

**Svitzer Australia Pty Limited National Towage Enterprise Agreement 2020**

I refer to the negotiations for the Svitzer Australia Pty Limited National Towage Enterprise Agreement 2020 (Proposed Enterprise Agreement) and Svitzer's without prejudice offer to settle the Proposed Enterprise Agreement on the following terms:

- (a) 2-year term (commencing 1 January 2020);
- (b) Zero wage increase for the duration of the term; and
- (c) Svitzer will engage with the relevant union in good faith prior to making any decision to terminate the employment of any employee covered by the Proposed Enterprise Agreement due to redundancy,

(together our March Offer) as confirmed via correspondence to you dated 25 March 2020.

We have considered the responses from the AMOU, AIMPE and MUA, including those provided by the AMOU in its letter dated 27 March 2020, AIMPE in its letter dated 26 March 2020 and MUA in its letter dated 3 April 2020.

Having considered these responses and noting, in particular your feedback regarding the proposed term and preference for some key conditions to be addressed, we have decided to revise our March Offer.

Accordingly, on a without prejudice basis, Svitzer proposes to settle the Proposed Enterprise Agreement on the following terms:

- 1 18-month term (commencing 1 January 2020);
- 2 Zero wage increase for the duration of the term;
- 3 Removal of the Workplace Council forum, noting the term, the COVID-19 and prevailing travel conditions;

- 4 Enhanced information sharing through the National Advisory Board, Port Advisory Group and directly at the request of delegates and national union officials;
- 5 Greater restriction and prescription with respect to job share arrangements, including improved consultation on inception and termination;
- 6 Alignment of Svitzer's ability to terminate employment without notice with Svitzer's current practice and the *Fair Work Act 2009* (Cth);
- 7 Removal of the requirement to review Port Operating Procedures annually, such that instead they will be reviewed, when required by any party to the Agreement;
- 8 Reduction in the cap of continuous duty from 16 hours to 14 hours;
- 9 Inclusion of days worked by an employee outside their home port when calculating maximum days; and
- 10 Adjustment to the order of pick,

with relevant drafting for items 3-10 above set out in the Appendix (together, our April Offer).

We recognise that aspects of our April Offer will come at a cost to Svitzer and that this cost will be challenging given the current and predicted financial impacts of COVID-19. However, we are mindful of your feedback and consider that our April Offer takes into consideration, in a balanced way, the interests raised by you on behalf of your members.

We will be prepared to discuss our April Offer further during our meeting on Wednesday at 1:30pm

Yours faithfully

A handwritten signature in blue ink, appearing to read "Nicolaj Noes", with a long horizontal line extending to the right.

Nicolaj Noes  
Managing Director

## Appendix

### Item 3 – Amendments to clauses 11.1.3 and 11.2.4

11.1.3 It is agreed between the parties that consultation will occur between management and the ~~employees~~ Employees principally at the port level. Formal structures will be established to enable consultation to take place between Svitzer, the ~~employees~~ Employees and the Unions representing all ~~employees~~ Employees on a regular basis. This will occur in the following forums:

- (i) National Advisory Board;
- (ii) Port Advisory Group;
- (iii) Tug Efficiency and Management Systems ("TEAMS");
- ~~(iv) Workplace Council;~~
- ~~(v)~~ (iv) Svitzer Workforce Planning and Development Committee established for each classification or work group.

### 11.2.4 — Workplace Council

- ~~(i) — The workplace council will meet at least once during the term of this Agreement. The workplace council is not a forum for the discussion of industrial disputes or individual grievances, but rather provides a forum for the exchange of views between representatives of the employees and senior management, where, in addition to local consultative processes and through sharing information about industry matters and company prospects, greater trust and respect can be established.~~
- ~~(i) — The workplace council will comprise one representative from each Port specified in Schedule 3 for each classification specified in clause 24.1.1, and a national officer of each Union.~~
- ~~(ii) — It is anticipated that the workplace council would be scheduled over 2 days.~~
- ~~(iii) — Svitzer will ensure that appropriate members of the senior management, corporate staff and port manager/s attend the meeting to enable detailed and open discussion of the issues.~~
- ~~(iv) — The cost of travel, meals and accommodation required to facilitate attendance at the workplace council meeting will be met by Svitzer.~~
- ~~(v) — It is agreed that as a requirement of participation in this process, the participants will convey the information received at the council to the relevant employees within their region fairly and impartially, unless the information is identified as being confidential by Svitzer, in which case the representative will respect such confidentiality.~~



#### Item 4 – Amendments to clauses 11.2.1 and 11.2.2

##### 11.2.1 National Advisory Board:

- (i) This comprises Senior Management and two representatives from each of the three Maritime Unions, and is the senior consultative forum where detailed commercial issues will be discussed which enables union officials to appreciate the commercial and operational requirements of the business. The National Advisory Board operates in accordance with its Charter made on 17 February 2012.
- (ii) On and from the first meeting of the National Advisory Board in 2021, Svitzer shall at each meeting of the National Advisory Board, provide an updated report of actual expenditure as against the budget referred to in clause 19.5.1.
- (iii) Svitzer will make best endeavours to meet the obligation referred to in clause (ii) above prior to the first meeting of the National Advisory Board in 2021 (during which Svitzer must provide a report with respect to period 2021 year to date).
- (iv) Svitzer will consult with the National Advisory Board in relation to the structure of the report referred to in (ii) above.

##### 11.2.2 Port Advisory Group:

- (i) This is the forum for local communication and information sharing to enable all towage ~~Employees~~ employees to have input in the local daily operation of the business. The Port Advisory Group shall comprise representatives of each department and Svitzer management.
- (ii) Effective 2021, as part of the Port Advisory Group, the following information with respect to the preceding period will be provided for the relevant port by Svitzer:
  - A. crew recalls;
  - B. casual usage;
  - C. scratch crew usage;
  - D. port volumes (% change from previous period);
  - E. unplanned absences;
  - F. permanent part-time Employees utilisation; and
  - G. accrued leave balances.
- (iii) Effective 2021, Svitzer will provide a delegate or Union official with the information referred to in paragraph (ii) upon request from that delegate or Union official and in that circumstance the delegate or Union official must keep that information confidential.
- (iv) Notwithstanding (iii) above, Svitzer will only provide delegates with information relating to their home port.

**Formatted:** Indent: Left: 1.5 cm, Hanging: 1.25 cm, Outline numbered + Level: 4 + Numbering Style: i, ii, iii, ... + Start at: 1 + Alignment: Left + Aligned at: 2.5 cm + Tab after: 4 cm + Indent at: 4 cm



**Item 5 – Amendments to clause 15.3.8**

**15.3.8 Job sharing**

~~Job sharing arrangements between permanent full-time employees may be implemented where there has been mutual agreement between the employees concerned and the Company, and consultation has occurred with the Union.~~

- (i) The Parties agree that job sharing arrangements are generally for the purpose of supporting Employees transitioning to retirement or Employees that have legitimate reasons that do not allow them to maintain their permanent positions, such as, compassionate reasons, returning to work from parental leave and family caring responsibilities.
- (ii) On and from Commencement Date:
  - A. job sharing arrangements for Masters and Engineers may only be entered into between permanent Employees, and
  - B. job sharing arrangements for Ratings may only be entered into between two permanent full time Employees.
- (iii) Subject to clauses (i) and (ii) above, Svitzer may agree to Employees entering into a job share arrangement subject to the following:
  - A. the job sharing arrangement being at the instigation of one or more of the relevant Employees, and
  - B. Svitzer consulting with the relevant Employees and relevant Union in relation to the appropriateness, terms and conditions of the job share arrangement.
- (iv) Should an Employee party to a job share arrangement change their status of employment with Svitzer, Svitzer will consult with the remaining Employees in the relevant job share arrangement and the relevant Union, in relation to the role which was the subject of the relevant job share arrangement.
- (v) This clause is not intended to prejudice job share arrangements (including the terms and conditions of those arrangements) which commenced prior to the Commencement Date.
- (vi) Notwithstanding clause (v) above, Svitzer agrees that job share arrangements which commenced prior to the Commencement Date will be subject to the consultation referred to in clause (iv) above.

#### **Item 6 – Amendment to clause 20.3**

##### 20.3 Termination without notice

Despite the provisions of this clause, Svitzer may terminate the employment of an ~~employee~~ Employee without notice, or payment in lieu of notice, for serious misconduct.

#### **Item 7 – Amendment to clause 41.1**

41.1 There will be a set of Port Operating Procedures in each port. Port Operating Procedures ~~must~~ may be reviewed ~~as required by any Party but any review must be in accordance with clause 41.4 at least annually.~~ Svitzer will prepare and distribute to the Unions a report on the status of the Port Operating Procedures by 31 March. ~~Subject to clause 41.4, the annual review must be completed by 30 April. Following the review Svitzer will prepare another status report by 14 May.~~

#### **Item 8 – Amendment to clause 41.2.4(iii)**

(iii) A period of continuous duty must not exceed ~~14~~6 hours.

#### **Item 9 – Amendment to clause 41.2.5**

41.2.5 Employees must not work more than 14 days in excess of the number of days a full-time ~~employee~~ Employee is required to work in a calendar year under the operating roster in the port (Maximum Days). For the purpose of this clause 41.2.5, the following days will be disregarded in calculating Maximum Days:

- Work days when the ~~employee~~ Employee does not perform ship-assist operations on a tug boat in any port (harbour towage);
- days when an ~~employee~~ Employee attends shoreside meetings;
- Outside Work days;
- days attending emergencies, and
- days undertaking docking work.

Days worked outside an Employee's home port performing ship-assist operations on a tug boat (harbour towage) will be included when calculating Maximum Days.

**Item 10 – Amendment to clause 41.2.7(i)**

41.2.7 Relief arrangements to be utilised in the Port and casual usage:

Variation to the following order of pick shall only occur following agreement between Svitzer and the relevant Union. Where such agreement is reached, that agreement shall be reflected in the port's relevant Port Operating Procedures.

(i) Relief work requirements to supplement the roster will usually be covered:

A. ~~First call – permanent part-time employees who have not met their prescribed proportion % and are not on rostered / nominated leave (other than during an off-duty period pursuant to clause 41.2.4(iv)), or when they are otherwise unavailable under this Agreement);~~

B. Second call – permanent part-time Employees who have met their prescribed proportion % and are not on rostered/nominated leave and have not worked 182 days that year. For the avoidance of doubt, rostered permanent part time Employees whose roster delivers their prescribed proportion % fall within the second call;

~~B.C. third call – casual employees~~ Employees;

~~D. Third fourth call – permanent part-time Employees who have not worked 182 days that year and who are on rostered/nominated leave; and~~

~~G.E. fifth call – permanent full-time employees~~ Employees on rostered leave, permanent part-time Employees who have exceeded 182 days of duty that year, and Employees who are under an arrangement referred to in clause 15.3.8 (job sharing).

(ii) ~~Permanent full-time employees~~ Employees on rostered leave and Employees who are under an arrangement referred to in clause 15.3.8 (job sharing) are not obliged to be available for relief work, however subject to clause 41.2.5, every ~~employee~~ Employee and the Unions will make best endeavours to ensure that, under normal circumstances as described in the Port Operating Procedures, the port operations are not compromised by unavailability of relief personnel to cover short term or unplanned absences.

(iii) Casual usage:

The incidence of relief days, measures over a representative period (say 6 months), shall be reviewed in conjunction with the ~~annual~~ review of the Port Operating Procedures.

Vertical line of noise or artifacts on the left side of the page.



# ORDER

*Fair Work Act 2009*  
s.437—Protected action

## **Construction, Forestry, Maritime, Mining and Energy Union**

v

**Svitzer Australia Pty Ltd**  
(B2020/442)

DEPUTY PRESIDENT BOOTH

SYDNEY, 28 AUGUST 2020

*Proposed protected action ballot of employees of Svitzer Australia Pty Ltd.*

Pursuant to s.443 of the *Fair Work Act 2009* (the FW Act) the Fair Work Commission orders:

### **1. PROTECTED ACTION BALLOT TO BE HELD**

The Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) is to hold a protected action ballot of employees of Svitzer Australia Pty Ltd described in clause 3 of this order.

### **2. NAME OF PERSON AUTHORISED TO CONDUCT THE BALLOT**

The ballot is to be conducted by Australian Electoral Commission.

### **3. GROUP OR GROUPS OF EMPLOYEES TO BE BALLOTTED**

In accordance with s.437(5) of the FW Act, the employees to be balloted are those who will be covered by the proposed enterprise agreement known as the *Svitzer Australia Pty Limited National Towing Enterprise Agreement 2020*, and are represented by, or are members of, the CFMMEU.

### **4. DATE VOTING CLOSES**

The date by which voting in the protected action ballot is to close is six weeks from the date of this order.

### **5. QUESTIONS**

The questions to be put to voters in the ballot are:

*Do you, for the purpose of advancing claims in the negotiation of an enterprise agreement to govern the terms and conditions of your employment with Svitzer Australia Pty Ltd, authorise protected industrial action, separately, concurrently and/or consecutively in the form of:*

- 1. An unlimited number of stoppages of work of 4 hours duration which may be organised or arranged in consecutive periods?*

*Yes / No*

- 2. An unlimited number of stoppages of work of 24 hours duration which may be organised or arranged in consecutive periods?*

*Yes / No*

- 3. An unlimited number of bans or limitations on the performance of overtime, including recalls from leave, for an indefinite period?*

*Yes / No*

- 4. An unlimited number of bans or limitations on the use of the "Sertica" maintenance system for an indefinite period?*

*Yes / No*

- 5. An unlimited number of bans or limitations on the use of Svitzer Australia online training courses for an indefinite period?*

*Yes / No*

- 6. An unlimited number of bans on the performance of work on any nominated vessel/s or shipping line/s for an indefinite period?*

*Yes / No*

- 7. An unlimited number of bans on the performance of work on Maersk shipping line vessels for an indefinite period?*

*Yes / No*

- 8. An unlimited number of bans or limitations on the performance of any work from 8 hours after the shift commencement time?*

*Yes / No*

- 9. An unlimited number of bans or limitations on the performance of any work from 10 hours after the shift commencement time?*

*Yes / No*

- 10. An unlimited number of bans or limitations on the performance of any work from 12 hours after the shift commencement time?*

*Yes / No*

- 11. An unlimited number of bans or limitations on staying onboard a tug for longer than 16 hours without returning to the Bowen wharf for a 10-hour break for an indefinite period?*

*Yes / No*

- 12. An indefinite number of bans on working from the Abbott point moorings for live on board towage arrangements for an indefinite period?*

*Yes / No*

- 13. An unlimited number of bans or limitations on “ship-to-ship” jobs for an indefinite period?*

*Yes / No*

- 14. An unlimited number of bans or limitations on captive shifts for an indefinite period?*

*Yes / No*

- 15. An unlimited number of bans for a period of 12 hours on casuals working in Westernport or Geelong for an indefinite period?*

*Yes / No*

- 16. An unlimited number of bans for a period of 24 hours on casuals working in Westernport or Geelong for an indefinite period?*

*Yes / No*

- 17. An unlimited number of bans for a period of 48 hours on casuals working in Westernport or Geelong for an indefinite period?*

*Yes / No*

- 18. An unlimited number of bans in Victoria for periods of 12 hours, 24 hours and 48 hours ‘captive’ for N1, N2, D1, D2, M3 and M4 for an indefinite period?*

*Yes / No*

- 19. An unlimited number of bans on breaks being taken away from the ordinary Svitzer Australia tug berth, including temporary mooring at berth other than the ordinary Svitzer Australia tug berth, for an indefinite period?*

*Yes / No*

20. *An unlimited number of bans on the performance of work on any ship arriving or departing from any nominated berth / wharf for an indefinite period?*

*Yes / No*



DEPUTY PRESIDENT

Printed by authority of the Commonwealth Government Printer





Reference: 2020/7912

The General Manager  
Fair Work Commission  
Level 4, 11 Exhibition Street  
Melbourne VIC 3000  
Email: [melbourne@fwc.gov.au](mailto:melbourne@fwc.gov.au)

Paul Garrett  
Construction, Forestry, Maritime, Mining and Energy Union  
[Paul.Garrett@mua.org.au](mailto:Paul.Garrett@mua.org.au)

Katie Davis  
Svitzer Australia Pty Ltd  
[katie.davis@svitzer.com](mailto:katie.davis@svitzer.com)

### Declaration of results – PAB Order: B2020/442

Pursuant to the Protected Action Ballot Order B2020/442 issued by the Fair Work Commission, the AEC has conducted the protected action ballot and the declaration of the result is provided below.

Preliminary scrutiny	
Number of employees on the Roll of Voters (Voters)	240
Postal votes returned by voters	196
Postal votes rejected at the preliminary scrutiny	1
Postal votes admitted to further scrutiny	195
Percentage of postal votes returned*	81.6%

\*This is the number of postal votes admitted to further scrutiny as a percentage of the number of employees on the Roll of Voters (the number of voters who voted).

The further scrutiny has been conducted. The table below provides the results for each question.

Do you, for the purpose of advancing claims in the negotiation of an enterprise agreement to govern the terms and conditions of your employment with Svitzer Australia Pty Ltd, authorise protected industrial action, separately, concurrently and/or consecutively in the form of:

	Question	Yes	No	Informal
1	An unlimited number of stoppages of work of 4 hours duration which may be organised or arranged in consecutive periods?	192	3	0
2	An unlimited number of stoppages of work of 24 hours duration which may be organised or arranged in consecutive periods?	190	5	0

<b>3</b>	An unlimited number of bans or limitations on the performance of overtime, including recalls from leave, for an indefinite period?	191	4	0
<b>4</b>	An unlimited number of bans or limitations on the use of the "Sertica" maintenance system for an indefinite period?	191	4	0
<b>5</b>	An unlimited number of bans or limitations on the use of Svitzer Australia online training courses for an indefinite period?	191	4	0
<b>6</b>	An unlimited number of bans on the performance of work on any nominated vessel/s or shipping line/s for an indefinite period?	190	5	0
<b>7</b>	An unlimited number of bans on the performance of work on Maersk shipping line vessels for an indefinite period?	189	6	0
<b>8</b>	An unlimited number of bans or limitations on the performance of any work from 8 hours after the shift commencement time?	192	3	0
<b>9</b>	An unlimited number of bans or limitations on the performance of any work from 10 hours after the shift commencement time?	192	3	0
<b>10</b>	An unlimited number of bans or limitations on the performance of any work from 12 hours after the shift commencement time?	192	3	0
<b>11</b>	An unlimited number of bans or limitations on staying onboard a tug for longer than 16 hours without returning to the Bowen wharf for a 10-hour break for an indefinite period?	192	3	0
<b>12</b>	An indefinite number of bans on working from the Abbott point moorings for live on board towage arrangements for an indefinite period?	191	4	0
<b>13</b>	An unlimited number of bans or limitations on "ship-to-ship" jobs for an indefinite period?	190	5	0
<b>14</b>	An unlimited number of bans or limitations on captive shifts for an indefinite period?	191	4	0
<b>15</b>	An unlimited number of bans for a period of 12 hours on casuals working in Westernport or Geelong for an indefinite period?	191	4	0

16	An unlimited number of bans for a period of 24 hours on casuals working in Westernport or Geelong for an indefinite period?	191	4	0
17	An unlimited number of bans for a period of 48 hours on casuals working in Westernport or Geelong for an indefinite period?	191	4	0
18	An unlimited number of bans in Victoria for periods of 12 hours, 24 hours and 48 hours 'captivity' for N1, N2, D1, D2, M3 and M4 for an indefinite period?	190	5	0
19	An unlimited number of bans on breaks being taken away from the ordinary Svitzer Australia tug berth, including temporary mooring at berth other than the ordinary Svitzer Australia tug berth, for an indefinite period?	191	4	0
20	An unlimited number of bans on the performance of work on any ship arriving or departing from any nominated berth / wharf for an indefinite period?	191	3	1

I declare that:

- The requisite number of voters (at least 50%) voting in the protected action ballot was achieved.
- The majority of voters who cast a valid vote were in favour of the action set out in question(s) 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19 and 20.
- The majority of voters who cast a valid vote were against the action set out in question(s) - None.



Noopur Madan  
Returning Officer  
Delegate of the Ballot Agent  
Australian Electoral Commission

08/10/2020

Chris Neiberding, Australian Maritime Officers Union (AMOU): [chris@amou.com.au](mailto:chris@amou.com.au)

Greg Yates, Australian Institute of Marine and Power Engineers (AIMPE): [gyates@aimpe.asn.au](mailto:gyates@aimpe.asn.au)

Paul Garrett, Construction Forestry Maritime Mining and Energy Union (MUA): [paul.garrett@mua.org.au](mailto:paul.garrett@mua.org.au)

### ***Without prejudice***

Dear Sirs

I refer to the negotiations for the Svitzer Australia Pty Limited National Towage Enterprise Agreement 2020 and the letter sent to you from Nicolaj on Friday, 4 September 2020, by which he advised that Svitzer would be presenting a new log of claims today and the reasons for the change in position.

Please see below our new log of claims. This log of claims is designed to put the business on a sustainable footing in the long-term so we can continue to offer great jobs. This is about improving our operations – it is not about reducing wages. The risks of not doing this are too great - we are all familiar with companies and industries here in Australia that simply ended up going out of business because they failed to adapt. Svitzer is not willing to let that happen.

1. Term: 4-year agreement.
2. Salary increases: Y1:CPI; Y2:CPI; Y3:CPI; Y4:CPI.
3. Dispute resolution: Replace dispute resolution clause with the model dispute resolution clause.
4. Consultation: Replace all consultation requirements with the Model consultation clause (including by way of example, applying the model consultation clause where required in circumstances of redundancy).
5. Consultation forums: Remove all consultation forums other than the NAB.
6. PoPs, rosters and port management: Simple, efficient, standard process to manage Ports:
  - Remove the PoPs and rely on the EA to cover key general operational requirements in the Port (e.g. minimum rest break of 6 hours; meal breaks; leave in running arrangements; backfilling arrangements at the discretion of Svitzer; rules around start time; methods of receipt of orders, etc). Port specific issues to be addressed only to the extent required.
  - Roster to be developed at a local level and not to be incorporated into the EA. Guidelines for development of rosters to be considered during negotiations. For practical purposes, the EA will include rosters for day 1 (largely reflecting the current rosters in the Port).
  - Rosters to be amended from time to time, in accordance with the consultation clause.

We will present detailed provisions and process of how we propose this be addressed during bargaining.

7. Relief – backfilling and order of pick: Provide the require flexibility to ensure Svitzer can exercise discretion whether or not to backfill absences and choose which crew member to engage for relief/additional work.
8. Delegates: Delegates to perform their roles at their own cost. Remove delegates' right to paid time off to participate in forums and meetings.
9. Casual engagement period: Minimum casual engagement period to be reduced from 24 hours to 2 hours. For clarity in application, salaries for casuals to be included as an hourly rate.

10. Outside Work, emergency operations and salvage: Svitzer discretion to subcontract outside work, without condition. Svitzer able to direct crew (at their discretion) to participate in training for outside work and emergency operations. Relevant crewing for outside work (free running, contract towage and salvage) to be determined by reference to a risk assessment completed by Svitzer from time to time. To agree the safety risk assessment on day 1 of the EA.
11. Maintenance: Maintenance to be conducted as required by Svitzer during available hours and no emergency maintenance allowance to apply.
12. Revalidation of competency certificates: Svitzer will only fund revalidation of short courses required for the employee's base certificate of competency under which they were employed. Svitzer not to be required to support revalidation of courses that are not required for Svitzer's operation.
13. Hiring: Hiring of employees will be in accordance with Svitzer's recruitment policy and meeting capability and safety requirements and not to require consultation.
14. Trainees: Trainee's remuneration to be aligned with industry standards.
15. Accrued Leave (above NES leave): Remove the ability for employees to accrue accrued leave; employees to receive cash instead of accruing accrued leave / receiving a 'dead day'.
16. Recalls: Recalls of permanent employees to be a minimum engagement period of 2 hours (rather than 24 hours).
17. PPT Guarantee: PPT guarantee to move from calendar year to financial year.
18. All agreements: EA to capture all agreements and understandings between the parties. All side agreements to fall away or relevant terms to be incorporated into the EA in full to avoid any confusion.
19. Employment categories: Clarity with respect to available employment categories (including Trainees) and their nature.
20. Employee duties: Clarity with respect to each classification's duties. No requirement for Svitzer to agree with Engineers for any purpose relating to the Engineers' duties and planned maintenance system. Engineers to comply with reasonable management directions, including with respect to maintenance.
21. PPT reviews: Removal of PPT reviews and associated increases / decreases in percentages.
22. PPT conversion: Removal of PPT conversion to permanent full time.
23. Prescribed training courses: Permanent employees to provide 5 days of training per financial year as required by Svitzer when they are not otherwise required to work (as is currently contemplated under clause 19.3.4).
24. Training budget: Svitzer to have complete discretion on investment in training; training budget to be removed.
25. Payment of salaries: Salaries to be paid in arrears.
26. Orders: Orders to be received as required by Svitzer (eg, SMS and mobile).
27. Personal leave bonus: Review personal leave bonus.
28. Notes to salaries: Review notes during bargaining.
29. Allowances: Review port specific allowances.
30. Other: Administrative tidy ups and amendments to ensure compliance with legal obligations.

Yours sincerely,



Nicolaj Noes

**Managing Director**



11 August 2022

Dear employee of Svitzer/member of AIMPE, MUA or AMOU,

Following a recommendation from Deputy President Easton, I convened a mediation today in an attempt to resolve the application to cancel the Svitzer Enterprise Agreement. The Company and the three Unions attended the Commission in Sydney for an all-day conference. The parties agreed to utilise their best endeavours to try and resolve this dispute via 5 days of conciliation over the next three weeks.

There are a number of pre-requisites that I have requested prior to the commencement of the negotiations on 18 August 2022:

1. That both parties will cease in briefing the media in relation to the dispute. This also includes all forms of social media. Unfortunately, a number of journalists have previously been briefed in relation to the dispute and those stories are expected to be published in the coming days. However, the parties agree there will be no further interaction with the media, apart from any immediate response from the Unions in relation to these unpublished stories.
2. That the discussions are without prejudice and confidential. It would not be appropriate for either side to distribute information pertaining to the negotiations to any third party. Obviously, this level of confidentiality does not include the necessary briefing of union members or discussions at a managerial level.
3. For these negotiations to be carried out at the necessary level of good will, both parties must come to the Commission unencumbered. This means that any industrial action that is taking place needs to cease as soon as possible. Obviously, if these negotiations are proven to be unsuccessful then the industrial action can be resumed. Further, I have asked the company to cease the implementation or discussion of any new measures which are likely to cause dispute.
4. I have advised both parties that I expect them to attend these private conferences with the requisite level of good will. The good faith bargaining obligations of the Fair Work Act apply to these negotiations.
5. I have advised both parties that at the conclusion of the negotiations, if deemed appropriate, I will issue a recommendation which could be on the subject of a proposed enterprise agreement or alternatively about the way that either party has participated in the negotiations.

