

**UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION**

In Re:	) Chapter 11
	)
HII TECHNOLOGIES, INC., <i>et al.</i> <sup>1</sup>	) Judge David R. Jones
	)
Debtors.	) Case No. 15-60070(DRJ)
	) (Jointly Administered)

**BCL-EQUIPMENT LEASING LLC’S RESPONSE AND LIMITED OBJECTION TO DEBTORS’  
MOTION TO SELL CERTAIN ASSETS UNDER 11 U.S.C. § 363 [DKT. 242]**

BCL-Equipment Leasing LLC (“**BCL**”), the lessor under a rejected equipment lease agreement with HII Technologies, Inc. (“**HII Technologies**”), files its Response and Limited Objection to the Debtors’ Motion to 1) Sell Certain Assets Under 11 U.S.C. § 363 Free of Liens, Claims and Encumbrances; 2) Approve Lease of Hydrowflow Units to Purchaser; 3) Assign the Hydroflow Distribution Agreement; and 4) Approve Breakup Fee and Bidding Procedure [Dkt. 242] (“**363 Motion**”) and in support thereof, BCL states as follows:

**RESPONSE**

1. BCL admits the Debtors filed their voluntary petitions on September 18, 2015 and that the cases are being jointly administered under case number 15-60070. To the extent paragraph 1 incorporates allegations from the Debtors’ First Day Motions, BCL lacks sufficient information to admit or deny such allegations and therefore denies same.

2. BCL lacks sufficient information to admit or deny the allegations of paragraph 2 and therefore denies same.

3. BCL lacks sufficient information to admit or deny the allegations of paragraph 3 and therefore denies same.

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number, are: (i) Apache Energy Services, LLC (4404); (ii) Aqua Handling of Texas, LLC (4480); (iii) HII Technologies, Inc. (3686); (iv) Sage Power Solutions, Inc. fka KMHVC, Inc. (1210); and (v) Hamilton Investment Group, Inc. (0150).

4. BCL lacks sufficient information to admit or deny the allegations of paragraph 4 and therefore denies same.

5. BCL lacks sufficient information to admit or deny the allegations of paragraph 5 and therefore denies same.

6. BCL lacks sufficient information to admit or deny the allegations of paragraph 6 and therefore denies same.

7. BCL lacks sufficient information to admit or deny the allegations of paragraph 7 and therefore denies same.

8. BCL lacks sufficient information to admit or deny the allegations of paragraph 8 and therefore denies same.

9. BCL lacks sufficient information to admit or deny the allegations of paragraph 9 and therefore denies same.

10. BCL lacks sufficient information to admit or deny the allegations of paragraph 10 and therefore denies same.

11. Paragraph 11 states a legal conclusion to which no answer is required. To the extent an answer is required, BCL denies same.

12. BCL lacks sufficient information to admit or deny the allegations of paragraph 12 and therefore denies same.

13. Paragraph 13 states a legal conclusion to which no answer is required. To the extent an answer is required, BCL denies same.

14. Paragraph 14 states a legal conclusion to which no answer is required. To the extent an answer is required, BCL denies same.

15. Paragraph 15 states a legal conclusion to which no answer is required. To the extent an answer is required, BCL denies same.

16. BCL denies the allegations of Paragraph 16 and affirmatively states that it has a valid and perfected interest in the Hoses, as defined and set forth in detail in the Limited Objection below.

17. Paragraph 17 states a legal conclusion to which no answer is required. To the extent an answer is required, BCL denies same.

18. BCL lacks sufficient information to admit or deny the allegations of paragraph 18 and therefore denies same.

19. BCL denies the allegations of paragraph 19.

### **LIMITED OBJECTION**

#### **Executive Summary**

1. HII Technologies is a Delaware corporation previously operating in Texas as a publicly-traded oilfield services company.

2. BCL, an Illinois limited liability company, leased polyurethane hoses (“**Hoses**”) to HII Technologies, which are more fully described in the lease agreement hereinafter described and referred to as the “**Lease**.”

3. On September 18, 2015, HII Technologies and its affiliates filed their chapter 11 bankruptcy petition in this Court.

4. Also on September 18, 2015, HII Technologies filed its Motion Pursuant to 11 U.S.C. § 365 to Reject Certain Executory Contracts, effective *nunc pro tunc* (“**Motion to Reject**”) [Dkt. 14].

5. BCL’s Lease was included in the Motion to Reject as an executory contract sought to be rejected by Debtors, and was ultimately rejected *nunc pro tunc* to the Petition Date by Court Order dated October 14, 2015 [Dkt. 146].

6. Despite rejecting BCL’s Lease, as of the date of this Objection, Debtors have failed to return the missing Hoses to BCL despite repeated requests for the location and leads related to the stolen Hoses.

7. Debtors have now filed a 363 Motion, pursuant to which they request permission from this Court to sell certain assets listed on Exhibit A to the 363 Motion, including, but not limited to, “all equipment, vehicles, tools, *hose*, piping, pumps, ...” [Dkt. 242-1, Ex. A, section 1.1] (emphasis added).

8. Additionally, on December 10, 2015 – just *one day* before the objection deadline - Debtors’ filed a Modified Asset List (“*Asset List*”) in support of the 363 Motion, which also includes references to 10 inch hoses or pipes. [Dkt. 273-1].

9. BCL is unable to ascertain whether Debtors’ 363 Motion includes a request to sell the Hoses owned by BCL and previously leased to HII Technologies, and to the extent Debtors’ Motion seeks such relief, BCL objects to the entry of same.

**Basis for Limited Objection**

10. On or about June 27, 2014, HII Technologies entered into a Master Lease Agreement with BCL for the Hoses. A true and correct copy of the Lease is attached hereto as **Exhibit A**.

11. Pursuant to the terms of the Lease, BCL leased 3 miles of 12 inch Hoses and 15.75 miles of 10 inch Hoses, in exchange for which HII Technologies was to make rental payments to BCL in the amount of \$150,768.62 per month.

12. In or around July, 2015, HII Technologies defaulted on the terms of the Lease by failing to make its monthly rental payments and also by virtue of shutting down its business.

13. At that time, HII Technologies promised BCL it would make arrangements for the return of the Hoses, but thereafter notified BCL that the Hoses were presumed missing or stolen and were no longer in its possession or control.

14. BCL then began taking the necessary steps to try to recover the Hoses, including making reports to law enforcement.

15. On September 18, 2015, HII Technologies and its affiliates filed their petition under chapter 11 of the United States Bankruptcy Code (“*Petition*”) triggering the automatic stay.

16. Simultaneously with the Petition, the Debtors filed their Motion to Reject, which included the rejection of BCL's Lease.

17. Despite rejecting BCL's Lease, the Debtors have failed to return any of the Hoses to BCL as of the date of this Objection.

18. Although the Debtors have stated to BCL that the Hoses are presumed lost or stolen, BCL has been unable to verify the truth or accuracy of that statement.

19. Debtors have failed to identify the source of the hoses they are proposing to sell in connection with their 363 Motion so that BCL may confirm that it is not actually the Hoses owned by BCL.

20. BCL intends to file an adversary complaint ("*Adversary Complaint*") against the Debtors, William Mark Hamilton and Craig Hamilton (the "*Hamiltons*"), Heartland Bank and others, seeking a declaratory judgment that BCL is the owner of any available Hoses that have not been stolen, as well as a turnover of the Hoses in possession of the above-mentioned parties, if any, for a determination of ownership and as an attempt to trace the stolen Hoses which the Debtor failed to safeguard, locate or turn over.

21. After filing the Petition, Debtors initially initiated contempt proceedings against the Hamiltons, among others, to turn over all items the Debtors alleged were stolen from or belonged to them, which included the Hoses. Purportedly, the Hamiltons subsequently turned over a large amount of collateral to the Debtors and the Debtors chose not to proceed with further action on their contempt motions against the Hamiltons even though the Hoses have yet to be returned to BCL. At this time, the Hoses may be in the possession of the Debtors, the Hamiltons, or Heartland Bank or stolen, but now Hoses are magically appearing in a sale motion.