It is my expectation that this dispute will be resolved within a matter of weeks. If both parties are prepared to negotiate, then every dispute is capable of resolution.

Yours sincerely,



Commissioner Bernie Riordan

# PG10

Without prejudice – Final Svitzer offer 20 October 2022 vs Union offer

Svitzer Offer	Union offer
1. <b>Term:</b> Expiry 30 June 2026	31 December 2025
2. <b>Wages:</b> No backpay. 1 Jan 2023 3.5% 1 Jan 2024 CPI capped at 4% and minimum 0 1 Jan 2025 CPI capped at 4% and minimum 0 1 Jan 2026 CPI capped at 4% and minimum 0	1 Jan 22 – 2% 1 Jan 23 – ½ CPI 1 Jan 24 – min 2.5% to CPI capped at 5% 1 Jan 25 – min 2.5% to CPI capped at 5%.
3. <b>Maintenance:</b> as per October drafting	
4. <b>POPs:</b> reinstating PPT relief provision as per 2016 EA, all other changes as per version circulated on 19 October	<ul style="list-style-type: none"> <li>Order of pick as per 2016</li> <li>New proposed clause 5.3</li> </ul>
<p><b>Clause 5.3.2</b> (now amended as follows by removing unenforceable)</p> <p>▲ <a href="#">5.3.2 The Parties must comply with any current Port Operating Procedure that is made in accordance with this Agreement or any predecessor agreement, to the extent that they are enforceable and not inconsistent with the terms of this Agreement.</a></p>	
5. <b>PPT conversion to full time removed as per October 2022 draft</b>	Agreed.
6. <b>70 week cap on redundancy</b>	Agreed
7. <b>Engineers duties</b>	Agreed
8. <b>Engineers minimum qual</b>	Agreed
9. <b>Outside work as per October 2022 draft wording</b>	Agreed
10. <b>Recruitment as per October 2022 draft</b>	Agreed
11. <b>Accrued leave cashing out – Clause 40.2.5 (increase 7 days to 10 days), all other terms as per the October version</b>	<ul style="list-style-type: none"> <li>8<sup>th</sup> day onwards cashed out agreed</li> <li>Agreed day in June for cash out but not agreed to the cashing out to 7 days.</li> </ul>
12. <b>Move PPT guarantee from calendar to financial year</b>	Agreed
13. <b>Removal of TEAMS and TEAMS bonus</b>	Agreed
14. <b>Masters indemnity as per October 2022</b>	Agreed
15. <b>Master qual as per October 2022</b>	Agreed
16. <b>Revalidation courses as per October version– anything about specific courses to be agreed outside of the EA</b>	As per 2016 except for some agreed limitations for engineers
17. <b>Super amendments as per October version drafting with words “or successor fund” after Maritime Super</b>	Agreed
18. <b>Approved forums as per October version with the change below</b>	May be more than those 3 or 4 forums “including but not limited to”
<p><small>Whenre a delegate is required to attends an approved scheduled forum or meeting or is required by the Company to attend any other forum during a leave day, the day of leave will be restored to that delegate.</small></p>	
19. <b>Proposed new clause 15.4.2 as follows:</b>	Fixed-term – want commitment for the fixed-term employees
<p><i>‘Employment for a specified period of time or specified task will be for:</i></p>	



Without prejudice – Final Svitzer offer 20 October 2022 vs Union offer

Svitzer Offer	Union offer
(a) <i>2 consecutive contracts only;</i>	to be made permanent.
(b) <i>a maximum of 2 years'</i>	
<b>20. Other drafting as per the October version</b>	
<b>21. Not agreed</b>	Geelong
<b>22. Not agreed</b>	Maintaining no outsourcing in EA ports
<b>23. Not agreed</b>	Requirement for IRs to be employed in major ports.
<b>24. Not agreed</b>	Reimbursement for delegate's days backdated
<b>25. Not agreed</b>	Get rid of December dates when we reach in principle agreement.
<b>26. Not agreed</b>	Drafting session with Bernie's assistance



**SVITZER AUSTRALIA PTY LIMITED NATIONAL  
TOWAGE ENTERPRISE AGREEMENT 20~~22~~<sup>24</sup>**

**Without Prejudice –26 October 2022 and subject to overall agreement  
and Unions dropping all of their recent claims**

**Table of Contents**

<b>PART 1 - APPLICATION AND OPERATION .....</b>	<b>3</b>
1. Title .....	3
2. Operation of Agreement .....	3
3. Definitions and Interpretation.....	3
4. Application .....	5
5. Operation and Relationship with other Industrial Instruments.....	6
The POPs are not incorporated as a term of this Agreement for the particular Port concerned. This Agreement prevails over applicable Port Operating Procedures, which have no effect to the extent of any inconsistency with any term of this Agreement. ....	
6. No Extra claims.....	6
7. Variation of this Agreement .....	6
8. Enterprise flexibility .....	7
9. Renegotiation of this Agreement .....	8
<b>PART 2 – CONSULTATION AND DISPUTE RESOLUTION.....</b>	<b>9</b>
10. Continuity of Operations and Dispute Resolution Procedure .....	9
11. Consultation, Communication and Information Sharing .....	10
12. Authorised Meetings .....	15
13. Reduction, Cessation or Growth in Business .....	15
14. Rights and Responsibilities of Delegates .....	15
<b>PART 3 - ENGAGEMENT AND TERMINATION OF EMPLOYMENT .....</b>	<b>17</b>
15. Categories of Employment and Engagement.....	17
16. Selection and Recruitment.....	20
17. Employee Duties.....	23
18. Work Health and Safety.....	27
19. Training and Skill Development .....	28
20. Termination of Employment.....	32
21. Redundancy.....	33
<b>PART 4 – SALARIES, ALLOWANCES AND RELATED MATTERS .....</b>	<b>36</b>
22. Payment of Salaries.....	36
23. Induction Payment – Masters and Engineers.....	36
24. Salaries .....	37
25. Superannuation .....	39
26. Travel Expenses .....	42
27. Industrial and Protective Clothing.....	43
28. Communications .....	44
29. Nominated Voyages Allowance .....	45
30. Outside Work .....	45
31. Salvage Work .....	47

32.	Emergency maintenance .....	47
33.	Penalty payment - extended hours .....	48
34.	Extreme weather alert allowance .....	48
35.	Port-specific allowances and deductions.....	49
36.	Compensation for Personal Effects Lost .....	49
37.	Accident Pay .....	49
38.	Counselling Services .....	50
39.	Compensation for Loss of Certificate of Competency .....	50
<b>PART 5 - HOURS OF WORK AND RELATED MATTERS (Note: Already discussed and agreed during conciliation drafting session; the only change from those session is highlighted in yellow)</b>		<b>52</b>
40.	Hours of Work and Related Matters .....	52
<b>PART 6 – LEAVE.....</b>		<b>57</b>
41.	Leave .....	57
42.	Discharge of accrued leave .....	58
43.	Personal/Carer's Leave .....	59
44.	Compassionate Leave .....	60
45.	Unpaid Leave.....	61
46.	Community Service Leave.....	61
47.	Parental Leave.....	61
48.	Long Service Leave .....	61
49.	Defence Leave.....	62
<b>PART 7 – OTHER .....</b>		<b>63</b>
50.	Masters Indemnity .....	64
51.	Master's Overriding Authority .....	65
<b>PART 7 – EXECUTION.....</b>		<b>66</b>
Signatures.....		66
<b>SCHEDULES .....</b>		<b>i</b>
Schedule 1 – Salaries (Refer clause 24).....		i
Schedule 1B – Training Salaries (Refer clause 24.5) .....		ii
Schedule 2 - National Allowances .....		iii
Schedule 2A - Nominated Voyages Allowance (refer clause 29).....		iii
Schedule 2B - Allowance for Outside work and Salvage work (refer clauses 30 and 31) .		iv
Schedule 2C – Emergency Maintenance Allowance (refer clause 32) .....		iv
Schedule 2D - Penalty payment - extended hours (refer clause 33) .....		iv
Schedule 2E - Extreme weather alert allowance (refer clause 34) .....		iv
Schedule 3– Port Specific Allowances and Deductions (refer clause 35) .....		v

## PART 1 - APPLICATION AND OPERATION

### 1. Title

This Agreement is entitled the Svitzer Australia Pty Limited National Towage Enterprise Agreement 2022~~16~~ (“Agreement”).

### 2. Operation of Agreement

2.1 This agreement comes into operation on the Commencement Date.

2.2 The nominal expiry date of this Agreement is 31 December 2019 4 years from the date the Agreement is approved by the Fair Work Commission.

### 3. Definitions and Interpretation

#### 3.1 Definitions

3.1.1 **Act** means the *Fair Work Act 2009* (Cth) or its successor.

3.1.2 **AIMPE** means the Australian Institute of Marine and Power Engineers.

3.1.3 **AMOU** means the Australian Maritime Officers Union.

3.1.4 **Award** means the Marine Towage Award 2020~~2010~~, as varied or replaced.

3.1.5 **Commencement Date** means the date when this Agreement comes into operation as provided in the Act.

3.1.6 **Contract towage** means when a tug is towing a vessel from one location to another location, where that tow or other services of a non-emergency nature has been contracted for and pre-planned by the employer.

3.1.7 **Emergency maintenance work** means work which is necessary to reinstate into service a tug which would otherwise be out of service.

3.1.8 **Emergency operations** means when a tug is called on at short notice to leave a port to assist a vessel broken down or in distress (excluding salvage work).

3.1.9 **Employee** means an employee of Svitzer Australia Pty Limited to whom this Agreement applies, who is employed in the classification of Master, Engineer or Rating.

3.1.10 **Financial Year** means each year commencing 1 July and ending 30 June, subject to the provisions of clause 50 – Transitional Arrangements.

3.1.11 **FWC** means Fair Work Commission or its successor.

3.1.12 **Maintenance** includes, corrective, preventative, planned, critical and non-critical maintenance and emergency maintenance.

3.1.13 **MUA** means Maritime Union of Australia Division of the Construction, Forestry, Maritime, Mining and Energy Union.

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

3.1.143.1.14 **NES** means the National Employment Standards as contained in the *Fair Work Act 2009* (Cth).

3.1.143.1.15 **Nominated Voyage** means a free-running voyage as specified in clause 29 and Schedule 2A of this Agreement.

3.1.153.1.16 **Outside Work** means work on a tug which proceeds to sea on a special voyage outside the limits of bays, rivers or regulated port boundaries or limits but within Australian territorial waters, excluding Nominated Voyages.

3.1.163.1.17 **Parties** means Svitzer Australia Pty Limited, a Union covered by this Agreement, and the Employees covered by this Agreement.

3.1.173.1.18 **Port Operating Procedures** or **POPs** means the operating procedures applying in a particular port which set out details in respect of the matters referred to in clause ~~41.2~~ 40.1 for that particular Port.

3.1.183.1.19 **PPT Guarantee** means the prescribed proportion (%) of full time employment for each Financial Year (less than 100%) as agreed between Svitzer and the Employee as at the commencement of their employment in their employment letter and as varied from time to time by agreement.

3.1.193.1.20 **Salvage work** means work performed under a contract for salvage or under the Lloyd's Open Form of Salvage Agreement.

3.1.203.1.21 **Special Voyage** means a voyage for which it is necessary to set watches including any special free running voyage, delivery voyage, contract towage or emergency operations.

3.1.213.1.22 **Svitzer** means Svitzer Australia Pty Limited (ACN 000 045 009).

3.1.223.1.23 **Tug and Barge operations** means the movement of contract cargoes by combined tug and barge (up to a maximum of 10,000 tonnes) between different ports or locations in Australia.

3.1.233.1.24 **Trainee** means an Employee of Svitzer who is employed as a Trainee under clause 15.6 and who is sponsored by Svitzer to undergo a Traineeship.

3.1.243.1.25 **Traineeship** means a structured course of accredited training, under which a Trainee acquires skills and competence and relevant qualifications to become eligible to work on Svitzer's tug fleet under this Agreement.

3.1.253.1.26 **Union** means the AMOU or AIMPE or MUA respectively.

3.1.263.1.27 **Unions** means the AMOU, AIMPE and MUA collectively.

## 3.2 Interpretation

3.2.1 It is the intention of the parties that all of the provisions of this Agreement pertain to the employment relationship [or are ancillary thereto] and the Agreement will be given that effect wherever possible. It is also the intention of the parties that if any clause or sub-clause is found not to pertain to the employment relationship [or be ancillary thereto] or otherwise found not to be enforceable, then the particular clause or sub-clause will be inoperative but the remainder of the Agreement will continue in force.

3.2.2 A reference in this Agreement to an instrument includes a reference to the instrument as amended or varied from time to time.

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

#### **4. Application**

4.1 The Agreement covers and binds:

4.1.1 Svitzer Australia Pty Limited; and

4.1.2 The AMOU, AIMPE and MUA providing that, in approving the Agreement, FWC notes that the Agreement covers the respective Union; and

4.1.3 Employees and Trainees employed by Svitzer, in relation to work performed by Employees on tug boats in or about the ports specified in Schedule 1.

4.2 Exclusions

4.2.1 This Agreement does not cover Employees employed by Svitzer:

- (i) in work covered by the Dredging Industry Award 2010 or its successor;
- (ii) in work on lines boats and mooring launches;
- (iii) in all tugboat operations in the port of Darwin or any other port not specified in Schedule 1;
- (iv) the tug and barge operations at the Koolan Island Project (WA).
- (v) Contract towage or Tug and Barge operations that are the subject of another enterprise agreement.

(vi) Who performs any work that falls within the scope of the following enterprise agreements (or their successor):

(a) Svitzer Port of Darwin Masters Towage Agreement 2019;

(b) Svitzer Port of Darwin Engineers Towage Agreement 2019;

(c) Svitzer Port of Darwin Ratings Towage Agreement 2019;

(d) Svitzer Australia Pty Limited Port Kembla Lines and Mooring Enterprise Agreement 2017;

(e) SVITZER Australia Port of Eden Lines and Launch Services Agreement 2019;

(f) Svitzer Australia Pty Ltd and Maritime Unions Port of Fremantle Lines and Launches Enterprise Agreement 2019;

(g) Svitzer East Coast Operations Centre Enterprise Agreement 2021;

(h) Svitzer Australia Pty Ltd Maritime Offshore Oil and Gas Industry (Integrated Ratings, Cooks, Caterers and Seafarers) Enterprise Agreement 2019;

(i) Svitzer Australia Pty Ltd Australian Institute of Marine and Power Engineers Offshore Oil and Gas Industry Enterprise Agreement 2010;

(j) Svitzer Australia Pty Ltd and Australian Maritime Officers Union Offshore Oil and Gas Enterprise Agreement 2010; or

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

(k) Any other enterprise agreement covering Svitzer Australia Pty Limited that is subsequently approved by the Fair Work Commission after the commencement date of the Agreement.

~~(a)(l)~~ Svitzer Australia Pty Limited and MUA Newcastle Lines and Mooring Enterprise Agreement 2019

## 5. Operation and Relationship with other Industrial Instruments

### 5.1 Interaction with Award

5.1.1 The Award and its terms have no effect in relation to work described in clause 4.1.3 unless otherwise provided in this Agreement.

### 5.2 Interaction with other Agreements

5.2.1 This Agreement replaces ~~each of the following enterprise agreements:~~ Svitzer Australia Pty Limited National Towage Enterprise Agreement 2016.

~~(i) Svitzer Australia Pty Limited and AMOU Towage Enterprise Agreement 2013;~~

~~(ii) Svitzer Australia Pty Limited and AIMPE Towage Enterprise Agreement 2013; and~~

~~(iii) Svitzer Australia Pty Limited and MUA Towage Enterprise Agreement 2013.~~

5.2.2 This Agreement excludes any other agreement that may otherwise cover the Parties in relation to work described in clause 4.1.3.

### 5.3 Interaction with POPs

The POPs are not incorporated as a term of this Agreement for the particular Port concerned. ~~However, this~~ This Agreement prevails over applicable Port Operating Procedures, which have no effect to the extent of any inconsistency with any term of this Agreement.

The parties agree that the PoPs are made consistent with the terms of this Agreement. The parties covered by this Agreement consent to the application of the dispute resolution clause (clause 10) for the FWC to conciliate or arbitrate or determine an interpretation of the PoPs.

## 6. No Extra claims

6.1 Subject to this Agreement, from the Commencement Date until the nominal expiry date, there will not be any extra claims, with respect to the terms and conditions of employment of Employees bound by this Agreement.

## 7. Variation of this Agreement

7.1 This Agreement may be varied prior to its nominal expiry date either to reflect agreements reached in response to changed circumstances as provided in clause 13, for the purposes of ensuring appropriate consistency with the terms and conditions granted to other comparable Employees in the Company's towage operations, or otherwise.

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

**8. Enterprise flexibility**

- 8.1 Notwithstanding any other provision of this Agreement, Svitzer and an individual Employee may agree to vary the application of certain terms of this Agreement to meet the genuine individual needs of the Company and the individual Employee. The terms Svitzer and the individual Employee may agree to vary the application of are those concerning:
- 8.1.1 arrangements for when work is performed or leave taken;
  - 8.1.2 the cashing out of an Employee's entitlements to paid leave under this Agreement. However any such agreement must ensure the Employee retains the minimum leave balances stipulated by the Act, and that the Employee be paid at least the full amount that would have been payable to the Employee had the Employee taken the leave that the Employee has forgone;
  - 8.1.3 for Masters and Engineers, the performance of additional functions such as management support functions.
- 8.2 Svitzer and the individual Employee must have genuinely made the agreement without coercion or duress.
- 8.3 The agreement between Svitzer and the individual Employee must:
- 8.3.1 be confined to a variation in the application of one or more of the terms listed in clause 8.1; and
  - 8.3.2 result in the Employee being better off overall than the Employee would have been if no individual flexibility agreement had been agreed to.
- 8.4 The agreement between Svitzer and the individual Employee must also:
- 8.4.1 be in writing, name the parties to the agreement and be signed by Svitzer and the individual Employee;
  - 8.4.2 state each term of this Agreement that Svitzer and the individual Employee have agreed to vary;
  - 8.4.3 detail how the application of each term has been varied by agreement between Svitzer and the individual Employee;
  - 8.4.4 detail how the agreement results in the individual Employee being better off overall in relation to the individual Employee's terms and conditions of employment; and
  - 8.4.5 for an agreement under clause 8.1.2, each cashing out of a particular amount of paid leave must be documented in a separate written agreement;
  - 8.4.6 state the date the agreement commences to operate.
- 8.5 Svitzer must give the individual Employee a copy of the agreement and keep the agreement in the Employee's individual records.
- 8.6 Except as provided in clause 8.4.1 the agreement must not require the approval or consent of a person other than Svitzer and the individual Employee.
- 8.7 The agreement may be terminated:
- (i) by Svitzer or the individual Employee giving four weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

(ii) at any time, by written agreement between Svitzer and the individual Employee.

8.8 The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between Svitzer and an individual Employee contained in any other term of this Agreement.

**9. Renegotiation of this Agreement**

9.1 The parties agree to commence negotiations for an agreement to replace this Agreement at least three (3) months prior to the nominal expiry date of this Agreement.



---

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

---

## **PART 2 – CONSULTATION AND DISPUTE RESOLUTION**

### **10. Continuity of Operations and Dispute Resolution Procedure**

- 10.1 The following procedure shall apply to settle disputes about any matters arising under this Agreement and in relation to the NES or in relation to disputes arising under the Port Operating Procedures or Port Operating Procedures variations proposed under clause 40.4.
- 10.2 The parties to a dispute must genuinely attempt to resolve the dispute at the workplace level as follows.
- 10.2.1 As soon as practicable after a dispute arises an Employee must speak to his or her immediate supervisor or manager and give the supervisor or manager an opportunity to resolve the dispute.
- 10.2.2 If the dispute remains unresolved, the Employee may request a representative, which may be a Union delegate or officer, to progress the matter with the immediate supervisor or manager
- 10.2.3 Where the delegate or representative of the Union on the tug becomes aware of any such matter he or she may take it up with the local manager.
- 10.2.4 In the case of a matter arising at federal level, the Employee's representative or relevant federal official of the union concerned and the appropriate regional or national company representative concerned shall discuss the matter and endeavour to resolve it.
- 10.2.5 If the matter cannot be settled it shall be referred to FWC for conciliation and/or arbitration.
- 10.3 Dispute Settlements - The above steps shall not preclude the right of any party to refer a dispute to the Fair Work Commission. In these circumstances, FWC shall retain its discretion to either refer the parties back to a continuation of this procedure (where FWC considers that course as appropriate), or conduct conciliation proceedings and where the FWC cannot settle the matter by conciliation, determine the matter.
- 10.4 Work shall continue pending determination of any matter or dispute in accordance with the above procedures except in circumstances where an Employee holds a reasonable concern about an imminent risk to his or her health or safety. Subject to relevant provisions of work health and safety law, even if the Employee has a reasonable concern about an imminent risk to his or her health or safety, the Employee must not unreasonably fail to comply with a direction by Svitzer to perform other available work that is safe and appropriate for the Employee to perform. The fact that the Employee continues to work will not prejudice the Employee or Svitzer.
- 10.5 Continuity of Operations
- Pending the completion of the procedure set out in this clause, work shall continue without interruption. No party shall engage in unlawful action and pending the resolution of the dispute the status quo shall apply. The rights of individuals or parties under the Act shall not be prejudiced by the fact that work has continued under this process normally and without interruption.

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

**11. Consultation, Communication and Information Sharing**

This clause does not affect the operation of clauses [13 (Reduction, Cessation and Growth) or clause 40.4 (Variations to the PoPs)].

11.1 This term applies if the employer:

11.1.1 has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or

11.1.2 proposes to introduce a change to the regular roster or ordinary hours of work of employees

**Major change**

11.2 For a major change referred to in paragraph 11.1.1:

11.2.1 the employer must notify the relevant employees of the decision to introduce the major change; and

11.2.2 subclauses 11.3 to 11.9 apply.

11.3 The relevant employees may appoint a representative for the purposes of the procedures in this term.

11.4 If:

11.4.1 a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and

11.4.2 the employee or employees advise the employer of the identity of the representative;

the employer must recognise the representative.

11.5 As soon as practicable after making its decision, the employer must:

11.5.1 discuss with the relevant employees:

(i) the introduction of the change; and

(ii) the effect the change is likely to have on the employees; and

(iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and

11.5.2 for the purposes of the discussion—provide, in writing, to the relevant employees:

(i) all relevant information about the change including the nature of the change proposed; and

(ii) information about the expected effects of the change on the employees; and

(iii) any other matters likely to affect the employees.

11.6 However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

11.7 The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.

11.8 If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in paragraph 11.2 (11.2.1) and subclauses 11.3 and 11.5 are taken not to apply.

11.9 In this term, a major change **is likely to have a significant effect on employees** if it results in:

11.9.1 the termination of the employment of employees; or

11.9.2 major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or

11.9.3 the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or

11.9.4 the alteration of hours of work; or

11.9.5 the need to retrain employees; or

11.9.6 the need to relocate employees to another workplace; or

11.9.7 the restructuring of jobs.

**Change to regular roster or ordinary hours of work**

11.10 For a change referred to in paragraph 11.1.2:

~~44.2.2~~11.10.1 the employer must notify the relevant employees of the proposed change; and

11.10.2 subclauses 11.11 to 11.15 apply.

11.11 The relevant employees may appoint a representative for the purposes of the procedures in this term.

11.12 If:

~~44.2.3~~11.12.1 a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and

11.12.2 the employee or employees advise the employer of the identity of the representative;

the employer must recognise the representative.

11.13 As soon as practicable after proposing to introduce the change, the employer must:

~~44.2.4~~11.13.1 discuss with the relevant employees the introduction of the change; and

11.13.2 for the purposes of the discussion—provide to the relevant employees:

- (i) all relevant information about the change, including the nature of the change;
- and

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

(ii) information about what the employer reasonably believes will be the effects of the change on the employees; and

~~(+)(iii)~~ information about any other matters that the employer reasonably believes are likely to affect the employees; and

(iv) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).

11.14 However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

11.15 The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.

11.16 In this term:

**relevant employees** means the employees who may be affected by a change referred to in subclause (1).

4.3.11.17 General

4.3.11.17.1 The parties agree that effective consultation and communication under this Agreement, based on the following principles, is essential in ensuring the Agreement contributes to the success of the Company:

- (i) consultation and communication must provide opportunities for participation of all work groups or ranks in respect of common matters under this Agreement;
- (ii) fair and equitable treatment of Employees ensured - for individuals, members of their particular work group or rank, and all tugboat crew members in a port;
- (iii) Employees' respective representational rights and obligations under clause 14 must be respected;
- (iv) dispute resolution mechanisms under this Agreement, including clause 10 must be adhered to.

4.3.211.17.2 Information sharing will be achieved through both formal and informal means, such as presentations, newsletters and other appropriate avenues.

4.3.311.17.3 It is agreed between the parties that consultation will occur between management and the Employees principally at the port level. Formal structures will be established to enable consultation to take place on a regular basis between Svitzer, the Employees representatives and the Unions representing all Employees on a regular basis. This will occur in the following forums:

- (i) National Advisory Board;
- (ii) Port Advisory Group;
- ~~(iii) Tug Efficiency and Management Systems ("TEAMS");~~
- ~~(iv)~~ (iii) Workplace Council;

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

~~(v)~~(iv) Svitzer Workforce Planning and Development Committee established for each classification or work group.

11.4.11.18 Consultation Forums

11.4.11.18.1 National Advisory Board:

This comprises Senior Management and two representatives from each of the three Maritime Unions, and is the senior consultative forum where detailed commercial issues will be discussed which enables union officials to appreciate the commercial and operational requirements of the business. The National Advisory Board operates in accordance with its Charter made on 17 February 2012.

11.4.211.18.2 Port Advisory Group:

This is the forum for local communication and information sharing to enable all towage Employees to have input in the local daily operation of the business. The Port Advisory Group shall comprise representatives of each department and Svitzer management.

- (i) Svitzer will, subject to compliance with privacy laws and provided the information is not commercially sensitive or confidential, share with Employees via quarterly newsletter or reports the following data about their home port:
- (a) crew recalls;
  - (b) casual usage;
  - (c) scratch crew usage;
  - (d) port volumes;
  - (e) unplanned absences;
  - (f) permanent part-time Employee utilisation; and
  - (g) accrued leave banks.

**Tug Efficiency and Management Systems (“TEAMS”)**

- (i) ~~The basis for the operation of TEAMS and its co-ordinating committee is established by the TEAMS Framework Memorandum.~~
- (ii) ~~The purpose of TEAMS is to:~~
- (a) ~~manage controllable cost and improve performance through engaging the workforce and using their skills in the management of the business; and~~
  - (b) ~~to ensure a sustainable future for Svitzer and its towage Employees by being the preferred provider of marine services and an employer of choice to the maritime labour market.~~
- (iii) ~~In the above respects, TEAMS shall ensure that maintenance, tug safety and crew member duties and responsibilities shall not be compromised by an initiative to cut costs.~~

---

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

---

- ~~(iv) If a disagreement arises involving a matter relating to the operation of TEAMS:~~
  - ~~(a) the matter may be referred to the Port Advisory Group (if it is a matter affecting the operation of one Port); or~~
  - ~~(b) the matter may be referred to the National Advisory Board if it is a matter affecting the operation of more than one Port, the TEAMS Framework Memorandum, or a matter that could not be resolved by discussion at the Port Advisory Group.~~
  - ~~(c) The matter will not be referred to the Dispute Resolution procedure in clause 10, until the preceding steps have been taken.~~

#### 11.18.3 Workplace Council

- (i) The workplace council will meet at least once during the term of this Agreement. The workplace council is not a forum for the discussion of industrial disputes or individual grievances, but rather provides a forum for the exchange of views between representatives of the Employees and senior management, where, in addition to local consultative processes and through sharing information about industry matters and company prospects, greater trust and respect can be established.
- (ii) The workplace council will comprise one representative from each Port specified in Schedule 1 for each classification specified in clause 24.1.1, and a national officer of each Union. It is anticipated the workplace council would be scheduled over 2 days.
- (iii) Svitzer will ensure that appropriate members of the senior management, corporate staff and port manager/s attend the meeting to enable detailed and open discussion of the issues.
- (iv) The cost of travel, meals and accommodation required to facilitate attendance at the workplace council meeting will be met by Svitzer.
- (v) It is agreed that as a requirement of participation in this process, the participants will convey the information received at the council to the relevant Employees within their region fairly and impartially, unless the information is identified as being confidential by Svitzer, in which case the representative will respect such confidentiality.

#### 11.18.4 Svitzer Workforce Planning and Development Committee

Clause 19.4 describes the composition, functions and operation of this Committee.

#### 11.19 Consultation and new class of vessel

11.19.1 When Svitzer proposes to introduce a harbour tug into the Australian fleet it will advise the Unions.

11.19.2 Senior Management will then consult with the relevant Employee representatives including the officials of the Unions regarding the vessel, and where appropriate and agreed, the extent and nature of any inspection trip to be undertaken by Employees and/or Employee organisation representatives, and the program for introducing the new vessel at the destination Port.

---

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

---

~~11.5.3~~11.19.3 Svitzer will arrange for an independent and internationally reputable asbestos surveyor to inspect each new vessel for asbestos, and provide the Union with a copy of the inspection report, prior to the arrival of the new vessel in Australia. Any remedial action shall be undertaken as per the requirements of Svitzer's Asbestos Management Plan which has been developed to manage all obligations in all circumstances under all applicable regulatory frameworks for asbestos management, using a single and nationally consistent approach.

**12. Authorised Meetings**

12.1 Meetings of Employees

Meetings of Employees will be allowed without loss of salary, provided that the meetings and their duration are arranged so as to avoid any disruption whatsoever to operations.

**13. Reduction, Cessation or Growth in Business**

13.1 The parties have entered into this Agreement in the expectation that the terms of this Agreement will apply for the life of the Agreement.

13.2 However, if circumstances affecting the business, either across the board or in a particular port will lead to a reduction, cessation or growth of port business, Svitzer and the Union will confer in an attempt to resolve any issues arising from the change in circumstances. The parties will attempt to resolve such issues in accordance with the dispute resolution procedure, clause 10 of this Agreement, including by reference to FWC to have FWC determine the reasonableness of any proposals to address the changed circumstances. Where found to be reasonable by FWC, the Company proposals will be implemented.

13.3 In the event of substantial changes in roster arrangements (which may include roster arrangements providing for the introduction of "captivity" for a port) or the level of towage operations or other relevant circumstances, the parties agree to review, and where necessary, adjust the salaries referred to in clause 24 of this Agreement.

13.4 If, as a result of the review referred to above, it is necessary to alter salary levels, the parties agree to take such steps as are required by the Act and clause 7 to vary this Agreement accordingly.

**14. Rights and Responsibilities of Delegates**

14.1 The parties to this Agreement believe that good workplace relations are essential for the well being of Employees and as a pre-requisite for a safe and productive enterprise.

14.2 Part of this includes acknowledgement of the role of workplace delegates and in enhancing efficiency the following principles are agreed:

- (a) The delegate has the right to fair treatment and to perform their role without discrimination in their employment.
- (b) The delegate has the right to formal recognition by the company and its representatives.
- (c) The delegate has the right to consult with workplace staff and management and will be given reasonable access around the workplace to facilitate this.

---

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

---

~~(d)~~ The delegate has the right to reasonable paid time off to participate in approved forums and meetings with the company during the Employees normal duty cycle, and all reasonable endeavours will be made to schedule these activities when the delegate is at work, shipping requirements permitting.

Where a delegate is required to attend a scheduled forum or meeting during a leave day, the day of leave will be restored to that delegate.

~~(d)~~~~(e)~~ The delegate has the right to relevant training as agreed.

~~(e)~~~~(f)~~ The delegate has the right to reasonable access to workplace equipment such as facsimile, photocopying, e-mail, internet etc. provided that this does not interfere with the normal operations of other staff.

~~(f)~~~~(g)~~ The delegate has the right to place necessary union information on company noticeboards.

~~(g)~~~~(h)~~ The delegate has the right to take reasonable leave without pay to work with the Union at a time agreed with the company.

14.3 It is acknowledged by the parties that in carrying out their role workplace delegates also have a number of responsibilities. These include:

- (a) Acting in a courteous and professional manner in their role;
- (b) The responsibility to raise workplace issues in a timely fashion and work co-operatively with the Company to resolve issues.
- (c) Workplace delegates must deal in a professional manner with all Employees, regardless of union membership status.
- (d) Adhere to Svitzer policies and procedures whilst carrying out their role. This includes using equipment made available in a manner consistent with Svitzer policies on acceptable use of e-mail and internet, harassment and discrimination.



## **PART 3 - ENGAGEMENT AND TERMINATION OF EMPLOYMENT**

### **15. Categories of Employment and Engagement**

#### 15.1 Employment Categories

15.1.1 An Employee under this Agreement may be engaged in one of the following employment categories:

- permanent full time,
- permanent part time,
- Employee engaged for a specified period of time / task, or
- casual employment,

in accordance with clauses 15.2 to 15.6 respectively.

15.1.2 At the time of engagement an Employee will be advised in writing of:

- (i) the category of employment in which the person is employed and
- (ii) as appropriate, the duration or expected duration of the engagement and the specified period of time or task;
- (iii) any requirement and likely duration of induction in relation to clause 23.

#### 15.2 Full-time employment

15.2.1 A permanent full time Employee is an Employee who is engaged to work on a full time basis in accordance with this Agreement and the Port Operating Procedures in the port in which the Employee is engaged.

#### 15.3 Permanent Part-time employment

15.3.1 Subject to the terms of this Agreement, a part time Employee receives, on a pro-rata basis, equivalent salary and conditions as a full-time Employee.

15.3.2 A permanent part time Employee is an Employee who is engaged for a prescribed proportion (%) of full time employment (less than 100%), and who is required to work at least the number of corresponding days per annumFinancial Year. (For example, an Employee who is engaged in a 50% permanent part-time role will be required to work at least 91 days per annumFinancial Year.)

15.3.3 Review of permanent part time Employee's percentage (%)

- (i) The proportionality of the engagement of each permanent part-time Employee will be reviewed each year on the employee's anniversary date (of their engagement):-
- (ii) The review will include consideration of the proportion of days worked by the employee in the previous year, and the reasons for any major

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

divergence between the Employee's percentage and the proportion of work actually performed.

~~(iii) If there is major divergence between the employee's percentage and the proportion of work actually performed by the employee, the employee's percentage will be either increased or decreased for the next 12 months to reflect the previous year's work activity, unless there are exceptional circumstances that explain the divergence; an adjustment to the percentage will not fall below the prescribed percentage (%) of full time employment under which the Employee was first engaged.~~

~~(iv) A permanent part time employee may seek the result of the review within 30 days from the date of their anniversary and elect to increase their percentage (%) based on this review. The Company will consider the criteria in this clause and act reasonably in considering the request.~~

~~For the purpose of sub-clause 15.3.3(iii):~~

~~(a) 'exceptional circumstances' includes but is not limited to unplanned leave; long service leave, or long planned leave, which is relieved by the relevant permanent part-time Employee, one off increase in volume in the relevant port associated with non-recurring work.~~

~~(b) When considering whether to increase or decrease the Employee's percentage, the Company will also take into account future forecast volume in the Port including but not limited to, for example, due to forecasted volume due to a pandemic or as a result of another towage provider entering the relevant port or loss of business or contract or potential increase in the volume due to customer win.~~

~~15.3.4 Conversion of permanent part-time employment to permanent full-time employment~~

~~(i) This clause 15.3.4 commences operation on 1 January 2017.~~

~~(ii) If a permanent part-time Employee worked, on average, at least the number of days ordinarily worked by a full-time Employee (100%) annually, the Employee may make an election to convert their employment to full-time employment, if the employment is to continue beyond the conversion process, in accordance with this clause 15.3.4.~~

~~Note: Conversion to full-time employment under this clause 15.3.4 does not guarantee predictable rostered leave.~~

~~(iii) Availability and Timing of election:~~

~~(a) For permanent part-time employees who were in permanent part-time employment on the Commencement Date: on 1 January 2017 for 2017, and after 2017, annually on the employee's anniversary date; or~~

~~(b) For permanent part-time employees not covered by paragraph A: on the employee's anniversary date.~~

~~(iv) Process for election~~

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

~~(a) — A permanent part-time Employee, who has met the requirements in paragraph (i), may provide Svitzer with written notice electing to convert their contract of employment to full-time employment within four (4) weeks after the date specified in paragraph (iii).~~

~~Within four (4) weeks of receiving such notice the Company must consent to or refuse the election but must not unreasonably so refuse.~~

~~(b) — Once a permanent part-time Employee has elected to become and been converted to a full-time Employee, the Employee may only revert to permanent part-time employment by written agreement between Svitzer and the Employee.~~

(v) An Employee must not be engaged and re-engaged to avoid any obligation under this clause 1.1.1.

~~15.3.5~~ 15.3.4 Job sharing

Job sharing arrangements between permanent full-time employees may be implemented where there has been mutual agreement between the employees concerned and the Company, and consultation has occurred with the Union.

15.4 Employment for a specified period of time or specified task

15.4.1 An Employee engaged for a specified period of time or a specified task is an Employee who works on either a permanent full time or permanent part time basis, but is engaged for a specified period of time or specified task.

15.5 Casual employment

15.5.1 A casual Employee is an Employee who is not regularly rostered to work, but is engaged daily for periods of one day or more.

15.5.2 Casual conversion

Casual Employees employed by Svitzer may have their casual employment converted to permanent employment, which may be either full-time or part-time employment, in accordance with Part 2-2, Division 4A – ‘Offers and Requests for Casual Conversion’ of the Act as varied from time to time.

~~15.5.2~~ 15.5.3 Terms of casual engagement

- (i) Subject to clause 15.5.3(ii), daily start and finish times and the timing and duration of breaks for casual Employees will align with those times that apply to permanent Employees in the port.
- (ii) Where Svitzer requires the casual Employee(s) to work at different times due to unusual operational requirements, the start time will commence at the start time notified.
- (iii) Where the start time notified is brought ahead and the casual Employee is available for duty then the casual engagement will commence from the new start time.

15.6 Trainees

15.6.1 A person may be engaged as a Trainee. Remuneration and conditions of Trainees

are set out in clause 24.5.

- 15.6.2 When Trainees satisfactorily complete their Traineeship, they will become eligible to apply to Svitzer for available employment as an Employee under one of the employment categories specified in clauses 15.2 to 15.5 above. However, there is no implied right for Trainees to be so engaged.

## 16. Selection and Recruitment

### Interpretation

For the purpose of clause 16.1.1(ii) from “the area of operation concerned” is:

the ‘respective Union’ is:

- (i) \_\_\_\_\_ for a Master (including a Master Trainee), the AMOU;
- (ii) \_\_\_\_\_ for an Engineer (including an Engineer Trainee), the AIMPE; and
- (iii) \_\_\_\_\_ for a Rating (including a Rating Trainee), the MUA.

The ‘area of operation’ concerned is:

- (iv) \_\_\_\_\_ for a Master position (including a Master Traineeship), the Masters; and
- (v) \_\_\_\_\_ for an Engineer position (including an Engineering Traineeship), the Engineers; and
- (vi) \_\_\_\_\_ for a Rating position (including a Rating Traineeship), the Ratings.

### 16.1 Recruitment

16.1.1 Process for recruitment of permanent Employees and trainees.

Where Svitzer intends to recruit permanent Employees and Trainees it will:

- (i) Advertise the position (the respective Union will be advised of this or be given a copy of the advertisement and it may identify candidates for consideration);
- (ii) Screen and interview applicants (an agreed Employee from the area of operation concerned will be invited to participate in the shortlisting and interview process) at no cost to Svitzer and subject to compliance with privacy laws and Svitzer privacy policies;
- (iii) Check references and medical fitness for the job;

~~16.1.2 Process for recruitment of casual Employees~~

~~To facilitate selection and engagement of suitable and qualified casual Employees, Svitzer will, in consultation with the respective Union:~~

- ~~(i) \_\_\_\_\_ develop and maintain a list of suitably qualified casual candidates;~~

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

~~(ii) — screen and interview candidates for potential or actual casual employment (an agreed Employee from the area of operation concerned will be invited to participate in the interview process);~~

~~(iii) — check references and medical fitness for the job.~~

## 16.2 Permanent Full Time Roles

~~(a) Subject to compliance with all of the provisions in this clause 16, including meeting the minimum qualifications, wWhen a permanent full-time role becomes available, following the interview process (which may include internal and external candidates), preference will be given to current permanent part-time employees for the role, unless Svitzer determines that the considerations in table 16.32.1 or the following considerations warrant choosing a different candidate:~~

~~(i) Past performance of the permanent part-time employee;~~

~~(ii) Past disciplinary matters of the permanent part-time employee~~

~~(iii) Diversity of candidates~~

~~(b) The parties to this agreement will use their best endeavours to ensure they consider candidates from all genders and First Nations persons.~~

### 16.216.3 Selection:

~~16.216.3.1 Svitzer must choose the successful applicant on the basis of merit, qualifications (certification) and experience. The table below contains:~~

~~(i) For Masters and Ratings, the criteria particular to the classification of Employees:~~

~~(ii) For Engineers the agreed certification requirements.~~

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

Masters	Engineers	Ratings
<p><del>(i)</del> <u>From the Commencement Date, Svitzer agrees to only employ or engage Masters with a minimum qualification of Master &lt;35m NC (without restriction).</u></p> <p><del>(i)</del><u>(ii)</u> Specific skills and competencies relating to the towage industry or potential to develop them;</p> <p><del>(ii)</del><u>(iii)</u> Demonstrated personal attributes of teamwork, communication, problem solving, suitability and ability to meet the requirements of the position;</p> <p><del>(iii)</del><u>(iv)</u> A detailed knowledge of International/National/State legislation as it applies to the towage industry.</p>	<p>(i) Svitzer agrees to engage permanent engineer Employees who possess either class 1, class 2, or class 3 Certificates of Competency as required to meet the needs of the business. In the case of the holder of a class 3 Certificate of Competency, <del>that person will also hold a trade qualification as either a fitter and turner, diesel fitter, electrical fitter or other relevant or equivalent engineering trade.</del></p> <p>(ii) Casual Employees engaged under this Agreement must possess, as a minimum, a Class 3 certificate of competency with a relevant engineering trade qualification.</p> <p><del>(iii)</del> The Traineeship will be structured so as to enable a Trainee to meet at least the minimum certification requirement of Class 3 <del>with a relevant trade qualification.</del></p>	<p>(i) Specific skills and competencies relating to the towage industry or potential to develop them;</p> <p>(ii) Demonstrated personal attributes of teamwork, communication, problem solving, suitability and ability to meet the requirements of the position.</p>

~~16.2.2~~16.3.2 The decision of management in selecting the successful permanent or casual employment candidate will be final.

~~16.3~~16.4 Probation for permanent Employees

~~16.3.1~~16.4.1 Specified Probationary periods are as follows:

- (i) in the case of Masters a six (6) month period of probation; or
- (ii) in the case of other Employees a three (3) month period. (Provided that where Svitzer considers that the performance of the Employee was not satisfactory during the probationary period it may, at its discretion, extend the probationary period for one month.)

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

~~16.3.2~~16.4.2 At the conclusion of the period of probation Svitzer will, subject to the satisfactory performance of the Employee during the probationary period, confirm the appointment.

~~16.3.3~~16.4.3 If the performance of the Employee during the initial period or the extended period of probation is deemed unsatisfactory by Svitzer it may terminate the Employee's employment at that time with one week's notice (or payment in lieu).

~~16.3.4~~16.4.4 It is agreed that the process set out in this clause is reasonable, and must be agreed to in advance, by any prospective Employee.

~~16.4~~16.5 Fitness for duty

It is a requirement that Employees, once recruited, remain fit for duty. In this respect Employees will attend for medical examination as required by Svitzer and at Svitzer's expense.

~~16.5~~16.6 Security clearance for duty

~~16.5.4~~16.6.1 Employees must have security clearance for work in the form of a valid and current Maritime Security Identification Card (MSIC) issued by the relevant government authority.

~~16.5.2~~16.6.2 Where a permanent Employee must obtain a MSIC in order to take up an offer of employment by Svitzer, the cost of the issue and the periodic renewal of the MSIC will be met by the Company. Where a MSIC card is lost and there is a valid reason for the loss the Company will meet the cost of replacement for one lost card during the term of this Agreement.

~~16.5.3~~16.6.3 Where a casual Employee must obtain a MSIC in order to take up an offer of employment by Svitzer, the cost of the issue will be met by the Company.

## 17. Employee Duties

The duties of Employees under this Agreement are set out in clauses 17.1 to 17.3 below by reference to the respective classification of the Employee:

### 17.1 Masters Duties

17.1.1 To achieve maximum flexibility, tug Employees shall work as a team with each Employee working as reasonably required to the level of their classification, job description, skills, training, competence, certification and applicable legislation in a co-operative effort, to ensure the safe and efficient operation of the tug. Where necessary, Employees will undertake training in order to maintain and enhance their skills.

17.1.2 The master (acting as Ship Security Officer) will fill the role of the SSO Designate under the- Maritime Transport and Offshore Facilities Security Act 2003 (Cth) ~~Maritime Transport Security Act 2003.~~

17.1.3 The duties of a master include, but are not limited to:

- (i) The command of the tug and its crew;
- (ii) Act as tug manager and coordinating the attendance of crew as required for operations, the provision of stores, and ensuring readiness for operations;

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

- (iii) Compliance with policies and procedures authorized by Svitzer, including Quality control;
- (iv) Assurance and I.S.M. systems and procedures;
- (v) Management of disciplinary procedures relating to tug crews as required;
- (vi) Supervision and assistance with tug maintenance as necessary;
- (vii) Where required, the preparation of operational reports;
- (viii) Induction training of visitors, Employees and other persons authorised by Svitzer to access the vessel;
- (ix) Monitoring and review of work health and safety standards and procedures associated with tug operations and reporting as appropriate;
- (x) Ensuring compliance with relevant environmental regulations.
- (xi) Participation in operational improvement exercises, including but not limited to towage simulation exercises, advisory support during discussions with port authorities, pilots and other parties, and liaison with Svitzer management regarding the improvement of operational procedures;
- (xii) Compliance with roster arrangements and Svitzer’s Standing Orders;
- (xiii) Participation in safety training;
- (xiv) For designated trainers in accordance with clause 19.3.4, conducting on-the-job training for Trainee masters;
- (xv) Participation in skills and competency training including the training of other crew members, and Trainees.

17.1.4 In the application of this clause, for the avoidance of doubt, it is agreed that nothing in the making of this Agreement is intended to reduce, diminish or detract from the scope of the existing duties of Masters covered by this Agreement, as detailed in this clause 17.1 (for example, duties associated with the command of the tug and its crew, supervision and assistance with tug maintenance, monitoring and review of work health and safety standards and procedures associated with tug operations and reporting) or as elsewhere detailed in this Agreement. ~~(for example, duties associated with the introduction of Tug Efficiency and Management Systems).~~

## 17.2 Engineers Duties

17.2.1 Engineers ~~will be in charge of and responsible for all maintenance in accordance with the planned maintenance system as agreed by the company with its Engineering Employees and the~~ duties include, but are not limited to:

- (i) The performance of statutory functions and responsibilities in accordance with Marine Order 505 as commences 1 January 2023, but with immediate effect;



**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

- (ii) Compliance with port operating procedures agreed between the parties, including quality assurance and ISM procedures in so far as they relate to the engineer's duties;
- (iii) Maintenance and repair of marine plant and equipment, including emergency maintenance work;
- (iv) Tug maintenance in accordance with the class approved agreed programmed maintenance schedule and budget;
- (v) Supervision of personnel undertaking and assisting in the engineering function;
- (vi) Responsibility for signing off on maintenance work completed;
- (vii) Preparation of maintenance and operational reports as required;
- (viii) To be responsible for the safe operation of the vessels engines, generators and associated machinery and equipment whilst on towage services;
- (ix) To ensure that all machinery (deck and engine) is maintained to operational standards at all times;
- (x) To carry out routine maintenance and repairs as and when necessary, and to take responsibility for ensuring that the agreed class approved Planned Maintenance System is carried out onboard.
- (xi) Participation in agreed safety training, including the training of other crew members;
- (xii) Participation in agreed skills and competency training relevant to the Engineers duties and employment;
- (xiii) Assisting other crew members on deck as agreed;
- (xiv) Monitoring and review of relevant work health and safety standards and procedures and reporting as appropriate;
- (xv) Undertaking duty at dockings, including monitoring and supervising other personnel as necessary and appropriate.
- (xvi) Wear the industrial and protective clothing provided in accordance with clause 27, as well as any additional protective equipment agreed between the parties as necessary.
- (xvii) Ensuring day to day compliance with relevant environmental regulations;
- (xviii) Participation in operational improvement exercises and liaison with Svitzer management regarding improved operational procedures, leading to a culture of continuous improvement.

17.2.2 In addition to the above, Employees will undertake such duties as are reasonably agreed by the parties, provided that the duties are within the skills, competence and training of the Employee concerned to undertake.

17.2.3 Where required, Employees will undertake training in order to maintain and enhance their skills.

17.2.4 Employees must maintain and keep valid any certificate required by them to perform their duties. The cost and leave will be provided by Svitzer.

~~17.2.5 **Note:** This clause 17.2 – Engineers Duties, under this Agreement is interpreted in accordance with an exchange of correspondence between Svitzer and the AIMPE in February 2014, as if references in that correspondence to the Svitzer Australia Pty Limited and AIMPE Towing Enterprise Agreement 2013 were a reference to this Agreement.~~

### 17.3 Ratings Duties

17.3.1 The duties of a rating include, but are not limited to:

- (i) Deck and General Purpose duties of harbour, free running and outside towing work;
- (ii) Marine and salvage operations;
- (iii) Operation of fire fighting equipment and the provision of assistance to firefighting personnel;
- (iv) Operation of oil spill and other environmental protection equipment;
- (v) Maintenance of tugs, towing equipment, firefighting and environmental protection equipment and relevant shore based facilities;
- (vi) The handling of stores and equipment including fork lift operations;
- (vii) Assistance in the engine room;
- (viii) Compliance with policies and operating procedures authorised by Svitzer and consistent with statutory obligations, including safety, Quality Assurance and ISM procedures;
- (ix) Cooking during outside work;
- (x) General seamanship duties; and
- (xi) As required, watch keeping duties, and where appropriately qualified acting in the capacity of mate;
- (xii) Participation in safety training;
- (xiii) Participation in skills and competency training;
- (xiv) For designated trainers in accordance with clause 19.3.4 conducting on-the-job training for Trainee ratings;
- (xv) The training of other crew members, and Trainee ratings, where Employees have the appropriate skills and qualifications to do so;
- (xvi) Wear the industrial and protective clothing provided in accordance with clause 28, as well as any additional protective equipment deemed necessary by the Company.

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

- 
- (xvii) Ensuring day to day compliance with relevant environmental regulations;
  - (xviii) Participation in operational improvement exercises and liaison with Svitzer management regarding improved operational procedures, leading to a culture of continuous improvement.
- 17.3.2 In addition to the above, Employees will undertake such duties as are reasonably required by the Company, provided that the duties are within the skills, competence and training of the Employee concerned to undertake.
- 17.3.3 Where required, Employees will undertake training in order to maintain and enhance their skills.
- 17.3.4 In the application of this clause, for the avoidance of doubt, it is agreed that nothing in the making of this Agreement is intended to reduce, diminish or detract from the scope of the existing duties of Ratings covered by this Agreement, as detailed in this clause 17.3 (for example, duties associated with the maintenance of tugs, towage equipment, fire fighting and environmental protection equipment and relative shore based facilities) or as elsewhere detailed in this Agreement (~~for example, duties associated with the introduction of Tug Efficiency and Management Systems~~).
- 17.4 In the application of this clause 17, for the avoidance of doubt Svitzer will have regard to its work health and safety obligations under law.