22. Because the Debtors have failed to return BCL's Hoses after rejection of the Lease, for the moment, and until the Hoses or some portion thereof are recovered, BCL is the holder of an unsecured claim against the Debtors' estate in the amount of approximately \$3 million ("*Claim*"). Of course, a

recovery on BCL's Adversary Complaint would enable BCL to set-off the value of the Hoses recovered against the Claim.

23. The Debtors' 363 Motion is utterly unclear and lacks any degree of specificity as to what "hoses" it intends to sell so that BCL cannot ascertain whether the Debtors are requesting to sell hoses that rightfully belong to BCL.

24. The Asset List – which, again, was unexplainably filed just a day before the objection deadline - is equally unclear but even more alarming in that it purports to include assets which very well may be BCL's stolen or commingled Hoses, referenced therein and including but not limited to, as follows:

- Page 8 of 18, Items 115 and 116 – 10 inch "pipe" and "large quantity poly" located in Guthrie, OK (where BCL has reason to believe its Hoses were located).
- Page 11 of 18, Item 167 – 10' inch lay flat pipe
- Page 13 of 18, Item 200 – 10' inch lay flat pipe, including 10' inch lay flat hose
- Page 15 of 18, Item 251 – 10' inch lay flat water pipe

25. Thus, BCL objects to the entry of an order granting the Debtors' 363 Motion prior to a final resolution of BCL's Adversary Complaint and all claims of BCL related to the Hoses.

WHEREFORE, BCL-Equipment Leasing LLC, respectfully requests that this Court deny Debtors' Motion to: 1) Sell Certain Assets Under 11 U.S.C. § 363 Free of Liens, Claims and Encumbrances; 2) Approve Lease of Hydrowflow Units to Purchaser; 3) Assign the Hydroflow Distribution Agreement; and 4) Approve Breakup Fee and Bidding Procedure [Dkt. 242] until such time as all claims of BCL related to the Hoses have been fully and finally resolved and for such other and further relief that is just and equitable.

Respectfully Submitted

BCL-EQUIPMENT LEASING LLC

By: /s/ Jamie L. Burns  
One of its attorneys

Bryan I. Schwartz (ARDC 6192739)  
Jamie L. Burns (ARDC 6300120)  
LEVENFELD PEARLSTEIN, LLC  
2 North LaSalle Street, Suite 1300  
Chicago, Illinois 60602  
(312) 346-8380  
(312) 346-8434 (Facsimile)  
[bschwartz@lplegal.com](mailto:bschwartz@lplegal.com)  
[jburns@lplegal.com](mailto:jburns@lplegal.com)

Edward L. Rothberg  
HOOVER SLOVACEK LLP  
Galleria Tower II  
5051 Westheimer, Suite 1200  
Houston, Texas 77056  
(713) 977-8686  
(713) 977-5395 (Facsimile)  
[Rothberg@hooverslovacek.com](mailto:Rothberg@hooverslovacek.com)

**CERTIFICATE OF SERVICE**

I, Jamie L. Burns, hereby certify that I served the foregoing *Response and Limited Objection to Debtors' Motion to Sell Certain Assets under 11 U.S.C. § 363* the Court's CM/ECF system on all those electing to receive electronic notice in this case by electronically filing same on December 11, 2015.

/s/ Jamie L. Burns



# BCL-EQUIPMENT LEASING LLC

This MASTER LEASE AGREEMENT ("Agreement" or "Lease") is dated as of June \_\_, 2014 between BCL-EQUIPMENT LEASING LLC, an Illinois limited liability company (herein called "Lessor" and also referred to as "we", "us", or "our") with an address at 450 Skokie Blvd., Bldg. 600, Northbrook, Illinois 60062, P: 847-656-1100, F: 847-656-1100, and HIL TECHNOLOGIES, INC., a Delaware corporation ("Lessee" and also referred to as "you" or "your") with an address at 710 N. Post Oak Road, Suite 400, Houston, Texas 77024, P: 713-821-3225.