## **18. Work Health and Safety**

- 18.1 This Agreement will not conflict with relevant Work Health and Safety laws which confer a duty of care on the parties.
- 18.2 Work Health and Safety legislation requires Svitzer to provide a safe working environment by taking reasonable measures to minimize the risks associated with identified hazards, providing Employees with training in safe work methods and by being rigorous in investigating all hazardous occurrences and incidents. It also requires Employees to comply with all reasonable requirements of the Company in these respects.
- 18.3 Work Health and Safety Committees
- 18.3.1 Svitzer will provide tools and training to Work Health and Safety Committees to enable regular assessment of the incidence of fatigue and fatigue mitigation strategies. The parties will continue to consult at a senior level so as to ensure that fatigue is managed appropriately.
  - 18.3.2 Wherever possible the Committee meeting must be arranged on a day when the majority of Employee members are on-duty (and programmed around shipping requirements). If, in order to create a quorum of Employee representatives, an Employee representative must attend a Committee meeting during a leave day the day of leave will be restored to that Employee. -
- 18.4 Svitzer will provide expert injury management services in order to expedite the full recovery and the earliest possible return to work of an injured Employee.
- 18.5 Health and Safety Representative (HSR) Training

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

Where applicable Work Health and Safety laws require an Employee HSR to undertake a HSR course of training, that HSR training must be undertaken ~~during duty periods on a work day~~ to the extent it is practical to do so, taking into account obligations under the relevant Work Health and Safety legislation. To the extent the HSR course of training must be undertaken or completed on a day that falls on a rostered leave day and the HSR agrees to attend the training, the Employee will receive a day in lieu of leave, but no additional remuneration will be paid. For the avoidance of doubt, the HSR will not receive any remuneration for attending HSR training on a rostered leave day, during an off-duty period, that day of HSR training will be restored to the Employee (that is, such training day will be treated as a “dead day”) without any additional compensation.

- 18.6 Employees must exercise duty of care to both themselves and others in the workplace. If an injury occurs Employees will do all that is within their capacity to participate in injury management and rehabilitation programs in order to achieve full recovery and an early return to work. Employees will cooperate fully in all safety initiatives implemented by Svitzer.

## **19. Training and Skill Development**

### **19.1 Skill Enhancement**

#### **19.1.1 Principles**

A well trained, skilled competent and flexible workforce is essential to meet the objectives of any modern company. It serves a number of purposes including:

- (i) Enhancing the Employee's capacity to perform within his or her classification;
- (ii) Providing the Employee with opportunities for promotion to shore based management functions and specialist positions within the company;
- (iii) Providing the Employee with opportunities for personal and professional growth and career progression.

#### **19.1.2 Training will be delivered and undertaken in accordance with the following:**

- (i) Employees will be trained so as to ensure that the current and future needs of Svitzer and Salvage are met;
- (ii) Employees will gain access to training on their merit and according to the perceived potential of the Employee;
- (iii) Training will be made available in order to meet the requirements of State and Federal legislation.

### **19.2 Trainees (new entrants)**

To further ensure that the future needs of Svitzer are met, regarding access to an appropriate number of properly qualified Trainees, Svitzer commits to the engagement of Trainees in accordance with the principles set out in this sub-clause.

#### **19.2.1 The principles for the Traineeship are as follows:**

- (i) Upon the commencement of this Agreement, Svitzer will commence recruitment of Trainees consistent with its operational needs.

- 
- (ii) Training wages will be in accordance with clause 24.5;
  - (iii) Certification objectives will be in accordance with clause 16.2.

### 19.3 Training Conditions

19.3.1 Svitzer will meet the costs of study, including course costs, and ancillary reasonable travel / accommodation and victualling costs for any study or training course that Svitzer requires the Employee to undertake. To avoid doubt, this clause also applies to revalidation courses.

19.3.2 Where Svitzer appoints an Employee to conduct designated on-the-job training the Employee will receive recognised (formerly described as ‘train the trainer’) training at no cost to the Employee.

#### 19.3.3 Revalidation courses

(i) When an Employee is required to attend a training course for the purposes of revalidation of certificate on a day when the Employee is rostered for duty, that day will be regarded as a normal Employee day. Where the course falls on a day of leave the leave day will not be reinstated.

(ii) Svitzer will only revalidate the certificates required for the certificate of competency applicable to the Employee’s role, as required by Svitzer. In that case, tThe course costs relating to revalidation courses for an Employee will be met by Svitzer up to the standard at which the Employee was engaged only to the extent still required by Svitzer for the Employee to perform their duties or to the extent that the Employee needs to hold the CoC to continue employment in their classification regardless of the minimum CoC required.

(iii) Masters who are employed as at the date this Agreement is made, will be entitled to receive a revalidation certificate allowance, if their employment comes to an end as a result of a redundancy on the following terms and conditions:

(A) The revalidation allowance is a one-off fee of \$500.

(B) This amount will only be payable if their current certificate of competency required by Svitzer to complete their duties, would expire in less than 12 months period from the date of the end of their employment.

(C) This amount will not be payable for a Master who receives an amount of more than \$150,000 net in redundancy payments.

---

#### 19.3.4 Prescribed training courses

In this clause 19.3.4, a prescribed training course means an approved training course or program that will enhance the Employee’s ability to perform their prescribed duties in a safe, skilful and competent manner, including:

- (a) Workplace health and safety training and drills;
- (b) First aid training;

- 
- (c) IT training where applicable to the Employee's role;
  - (d) technology training to support the performance of an Employee's duties;
  - (e) Computerised planned maintenance system training;
  - (f) Safety management system on-line training;
  - (g) Any other training that arises from agreed business improvement initiatives, including any training identified through the Port Advisory Groups and the Svitzer Workforce Planning and Development Committee for the respective classification.

To avoid any doubt, a prescribed training course does not include revalidation courses, or "train the trainer" training, or "SCOPE" training courses.

Where a prescribed training course falls during a period of leave:

Employees will be available to undertake such training course without additional payment or compensation on up to five (5) leave days per ~~Financial Year~~ calendar year (which will not accumulate from year to year); ~~and~~.

After the first 5 days per year are utilised, each leave day during which a prescribed training course is undertaken will be restored to the Employee (that is, such training day will be treated as a "dead day") without any additional compensation. In respect of Health and Safety Representative (HSR) Training, refer to clause 18.5.

#### 19.3.5 Other Training conditions particular to Employee's classification

For Masters: Svitzer, following appropriate consultation with Masters employed within the port or region, agrees to appoint a Master or Masters as Check Master/s who will be responsible for the training/assessment of new and existing tug masters.

### 19.4 Svitzer Workforce Planning and Development Committee (for each classification)

#### 19.4.1 Charter and Composition of the Committee

- (i) The National Advisory Board described in clause 0 operates in accordance with its Charter made on 17 February 2012. The Charter sets out the Board's objectives, which include discussion on Workforce Planning, Training and Skills and Qualifications for Svitzer Employees.
- (ii) At Agreement commencement, a Svitzer Employee Workforce Planning and Development Committee will be established for each classification under this Agreement and will comprise two (2) Employee representatives, the Fleet Director and Technical Management representative.

#### 19.4.2 Functions of the Committee

- (i) Consistently with the Company's current and future workforce requirements, the Committee will exercise the following functions:

- 
- (a) Consult with and communicate with the National Advisory Board concerning Svitzer Workforce Planning and Development matters;
  - (b) Review current and future workforce requirements for the respective Employee classification;
  - (c) Develop and implement a plan for Employee training;
  - (d) Review training required for tugs and tug technology;
  - (e) Review the impact of the National Law regulating commercial vessels to identify issues impacting on Employee certificates of competency, make recommendations to address issues, including interim arrangements and develop recruitment standards to meet the operational requirements of a tug and port that meets requirements specified at clause 16.2 in this Agreement;
- (ii) Consider and make recommendations for allocating training budgets and expenditure pursuant to this clause 19.4 and clause 19.5.

#### 19.4.3 Operation of the Committee

- (i) Svitzer shall ~~make~~ available relevant information and data to carry out the above functions.
- ~~(ii)~~ The Committee may agree to meet jointly.
- ~~(iii)~~ The Committee shall meet at least ~~quarterly~~ three times per year, and a further meeting may be held by agreement.
- ~~(iii)~~ (iv) The Union may be consulted by the Committee.
- ~~(iv)~~ (v) The National Advisory Board will be provided with the opportunity to comment on the reviews conducted and recommendations made by the Committee.
- ~~(v)~~ (vi) Svitzer and the Union shall meet to discuss the implementation of recommendations from the Committee.

#### 19.5 Training Expenditure

As from the Commencement Date, and for each calendar year until the nominal expiry date of this Agreement, Svitzer will, consistently with the Company's current and future workforce requirements:

- 19.5.1 set aside a training budget equal to one (1) per cent of its wages bill for Employees (based on the annual Port Salary under Schedule 1 for each Full-Time Equivalent [FTE]) under this Agreement;
- 19.5.2 in consultation with the relevant Svitzer Workforce Planning and Development Committee, undertake and direct this expenditure towards relevant training that is described in this clause 19;
- 19.5.3 implement agreed recommendations made by that Committee in relation to the allocation of this training expenditure.



## 20. Termination of Employment

### 20.1 Notice of termination by employer—permanent Employees

20.1.1 In order to terminate the employment of a permanent Employee, Svitzer must give to the Employee respective classification the following written notice:

Period of continuous service	Tug Masters	Engineers	Ratings
	[Weeks]		
1 year or less	2	2	1
More than 1 year but not more than 3 years	4	4	2*
More than 3 years but not more than 5 years	6	6	3*
More than 5 years	8	8	4*

\* The above period of notice will be increased by 1 week if the Employee is over 45 years old and he or she has completed at least 2 years of continuous service with Svitzer.

20.1.2 Payment instead of the notice prescribed in clause 20.1.1 may be made.

20.1.3 Svitzer may terminate an Employee's employment by giving part of the notice prescribed in clause 20.1.1 and part payment instead thereof.

20.1.4 In calculating any payment instead of notice, the salary an Employee would have received in respect of ordinary time the Employee would have worked during the period of notice if the Employee's employment had not been terminated must be used.

### 20.2 Job search entitlement

Where Svitzer has given notice of termination to an Employee, the Employee must be allowed up to one day's time off without loss of pay, which may be a day of leave, for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the Employee after consultation with the Company.

### 20.3 Termination without notice

Despite the provisions of this clause, Svitzer may terminate the employment of an Employee without notice, or payment in lieu of notice, for serious misconduct.

### 20.4 Notice of termination—permanent Employees

20.4.1 An Employee other than a casual Employee may terminate his or her employment by giving Svitzer the following written notice:

- A. In the case of Tug Masters and Engineers – 4 weeks notice;
- B. In the case of Ratings - 2 weeks notice.



**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

~~20.4.2 If an Employee fails to give the required notice Svitzer may withhold from any monies due to the Employee on termination under this Agreement, an amount not exceeding the amount the Employee would have been paid under this Agreement in respect of the period of notice required by this clause less any period of notice actually given by the Employee.~~

20.5 Casual Employees

The employment of a casual Employee terminates at the end of each period of duty.

**21. Redundancy**

21.1 This clause applies to Permanent Full Time and Permanent Part Time Employees and does not apply to Employees engaged for a specified period of time / task, or to casual Employees.

21.2 Redundancy Process

21.2.1 Where an Employee is surplus to company requirements and Svitzer decides that the Employee's position is redundant, the following process will be followed:

21.2.2 Svitzer will notify and consult with the Employees and the Union in relation to the number of proposed redundancies and the reason/s why they are to occur;

~~(i) Following consultation, expressions of interest will be sought in the port where the redundancies are to occur;~~

~~(ii) If insufficient expressions of interest are received, Employees in adjacent ports may, at Svitzer's discretion, be offered voluntary redundancy as a means to avoid compulsory redundancies. In this circumstance Employees in the port where the redundancies occur will, as a pre requisite agree to transfer, and this will be discussed with the Union;~~

~~21.2.3 If there remain insufficient expressions of interest in voluntary redundancies, Svitzer will implement redundancies on a last on first off basis in the port where the reduction in numbers is required.~~

21.3 Redundancy pay

21.3.1 In circumstances where a permanent Employee is or would be entitled to Redundancy Pay under the NES, Redundancy Pay for that Employee will be calculated according to the following table:

Years of continuous service	Weeks pay per year*
0 – 15	4 weeks
16 – 25	3 weeks
26 – 30	2 weeks
31 years and over	1 week

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

---

\* Redundancy Pay will be capped at a total of 70 weeks' pay and no payment in excess of 70 weeks' pay will be made under this clause.

21.3.2 It is the Company and the Unions' preference to avoid redundancy if possible. The parties acknowledge however that there may be commercial or operational reasons why redundancy may still take place.

21.3.2-21.3.3 Redundancy will be calculated at the Employee's port salary (pro-rata for permanent part-time Employees) as defined in Schedule 1.

#### 21.4 Job search entitlement

21.4.1 An Employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay, which may be a day of leave, during each week of notice for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the Employee after consultation with the Company.

21.4.2 If the Employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the Employee must, at the request of the Company, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.

21.4.3 This entitlement applies instead of clause 20.2.

#### 21.5 Transfer to lower paid duties

Where, by agreement between the Company and a permanent Employee, the Employee is transferred to lower paid duties by reason of redundancy, the same period of notice must be given as the Employee would have been entitled to if the employment had been terminated and Svitzer may, at the Company's option, make payment instead of an amount equal to the difference between the former salary and the salary for the number of weeks of notice still owing. In these circumstances, the Employee is not entitled to redundancy pay.

#### 21.6 Transfer and Relocation

This clause 21.6 applies when an Employee remains in employment but is permanently transferred from one operational location to another by virtue of the Employee's position becoming redundant.

21.6.1 Svitzer shall reimburse an Employee for out of pocket expenses where that Employee is permanently transferred from one operational location to another in circumstances where the Svitzer Employee is surplus in one port and is transferred to another port to fill a vacancy.

Reimbursement will be in accordance with clause 21.6.2 to clause 21.6.6.

21.6.2 Svitzer shall pay to the Employee in respect of any reasonable time spent travelling between the two ports (for the purpose of relocation) a travelling allowance of \$43.31 per day for the Employee and a further \$36.10 per day for each dependent of the Employee including the Employee's spouse.

21.6.3 Svitzer shall pay to such Employee by way of a resettlement allowance the amount of \$11804 if the Employee has a spouse and/or dependent children, or the amount of \$3760 if the Employee is single and without dependants.

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

---

21.6.4 The amounts contained in clauses 21.6.2 and 21.6.3 above shall be adjusted each twelve months at the beginning of the calendar year or as soon as figures become available in accordance with movements in the Consumer Price Index for the preceding calendar year. These amounts shall be included on the Employees group certificate for taxation purposes.

21.6.5 The resettlement allowance contained in clause 21.6.3 above will include but not be limited to costs incurred in respect of:

- (i) Agent's commission on sale of house, legal fees on sale of house, any advertising or auction fees/expenses associated with the sale of the property and disposal of perishables, i.e. food, pot plants, etc.;
- (ii) Any expenses incurred on a "preliminary" visit to the new Port by Employee and/or family including fares and accommodation;
- (iii) Any storage costs associated with personal effects being stored in the destination Port or Port of origin;
- (iv) Any costs associated with transfer of goods from storage in the destination or origin Port/s to the new residence.
- (v) Any accommodation charges on arrival in the destination Port pending more suitable longer-term accommodation being obtained.
- (vi) Any costs associated with the purchase of a new home in the destination Port.

21.6.6 Removal Expenses

Employees shall be entitled to reimbursement of reasonable removal expenses subject to the following:

- (i) Reimbursement of removal expenses shall include all personal effects including one motor vehicle only and no boats, caravans or trailers.
- (ii) Storage charges or the cost of transfer of personal effects to or from the storage shall be deemed to form part of the resettlement allowance and shall not be reimbursed as a removal expenses.
- (iii) Employees shall obtain two quotes from reputable removalists and submit them to Svitzer.

## **PART 4 – SALARIES, ALLOWANCES AND RELATED MATTERS**

### **22. Payment of Salaries**

22.1 All salaries, related payments and allowances will be paid fortnightly (one week in advance and one week in arrears for permanent Employees, and in arrears for permanent part-time Employees paid under clause 24.2.1 and casual Employees). No Employee will be disadvantaged as a result of the implementation of this sub-clause. During the nominal term of the Agreement, the parties may hold discussions concerning the operation of the pay system.

22.2 Fortnightly and daily salaries are calculated as follows:

22.2.1 The fortnightly rate is the annual salary rate divided by 26;

22.2.2 The daily rate is the fortnightly rate divided by 14.

22.3 Deductions and payroll corrections

22.3.1 Svitzer may deduct from any amount payable to an Employee the amount of any overpayment of wages or allowances, and any other amount that is refundable to the Company under this Agreement. Overpayments of wages or allowances will be repaid on the basis that, unless Svitzer and the Employee agree otherwise:

- (i) no less than 14 days written notice will be given to the Employee of the amount it seeks to recover;
- (ii) the deduction will not exceed 10 per cent of the Employee's gross salary per fortnight.

22.3.2 Payroll corrections: Payroll errors will be rectified as a matter of priority.

### **23. Induction Payment – Masters and Engineers**

23.1 A Tug Master or Engineer newly recruited into Svitzer's towing operations under this Agreement who is engaged in the port on a supernumerary basis (that is, other than as part of the normal crew complement), because the said Employee is required to complete a period of induction:

23.1.1 in order to comply with any local knowledge requirements imposed by the relevant port authority or other regulatory authority on a Tug Master, or

23.1.2 to complete a necessary period of familiarisation with a new class of vessel

will be paid the amount set out in clause 23.2 for each day worked during the induction period. The induction period under this clause 23.1 will not exceed:

- (i) one (1) month for Engineers; or
- (ii) three (3) months for Masters.

This payment will be paid in lieu of the otherwise applicable salary under clause 24.

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

23.2 The induction payment in clause 23.1 is an amount equivalent to 75% of the prevailing annual salary that would apply to a full-time Master or Engineer in the port under clause 24.1 and Schedule 1.

## 24. Salaries

### 24.1 Salaries - Permanent full-time Employees

24.1.1 Full-time Employees will be paid a salary relevant to the Employee's home port in accordance with Schedule 1.

24.1.2 If Svitzer requires a permanent Employee to temporarily work in an outport, the Employee will be entitled to the salary applicable to the outport or the salary applicable to the Employee's home port, whichever is the greater, in respect of that temporary work.

~~24.1.3 A full time Employee who is recalled from a period of leave will have their leave day reinstated be paid 200% of the daily salary rate for the relevant port for for each Day of Recall work (or they can elect in writing to receive the daily salary rate instead)(in addition to the Employee's salary).~~

~~In these circumstances, the Employee must remain at the relevant Port for towing or required Maintenance and Emergency Maintenance or any other required work, unless they are released by the Company.~~

~~An Employee may elect to receive this payment as follows: in cash; or as one day's pay plus one day of accrued leave.~~

### 24.2 Salaries - Permanent part-time Employees

~~24.2.1 Permanent part time Employees will be paid two (2) days' pay (that is, the daily salary rate relevant to the Employee's home port in accordance with Schedule 1, plus a loading of 100% of the daily salary rate), for each day worked. The loading is payment incorporates a payment for leave (including annual leave), being a minimum of 5 days free of duty each month. N-and no further leave will accrue.~~

~~24.2.2 Permanent part-time employees will receive pro rata the equivalent salary of full time employees. The part time employee's pro-rata salary will be paid in equal fortnightly instalments according to the prescribed proportion of full time employment agreed with the employee under clause 15.3.1 or 15.3.3.~~

~~24.2.3 The permanent part time Employee will be paid no less than their pro rata annual salary for each Financial Year as at the Employee's anniversary date, provided the permanent part-time Employee does not unreasonably refuse available work. If an Employee commences employment part way through a Financial Year, the payment will be pro rated by reference to their commencement date.~~

~~Alternatively, permanent part time Employees may elect to be paid in accordance with clause 24.2.2.~~

#### ~~24.2.2 Guaranteed Salary Option~~

~~A permanent part-time Employee may make a written election to receive their salary as a fortnightly pro-rata Guaranteed Salary in accordance with this clause 24.2.2, as follows:~~

- ~~(i) The permanent part time Employee will be paid pro rata the equivalent salary as full time Employees. The part-time Employee's~~

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

pro-rata salary will be paid in equal fortnightly instalments according to the prescribed proportion of full-time employment agreed with the employee under clause 15.3.1 or (i).

*Example: a part time Employee who is engaged to work 50% of the days worked by a full time employee, will be paid an annual salary of 50% of the annual salary that would apply to the full time Employee in the port under clause 24.1.1 and Schedule 1.)*

24.2.4 When permanent part time Employees are engaged to do work in a port, they must remain at the relevant Port for towage or required Maintenance and Emergency Maintenance.

24.2.324.2.5 If the permanent part time Employee has worked in excess of the minimum number of days for the Financial Year ~~calendar year~~ that correspond to their pro-rata ~~Guaranteed S~~Salary, then:

- (a) for the remainder of the Financial calendar Yyear during their employment, the permanent part-time Employee will receive ~~two (2) days' pay~~ for 1.5 days (that is, the daily salary rate relevant to the Employee's home port in accordance with Schedule 1, plus a loading of ~~54~~90% of the daily salary rate), for each day worked;
- (b) ~~save provided~~ that, in respect of each day worked above 182 days in the Financial Year~~calendar year~~, the permanent part-time Employee ~~will instead receive either~~ may make a further written election to receive their entitlement as one day's
- (c) \_\_\_\_\_
- ~~(b)~~(d) accrued leave (in lieu of payment) pay plus one day or one's day's pay of accrued leave (in lieu of payment) at the Employee's ir-election. The maximum accrued leave will be 9 days in a Financial Year.

*Example: When a permanent part-time Employee who is engaged to work 75% of the days worked by a full time employee works 137 days, per year then, for each additional day worked in the same year, the Employee will receive:*

- 1.52 days pay (no leave accrual);
- ~~save provided~~ that, after 182 days of work in that year, the Employee will instead receive either 1 day's pay or 1 day of accrued leave (in lieu of payment) (up to 9 days of accrued leave) ~~may elect in writing to receive their entitlement as 1 day's pay plus one day's accrued leave.~~

- (ii) \_\_\_\_\_ The pro-rata ~~Guaranteed Salary~~ remains payable in accordance with clause 24.2.2(i), irrespective of the number of days worked by the permanent part time Employee, provided the permanent part time Employee does not unreasonably refuse available work.
- (iii) \_\_\_\_\_ Cessation of ~~Guaranteed Salary Option~~

~~The Guaranteed Salary Option under this clause 24.2.2 ceases:~~

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

- ~~(a) — By a permanent part-time Employee giving the Company three (3) months written notice after which time the Guaranteed Salary Option ceases to operate;~~
- ~~(b) — At any time, by written agreement between Svitzer and the individual employee;~~
- ~~(c) — By the cessation of the Employee's part-time employment.~~

~~Upon the cessation of the Guaranteed Salary Option, the salary payments received by the employee will be reconciled to ensure that such payments were no less than the salary that would have been paid to the Employee under clause 24.2.1. Thereafter salary payments will be made in accordance with clause 24.2.1.~~

~~Note: refer also to clause 15.3.~~

~~24.2.4 Note: permanent part time Employees sharing a full time position are not subject to the averaging arrangements described above.~~

**24.3 Salaries - Employees engaged for a specified period of time or specified task**

Employees engaged for a specified period of time or specified task will be paid as a permanent full time Employee or as a permanent part time Employee, depending on their mode of engagement.

**24.4 Salaries - casual Employees**

24.4.1 A casual Employee's salary will be calculated per day, as from the start time described in clause 15.5.3, in 24 hour blocks from that time.

24.4.2 Casual Employees will be paid a casual loading of ~~400~~50% of the daily salary rate, in addition to the daily salary rate, for that port for each day worked.

24.4.3 Where a Casual Employee works overtime, they will receive the penalty payment in accordance with clause 33 (penalty payment – extended hours). For the avoidance of doubt, they will not receive the Casual Loading for those overtime hours.

~~24.4.3~~ 24.4.4 The Casual Loading is paid instead of leave (including annual leave), paid personal/carer's leave, notice of termination, redundancy benefits and the other attributes of full-time or part-time employment.

**24.5 Trainees (new entrants)**

Trainees will be paid a training salary, based on each stage of their Traineeship, as set out in the table in Schedule 1A.

**24.6 All inclusive salary**

24.6.1 The salaries and payments under Part 4 of this Agreement (including the Schedules) include all allowances, disabilities and penalty payments payable to Employees for all work performed, and no further amounts will be payable except as explicitly provided for in this Agreement.

**25. Superannuation**

**25.1 Superannuation Contributions**



**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

25.1.1 Svitzer and its Employees who are members of the Svitzer Defined Benefit Plan will contribute to the fund in accordance with the Trust Deed. The plan is a sub plan of the Seafarers' Retirement Fund (the Defined Benefit Plan). The Defined Benefit Plan is closed to new members.

Note: Under the Trust Deed, Defined Benefit Plan members (upon retirement after attaining the age of 60 years or between the ages of 55 years and 60 years with the consent of the Company), are entitled to the greater of their notional Accumulation Benefit and their individual Defined Benefit entitlement (including accumulation component). However the terms of the Trust Deed are in no way to be taken as an express or implied term of this Agreement.

25.1.2 For Employees who were members of the Adsteam Superannuation Fund Accumulation Plan as at 24 March 2006 (and who are not members of the Defined Benefit Plan) Svitzer will contribute 14% of their salary under Schedule 1. In addition, Svitzer, through the fund, will continue to meet the cost of death and total and permanent disablement insurance cover; temporary disablement insurance cover; and, administration costs of the fund, for this group of Employees.

25.1.3 For Employees not covered by clauses 25.1.1 or 25.1.2, Svitzer will contribute 15.5% of their salary under Schedule 1, which will be in full satisfaction of all or any obligations upon Svitzer to make contributions, meet the cost of administration, salary continuance and death and disability or other insurance.

25.1.4 The calculation of contributions in respect of Permanent Part Time Employees and casual Employees will be based on gross earnings provided that employer contributions in a ~~calendar~~ Financial year will not exceed the contributions that would have been payable to a full-time Employee of the same classification in the port where the Employee primarily worked.

25.1.5 The contributions made by Svitzer in compliance with this clause 25 are inclusive of all contributions required by statute.

25.1.6 Svitzer will remit contributions on a monthly basis.

25.2 Choice of Fund

25.2.1 To the extent permitted by law, contributions under clause 25.1.3 will be made into one of the following complying funds of the Employees' choice:

- Svitzer's current complying fund (other than for casual Employees); or
- Maritime Super for Masters and Ratings or;
- Australian Retirement Fund for Masters; or
- Maritime Officers Superannuation Trust (accumulation fund) for Engineers; or
- The Employees' current complying fund; or
- Another complying fund as notified to Svitzer by the Employee submitting a superannuation standard choice form. by agreement between Svitzer and the Employee.

25.2.2 Employees who receive contributions under clause 25.1.2 may elect to have contributions made in accordance with clause 25.1.3. Where an Employee makes such an election, the obligation of Svitzer to make contributions in accordance with clause 25.1.2 is permanently extinguished.



**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

25.2.3 Svitzer at all times retains a right of refusal to contribute to a fund where the fund of the Employees choice is not a complying fund, in which case the fund used will be that specified in clause 25.2.4 or (if such funds are not complying) another complying fund nominated by Svitzer. ~~requires the Company to enter into any form of binding agreement unacceptable to the Company as a condition precedent to making such contributions, if the fund proposed is not a complying fund or if as a result of the Employees choice the Company would be required to incur any unreasonable additional cost.~~

25.2.4 Where an Employee neglects to exercise a choice the default fund will be as follows (provided the fund is a complying fund):

- (i) Svitzer's complying fund for Masters and Engineers; and
- (ii) Maritime Super for Ratings.

25.3 Salary Sacrifice

25.3.1 Employees may elect, in writing, to sacrifice a specified proportion of their earnings into their superannuation account as additional employer contributions. These salary sacrificed amounts may be subject to differential tax treatment depending upon the amount sacrificed. The tax effect of such sacrificed contributions is a matter for the Employee concerned. In this regard Employees are encouraged to seek independent financial advice.

25.3.2 The amount sacrificed will be paid into the complying superannuation fund which receives superannuation contributions on behalf of the Employee under clause 25.2.

25.3.3 The Employee may make an election once in each quarter. The election must be made in writing on a prescribed form and will take effect at the commencement of the next quarter commencing on one of the following dates: 1 January, 1 April, 1 July or 1 September.

25.3.4 The Employee must advise Svitzer of the election at least one month before the election taking effect.

25.3.5 Employees may cancel the salary sacrifice arrangements at any time.

25.3.6 The effect of such a salary sacrifice arrangement on an Employee's salary is as follows-

- (i) For the purposes of pay and leave pay the reduced salary will be used to calculate the amount payable.
- (ii) For the purposes of long service leave entitlement (on cashing out or employment being terminated), redundancy, payment in lieu of the period of notice on termination of employment and calculating defined benefit superannuation retirement benefits, the salary before any salary sacrifice will be used.

~~(iii) **Tug Efficiency and Management Systems (TEAMS) Bonus Application and Eligibility**This clause applies to permanent Employees who are and remain in full-time or permanent part-time employment as at: 31 December 202016 (in respect of the 202117 TEAMS Bonus); and 31 December 202117 (in respect of the 202218 TEAMS Bonus); and 31 December 202218 (in respect~~

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

~~of the 202319 TEAMS Bonus).31 December 2019 (in respect of the 2020 TEAMS Bonus).~~

- ~~(iv) — Provided that an eligible Employee may include a permanent Employee who has medically retired or a permanent Employee who has deceased in the preceding year, where the Employee or their estate as the case may be applies to the Company to be treated as an eligible Employee. TEAMS Bonus A bonus payment pursuant to clause 26.2.3 and clause 26.2.4 is payable to eligible Employees as a flat dollar (non-compounded) bonus, following release of financial results for the preceding calendar year (TEAMS Bonus). The TEAMS Bonus is payable as follows: 30 January 202117 in respect of the 202016 TEAMS Bonus; 30 January 202218 in respect of the 202117 TEAMS Bonus; 30 January 202319 in respect of the 202218 TEAMS Bonus~~

26. ~~30 January 2020 in respect of the 2019 TEAMS Bonus (or the nominal expiry date of this Agreement if the Agreement ceases to apply after that date). The TEAMS Bonus is calculated under a formula which distributes to each eligible Employee one-half (½) of the savings, in operating costs (Opex) achieved nationally in the preceding year, apportioned in accordance with clause 26.2.4, based on business efficiency criteria devised by TEAMS. The TEAMS Bonus is distributed according to the eligible Employee's proportional continuous service during the preceding calendar year. (For example, a permanent part-time Employee with a 50% PPT Guarantee who is engaged on a 50% basis, or a permanent full-time Employee who has 6 months continuous service in the preceding year, will receive one-half (½) of the standard TEAMS Bonus that is declared for each eligible permanent full-time Employee.) Superannuation payments will be deducted from the TEAMS Bonus. Personal Leave Bonus – refer clause 45. Travel Expenses~~

- 26.1 Employees will be entitled to reasonable travel and accommodation expenses in the following circumstances:

- (i) where travel is undertaken at the requirement of Svitzer for any reason; or
- (ii) where the Employee's service begins or ends elsewhere than at the Employee's home port

and Svitzer does not provide transport or accommodation.

Unless otherwise agreed with the Employee, the relevant amounts determined from time to time by the Australian Taxation Office will be used to calculate reasonable amounts for domestic travel allowance expenses under this clause. (For reference refer the ATO website at <http://law.ato.gov.au/atolaw/view.htm?Docid=TXD/TD201217/NAT/ATO/00001&PiT=99991231235958>.)

- 26.2 Travel by air will be economy class, and be booked by Svitzer. Accommodation will be of a standard equal to that generally provided in major motel chains.

- 26.3 Where Svitzer authorises an Employee (prior to the Employee undertaking the travel) to utilise the Employee's personal vehicle to undertake travel under clause 26.1, the Employee will be entitled to receive the applicable kilometre rate applied by the Australian Taxation Office (ATO) from time to time in respect of such travel. ~~At the Commencement Date the ATO rate was \$0.76 / \$0.77 per kilometre.~~

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

- 26.4 A permanent Employee who volunteers to undertake outside work or required to travel overseas on Svitzer business, will be entitled to be reimbursed their out-of-pocket passport expenses. A list for this purpose will be maintained in each Port.
- 26.5 Travel and reasonable expenses may be withheld by Svitzer where an Employee's employment is terminated on the grounds of misconduct on the part of the Employee.
- 26.6 Notwithstanding the provision for the payment of travel and reasonable expenses (in lieu of victualling and accommodation allowances) as set out in this clause, alternative arrangements may be applied by agreement between Svitzer and an Employee in special circumstances.

**27. Industrial and Protective Clothing**

27.1 Svitzer will issue the following industrial and protective clothing suitable for the environment in which the tug operates to all permanent Employees on engagement and replace these items without cost to the Employee on a fair wear and tear basis.

- 4 x Shirts (long sleeved, short sleeved or polo);
- 3 x Shorts or Trousers;
- 2 x Overalls (white for Engineers) - cotton or tropical;
- 2 x Pairs of Safety Boots;
- 1 x Pair of Sea Boots;
- 1 x Cold Weather Jacket;
- 1 x Safety Helmet;
- 1 x Hat for sun protection;
- 1 x ¾ Length Wet Weather Coat;
- 1 x Pair of Wet Weather Trousers;
- 1 x Jumper.

N.B. Employees may elect to take an additional two overalls in lieu of the shirts and shorts/trousers listed above.

27.2 In addition to the above Svitzer will supply:

- UV lotion as required; and
- 1 x Pair of sunglasses of Australian UV standard quality suitable for maritime use. Clip-ons will be provided as required. Where an Employee uses prescription safety sunglasses or glasses Svitzer will reimburse the Employee up to \$272 per annum, on presentation of a receipt showing the expenditure.

27.3 Casual Employees will be provided with a reasonable issue of clothing sufficient to perform their work with adequate protection.

27.4 The items specified in this clause will be replaced on production of evidence that they are worn out. Lost items must be replaced by the Employee at the Employee's own cost unless

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

the Employee can demonstrate that the loss was in no way due to the negligence of the Employee.

27.5 Employees must wear the industrial and protective clothing provided in accordance with this clause, as well as any additional protective equipment deemed necessary by Svitzer. Failure to do so may result in disciplinary action being taken.

27.6 Notwithstanding the provisions of this clause, where a port manager is satisfied that additional personal protective equipment is warranted, such additional items of equipment may be provided at the manager's discretion.

## **28. Communications**

28.1 Mobile Telephones (personal communications device)

28.1.1 Svitzer will pay a communications allowance of \$37.50 per fortnight to a permanent Employee. (For the absence of doubt, the national corporate network plan will cease to apply and Employees must migrate to their own personal account.)

28.1.2 The purpose of this clause is to enable and require Employees to

- (i) purchase, maintain and insure for personal loss or damage the necessary communications device or devices for electronic communications between the Company and the Employee; and
- (ii) be and remain reasonably contactable by mobile phone and SMS messaging in accordance with clause 40 and the Port Operating Procedures.

28.1.3 The Company will not be liable for any additional costs or charges associated with maintaining a mobile phone or communications device(s), including:

- call charges,
- SMS messaging,
- network access or rental,
- excess usage charges or
- loss or damage to mobile communications devices and related insurance.

28.1.4 The allowance in clause 28.1.1 includes an amount to enable the Employee to take out insurance for personal loss or damage to their mobile communications device or devices. For the absence of doubt, Svitzer will not provide any compensation for personal loss or damage to an Employee's communications device and clause 36 [Compensation for Personal Effects Lost] has no application to the Employee's mobile communications devices.

28.2 Access to internet and email onboard tugs

28.2.1 During the nominal term of this Agreement Svitzer will continue to implement reasonable internet and email access within the Australian fleet.

28.2.2 The issue and use of the communications equipment described in this clause 28 will be subject to compliance with Svitzer Information Technology (IT) policy as determined by Svitzer from time to time. This policy will be available to Employees at the nearest port or on Svitzer's vessels.

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

**29. Nominated Voyages Allowance**

29.1 For each hour during which an Employee is engaged on a Nominated Voyage between two locations specified in Schedule 2A (Nominated Voyages), the Employee will be paid the allowance specified in the table in Schedule 2A.

29.2 The allowance in clause 29.1 is not payable with respect to the Nominated Voyages which are identified with an asterisk (\*) in Schedule 2A.

**30. Outside Work**

30.1 Application

This clause does not apply to Salvage work which work is covered by clause 32 or to work on a Nominated Voyage under clause 29.

30.2 Crewing on Outside Work

30.2.1 Subject to clause 30.2.2, when tugs are required to perform Outside Work additional personnel will be engaged and crewing will be in accordance with the following tables:

(i) Masters:

Type of Voyage	UMS Tug on a voyage less than 72 hours	Non-UMS Tug on voyage less than 72 hours	Voyage more than 72 hours
Free running	2	2	3
Contract towage	2	2	3
Emergency operations (or Salvage work)	2*	3	3

(ii) Engineers:

Type of Voyage	UMS Tug	Non UMS Tug
Free running	2	2*
Contract towage	2	2*
Emergency operations (or gSalvage work)	2	2**

\* If the voyage is to exceed 72 hours, a third engineer will be engaged.

\*\* If the voyage is to exceed 48 hours, a third engineer will be engaged.

(iii) Ratings:

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

Type of Voyage	Number of Ratings
Free running (subject to cl.30.2.20):	
• Up to 1824 hours	23
• More than 1824 hours	34
• Contract towage	5
• Emergency operations (or Salvage work)	6

30.2.2 In the application of clause 30.2.1 Svitzer will at all times have regard to the following matters:

- (i) the views of crew members;
- (ii) obligations under relevant maritime and other laws;
- (iii) the duration of the voyage;
- (iv) operational requirements;
- (v) fatigue management;
- (vi) previous voyages of a similar nature; and
- (vii) the weather forecast for the area of operations.

30.2.3 Employees engaged on Outside Work (other than on a Nominated Voyage) will be so engaged on a voluntary basis. Employees must not seek any entitlement or benefit to complete Outside Work, other than what is included in this Agreement, including without limitation, 'short hand' payments. Any agreement made for additional payments is inconsistent with this clause, is in breach of this Agreement, invalid and not enforceable.

~~30.2.3 If Svitzer elects to engage a contractor to internally relocate a tug under a free running voyage, including an international relocation, Svitzer will ensure that, during such relocation, Employees of the contractor are employed on terms and conditions that are no less favourable than the terms and conditions set out in this Agreement.~~

30.3 Allowance for Outside work

30.3.1 An Employee who performs Outside Work on any day (including Saturdays, Sundays and Public holidays) on an irregular basis will be entitled to payment in accordance with the relevant table in Schedule 2B, in lieu of the salary provided under clause 24 or Schedule 1 for that day.

30.3.2 The amounts contained in clause 30.3.1 and in clause 30.3.4 will only be payable to Employees from the time that the tug leaves the wharf to proceed to sea until it ties up at the wharf on return.

30.3.3 Outside Work commitments do not affect a permanent Employee's entitlements to "even-time leave" under clause 41.3.

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

30.3.4 In addition to the payment in clause 30.3.1, a casual Employee is entitled to be paid a 100% loading of their home port daily salary rate.

**31. Salvage Work**

31.1 Performance of Salvage work

31.1.1 Employees may perform salvage work on a voluntary basis.

31.1.2 Work health and safety considerations under clause 18, and the training principles under clause 19, have particular application to training for salvage work.

31.2 Crewing for Salvage work

When tugs are required to perform salvage work additional personnel will be engaged and crewing will be in accordance with the respective crewing tables for Emergency Operations (Salvage work) in clause:30.2.1, and the principles in clause 30.2.2.

31.3 Payments for Salvage work

31.3.1 An Employee who performs salvage work on any day (including Saturdays, Sundays and Public holidays) will be entitled to payment in accordance with the relevant table in Schedule 2B, in lieu of the salary provided under clause 24 and Schedule 1 for each such day.

31.3.2 The amounts contained in clause 31.3.1 will only be payable from the time that the tug leaves the wharf to proceed to sea on any salvage work voyage until it ties up at the wharf on return.

31.3.3 Salvage Work commitments do not affect a permanent Employee's entitlements to "even-time leave" under clause 41.3, such that:

- (i) for a permanent Employee whose leave periods are rostered under the prevailing port roster at the time the Employee proceeds on Salvage Work, the Employee receives a day of leave for each day of Salvage Work that falls on a day the Employee would have been rostered-off (off-duty);
- (ii) for other permanent Employees, the Employee proportionally receives a day of leave in respect of each day of Salvage Work, as part of their "even-time leave" entitlement.

**32. Emergency maintenance**

32.1 Application and definition

32.1.1 The allowance specified in clause 32.2 does not apply to Employees specifically engaged to undertake Emergency Maintenance work, Employees performing duty at dockings, Employees in receipt of a Nominated Voyage allowance under clause 29, a payment for outside work under clause 30, salvage work under clause 32, or a penalty payment under clause 33 on a particular day.

32.1.2 For the purposes of this clause 32, Ordinary Hours means:



**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

- (i) for tug crews working 12-hour “captive” shifts – 12 hours per day 7 days per week;
- (ii) for all other tug crews – a spread of 8 hours between 0700 and 1700, 5 days per week, Monday to Friday (excluding public holidays).

**32.2 Emergency Maintenance**

An Employee who performs **E**mergency **M**aintenance work on board a tug, as required or requested by the Company, outside Ordinary Hours, will be paid an additional allowance in accordance with the amount specified in the relevant table in Schedule 2C.

**33. Penalty payment - extended hours**

33.1 The penalty specified in this clause 33 does not apply to Employees in receipt of payment for Outside work under clause 30, Salvage work under clause 32, an emergency payment allowance under clause 32, or an extreme weather alert under clause 34, on a particular day.

33.2 Where Svitzer requires an Employee to work continuously:

33.2.1 in the ports referred to in clause 33.3, for more than 12 hours subject to the conditions specified in that clause for the respective ports; or

33.2.2 in other circumstances, more than 14 hours,

to meet operational requirements, the Employee will receive a penalty payment for each hour or part thereof by which those hours are exceeded. The penalty payment will be calculated in accordance with the relevant table in Schedule 2D.

33.3 In:

33.3.1 the port of Brisbane and in Victorian Ports, the penalty payment referred to in clause 33.2.1 and Schedule 2D\_ may at the election of the Employee, be paid as accrued leave at the rate of one hour of accrued leave for each additional half-hour actually worked. Accrued leave must be taken in full days. Twelve (12) hours of accrued leave will constitute a full day of accrued leave under this sub-clause.

33.3.2 Port Botany Sydney, where an employee works continuously for more than 12 hours during a Captive Shift the penalty payment referred to in clause 33.2.1 and Schedule 2D will apply after 12 hours. In this clause 33.3.2, a Captive shift means a duty shift worked by a crew member which requires the crew member to crew a tugboat for shipping or an unexpected emergency, on immediate response, pursuant to the operating or licence conditions that are imposed by the Port Authority of New South Wales from time to time.

33.4 Leave is reserved for the Parties to discuss the application of clause 33.3.2 in respect of ports that newly introduce “captive” shifts requiring employees to work continuously for more than 12 hours.

**34. Extreme weather alert allowance**

34.1 In this clause “an extreme weather event” means a watch or warning issued by the Australian Government Bureau of Meteorology or its State/Territory counterparts, involving “Storm Force” wind-speeds or above (including a cyclone alert and warning), a flood or tsunami alert, and a Port Harbour Master directs Svitzer, or Svitzer determines, to deploy Employees on board a tug in response to that event.



**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

34.2 For each hour (including during Saturdays, Sundays and public holidays) on which an Employee is on board a tug and available for the performance of any duty during an extreme weather event, an Employee will be paid an allowance in accordance with the table in Schedule 2E.

34.3 Where tug crews work a 12-hour “captive” shift, this allowance will not be payable during that “captive” shift.

**35. Port-specific allowances and deductions**

Employees will be entitled to the port-specific allowances referable to the port in which they are engaged as set out in Schedule 1, where the Employee meets the conditions for the payment of such allowance.

**36. Compensation for Personal Effects Lost**

If an Employee should sustain loss of, or damage to, personal effects or equipment at work, Svitzer will compensate the Employee for such damage or loss by cash payment to the equivalent value of the loss or damage up to a maximum of \$2400, provided that the maximum compensation for the loss of or damage to any single item will be \$903. Refer also to clause 28.1.4.

**37. Accident Pay**

37.1 In the event of an Employee requiring time off work as a result of an accident where workers' compensation is paid, including any period off work as a result of a recurrence or aggravation of the injury, the Employee will be paid for a total period of up to 52 weeks at the Employee's daily salary rate.

37.2 After 52 weeks' payment, continuing benefits will be provided in accordance with statutory entitlements applicable under State Workers' Compensation Law. At this point Svitzer may review the continuing employment of the Employee, taking into account the available medical advice as to the likelihood of a return to full duties and the requirements of the relevant State Workers' Compensation Law. On completion of the review Svitzer will decide whether or not it is appropriate to continue the Employee's employment and take appropriate action.

37.3 Svitzer will provide equivalent insurance cover for accidents occurring on the journey, via the most direct route, between the Employee's home and place of employment where the Workers' Compensation Scheme in the relevant State no longer provides such cover. Car pooling arrangements that have been approved by local management will be deemed to be the direct route for the purposes of this clause.

37.4 If an Employee receives a lump sum payment in redemption of weekly payments under the legislation, Svitzer's liability to pay Accident makeup pay under this clause ceases from the date of the redemption.

37.5 If the Employee recovers damages from Svitzer or from a third party in respect of the injury, independently of the legislation, the Employee must repay to Svitzer the component referable to loss of income up to the date of settlement, and the Employee will not be entitled to any further Accident make-up pay.

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

**38. Counselling Services**

Svitzer has engaged the services of an independent counselling organization, Hunterlink, to provide assistance to Employees where personal, financial or health related problems affect the Employee or his or her immediate family. The service is free and confidential and where the parties identify an Employee who may benefit from such a service, it is agreed that they will encourage the Employee to take advantage of it.

**39. Compensation for Loss of Certificate of Competency**

39.1 A permanent full-time or part-time Employee who is unable to carry out the duties required by the Company because he/she has been refused revalidation of his/her certificate of competency by the appropriate Authority because of failure on examination to comply with the medical requirements prescribed by legislation (or any Regulations or Orders made thereunder) and has failed to satisfy the appropriate authority that he/she can, notwithstanding his/her inability to comply with such medical requirements, satisfactorily perform the duties appropriate to the certificate and who:

- (i) is found by further independent medical examination to be permanently unable to carry out their required duties and to revalidate a certificate of competency; or
- (ii) is found by further independent medical examination to comply with the above medical requirements and/or to be capable of carrying out their required duties but is still unable to satisfy the appropriate Authority that his/her certificate should be revalidated.

shall be entitled to compensation in the manner and on the conditions set out below.

39.2 Subject to clauses 39.4 and 39.5 hereof, an Employee to whom clause 39.1 applies shall be entitled to receive on the termination of his/her employment under this Agreement, a payment at the appropriate Port salary in accordance with the following table:

Age	Number of months salary (full-time Employee)
Under 30	24 months
30 but less than 35	21 months
35 but less than 40	18 months
40 but less than 45	15 months
45 but less than 50	12 months
50 but less than 55	9 months
55 but less than 60	6 months
60 and over	Nil

39.3 Where an Employee suffers an illness or injury entitling him/her to any compensation, damages or other benefits (called "benefits") from the Company and/or any third party under any applicable legislation (whether Federal or State) and/or at common law and/or equity and/or under any contract, deed or other arrangement and such benefits include a component referable to loss of earnings, then the value of that component shall be deducted from the amount payable to the Employee under clause 39.2. Svitzer shall value the amount of any such component to be taken into account.

39.4 An Employee shall not be entitled to the benefit of clause 39.2 where:

39.4.1 He/she dies;

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

---

- 39.4.2 His/her failure to comply with the prescribed medical requirement arises from any one of the following:
- (i) self-inflicted or self-induced illness or injury; or
  - (ii) an illness or injury suffered whilst he/she is voluntarily involved in or in connection with any activity for financial reward or gain or which unnecessarily subjects him/her to risk of injury and which activity is substantially unrelated to his/her employment; or
  - (iii) He/she is offered reasonably suitable alternative employment, suitable to the individuals' skills and abilities, (provided however that Svitzer may in any such case defer for a period of six months from the date of acceptance of the alternative employment the question of entitlement to compensation under this Scheme).
- 39.5 An Employee shall not be entitled to receive the benefits for Loss of Certificate of Competency more than once.
- 39.6 Where a disagreement arises as to the entitlement of an Employee to compensation under this clause, the matter will be dealt with in accordance with clause 10 Disputes Procedure of this Agreement.

## PART 5 - HOURS OF WORK AND RELATED MATTERS

### 40. Hours of Work and Related Matters

#### 40.1 Scheduling and Hours of Work

##### 40.1.1 ~~Port roster and Port rosters~~Hours of work

- (i) Towage operations are carried out over 24 hours per day on every day of the year;
- (ii) ~~Subject to the conditions in this clause, an Employee can perform Maintenance at any time in the relevant Port while on duty as per the Company's planned maintenance system, currently Sertica. Ordinarily, Maintenance will be conducted during the ordinary hours as included in the local Port Operating Procedures (if any) (Ordinary Hours). However, where there are planned maintenance tasks (which includes critical and non-critical work) which are either overdue or forecasted to be overdue in the next 7 to 14 days (based on the overall work schedule in the relevant Port), crews may be required to complete those tasks outside the Ordinary Hours including on the weekends without additional payment. The performing of maintenance work is subject to work health and safety obligations and the fatigue management system.~~

~~(ii)(iii)~~ rosters will as far as practicable include the detail of work days, the component of predictable leave days, and the number of crews on duty and on leave required to man the roster;

~~(iii)(iv)~~ Off-duty periods for permanent full-time Employees:

- (a) leave for permanent full-time Employees should to the greatest practical extent be predictable;
- (b) leave in running arrangements may be implemented where it is impracticable to predict leave periods to their full extent or (notwithstanding clause 15.2.1) when an Employee's employment is converted to full-time employment under clause 1.1.1.

~~(iv)(v)~~ Off-duty periods for permanent part-time Employees:

Refer to Part 7 (Leave), clause [41.3.2] for off duty and relief periods for permanent part time employees

~~40.1.2 Permanent full-time Employees are the main source of crewing the port roster and permanent part-time Employees supplement the roster. Where a port cannot support a roster for permanent part-time Employees, off-duty periods will be programmed as follows:~~

~~40.1.3 Permanent part-time Employees may nominate to take seven (7) days free of duty each month (non-cumulative); or~~

~~40.1.4 Permanent part-time Employees instead may make an annual election to take five (5) days free of duty each month (non-cumulative) PLUS one off-duty period of 25 days, amounting to a "30 day block-out duty free period" per calendar year. Where agreement between Svitzer~~

**Without Prejudice – Part of conciliation before Brian Lacy and subject to conciliation terms – 5 May 2022**

~~and the Employee is not possible on the programming of the “30 day block-out duty free period”:~~

~~40.1.5 the Employee must give the Company 3 months’ notice of their requested nominated “30 day block-out duty free period”; and~~

~~40.1.6 Svitzer must not unreasonably refuse the Employee’s request.~~

~~40.1.7 Permanent part-time Employees must otherwise be available for relief work duty in accordance with clause 40.1.7 1.1.1(i).~~

~~40.1.8~~ 40.1.2 Work orders:

- (i) should include details of the procedures to be used for the giving, receipt and acknowledgement of work orders;
- (ii) SMS messages may be used to communicate orders for the purpose of minimising off-duty disruption to Employees;
- (iii) Employees should not be contacted unnecessarily during breaks.
- (iv) Should include details of a Allocation of work.

~~40.1.9~~ 40.1.3 Availability

The objective of any duty roster is to ensure that sufficient Employees are available at any time to satisfy customers’ requirements on no more than 2 hours’ notice, unless the Port Operating Procedures specify otherwise to meet those requirements.

~~40.1.10~~ 40.1.4 Hours of work, regular duty requirements and off-duty periods

- (i) Scheduled hours of work should not exceed 12 hours. That is:
  - (a) under the Port Operating Procedures, the last towing job in a period of continuous duty must not be scheduled more than 11 hours and 45 minutes after that period has commenced; and
  - (b) jobs commenced prior to the 12th hour shall be completed.

The parameters for scheduling the last job in the period must be set out in the Port Operating Procedures.

~~(ii)~~ If an Employee is required to be on continuous duty for ~~14-12~~ hours or more, the Employee must be given a rest break of 10 hours at the cessation of that period of duty before the commencement of the next period of duty, but will be contactable after 8 hours

~~(iii)~~ Any duty period followed by an off duty period of less than 10 hours must be followed by an off duty period of at least 10 hours. For example, if an Employee starts duty at 8.00 and works until 15:00 (a total of 7 hour duty), then they may be given a minimum 6 hour rest break prior to being required to recommence duty. In this example, when they start work again at 21:00 and work until 01:00, they will be given at least 10 hour rest break before their next duty period. The Employee is able to recommence duty following this 10 hour break at 1100, although may be contacted 8 hours into the break at 0900.