## 1. LEASE AGREEMENT; DELIVERY AND ACCEPTANCE.

**1.1 Property Leased.** You agree to lease from us the personal property including the hardware and software (collectively "Property") described in Schedule 1 hereto and in future schedules as may be agreed upon by Lessor and Lessee, on the terms and conditions herein.

The Property described in Schedule 1 shall be referred to as "Initial Property" and the Property described in subsequent schedules shall be referred to as "Subsequent Property."

**1.2 Advance Payment.** Upon your acceptance of this Agreement and payment of the Advance Payment (as defined below), and provided that Lessor and Lessee have both executed the required other documentation required by Lessor, the Lease will commence (such date, the "Lease Commencement").

The Advance Payment consists of: (a) the first Initial Term Rental Payment (as defined below) due under this Agreement; and (b) a non-refundable "Security Deposit" of \$646,933.33 and (c) an origination fee of \$32,346.66. Collectively, (a) and (b) are referred to as the "Advance Payment."

**1.3 Term.** This Lease with respect to the Initial Property shall consist of: (a) an interim term ("Interim Term"); and (b) an additional 24 month term (the "Initial Term," which together with the Interim Term is the "Lease Term").

The Interim Term with respect to Property shall run from Lease Commencement to the last day of the calendar month in which Lease Commencement occurs (with respect to Initial Property) or in which a future schedule is approved (with respect to Subsequent Property). The rental payment and other charges for the Interim Term shall be prorated and computed by converting the Rental Payment and any applicable taxes to a daily rate based on a 30 day month. For the sake of clarity, these payments are components of the Advance Payment and shall be paid as provided in Section 1.2 above.

**1.4 Rental Payments.** The Initial Term shall commence on the first day of the month following Lease Commencement and shall continue thereafter to be paid on the same day of each subsequent month and shall continue for 24 months.

During the Lease Term, monthly rental with respect to the Initial Property shall be \$150,768.62 per month. Such monthly rental payments (along with any monthly rental payments for any Subsequent Property) shall be referred to as "Rental Payments."

The Rental Payments with respect to the Initial Property shall be firm for the entire term of the Agreement, except that if the financial information furnished to Lessee is false or incorrect, then Lessor has the right to adjust the Rental Payments to account for such additional risk and to maintain Lessor's economic return. Lessee's obligation to make Rental Payments under the Agreement shall be absolute and unconditional. Rental payments for Subsequent Property shall be at a rate of \$46.61 per \$1,000 of Lessor's Capital Cost with respect to such Subsequent Property.

**1.5 Capitalized Cost.** Lessor's "Capitalized Cost" with respect to the Initial Property is \$3,234,666.54.

**1.6 Taxes and other Costs.** In all cases, Lessee is solely responsible for any sales, use, or property taxes (collectively, "Taxes") and shall pay such amounts to Lessor when and as demanded by Lessor.

Lessee is responsible for all costs associated with the possession, control, and operation of the Property, including but not limited to repair and maintenance expenses, insurance, titles and taxes. Lessee agrees to pay Lessor for all costs, including UCC search and filing fees, equipment inspection fees, a documentation fee to offset applicable administrative costs and legal costs including attorneys' fees incurred by Lessor and its assigns in committing and closing the Agreement, and reasonable legal costs and attorneys' fees in order for Lessor to enforce the Agreement.

**1.7 Receipt of Payments.** You will make all payments required under this Agreement to us at such address as we may specify in writing. If any Rental Payment or other amount payable to us is not paid within 5 days of its due date, you will pay us a late charge of 10% of each late payment (or such lesser rate as is the maximum rate allowable under applicable law). We may charge you a fee of \$50.00 for any check that is returned or ACH that is rejected.

Lessor is hereby authorized to instruct Lessee's banks to send Lessor ACH payments directly from Lessee's bank accounts in the event Lessee is 10 days delinquent in paying any amounts due under this Agreement.