~~(iv)~~ A period of continuous duty must not exceed ~~16-14~~ hours, except as provided in sub-clause (v).

**Without Prejudice – Part of conciliation before Brian Lacy and subject to conciliation terms – 5 May 2022**

- (v) The Company may require an Employee to perform work continuously in excess of 14 hours but not more than 16 hours (extended hours) where:
- (a) ~~(i)~~ it is reasonably necessary to meet an unforeseen operational requirements or emergency event;
  - (b) ~~(ii)~~ the Company endeavours to terminate the period of continuous work as soon as practicable; and
  - ~~(a)(c)~~ ~~(iii)~~ the Company grants the Employee a rest period of no less than 10 hours before requiring the employee to resume duty, provided they are contactable after 8 hours.
- ~~(iii)(vi)~~ A nominated rest break of 6 hours or more breaks the continuity of a period of duty.
- ~~(iv)(vii)~~ Employees will be entitled to a meal break on completion of 5 hours' duty. Meal breaks must be taken flexibly. For the avoidance of doubt meal breaks must not be taken in a manner or at a time that would interrupt port operations.

40.1.5 Maximum Days of Work

Employees must not work more than 14 days in excess of the number of days a full-time Employee is required to work in a calendar year under the operating roster in the port (Maximum Days). For the purpose of this clause 40.1.5~~41.2.4(iv)A~~, the following days will be disregarded in calculating the Maximum Days:

- Work days when the Employee does not perform ship-assist operations on a tug boat in any port (harbour towage);
- days when an Employee attends shoreside meetings;
- Outside Work days;
- days attending emergencies, and
- days undertaking docking work.

~~40.1.11~~40.1.6 Fatigue management

The parties will keep fatigue management and the operation of the roster under review in each port, through the local Work Health and Safety committee, so as to ensure the proper and efficient management of fatigue. Because of the unpredictability of vessel movements the strict application of the STCW Code as above may not always be possible, however, an Employee must be provided with minimum aggregate rest of 77 hours in 7 days consistently with Marine Orders Part 28, section 4.

40.1.7 Relief arrangements to be utilised in the Port ~~and casual usage.~~

- (a) Where Employees are required to perform relief work to supplement the roster, permanent part-time Employees in the Port (if any) who have not met the higher of:
- (i) their PPT Guarantee; and
  - (ii) 75% of the equivalent days worked by a full time employee,

**Without Prejudice – Part of conciliation before Brian Lacy and subject to conciliation terms – 5 May 2022**

will usually be the first persons called.

- (b) This clause 40.1.7~~6~~ does not apply to employees forecast to meet both the above pre-requisites in (i) and (ii), including through being rostered for example.
- (c) Notwithstanding anything else to the contrary in this Agreement, after complying with clause 40.1.7, any other relief work will be backfilled, engaged or allocated at the Company's discretion.

(i) ~~Relief work requirements to supplement the roster will usually be covered:~~

(a) ~~first call – permanent part-time Employees (other than during an off-duty period pursuant to clause 41.2.1(iv), or when they are otherwise unavailable under this Agreement);~~

(b) ~~second call – casual Employees;~~

(c) ~~third call – permanent full-time Employees on rostered leave.~~

(d) Permanent full-time Employees on rostered leave are not obliged to be available for relief work, however subject to clause 40.1.5, every Employee and the Unions will use best endeavours to ensure that, under normal circumstances as described in the Port Operating Procedures, the port operations are not compromised by unavailability of relief personnel to cover short term or unplanned absences.

(ii) ~~Casual usage:~~

~~40.2 The incidence of relief days, measured over a representative period (say 6 months), shall be reviewed in conjunction with the annual review of the Port Operating Procedures.~~

Other issues of an operational nature, specific to the Port.

Port Operating Procedures should not prevent or unreasonably restrict Svitzer's ability to meet customer and port requirements on Saturdays, Sundays or Public Holidays.

**40.2 Port operating procedures**

40.2.1 Each port has a port operating procedure.

40.2.2 The parties acknowledge and agree that changes to the Port Operating Procedures will be in accordance with this clause [Final cross referencing] and must be signed by the relevant General Manager and an authorised union representative.

40.2.3 A copy of the Port Operating Procedures will be provided to an Employee upon request.

40.2.4 The Port Operating Procedures must only include subject matters in clause 40.1. Any term that is not covered in those sub-clauses is not enforceable.

~~40.2.4~~40.2.5 A copy of this Agreement and the Port Operating Procedures will be kept in a convenient location at the Port. During the term of this Agreement, the Company and the Unions will meet to develop a Port Operating Procedures template.



**Without Prejudice – Part of conciliation before Brian Lacy and subject to conciliation terms – 5 May 2022**

---

**40.3 Variations of port operating procedures**

- 40.3.1 Svitzer may vary the terms of the port operating procedures to address the needs of the port. This does not prevent Employees raising issues with their local Port Manager about the Port Operating Procedures and the Port Manager will act reasonably in discussing the issues.
- 40.3.2 Where Svitzer wishes to propose a variation to the port operating procedures, the Port Manager will notify the Employees in the relevant port together with their nominated employee representatives, and the union officials in writing of the proposed changes.
- 40.3.3 Consultation at the local port level will continue, with a view to reaching agreement about the changes and will commence as soon as possible (no later than 7 days from the date of the notification).
- 40.3.4 If no agreement is reached with all 3 unions, within 14 days from the date of commencement of consultation (or any other period as agreed reasonably between the parties taking into account the complexity of the issues and changes), either party may refer the matter to the Fair Work Commission under the dispute resolution clause.
- 40.3.5 Any dispute raised by the parties in relation to the application or adherence to the applicable Port Operating Procedure in the relevant Port (including changes to the Port Operating Procedures) shall be dealt with in accordance with the Continuity of Operations and Dispute Resolution Procedure found at Clause 10 of this Agreement. While the dispute is being resolved, the status quo in place prior to the change will remain until the dispute is settled.

**~~There will be a set of Port Operating Procedures in each port. Port Operating Procedures must be reviewed at least annually. Svitzer will prepare and distribute to the Unions a report on the status of the Port Operating Procedures by 31 March. Subject to clause 41.4, the annual review must be completed by 30 April. Following the review Svitzer will prepare another status report by 14 May.~~**

~~The Port Operating Procedures (when made or varied) will set out details in respect of the following subject matter, which provide a foundation for the guidance to the parties in developing Port Operating Procedures~~

~~Port Operating Procedures must be signed by the Port Manager and authorised union representatives. Changes to Port Operating Procedures may be made by agreement following consultation, or as follows: Where Svitzer is proposing the change it will notify the Union in writing of the proposed changes and where the Union is proposing the change it will likewise notify Svitzer in writing. The parties will commence consultation at a local level about the matters set out above within seven days of such notification. Consultation at local level will continue with a view to reaching consensus about the changes, and then at national level if the matter cannot be resolved locally. In the event that the parties cannot achieve a consensus within a reasonable timeframe, the party proposing the change may give 28 days notice requiring that the change be implemented. During the notice period, either party may make application in accordance with the Dispute Resolution Procedure and if such application is made, the status quo will remain until the matter is settled.~~



## PART 6 – LEAVE

### 41. Leave

41.1 This clause operates in conjunction with the NES. The provisions of this clause are intended to satisfy the provisions in the NES concerning maximum weekly hours of work, annual leave and public holidays.

41.2 The roster that prevails in the port under the applicable Port Operating Procedures will provide for the number of days free of duty set out in clause 41.3 averaged over the applicable roster cycle.

41.3 Entitlement to leave (“even-time leave”)

41.3.1 A permanent full-time Employee will be entitled to 182 days free of duty in each year (which may be averaged over the applicable roster cycle), or to proportionate leave for any continuous service of less than a year.

41.3.2 A permanent part-time Employee will be entitled to the leave ~~granted to a full-time Employee on a pro-rata basis. (For example, an permanent part-time Employee with a 50% PPT Guarantee who is engaged in a 50% permanent part-time role will be entitled to 91 days free of duty in each year of continuous service.)~~ identified in clause 41.3.3 but is not otherwise entitled to even-time leave (as outlined in clause 24.2.1).

41.3.3 Off duty periods for permanent part time employees.

Permanent full-time employees are the main source of employees crewing the port roster and permanent part-time employees and casuals supplement the ~~roster~~ permanent full time employees in the roster. Where a port cannot support a roster for permanent part-time employees, off duty periods for permanent part time Employees will be programmed as follows:

- (a) Permanent part-time Employees may nominate to take seven (7) days free of duty each month (non-cumulative); or
  - (b) Permanent part-time Employees instead may make an annual election to take five (5) days free of duty each month (non cumulative) PLUS one off-duty period of 25 days, amounting to a “30 day block-out duty free period” per calendar year. Where agreement between Svitzer and the Employee is not possible on the programming of the “30 day block-out duty free period”:
    - (i) the Employee must give the Company 3 months’ notice of their requested nominated “30 day block-out duty free period”; and
    - (ii) Svitzer must not unreasonably refuse the Employee’s request.
- ~~(c)~~ (e) Permanent part-time Employees must otherwise be available for relief work duty at all times outside of the leave referred to in subclauses (a) and (b) above.
- ~~(c)~~(d) The 7 days free of duty each month under clause 41.3.3(a) and the 5 days free of duty each month under clause 41.3.3(b) is paid for by the provision of the 100% loading identified in clause 24.2.1.

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

- 41.3.4 An Employee who is engaged for a specified period of time or a specified task, will be entitled pro-rata, to the leave granted to a full-time Employee based on the period of the respective engagement.
- 41.4 The leave prescribed in this clause 41 includes the following entitlements of full-time Employees (who may otherwise have been engaged on a Monday to Friday basis in accordance with the terms of the Award):
- (i) 104 days of leave, being in lieu of weekends;
  - (ii) 5 weeks of paid annual leave for shiftworkers;
  - (iii) public holiday entitlements;
  - (iv) an additional 28 days leave in recognition of the 35-hour week.
- 41.5 For each day of absence referred to in clause 37, an Employee's leave entitlement under this clause 41 will be debited by one day.

**42. Discharge of accrued leave**

42.1 For the avoidance of doubt, accrued leave does not refer or include even time leave conferred under clause 41. Accrued leave is a form of time in lieu.

42.142.2 Where a permanent Employee accumulates leave that is not discharged under the prevailing roster (accrued leave), the Employee may discharge the accrued leave by taking the leave in accordance with clause 42.3, or by cashing out the leave in accordance with clause 42.4.

42.242.3 Taking accrued leave

42.2.142.3.1 Any accrued leave may be applied for and taken at the permanent Employee's request as follows:

- (i) upon the Employee giving the Company three (3) months written notice - at any time, unless 2 or more employees of the same classification in the port have already been granted approval to take their leave on the same day(s); or

42.2.242.3.2 otherwise, subject to management approval which will not be unreasonably withheld.

42.342.4 Cashing out accrued leave

The accrued leave may be discharged as a cash amount, at the permanent Employee's written election, as follows:

42.3.142.4.1 For accrued leave generated as a result of Salvage Work pursuant to clause 31.3.3(i), each day of rostered leave that would have fallen during a period of Salvage Work may be cashed-out at the rate of two (2) days pay for each leave day discharged (at the Employee's home port daily salary rate in Schedule 1). This election must be exercised within 30 days of the completion of the Salvage Work.

42.3.242.4.2 For accrued leave generated otherwise (including as a result of call-backs pursuant to clause 24.1.3, or as a result of the application of clause 33.3), each day of accrued leave may be cashed out at the rate of one day's pay for each leave day discharged (at the Employee's home port daily salary rate in Schedule 1).

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

- (i) Any accrued leave may be salary sacrificed in advance to the Employees' superannuation account (at the Employee's home port daily salary rate in Schedule 1).

42.442.5 As at 1 December each year, all accrued leave balances (excluding leave which has been approved under clause 42.3) will be automatically cashed out, save for a maximum balance of 14 days. Any accrued leave that is discharged under this clause (including leave that is not cashed out by an election under clause 42.4), is cashed out at the rate of one day's pay for each leave day discharged (at the Employee's home port daily salary rate in Schedule 1).

### **43. Personal/Carer's Leave**

#### 43.1 Personal/carer's leave under NES

43.1.1 In accordance with the National Employment Standards, a permanent full-time Employee is entitled to paid personal/carer's leave of 10 days per year of service, if the leave is taken:

- (i) because the Employee is not fit for work because of a personal illness or injury affecting the Employee (sick leave), or
- (ii) to provide care or support to a member of the Employee's immediate family or household who requires care or support because of a personal illness, personal injury or an unexpected emergency affecting the member.

43.1.2 Personal leave under clause 43.1.1 accumulates progressively during a year of service and accumulates from year to year.

#### 43.2 Carer's leave

43.2.1 In addition to Personal leave under clause 43.1, a permanent full-time Employee will be entitled to 5 days Carers leave in any one year without loss of pay. Leave under this clause 43.2 may be taken for the purpose specified in clause 43.1.1(ii), or in a domestic violence situation under clause 43.2.2.

#### 43.2.2 Domestic Violence situation

Carers leave under this clause 43.2.2 includes leave that the Employee reasonably needs:

- (i) to obtain medical or professional attention as a result of having suffered domestic violence; or
- (ii) to care for or support a member of the Employee's immediate family or household because of domestic violence affecting the member.

Svitzer will need to be satisfied, on reasonable grounds, that domestic violence has occurred and may require proof presented in the form of a document issued by the Police Force, a Court, a Doctor, a Domestic Violence Support Service or Lawyer, to grant a leave benefit under this clause 43.2.2.

43.2.3 For reference, it is noted that support in cases of domestic violence is available under the counselling service described in clause 38.

43.2.4 Carer's leave under this clause does not accumulate from year to year. Carer's leave under this clause is used before Personal leave.

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

43.3 Unpaid Carer's Leave

In the case of an Employee who is required to care for an immediate family member who is suffering a long term illness, the Employee may, with the consent of the Company, take unpaid leave for the purpose of providing care to that immediate family member. While unpaid leave is taken there will be no break in the continuity of employment of the Employee, however, no entitlements based on length of service will apply in relation to that period.

43.4 Notification

43.4.1 Employees must notify their Manager as soon as practicable of any absence for personal / carer's leave, and the expected duration of the absence.

43.4.2 Svitzer may require an Employee to provide evidence in the form of a medical certificate (if reasonably practicable), or a statutory declaration, that the personal / carer's leave is being taken for a reason specified in clauses 43.1 - 43.3. Svitzer will not require the Employee to produce a medical certificate in relation to an absence due to personal illness of two (2) days or less unless the Employee's personal / carer's leave record or the circumstances under which the leave was claimed, reasonably justifies such a requirement.

43.4.3 An Employee is not entitled to take personal/carers leave unless the Employee complies with this clause 43.4.

43.5 This clause does not apply to any period during which the Employee is entitled to workers compensation payments.

~~**Personal Leave Bonus**~~~~The eligibility criteria and the frequency for crediting the personal leave bonus will be the same as that which apply for payment of the TEAMS bonus under clause 26.~~

~~**44. The Company will distribute the annual savings resulting from reduced personal leave absences among the national Towage crew workforce, in the form of a personal leave bonus that will be credited annually (as days and part-days) to an eligible Employee and be payable on termination of employment.**~~

~~**45. The annual savings will be measured against the national benchmark of average personal leave absences for Towage crews (FTEs – that is, permanent “full-time equivalent” Employees) in calendar year 2012.**~~

~~**46. The formula for distributing the savings and crediting the personal leave bonus will be devised by a sub-committee of TEAMS. Such formula must be equitable and reflect the proportionate personal leave entitlements of the permanent Employee.**~~

**47.44. Compassionate Leave**

**47.144.1** This clause incorporates compassionate leave entitlements available under applicable legislation and is to be read subject to legislation.

**47.244.2** Compassionate leave relates to occasions when a member of the Employee's immediate family or household contracts or develops a personal illness that poses a serious threat to their life, or sustains a personal injury that poses a serious threat to their life, or dies. This incorporates bereavement leave.

---

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

---

47.344.3 An Employee is entitled to compassionate leave of up to 3 days without deduction of salary. In the case of bereavement leave, the Employee is entitled to a further 4 days compassionate leave to be taken in one continuous period after the death of the member of the Employee's immediate family or household.

47.444.4 Svitzer may require the Employee to provide reasonable evidence that the leave is to be taken for such an incident.

47.544.5 This clause does not apply during any period of leave.

#### **48.45. Unpaid Leave**

48.145.1 An Employee may request to take unpaid leave for a specified period of time. The request must be in writing and set out the details of, and reasons for, the leave sought.

48.245.2 Svitzer may place such conditions on the granting of the request as it thinks appropriate. (Ordinarily one condition will be that the Employee must first exhaust their paid leave entitlements other than long service leave.) The Company may refuse the request for unpaid leave on reasonable business grounds.

#### **49.46. Community Service Leave**

49.146.1 Community service leave (which includes leave to attend jury service) is available under, and in accordance with, the terms and conditions, set out in the NES under the Act.

#### **50.47. Parental Leave**

50.147.1 An Employee is entitled to parental leave (maternity and paternity leave and adoption leave) as specified in applicable legislation. This clause is to be read subject to legislation.

50.247.2 Each permanent Employee will be entitled to two (2) weeks paid parental leave which must commence from the date of the birth or at the time of adoption of a child, and must be taken in one continuous period. For reference, unpaid parental leave is available under the National Employment Standards in the Act.

50.347.3 This clause does not apply during any period of leave.

#### **51.48. Long Service Leave**

51.148.1 Long Service Leave will accrue in accordance with the relevant State Long Service Leave legislation. For the purpose of administration, where the legislation refers to an entitlement in weeks, each week shall be equal to 5 days.

51.248.2 The Long Service Leave entitlement of each Employee who qualifies for Long Service Leave will be reduced by 1 day for each day of rostered duty taken as Long Service Leave.

51.348.3 Where a public holiday falls during a period of Long Service Leave, the period of Long Service Leave will not be extended. (This is due to the fact that the leave entitlement under clause 48 of this Agreement already includes public holiday entitlements.)

51.448.4 Discharge of Long Service Leave must be in blocks of days that conform with the roster pattern applicable in the port concerned. Long Service Leave can only be taken during periods when the Employee is rostered on for duty.

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

51.548.5 In ports where the system of work relies upon leave in running (un-rostered leave), the days on which long service leave is taken will be deemed to have been work days. For example, when a full 13 weeks long service leave entitlement (65 days) is taken in a year, the Employee will only be required to work on 118 days.

#### **49. Defence Leave**

49.1 In accordance with the provisions of the Defence Reserve Service (Protection) Act 2001, an Employee who is an Australian Defence Force reservist (**Reservist**) is entitled to leave without pay for the period where they are engaged by the Australian Defence Force (**Defence Leave**).

##### 49.1.1 Notification of Defence Leave

- (i) Employees must provide 3 months' notice of the requirement to take Defence Leave and where that is not possible, as much notice as is practicable.
- (ii) At the time of providing the notice referred to in sub-clause (i) above, the Employee must:
  - (a) to the extent practicable, notify the expected duration of the absence; and
  - (a)(b) in accordance with the Defence Reserve Service (Protection) Act 2001, provide Svitzer with an AE380, Tri Service Notice Reserve Service.

## **PART 7 – OTHER (To be updated closer to the date of finalising agreement)**

### **50. Transitional arrangement for ing-PPTs**

The transitional arrangements in clause 1 of this Schedule apply to all permanent part-time Employees employed between the period 1 January 2022 and 31 August 2022 (Transitioning PPTs).

#### 50.1 Review of salaries for Affected Transitioning PPTs

50.1.1 On or shortly after 1 September 2022, Svitzer will conduct a reconciliation with respect to the Transitioning PPTs and identify any Transitioning PPTs who have worked days in excess of their pro rata PPT Guarantee for the period 1 January 2022 to 31 August 2022 (Affected Transitioning PPTs).

50.1.2 Affected Transitioning PPTs will receive ~~400%~~ 200% of their daily salary rate relevant to permanent part time Employee's home port in accordance with Schedule 1 for each day worked in excess of their pro rata PPT Guarantee for the period 1 January 2022 to 31 August 2022.

50.1.3 Svitzer will make any required payments under this Schedule to Affected Transitioning PPTs by 1 November 2022.

#### 50.2 Transitioning PPTs – other

50.2.1 From 1 September 2022, the PPT Guarantee for all permanent part-time Employees will be reset and commence afresh, with the PPT Guarantee to be pro-rated over the balance of the 2022-23 Financial Year (and otherwise applied in accordance with this Agreement).

50.2.2 A Transitioning PPT who has not met their pro rata PPT Guarantee by 31 August 2022 will not be required to do so.

Example 1: A permanent part-time Employee with a 50% PPT Guarantee employed on 1 January 2022 and remaining employed as at 31 August 2022, works 80 days between 1 January 2022 and 30 June 2022.

- The pro rata PPT Guarantee for the period 1 January 2022 to 31 August 2022 is equal to 50% of 182 days (pro-rated down to 121 days - to represent 8 months of the 12 month calendar year), being a total of 60 days.

- The permanent part-time Employee is an Affected Transitioning PPT.

- The permanent part-time Employee has worked 20 days in excess of their pro rata PPT Guarantee for the period 1 January 2022 to 31 August 2022 and therefore under the transitional arrangements, will receive a payment from Svitzer equivalent to 20 days at 2400% of their daily salary rate.

Example 2: A permanent part-time Employee with a 50% PPT Guarantee, commenced employment 1 March 2022 and remains employed as at 31 August 2022, works 60 days between 1 March 2022 and 30 June 2022:

- The pro rata PPT Guarantee for the period 1 March 2022 to 31 August 2022 is equal to 50% of 182 days (pro-rated down to 91 days - to represent 6 months of the 12 month calendar year), being a total of 45.5 days.



**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

- The permanent part-time Employee is an Affected Transitioning PPT.
- The permanent part-time Employee has worked 14.5 days in excess of their pro rata PPT Guarantee for the period 1 March 2022 to 31 August 2022 and therefore under the transitional arrangements, will receive a payment from Svitzer equivalent to 14.5 days at 2400% of their daily salary rate.

**2. PPTs who commence midway through a Financial Year after commencement of this Agreement**

This clause 2 applies to PPTs who commence midway through a Financial Year after commencement of this Agreement.

For these PPTs, their PPT Guarantee is pro-rated down by reference to the number of days left in the Financial Year in which they commenced

**51. Masters Indemnity**

51.1 Masters shall be indemnified by Svitzer against all monetary claims, damages and expenses (including reasonable legal expenses) incurred by the Master arising from any act or omission of the Master while acting within the scope of the Master's employment or authority in relation to Australian maritime safety or environmental laws, and subject to the following limitations and conditions:

- (a) **Maritime navigation offences:** notwithstanding anything else in this Agreement (but subject to sub-clause 51(d) only), Svitzer will not indemnify Masters for any fines payable or any associated costs including legal advice in relation to the Master's liability to pay the fines in relation to breaches by the Masters of maritime safety or environmental laws or regulations.
- (b) **Environmental offences:** notwithstanding anything else in this Agreement, Svitzer will not provide any indemnification in relation to breaches of any environmental laws if the offence has occurred, because of a departure by the Master from Svitzer's operating procedures and policies.
- (c) **Indemnity in support of Svitzer's interest:** Svitzer will provide assistance to Masters including reimbursement or paying for reasonable expenses incurred by Masters when they are acting in support of Svitzer's interest only in investigations of maritime law investigations or environmental offences against Svitzer.
- (d) **Assistance to Masters during investigations:** Svitzer will provide the Masters with reasonable assistance and support (and reasonable legal expenses) during investigations commenced by a regulatory body against the Masters for alleged breaches by the Masters of environmental or maritime laws in the following circumstances and on the following conditions only:
  - (i) Svitzer has formed a view (acting reasonably) in respect of an incident that the Master had not breached any of Svitzer's policies or processes or the law; and
  - (ii) Svitzer will arrange for the external lawyer (if court proceedings are commenced) and the legal expenses will be capped at \$10,000 in legal fees.



**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

51.2 No indemnification will be provided under this Agreement in relation to any matter in which the Master has:

- (a) Engaged in fraud; serious or wilful misconduct; or
- (b) has been found to have been under the influence of alcohol or drugs (other than prescription drugs approved for the Master's use by Svitzer at the time of the relevant incident).

51.3 For the avoidance of doubt:

- (a) the reimbursement of reasonable legal expenses is not in relation to legal advice given to the Master about his or her breach of employment contract.
- (b) the indemnity in this clause also extends in circumstances where the Master is providing training to other masters, which is also within the scope of Master's employment or authority and on the conditions and limitations included in this clause.

**52. Master's Overriding Authority**

52.1 The Master has overriding authority to take required action considered necessary for the safety of the crew, the vessel or for the protection of the environment. Neither the owner, management, charterer or any other person will constrain the Master from complying with his or her responsibilities under Australian law, including the *Navigation Act 2012 (Cth)* and the state implementations of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*. Masters have the authority and responsibility to request management assistance, as he or she may consider necessary in order to make decisions to preserve human life, protect the environment or prevent damage to property.

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

## PART 7 – EXECUTION

### Signatures

<b>FOR Svitzer Australia Pty Limited</b>	<b>FOR Engineers / Australian Institute of Marine and Power Engineers</b>
_____ Signed	_____ Signed
_____ Name in full (printed)	_____ Name in full (printed)
_____ Title in full	_____ Title in full
	_____ <i>insert an explanation of the person's authority to sign the workplace agreement</i>
Date: _____	Date: _____
_____ Witnessed by (signature)	_____ Witnessed by (signature)
_____ Witness name in full (printed)	_____ Witness name in full (printed)
<b>FOR Masters / Australian Maritime Officers Union</b>	<b>FOR Ratings / Maritime Union of Australia <u>Division of the Construction, Forestry, Maritime, Mining and Energy Union</u></b>
_____ Signed	_____ Signed
_____ Name in full (printed)	_____ Name in full (printed)
_____ Title in full	_____ Title in full
Date: _____	Date: _____
_____ Witnessed by (signature)	_____ Witnessed by (signature)
_____ Witness name in full (printed)	_____ Witness name in full (printed)

---

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

---

51.652.2

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

## SCHEDULES

### Schedule 1 – Salaries (Refer clause 24)

**Annual Salaries 2022-2026 - See Note<sup>1</sup> as to adjustments to Port Salaries**

Port	Annual Salaries per Classification	
	Existing salary on <u>New Salary on</u> commencement of Agreement	
	Masters and Engineers	Ratings
Adelaide	\$208,277 <u>211,401</u>	\$126,774 <u>128,676</u>
Albany	\$178,956 <u>181,640</u>	\$108,881 <u>110,514</u>
<u>Bowen</u>		
Brisbane <sup>2</sup>	\$206,532 <u>209,630</u>	\$138,550 <u>140,628</u>
<u>Bundaberg</u>		
Cairns	\$149,960 <u>152,209</u>	\$113,267 <u>114,966</u>
Eden	\$131,615 <u>133,589</u>	\$95,214 <u>96,642</u>
Fremantle	\$190,087 <u>192,938</u>	\$116,178 <u>117,921</u>
Fremantle (composite)	\$193,346 <u>196,246</u>	\$122,220 <u>124,063</u>
<u>Geelong</u>		
Geraldton	\$187,905 <u>190,724</u>	\$114,327 <u>116,042</u>
<u>Gladstone</u>		
Kwinana	\$197,453 <u>200,415</u>	\$127,601 <u>129,515</u>
<u>Mackay</u>		
Melbourne	\$209,387 <u>212,528</u>	\$151,095 <u>153,361</u>
Mourilyan	\$149,960 <u>152,209</u>	\$113,268 <u>114,967</u>
Newcastle	\$211,797 <u>214,974</u>	\$138,437 <u>140,514</u>
Port Kembla	\$206,131 <u>209,223</u>	\$131,391 <u>133,362</u>
<u>Port Pirie</u> <u>Spencer Gulf</u> <sup>3</sup>	\$167,260 <u>169,769</u>	\$106,176 <u>107,769</u>
Sydney <sup>4</sup>	\$199,059 <u>202,045</u>	\$128,470 <u>130,397</u>
<u>Townsville</u>		
<u>Weipa</u>		
Westernport	\$202,210 <u>205,243</u>	\$139,601 <u>141,695</u>

#### Notes

1	National	<p>The salaries prescribed in the table in Schedule 1.</p> <p>If the Agreement is approved by the Fair Work Commission by 31 December 2022, the salaries will be adjusted on and from 1 January each year during the nominal term of this Agreement (on the first, second, third and fourth anniversary of this Agreement), commencing on 1 January 2017-2022 (and thereafter during the term of this Agreement) by as follows:</p> <ul style="list-style-type: none"> <li>1 January 2023 – 3.5%</li> <li>on each subsequent anniversary including 1 January 2026 after which it comes to an end, CPI (capped at 3%)</li> </ul> <p><b>CPI</b> means <b>annual percentage movement in the Consumer Price Index</b> (Cat No. 6401.0) [weighted average of the eight (8) capital cities] for the 12 months ending September in the preceding year</p>
2	Brisbane	Salary includes bridge toll and telephone allowance
3	Spencer Gulf Commuters	Employees who elect to receive accommodation provided by Svitzer will incur a deduction from their salary as prescribed in Schedule 3.

**Without Prejudice – and subject to overall agreement and Union dropping all of their recent claims**

4	Sydney	The salaries in the above table are in full satisfaction of any requirement from the Port of Sydney for immediate response in (“Captivity”) and Captive shifts in Port Botany, Sydney.
5	Cairns, Mourilyan	Salaries will be reduced by 7% effective 1 July 2017. There will be no salary increase in Cairns and Mourilyan for the year commencing 1 January 2018 or the year commencing 1 January 2019 if the CPI increase for each year is 1.5% or less. If the CPI increase for each individual year is greater than 1.5%, the salary will increase for that year by the difference between the CPI increase and 1.5%. For example: If the CPI increase for the year commencing 1 January 2018 is 2%, Svitzer will increase the Employees’ salary in Cairns and Mourilyan by 0.5%. If the CPI increase for the year commencing 1 January 2019 is 1.6%, Svitzer will increase the Employees’ salary in Cairns and Mourilyan by 0.1%. If the CPI increase for either year is 1.5% or less, the Employees’ salary in Cairns and Mourilyan will not increase.
	Ports without salaries listed	The annual salary for a full-time Employee will not fall below an annual salary that is calculated by multiplying the weekly salary for the Employee’s classification under clause 14.1 of the Award by 52.

**Schedule 1B – Training Salaries (Refer clause 24.5)**

Note: The Training Wages contained in the table in Schedule 1A will be adjusted proportionally on and from 1 January each year based on the adjustment in Salaries as described in Schedule 1.

Masters and Engineers	% of full-time Masters / Engineers salary *	Training Salaries	
		Prior to Commencement Date	From Commencement Date
Trainee Stage 1 (Entry level)	50%	\$59,910	\$62,501
Trainee Stage 2 (Intermediate Stage).	60%	\$71,891	\$75,001
Trainee Stage 3 (Final Stage)	75%	\$89,864	\$93,752

\*Based on the lowest Master / Engineer rate for the relevant period.

Ratings	% of full-time Ratings salary *	Training Salaries	
		Prior to Commencement Date	From Commencement Date
Trainee Stage 1 (Entry level)	50%	\$39,014	\$45,215
Trainee Stage 2 (Intermediate Stage).	60%	\$46,816	\$54,259
Trainee Stage 3 (Final Stage)	75%	\$58,520	\$67,823

\*Based on the lowest Ratings rate for the relevant period.

## Schedule 2 - National Allowances

**Note:** The Allowances contained in the tables in Schedules 2A to Schedule 2E below will be adjusted on and from 1 January each year (commencing on 1 January 2023 ~~17~~ and thereafter during the term of this Agreement) by the annual percentage movement in the Consumer Price Index (Cat No. 6401.0) [weighted average of the eight (8) capital cities] for the 12 months ending September in the preceding year.

### Schedule 2A - Nominated Voyages Allowance (refer clause 29)

State	Travel Between	And	Allowance (per Hour)
SA	Port Adelaide	Stanvac	\$26.81
	Port Adelaide	Giles Point	
	Port Adelaide	Kleins Point	
	Port Adelaide	Ardrossan	
	Port Adelaide	Port Lincoln	
	Port Pirie	Port Bonython	
	Port Pirie	Whyalla	
	Whyalla	Port Bonython	
Vic.	Melbourne	Westernport	\$26
	Geelong	Westernport	
NSW	Port Jackson	Botany Bay	\$26
	Port Jackson or Botany Bay	Newcastle or Port Kembla	
	Port Kembla	Newcastle	
QLD	Gladstone	Rockhampton	\$26
	Halftide Harbour**	Mackay**	
	Gladstone	Bundaberg	
	Mourilyan Harbour**	Lucinda**	
	Mourilyan Harbour#	Townsville #	
	Mourilyan Harbour*	Cairns*	
	Townsville	Cairns	
	Townsville**	Lucinda**	
	Cairns**	Lucinda**	
	Cairns#	Euston Reef #	
	Brisbane**	Towage requirements between M7 buoy and Port Limits**	
	Bowen*	Abbot Point*	

**Notes:**

\* The allowances that previously attached to Nominated Voyages marked with an asterisk (\*) are no longer payable separately as they have been incorporated into relevant salaries.

\*\* This allowance is not payable under this Schedule.

# No longer payable separately to Ratings/GPHs as allowances have been incorporated into their relevant salaries.

Schedule 2B - Allowance for Outside work and Salvage work (refer clauses 30 and 31) Outside Work (and Salvage work)	Outside Work Payment (Daily)			
	Prior to Commencement Date		From Commencement Date	
	Masters and Engineers	Ratings	Masters and Engineers	Ratings
Free Running Voyage and Delivery Voyage	\$824	\$514	\$896.2537	\$548.5322
Contract Towage	\$1,015	\$704	\$1,08230.35	\$750.2944
Emergency Operations (and Salvage work)	\$1,219	\$896	\$1,299.8837	\$956.2540

**Schedule 2C – Emergency Maintenance Allowance (refer clause 32)**

Emergency Maintenance Allowance	Emergency Maintenance Allowance ( Hourly)			
	Prior to Commencement Date		From Commencement Date	
	Masters and Engineers	Ratings	Masters and Engineers	Ratings
	\$88	\$53	\$91.7889	\$55.468

**Schedule 2D - Penalty payment - extended hours (refer clause 33)**

Penalty Payment	Penalty Payment (Hourly)			
	Prior to Commencement Date		From Commencement Date	
	Masters and Engineers	Ratings	Masters and Engineers	Ratings
	\$88	\$53	\$93.5389	\$56.7454

**Schedule 2E - Extreme weather alert allowance (refer clause 34)**

Extreme Weather Alert Allowance	Extreme Weather Alert Allowance (Hourly)			
	Prior to Commencement Date		From Commencement Date	
	Masters and Engineers	Ratings	Masters and Engineers	Ratings
	\$88	\$53	\$93.5389	\$56.7454

### Schedule 3– Port Specific Allowances and Deductions (refer clause 35)

State	Port	Description of Allowance	Eligibility and Application	From the Commencement Date
QLD	Brisbane	Voyage beyond M7 Buoy	Allowance is payable when towage assistance is rendered beyond the M7 buoy to the geographical limits of the Port of Brisbane. Payable per hour per hour from departure to return to base.	\$87.93
	Bowen / Abbott Point	Watchkeeping allowance (Ratings)	Allowance payable where SVITZER requires a rating to perform the functions of a wheelhouse watchkeeper under its Standing Orders, on a voyage between Bowen and Abbott Point, and the rating is qualified to do so and performs that function during the course of a duty period. The watchkeeping allowance is payable per duty period but it will not be payable more than once per day.	<del>\$79.00</del>
	Cairns and Mourilyan	Lucinda Voyage allowance (Masters and Engineers only)	Allowance is payable for any free-running voyage undertaken at Svitzer's requirement, between Cairns and Lucinda, and Mourilyan Harbour and Lucinda. Payable per day (or part thereof) from the time tug leaves the wharf.	\$205.24
SA	Spencer Gulf	Higher Duties Allowance	On any day when Svitzer requires a Rating/ General Purpose Hand who holds a valid "Master up to 35 metres Near Coastal" Certificate [previously known as a Certificate IV in Maritime Operations] ), to relieve the Master and perform duties of a Master, the Employee will be entitled to a daily higher duties allowance differential that equates to the difference between 75% of the daily Master's salary and the daily Ratings / GPH salary.	
SA	Spencer Gulf	Rental deduction (Spencer Gulf Commuters)	Applies to Employees who receive company-provided accommodation. The deduction will be made fortnightly from the Employee's wages on the basis specified below: (Casual Employees' deduction will be calculated pro-rata.) <i>per fortnight:</i>	\$60.00



State	Port	Description of Allowance	Eligibility and Application	
				From the Commencement Date
WA	Fremantle and Kwinana	Gale Watch	<p>Where:</p> <ul style="list-style-type: none"> <li>• Fremantle Ports or the Harbour Master requires Svitzer to deploy a tug in the Outer and/or Inner Harbours in response to a Bureau of Meteorology warning involving Gale Force winds that is current and applicable in the port area; and</li> <li>• an Employee crews that tug outside ordinary hours (for this purpose - before 0700 or after 1500 Monday to Friday excluding public holidays), during the warning,</li> </ul> <p>the Employee will receive the said allowance.</p> <p>This allowance will not be payable where an Employee is entitled to an Extreme weather alert allowance under clause 34.</p>	

# SVITZER

PG12

Monday 7 November 2022

## An Update on the EA and Protected Industrial Action

Dear Colleagues

I wanted to write to you all because I recognise how difficult the current environment is and, as the industrial action by the maritime unions escalates, the challenging position it puts us all in as we try to juggle managing the impacts of the actions alongside our everyday jobs.

And that's for everyone across the business, crew and shore teams alike, because it is tough, and I want to **thank you for your efforts, patience and resilience**.

At last count we have been notified of more than 150 instances of protected industrial action since 1 November 2022 – affecting ports around the country.

We are receiving notices from the unions of new protected actions on effectively a daily basis now.

Our customers and port stakeholders are obviously keenly keeping watch on this as a priority and sharing their questions and concerns.

### It is a difficult period

I also recognise that when there is a dispute of this nature it can understandably cause friction among teams within the company.

However, I want to stress that **please, be kind and respectful to each other**, and recognise that when this industrial action occurs it is uncertain and can create anxiety, frustration, anger and many more emotions among colleagues.

This is completely understandable so please be mindful as you all continue to work together in this current environment.

I also need to stress it is essential that during this uncertainty and the complexity of protected industrial action – we do not compromise on the safety of services and operations.

Please make sure this remains your primary focus at all times and support each other in doing so.

### Need to Change – New towage licence at Flinders Ports (SA)

Unfortunately, I also need to highlight that **we are facing ongoing challenges as a business and that our need to change is only growing**.

- Unfortunately, right now **Engage are picking up more work in Sydney and are aggressively going after emergency towage work** and other potential contracts.
- Additionally, **Flinders Ports (SA) has recently notified us that they are proposing to issue an additional licence for another towage provider**.
- Our major customers and port operators are investigating alternative providers as an ongoing concern.
- We also understand **the sale of Smit Lamnalco is imminent and note the recent entry of MSC into the global towage market**, acquiring a large towage provider in the past month.

Some of our colleagues have said the analogy I've made previously about the taxi industry being disrupted by Uber was a "disgraceful comparison" to the experience of Svitzer in Australia.

Unfortunately, recent events suggest this comparison is more appropriate than ever.

**Our reputation for service reliability that we have been able to charge a premium for is being harmed** and it will take time to rebuild the confidence that has been lost.

Lastly – I need to express this protected industrial action is not only being felt by our direct customer base, but it is **being felt right across the port communities in which we operate**.

I know this is not the news you will be wanting to hear – but my commitment is to be upfront with you.

So, in the face of this challenge, I want to again express my thanks to everyone for navigating it as best as possible – and for those of you working through the additional workload it is causing in the ops centres, communicating with our customers, managing shift schedules, figuring out crewing and more.

I will host an EA update soon to help bring you the latest and answer your questions – so please keep an eye out in your inbox for an MS Teams meeting invitation in coming days.

### Where you can seek support

If you or someone you needs support, please reach out to Svitzer's Employee Assistance providers:

**Hunterlink**, Svitzer Australia's Employee Assistance Provider, can be contacted on [1800 554 654](tel:1800554654), **24 hours, 7-days a week**.

**ComPsych**, PNG's Employee Assistance Provider, can be contacted on **+65.67346463**

Regards,

**Nicolaj**  
MD, Svitzer Australia

MAKING AUSTRALIAN PORTS SAFER AND MORE EFFICIENT



Paul Garrett

---

**Subject:** Re: Svitzer EA 2022 (Without Prejudice)  
**Date:** Friday, 11 November 2022 at 4:04:50 pm Australian Eastern Daylight Time  
**From:** Paul Garrett <Paul.Garrett@mua.org.au>  
**To:** Nicolaj Noes <nicolaj.noes@svitzer.com>  
**CC:** Jarrod Moran <Jarrod@amou.com.au>, Mark Davis <mark@amou.com.au>, Greg Yates <gyates@aimpe.asn.au>, Martin Byrne (mbyrne@aimpe.asn.au) <mbyrne@aimpe.asn.au>, Fabiana James <fabiana.james@svitzer.com>, Sydney Executive <SydneyExecutive@mua.org.au>, radads <radads@hotmail.com>, Anthony Nealen <jacksea007@gmail.com>, Brett Larkin <brett.larkin@mua.org.au>, Dave Andrews <dandrews@aapt.net.au>, David Ball <david.ball@mua.org.au>, David Debnam <davedebnam67@gmail.com>, jf.duffin <jf.duffin@hotmail.com>, George Gakis <george.gakis@mua.org.au>, Glen Williams <glen.williams@mua.org.au>, Jack McCabe <jack.mccabe@mua.org.au>, Jamie Newlyn <Jamie.Newlyn@mua.org.au>, Jason Miners <jason.miners@mua.org.au>, Jason Steen <jason-steen@hotmail.com>, Jeremy Delmadoros <jdelmadoros89@gmail.com>, John Atkin <johnnoatkin@gmail.com>, Matt Fitz <fitz1118@hotmail.com>, Mich-Elle Myers <Michelle.Myers@mua.org.au>, Michael Cross <michael.cross@mua.org.au>, Nathan Donato <nathan.donato@mua.org.au>, peterjamesmith123 <peterjamesmith123@hotmail.com>, Robert Paterson <Robert.Paterson@mua.org.au>, Rob Paterson <rob.paterson@hotmail.com>, shane maley <shanemales@hotmail.com>, Will Tracey <Will.Tracey@mua.org.au>, Dennis Outram <dennis.outram@mua.org.au>, Liam Kelly <liamkelly091@gmail.com>, Deniz Kirdar True <deniz.kirdar@svitzer.com>

**Attachments:** image001.png

Nicolaj,

Appreciate that whilst you have signed off on that letter, we both know you haven't written it.

We both know that it has mistruths in it and going back and forth to correct the record to appease your lawyers will not resolve the negotiations. It only serves to frustrate your workforce.

Respectfully, Svitzer cannot make application to terminate the EBA which your workers are employed under and then at the same time write out to your workers in some poor attempt to seek the moral high ground. It is hypocritical.

The parties need to resume negotiations. If you are listening to your workers, they want certainty in their industrial agreement.

The MUA notes that Svitzer are not prepared to meet.

Regards,  
Paul

**Paul Garrett**

Deputy Secretary | Branch Presiding Officer

---

**Maritime Union of Australia (Sydney Branch)**

365 Sussex Street  
Sydney NSW 2000  
m: 0418 422 589  
e: [paul.garrett@mua.org.au](mailto:paul.garrett@mua.org.au)

---

**From:** Nicolaj Noes <nicolaj.noes@svitzer.com>  
**Date:** Friday, 11 November 2022 at 3:44 pm  
**To:** Paul Garrett <Paul.Garrett@mua.org.au>  
**CC:** Jarrod Moran <jarrod@amou.com.au>, Mark Davis <mark@amou.com.au>, Greg Yates <gyates@aimpe.asn.au>, Martin Byrne <mbyrne@aimpe.asn.au>, Fabiana James <fabiana.james@svitzer.com>, Sydney Executive <SydneyExecutive@mua.org.au>, Adam Smith <radads@hotmail.com>, Anthony Nealen <jacksea007@gmail.com>, Brett Larkin <brett.larkin@mua.org.au>, Dave Andrews <dandrews@aapt.net.au>, David Ball <david.ball@mua.org.au>, David Debnam <davedebnam67@gmail.com>, Frank Duffin <jf.duffin@hotmail.com>, George Gakis <george.gakis@mua.org.au>, Glen Williams <glen.williams@mua.org.au>, Jack McCabe <jack.mccabe@mua.org.au>, Jamie Newlyn <Jamie.Newlyn@mua.org.au>, Jason Miners <jason.miners@mua.org.au>, Jason Steen <jason-steen@hotmail.com>, Jeremy Delmadoros <jdelmadoros89@gmail.com>, John Atkin <johnnoatkin@gmail.com>, Matt Fitz <fitz1118@hotmail.com>, Mich-Elle Myers <Michelle.Myers@mua.org.au>, Michael Cross <michael.cross@mua.org.au>, Nathan Donato <nathan.donato@mua.org.au>, Peter Smith <peterjamesmith123@hotmail.com>, Rob Paterson <Robert.Paterson@mua.org.au>, Rob Paterson <rob.paterson@hotmail.com>, Shane Maley <shanemales@hotmail.com>, Will Tracey <Will.Tracey@mua.org.au>, Dennis Outram <dennis.outram@mua.org.au>, Liam h Kelly <liamkelly091@gmail.com>, Deniz Kirdar-True <deniz.kirdar@svitzer.com>  
**Subject:** RE: Svitzer EA 2022 (Without Prejudice)

Gents,

Please find enclosed response.

Rgds Nicolaj

---

**From:** Paul Garrett <Paul.Garrett@mua.org.au>  
**Sent:** Tuesday, 8 November 2022 12:49 PM  
**To:** Nicolaj Noes <nicolaj.noes@svitzer.com>  
**CC:** Jarrod Moran <jarrod@amou.com.au>; Mark Davis <mark@amou.com.au>; Greg Yates <gyates@aimpe.asn.au>; Martin Byrne (mbyrne@aimpe.asn.au) <mbyrne@aimpe.asn.au>; Fabiana James <fabiana.james@svitzer.com>; Sydney Executive <SydneyExecutive@mua.org.au>; radads <radads@hotmail.com>; Anthony Nealen <jacksea007@gmail.com>; Brett Larkin <brett.larkin@mua.org.au>; Dave Andrews <dandrews@aapt.net.au>; David Ball <david.ball@mua.org.au>; David Debnam <davedebnam67@gmail.com>; jf.duffin <jf.duffin@hotmail.com>; George Gakis <george.gakis@mua.org.au>; Glen Williams <glen.williams@mua.org.au>; Jack McCabe <jack.mccabe@mua.org.au>; Jamie Newlyn <Jamie.Newlyn@mua.org.au>; Jason Miners <jason.miners@mua.org.au>; Jason Steen <jason-steen@hotmail.com>; Jeremy Delmadoros <jdelmadoros89@gmail.com>; John Atkin

<[johnnoatkin@gmail.com](mailto:johnnoatkin@gmail.com)>; Matt Fitz <[fitz1118@hotmail.com](mailto:fitz1118@hotmail.com)>; Mich-Elle Myers <[Michelle.Myers@mua.org.au](mailto:Michelle.Myers@mua.org.au)>; Michael Cross <[michael.cross@mua.org.au](mailto:michael.cross@mua.org.au)>; Nathan Donato <[nathan.donato@mua.org.au](mailto:nathan.donato@mua.org.au)>; peterjamesmith123 <[peterjamesmith123@hotmail.com](mailto:peterjamesmith123@hotmail.com)>; Robert Paterson <[Robert.Paterson@mua.org.au](mailto:Robert.Paterson@mua.org.au)>; Rob Paterson <[rob.paterson@hotmail.com](mailto:rob.paterson@hotmail.com)>; Shane Maley <[shanemales@hotmail.com](mailto:shanemales@hotmail.com)>; Will Tracey <[Will.Tracey@mua.org.au](mailto:Will.Tracey@mua.org.au)>; Dennis Outram <[dennis.outram@mua.org.au](mailto:dennis.outram@mua.org.au)>; Liam Kelly <[liamkelly091@gmail.com](mailto:liamkelly091@gmail.com)>

**Subject:** Re: Svitzer EA 2022 (Without Prejudice)

Nicolaj,

Following on from your remarkable email yesterday where you have doubled down on your Uber analogy, the MUA has had contact from your employees asking when the company is going to sit down with the unions next and work out a resolution to these ongoing EBA negotiations.

Is there any answer, or is everything pinned on EBA termination?

Appreciate your advice. We are open to seeking bargaining orders if Svitzer refuses to meet.

Looking forward to your response.

Regards,  
Paul

## Paul Garrett

Deputy Secretary | Branch Presiding Officer

### Maritime Union of Australia (Sydney Branch)

365 Sussex Street  
Sydney NSW 2000  
m: 0418 422 589  
e: [paul.garrett@mua.org.au](mailto:paul.garrett@mua.org.au)

---

**From:** Nicolaj Noes <[nicolaj.noes@svitzer.com](mailto:nicolaj.noes@svitzer.com)>

**Date:** Wednesday, 2 November 2022 at 1:49 pm

**To:** Paul Garrett <[Paul.Garrett@mua.org.au](mailto:Paul.Garrett@mua.org.au)>

**Cc:** Jarrod Moran <[jarrod@amou.com.au](mailto:jarrod@amou.com.au)>, Mark Davis <[mark@amou.com.au](mailto:mark@amou.com.au)>, Greg Yates <[gyates@aimpe.asn.au](mailto:gyates@aimpe.asn.au)>, Martin Byrne <[mbyrne@aimpe.asn.au](mailto:mbyrne@aimpe.asn.au)>, Fabiana James <[fabiana.james@svitzer.com](mailto:fabiana.james@svitzer.com)>, Sydney Executive <[SydneyExecutive@mua.org.au](mailto:SydneyExecutive@mua.org.au)>, Adam Smith <[radads@hotmail.com](mailto:radads@hotmail.com)>, Anthony Nealen <[jacksea007@gmail.com](mailto:jacksea007@gmail.com)>, Brett Larkin <[brett.larkin@mua.org.au](mailto:brett.larkin@mua.org.au)>, Dave Andrews <[dandrews@aapt.net.au](mailto:dandrews@aapt.net.au)>, David Ball <[david.ball@mua.org.au](mailto:david.ball@mua.org.au)>, David Debnam <[davedebnam67@gmail.com](mailto:davedebnam67@gmail.com)>, Frank Duffin <[jf.duffin@hotmail.com](mailto:jf.duffin@hotmail.com)>, George Gakis <[george.gakis@mua.org.au](mailto:george.gakis@mua.org.au)>, Glen Williams <[glen.williams@mua.org.au](mailto:glen.williams@mua.org.au)>, Jack McCabe <[jack.mccabe@mua.org.au](mailto:jack.mccabe@mua.org.au)>, Jamie Newlyn <[Jamie.Newlyn@mua.org.au](mailto:Jamie.Newlyn@mua.org.au)>, Jason Miners <[jason.miners@mua.org.au](mailto:jason.miners@mua.org.au)>, Jason Steen <[jason-steen@hotmail.com](mailto:jason-steen@hotmail.com)>, Jeremy Delmadoros <[jdelmadoros89@gmail.com](mailto:jdelmadoros89@gmail.com)>, John Atkin <[johnnoatkin@gmail.com](mailto:johnnoatkin@gmail.com)>, Matt Fitz <[fitz1118@hotmail.com](mailto:fitz1118@hotmail.com)>, Mich-Elle Myers <[Michelle.Myers@mua.org.au](mailto:Michelle.Myers@mua.org.au)>, Michael Cross <[michael.cross@mua.org.au](mailto:michael.cross@mua.org.au)>, Nathan Donato <[nathan.donato@mua.org.au](mailto:nathan.donato@mua.org.au)>, Peter Smith <[peterjamesmith123@hotmail.com](mailto:peterjamesmith123@hotmail.com)>, Rob Paterson <[Robert.Paterson@mua.org.au](mailto:Robert.Paterson@mua.org.au)>, Rob Paterson <[rob.paterson@hotmail.com](mailto:rob.paterson@hotmail.com)>, Shane Maley <[shanemales@hotmail.com](mailto:shanemales@hotmail.com)>, Will Tracey <[Will.Tracey@mua.org.au](mailto:Will.Tracey@mua.org.au)>, Dennis Outram <[dennis.outram@mua.org.au](mailto:dennis.outram@mua.org.au)>, Liam Kelly <[liamkelly091@gmail.com](mailto:liamkelly091@gmail.com)>

**Subject:** RE: Svitzer EA 2022 (Without Prejudice)

*Without Prejudice*

Paul,

Think we all have the history to confirm that we have certainly spent a lot of time bargaining and looking for solutions.

At the risk of repeating ourselves – we left the discussions in Sussex street with an offer presented by Svitzer. Unions decided not to respond to same and as circumstances changed (our commercial position deteriorated due to industrial action, recognition calculation that without an agreement reached in Sussex the cost and complexity of an extended process became a factor and we frankly also saw a heightened risk of more formidable competitors crystalize MSC and Boluda). We consequently felt it necessary to revert to a proposal that re-establish some of the efficiency gains necessary for us to survive in this new reality).

Paul – we are trying to be transparent here and this is not about positioning anyone, creating confusion or similar. This is us being pragmatic and looking to not waste anyones time nor create additional frustration by pursuing discussions where we know there can be no compromises.

We have made it clear that your position presented on 18-20<sup>th</sup> of October include threshold elements/claims that we know we can not agree to, no matter how many bargaining sessions we have. This is not about having anyone negotiate against themselves it is about being transparent and clear. The last thing parties need is another session where we simply sit and repeat entrenched positions causing more anger and frustration.

We remain committed to a negotiated outcome but we have to be respectful of eachothers time and resources and if the threshold claims remain as expectations for a deal and that is the response then I do not think it justifies additional sessions. We do feel that the ball is in your court at this point. I do think that email is a suitable media to create clarity on these issues and establish whether there is any path forward.

Rgds Nicolaj

---

**From:** Paul Garrett <[Paul.Garrett@mua.org.au](mailto:Paul.Garrett@mua.org.au)>

**Sent:** Wednesday, 2 November 2022 10:36 AM

**To:** Nicolaj Noes <[nicolaj.noes@svitzer.com](mailto:nicolaj.noes@svitzer.com)>

**Cc:** Jarrod Moran <[Jarrod@amou.com.au](mailto:Jarrod@amou.com.au)>; Mark Davis <[mark@amou.com.au](mailto:mark@amou.com.au)>; Greg Yates <[gyates@aimpe.asn.au](mailto:gyates@aimpe.asn.au)>; Martin Byrne <[mbyrne@aimpe.asn.au](mailto:mbyrne@aimpe.asn.au)>; Fabiana James <[fabiana.james@svitzer.com](mailto:fabiana.james@svitzer.com)>; Sydney Executive <[SydneyExecutive@mua.org.au](mailto:SydneyExecutive@mua.org.au)>; radads <[radads@hotmail.com](mailto:radads@hotmail.com)>; Anthony Nealen <[jacksea007@gmail.com](mailto:jacksea007@gmail.com)>; Brett Larkin <[brett.larkin@mua.org.au](mailto:brett.larkin@mua.org.au)>; Dave Andrews <[dandrews@aapt.net.au](mailto:dandrews@aapt.net.au)>; David Ball <[david.ball@mua.org.au](mailto:david.ball@mua.org.au)>; David Debnam <[davedebnam67@gmail.com](mailto:davedebnam67@gmail.com)>; jf.duffin <[jf.duffin@hotmail.com](mailto:jf.duffin@hotmail.com)>; George Gakis <[george.gakis@mua.org.au](mailto:george.gakis@mua.org.au)>; Glen Williams <[glen.williams@mua.org.au](mailto:glen.williams@mua.org.au)>; Jack McCabe <[jack.mccabe@mua.org.au](mailto:jack.mccabe@mua.org.au)>; Jamie Newlyn <[Jamie.Newlyn@mua.org.au](mailto:Jamie.Newlyn@mua.org.au)>; Jason Miners <[jason.miners@mua.org.au](mailto:jason.miners@mua.org.au)>; Jason Steen <[jason-steen@hotmail.com](mailto:jason-steen@hotmail.com)>; Jeremy Delmadoros <[jdelmadoros89@gmail.com](mailto:jdelmadoros89@gmail.com)>; John Atkin <[johnnoatkin@gmail.com](mailto:johnnoatkin@gmail.com)>; Matt Fitz <[fitz1118@hotmail.com](mailto:fitz1118@hotmail.com)>; Mich-Elle Myers <[Michelle.Myers@mua.org.au](mailto:Michelle.Myers@mua.org.au)>; Michael Cross <[michael.cross@mua.org.au](mailto:michael.cross@mua.org.au)>; Nathan Donato <[nathan.donato@mua.org.au](mailto:nathan.donato@mua.org.au)>; peterjamesmith123 <[peterjamesmith123@hotmail.com](mailto:peterjamesmith123@hotmail.com)>; Robert Paterson <[Robert.Paterson@mua.org.au](mailto:Robert.Paterson@mua.org.au)>;

Rob Paterson <[rob.paterson@hotmail.com](mailto:rob.paterson@hotmail.com)>; Shane Maley <[shanemales@hotmail.com](mailto:shanemales@hotmail.com)>; Will Tracey <[Will.Tracey@mua.org.au](mailto:Will.Tracey@mua.org.au)>; Dennis Outram <[dennis.outram@mua.org.au](mailto:dennis.outram@mua.org.au)>; Liam Kelly <[liamkelly091@gmail.com](mailto:liamkelly091@gmail.com)>

**Subject:** Re: Svitzer EA 2022 (Without Prejudice)

Obviously meant to read:

*Can you please confirm whether **Svitzer** are prepared to meet?*

I am sure you get the drift...

## Paul Garrett

Deputy Secretary | Branch Presiding Officer

---

### Maritime Union of Australia (Sydney Branch)

365 Sussex Street  
Sydney NSW 2000  
m: 0418 422 589  
e: [paul.garrett@mua.org.au](mailto:paul.garrett@mua.org.au)

---

**From:** Paul Garrett <[Paul.Garrett@mua.org.au](mailto:Paul.Garrett@mua.org.au)>

**Date:** Wednesday, 2 November 2022 at 10:29 am

**To:** Nicolaj Noes <[nicolaj.noes@svitzer.com](mailto:nicolaj.noes@svitzer.com)>

**Cc:** Jarrod Moran <[Jarrod@amou.com.au](mailto:Jarrod@amou.com.au)>, Mark Davis <[mark@amou.com.au](mailto:mark@amou.com.au)>, Greg Yates <[gyates@aimpe.asn.au](mailto:gyates@aimpe.asn.au)>, Martin Byrne <[mbyrne@aimpe.asn.au](mailto:mbyrne@aimpe.asn.au)>, Fabiana James <[fabiana.james@svitzer.com](mailto:fabiana.james@svitzer.com)>, Sydney Executive <[SydneyExecutive@mua.org.au](mailto:SydneyExecutive@mua.org.au)>, Adam Smith <[radads@hotmail.com](mailto:radads@hotmail.com)>, Anthony Nealen <[jacksea007@gmail.com](mailto:jacksea007@gmail.com)>, Brett Larkin <[brett.larkin@mua.org.au](mailto:brett.larkin@mua.org.au)>, Dave Andrews <[dandrews@aapt.net.au](mailto:dandrews@aapt.net.au)>, David Ball <[david.ball@mua.org.au](mailto:david.ball@mua.org.au)>, David Debnam <[davedebnam67@gmail.com](mailto:davedebnam67@gmail.com)>, Frank Duffin <[jf.duffin@hotmail.com](mailto:jf.duffin@hotmail.com)>, George Gakis <[george.gakis@mua.org.au](mailto:george.gakis@mua.org.au)>, Glen Williams <[glen.williams@mua.org.au](mailto:glen.williams@mua.org.au)>, Jack McCabe <[jack.mccabe@mua.org.au](mailto:jack.mccabe@mua.org.au)>, Jamie Newlyn <[Jamie.Newlyn@mua.org.au](mailto:Jamie.Newlyn@mua.org.au)>, Jason Miners <[jason.miners@mua.org.au](mailto:jason.miners@mua.org.au)>, Jason Steen <[jason-steen@hotmail.com](mailto:jason-steen@hotmail.com)>, Jeremy Delmadoros <[jdelmadoros89@gmail.com](mailto:jdelmadoros89@gmail.com)>, John Atkin <[johnnoatkin@gmail.com](mailto:johnnoatkin@gmail.com)>, Matt Fitz <[fitz1118@hotmail.com](mailto:fitz1118@hotmail.com)>, Mich-Elle Myers <[Michelle.Myers@mua.org.au](mailto:Michelle.Myers@mua.org.au)>, Michael Cross <[michael.cross@mua.org.au](mailto:michael.cross@mua.org.au)>, Nathan Donato <[nathan.donato@mua.org.au](mailto:nathan.donato@mua.org.au)>, Peter Smith <[peterjamesmith123@hotmail.com](mailto:peterjamesmith123@hotmail.com)>, Rob Paterson <[Robert.Paterson@mua.org.au](mailto:Robert.Paterson@mua.org.au)>, Rob Paterson <[rob.paterson@hotmail.com](mailto:rob.paterson@hotmail.com)>, Shane Maley <[shanemales@hotmail.com](mailto:shanemales@hotmail.com)>, Will Tracey <[Will.Tracey@mua.org.au](mailto:Will.Tracey@mua.org.au)>, Dennis Outram <[dennis.outram@mua.org.au](mailto:dennis.outram@mua.org.au)>, Liam Kelly <[liamkelly091@gmail.com](mailto:liamkelly091@gmail.com)>

**Subject:** Re: Svitzer EA 2022 (Without Prejudice)

Nicolaj,

Without prejudice.

The MUA notes your email. Again, the “...in-principle agreement...” which you refer to is not a point of agreement between the parties and that position has been well traversed between the parties.

With regards to your email below, respectfully, again Svitzer has changed the position of the company without any genuine clarity to the overall position that Svitzer is advancing. Your response again requires the unions to perform a gap analysis and make assessment of what the actual position of the company is against several documents over a six-month period.

The MUA is conscious that Svitzer are deliberately attempting to confuse these negotiations to play into a narrative that will no doubt be ventilated is the Fair Work Commission or other court of competent jurisdiction.

From what we can understand from your response, Svitzer have reopened several claims that had been previously settled during negotiations. The position that you have advanced is well inferior to the position you advanced one week prior.

Furthermore, it appears your solicitors have directed you to return to “negotiations via email”. That is disappointing.

The MUA in noting your response refers you back to the combined position of the three unions that were advanced during the EBA negotiation meetings held on 18-20 October.

Irrespective of your application to terminate the EBA, your employees right to collective bargain remains. The MUA calls on Svitzer to resume these negotiations immediately so the parties can attempt to resolve these well overdue EBA negotiations.

Your employees deserve that certainty.

Can you please confirm whether are prepared to meet?

Regards,  
Paul

## Paul Garrett

Deputy Secretary | Branch Presiding Officer

---

### Maritime Union of Australia (Sydney Branch)

365 Sussex Street  
Sydney NSW 2000  
m: 0418 422 589  
e: [paul.garrett@mua.org.au](mailto:paul.garrett@mua.org.au)



---

**From:** Nicolaj Noes <[nicolaj.noes@svitzer.com](mailto:nicolaj.noes@svitzer.com)>

**Date:** Wednesday, 26 October 2022 at 1:56 pm

**To:** Paul Garrett <[Paul.Garrett@mua.org.au](mailto:Paul.Garrett@mua.org.au)>, Jarrod Moran <[Jarrod@amou.com.au](mailto:Jarrod@amou.com.au)>, Mark Davis <[mark@amou.com.au](mailto:mark@amou.com.au)>, Greg Yates <[gyates@aimpe.asn.au](mailto:gyates@aimpe.asn.au)>, Martin Byrne <[mbyrne@aimpe.asn.au](mailto:mbyrne@aimpe.asn.au)>

**Cc:** Jamie Newlyn <[Jamie.Newlyn@mua.org.au](mailto:Jamie.Newlyn@mua.org.au)>, Glen Williams <[glen.williams@mua.org.au](mailto:glen.williams@mua.org.au)>, Anthony Nealen <[jacksea007@gmail.com](mailto:jacksea007@gmail.com)>, Adam Smith <[radads@hotmail.com](mailto:radads@hotmail.com)>, Rob Paterson <[rob.paterson@hotmail.com](mailto:rob.paterson@hotmail.com)>, Peter Smith <[peterjamesmith123@hotmail.com](mailto:peterjamesmith123@hotmail.com)>, Jeremy Delmadoros <[jdelmadoros89@gmail.com](mailto:jdelmadoros89@gmail.com)>

**Subject:** RE: Svitzer EA 2022 (Without Prejudice)

Without Prejudice

Hi Paul,

We have been negotiating in good faith – I think the amount of sessions, alternatives presented (generally in response to feedback from unions on what can and can not be accepted) is a real testament to that.

We did provide a without prejudice offer last week but it was given with a certain context – with the key assumption being that it would be accepted last week and we would move on to an implementation discussion. It became clear that our assumptions were not accurate and also the whole context of the discussion has changed:

- The offer was not approved and we consequently were served with significant industrial action and I have to assume there will more of that going forward. The industrial action does change the context/framework for our offer – historically we have been able to demand a premium for our service compared to our competitors. Reflecting our brand and quality of service – with continued industrial action we can no longer secure such premiums actually to the contrary we will have customers demanding a discount to do business with us. They say that the risk of industrial action and consequent service disruptions actually mean they require a discount to accept that risk. Concerningly that negative spiral of industrial action diminishing our brand and consequent need to offer more discounts, send us back looking for additional savings to counter the drop in revenue. This is a spiral we really need to break – for now though we had to withdraw our latest offer as it is not viable in an environment with significant industrial action and consequent price pressure from customers.
- We saw the expansion of MSC in to global towage and we now expect the SmitLamnalco sale will progress before the end of the year and it has been made clear to us, that they will be able to enter the SLA ports without the Smit EA being transferred over so we will have another key competitor with a more productive offering.
- I also saw our cost base challenge exposed this week – we were up against Engage in offering services for the support of the stricken Maersk vessel of NSW coast. The rates they were able to offer really crystallized the cost dis-advantage we are at.

Hence our move to revert to a position presented/agreed back when we had the in principle 'document' with minor adjustments to reflect the current landscape. We were at the working on a cost assumption of CPI for the 2023 1<sup>st</sup> Jan would be around the historic levels and RBA targets of 3pct. For clarity we have formalized that to a 3.5% 1<sup>st</sup> of Jan 2023 offer.

Attached is the EA which reflects our current offer – I want to be transparent that as things around change in the market we have to adapt and change our offer.

Summary of Key claims in the attached EA (refer to the attached for more details):

- Term of the Agreement: 4 years from the date of approval by the FWC
- As per the previous in-principle agreement, PoPs not incorporated into the EA however, they will be subject to the dispute resolution procedure (Clause 5.3 and 10.1)
- Clause 16 (Recruitment): removing restriction of trade certificate; removing consultation on casual employment, and delegates attending interview process at their cost; and keeping clause 16.2 around PPT
- Engineers duties clause as per attached and consistent with the in-principle agreement
- Revalidation clause (19.3.3.) as per the in-principle agreement
- Redundancy: Removing the EOI process
- Salaries (clause 24); full time employees to receive 1 day back when they get recalled; part time employees to receive 1.5 days back after they reach their guarantee (with maximum accrued leave days of 9)
- Casual loading of 50%
- Outside work clause 30 (as per attached); reduced nos for ratings; clause around shorthand allowance being not permissible, and removing subcontracting provisions
- PoPs clause as per the attached with the maintenance clause agreed back in April 2022
- No backpay
- Assuming agreement is approved by 31 December 2022; salary increase of 3.5% on 1 January 2023 and on each anniversary CPI (capped at 4%).

Per previous we remain committed to a negotiated outcome but also recognize the realities of not having an agreement push all parties toward focusing their minds towards termination hearings in December. I strongly feel that the best way forward is that the unions revert with a united and comprehensive response to the attached (including position on the claims raised by unions since the May discussions).

Regards

Nicolaj

---

**From:** Paul Garrett <[Paul.Garrett@mua.org.au](mailto:Paul.Garrett@mua.org.au)>

**Sent:** Wednesday, 26 October 2022 7:54 AM

**To:** Nicolaj Noes <[nicolaj.noes@svitzer.com](mailto:nicolaj.noes@svitzer.com)>; Jarrod Moran <[Jarrod@amou.com.au](mailto:Jarrod@amou.com.au)>; Mark Davis <[mark@amou.com.au](mailto:mark@amou.com.au)>; Greg Yates <[gyates@aimpe.asn.au](mailto:gyates@aimpe.asn.au)>; Martin Byrne <[mbyrne@aimpe.asn.au](mailto:mbyrne@aimpe.asn.au)> <[mbyrne@aimpe.asn.au](mailto:mbyrne@aimpe.asn.au)>; Jamie Newlyn <[Jamie.Newlyn@mua.org.au](mailto:Jamie.Newlyn@mua.org.au)>

**Cc:** Jamie Newlyn <[Jamie.Newlyn@mua.org.au](mailto:Jamie.Newlyn@mua.org.au)>; Glen Williams <[glen.williams@mua.org.au](mailto:glen.williams@mua.org.au)>; Anthony Nealen <[jacksea007@gmail.com](mailto:jacksea007@gmail.com)>; radads <[radads@hotmail.com](mailto:radads@hotmail.com)>; Rob Paterson <[rob.paterson@hotmail.com](mailto:rob.paterson@hotmail.com)>; peterjamesmith123 <[peterjamesmith123@hotmail.com](mailto:peterjamesmith123@hotmail.com)>; Jeremy Delmadoros <[jdelmadoros89@gmail.com](mailto:jdelmadoros89@gmail.com)>

**Subject:** Re: Svitzer EA 2022

Good Morning Nicolaj,

Thanks for your email and acknowledging its receipt.

Whilst obviously disappointing that Svitzer has moved away from many points that we had resolved in principle in the last few months, it is surprising that Svitzer have also dispensed with the "without prejudice" wage offer made by the unions, particularly as it was in line with the financial aspirations of the company as you have advanced on behalf of Svitzer at the EBA negotiations.

The MUA notes where you have stated:

*For this reason, going over our recent without prejudice offers, we believe the best way forward for us is to revert to the without prejudice position which formed part of the in-principle agreement before Brian Lacy (other than the proposed salary increases).*

Obviously, the "...in-principle agreement..." which you refer to is not a point of agreement between the parties and that position has been well traversed between the parties. Furthermore, the conciliation sessions before Brian Lacy have concluded.

To assist in giving genuine consideration of your position and to allow the MUA to respond, consistent with s228(1)(b) of the *Fair Work Act 2009 (Cth)*, the MUA respectfully requests that Svitzer outline in detail what the "...without prejudice position..." that Svitzer is going to "...revert to..." specifically is.

The email below is lacking in that detail and as you would appreciate, there has been a significant correspondence overload during these negotiations which has caused an ongoing lack of clarity on bargaining positions.

The MUA appreciates your prompt written response to this request.

On behalf of the MUA EBA Negotiating Committee.

Regards,  
Paul

## Paul Garrett

Deputy Secretary | Branch Presiding Officer

---

### Maritime Union of Australia (Sydney Branch)

365 Sussex Street

Sydney NSW 2000

m: 0418 422 589

e: [paul.garrett@mua.org.au](mailto:paul.garrett@mua.org.au)

---

**From:** Nicolaj Noes <[nicolaj.noes@svitzer.com](mailto:nicolaj.noes@svitzer.com)>

**Date:** Tuesday, 25 October 2022 at 1:29 pm

**To:** Jarrod Moran <[Jarrod@amou.com.au](mailto:Jarrod@amou.com.au)>, Mark Davis <[mark@amou.com.au](mailto:mark@amou.com.au)>, Greg Yates <[gyates@aimpe.asn.au](mailto:gyates@aimpe.asn.au)>, Martin Byrne <[mbyrne@aimpe.asn.au](mailto:mbyrne@aimpe.asn.au)>, Paul Garrett <[Paul.Garrett@mua.org.au](mailto:Paul.Garrett@mua.org.au)>, Jamie Newlyn <[Jamie.Newlyn@mua.org.au](mailto:Jamie.Newlyn@mua.org.au)>

**Subject:** Svitzer EA 2022

Dear all

Following on from the various without prejudice sessions we have been holding including before Brian Lacy and the FWC (an additional 15 sessions) bringing the no of bargaining sessions to 75, it appears that we are still significantly apart. This is also as a result of the Unions raising and insisting on additional claims.

Svitzer has been bargaining in good faith and has made a number of without prejudice offers which were subject to overall agreement and the Unions dropping their claims. These offers were rejected. For clarity, Svitzer withdraws all of these without prejudice offers and notes that they are no longer available for acceptance.

With the additional increased risk of competition as a result of the imminent sale of Smit, this requires us to be even more focused on being competitive, and productive with the aim of protecting the Company's position in the ports long term and securing long term jobs. For this reason, going over our recent without prejudice offers, we believe the best way forward for us is to revert to the without prejudice position which formed part of the in-principle agreement before Brian Lacy (other than the proposed salary increases).

For clarity, this means we are now apart on the following issues:

#### Svitzer's claims

1. Full time recall cost reduction
2. PPT cost reduction beyond guarantee
3. Casual loading reduction
4. PoPs clauses 5.3 and 40 in its entirety including variation and incorporation
5. Order of Pick
6. Removing restriction on maintenance while on duty
7. Removing restrictions in recruitment clause (including minimum qualifications which do not meet either operational or legal requirement)
8. Term of the Agreement
9. Backpay
10. Salary increases

#### Unions' claims

11. Restriction on subcontracting in all ports
12. Re-entry into Geelong on National EA terms and terminating the existing agreement with the subcontractor
13. Integrated Rating to be hired in key ports even though it is not operationally or legally required
14. Delegates to be paid for the days which they attended for bargaining

To be clear, the Unions' claims are things we simply cannot agree to.

Nicolaj Noes  
Managing Director – Svitzer Australia

---

**SVITZER** Svitzer Australia Pty Ltd, 7 Cooper Street, NSW 2041 Balmain, Australia  
Mobile: +61 0437 236 566

Information in this e-mail and any attachments is confidential and is intended solely for the use of the intended recipient. If you are not the intended recipient, disclosure, dissemination or use of the contents of the e-mail is prohibited. Please delete the e-mail including any attachments and notify the sender that you have received the e-mail by mistake.

 Please consider the environment before printing this email.

The information contained in this message is privileged and intended only for the recipients named. If the reader is not a representative of the intended recipient, any review, dissemination or copying of this message or the information it contains is prohibited. If you have received this message in error, please immediately notify the sender, and delete the original message and attachments.

Svitzer will as part of our communication and interaction with you collect and process your personal data. You can read more about Svitzer's collection and processing of your personal data and your rights as a data subject in our privacy policy from our parent company <https://www.maersk.com/privacy-and-cookie-policy>

All harbour towage services provided by Svitzer Group companies are subject to the U.K. Standard Conditions for Towage and Other Services (revised 1986). These conditions are available on [www.svitzer.com/standard-conditions](http://www.svitzer.com/standard-conditions)

The information contained in this message is privileged and intended only for the recipients named. If the reader is not a representative of the intended recipient, any review, dissemination or copying of this message or the information it contains is prohibited. If you have received this message in error, please immediately notify the sender, and delete the original message and attachments.

Svitzer will as part of our communication and interaction with you collect and process your personal data. You can read more about Svitzer's collection and processing of your personal data and your rights as a data subject in our privacy policy from our parent company <https://www.maersk.com/privacy-and-cookie-policy>

All harbour towage services provided by Svitzer Group companies are subject to the U.K. Standard Conditions for Towage and Other Services (revised 1986). These conditions are available on [www.svitzer.com/standard-conditions](http://www.svitzer.com/standard-conditions)

The information contained in this message is privileged and intended only for the recipients named. If the reader is not a representative of the intended recipient, any review, dissemination or copying of this message or the information it contains is prohibited. If you have received this message in error, please immediately notify the sender, and delete the original message and attachments.

Svitzer will as part of our communication and interaction with you collect and process your personal data. You can read more about Svitzer's collection and processing of your personal data and your rights as a data subject in our privacy policy from our parent company <https://www.maersk.com/privacy-and-cookie-policy>

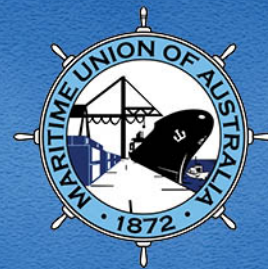
All harbour towage services provided by Svitzer Group companies are subject to the U.K. Standard Conditions for Towage and Other Services (revised 1986). These conditions are available on [www.svitzer.com/standard-conditions](http://www.svitzer.com/standard-conditions)

The information contained in this message is privileged and intended only for the recipients named. If the reader is not a representative of the intended recipient, any review, dissemination or copying of this message or the information it contains is prohibited. If you have received this message in error, please immediately notify the sender, and delete the original message and attachments.

Svitzer will as part of our communication and interaction with you collect and process your personal data. You can read more about Svitzer's collection and processing of your personal data and your rights as a data subject in our privacy policy from our parent company <https://www.maersk.com/privacy-and-cookie-policy>

All harbour towage services provided by Svitzer Group companies are subject to the U.K. Standard Conditions for Towage and Other Services (revised 1986). These conditions are available on [www.svitzer.com/standard-conditions](http://www.svitzer.com/standard-conditions)





## PG14

Wednesday, 16 November 2022

Nicolaj Noes  
Managing Director  
Svitzer Australia Pty Ltd  
7 Cooper Street  
Balmain NSW 2041  
**VIA EMAIL: [NICOLAJ.NOES@SVITZER.COM](mailto:NICOLAJ.NOES@SVITZER.COM)**

Dear Nicolaj,

### **SVITZER TUGS – 2020 EBA: WITHDRAWAL OF PROTECTED INDUSTRIAL ACTION**

---

The Maritime Union of Australia refers to the previously notified Protected Industrial Action, with reference to notices:

- #58 Adelaide Port Pirie / Spencer Gulf
- #59 Newcastle
- #60 Fremantle
- #61 Kwinana

**All Protected Industrial Action notified in these notices, as well as any other Protected Industrial Action notified by the MUA in any other notice, is withdrawn with immediate effect.**

Our members will be available as per their usual work requirements.

Yours Sincerely,

**Paul Garrett**  
**Deputy Secretary (Sydney Branch)**