**1.8 Additional Security.** Lessee has also provided, or caused to be provided, and hereby pledges the following additional security to protect Lessor under this Agreement Lessee; the equipment listed on Exhibit 1.8 attached hereto.

**2. NO WARRANTIES. WE ARE LEASING THE PROPERTY TO YOU "AS-IS." YOU ACKNOWLEDGE THAT WE PURCHASED THE INITIAL PROPERTY AT YOUR REQUEST FROM VENDORS YOU SELECTED AND THAT WE DID NOT MANUFACTURE THE PROPERTY. YOU ACKNOWLEDGE THAT ALL SUBSEQUENT PROPERTY WILL BE SELECTED BY YOU AND WILL BE PURCHASED BY US FROM WHATEVER MANUFACTURERS OR SUPPLIERS YOU SELECT, ON SUCH TERMS AS YOU SPECIFY.**

WE DO NOT REPRESENT THE MANUFACTURER OR SUPPLIER OF THE PROPERTY. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. YOU AGREE THAT REGARDLESS OF CAUSE, WE ARE NOT RESPONSIBLE FOR AND YOU WILL NOT MAKE ANY CLAIM AGAINST US FOR ANY DAMAGES, WHETHER CONSEQUENTIAL, DIRECT, SPECIAL, OR INDIRECT. YOU AGREE THAT NEITHER MANUFACTURER, SUPPLIER NOR ANY SALESPERSON, EMPLOYEE OR AGENT OF MANUFACTURER OR SUPPLIER IS OUR AGENT OR HAS ANY AUTHORITY TO SPEAK FOR US OR TO BIND US IN ANY WAY. WE TRANSFER TO YOU FOR THE TERM OF THIS AGREEMENT (OR UNTIL A DEFAULT OCCURS HEREUNDER) ANY WARRANTIES MADE BY THE MANUFACTURER OR SUPPLIER UNDER A SUPPLY CONTRACT. THIS AGREEMENT IS IRREVOCABLE TO YOU FOR THE FULL LEASE TERM. YOUR OBLIGATION TO PAY ALL AMOUNTS PAYABLE BY YOU UNDER THIS AGREEMENT IS ABSOLUTE AND UNCONDITIONAL AND WILL NOT BE SUBJECT TO ANY ABATEMENT, REDUCTION, SETOFF, DEFENSE, COUNTERCLAIM, INTERRUPTION, DEFERMENT OR RECOUPMENT FOR ANY REASON WHATSOEVER, INCLUDING ANY DEFECT IN THE PROPERTY OR GOODS AND SERVICES PROVIDED HEREUNDER. IN THE EVENT A MAINTENANCE AGREEMENT IS COVERED UNDER THE LEASE, YOU ACKNOWLEDGE THAT WE HAVE NO OBLIGATION FOR THE PERFORMANCE OF SUCH MAINTENANCE AND YOU SHALL HOLD US HARMLESS FROM ANY CLAIMS RELATING TO SUCH MAINTENANCE AGREEMENT. YOU HEREBY FURTHER REPRESENT, CONFIRM, AND WARRANT THAT IN THE EVENT MANUFACTURER OR SUPPLIER FAILS TO PROVIDE SUPPORT, SERVICE OR MAINTENANCE OR IF YOU ARE DISSATISFIED WITH THE SUPPORT, SERVICE OR MAINTENANCE PERFORMED BY MANUFACTURER OR SUPPLIER, YOU RECOGNIZE THAT SUCH EVENTS SHALL NOT AFFECT YOUR PAYMENT AND OTHER OBLIGATIONS UNDER THE LEASE. YOU AGREE THAT YOU WILL NOT SEEK ANY RELIEF FROM US AS A RESULT OF THE FAILURE OF MANUFACTURER OR SUPPLIER TO PERFORM SUCH SUPPORT, SERVICE OR MAINTENANCE. You agree that we assume no liability for and make no representation as to the treatment of the Lease, the Property or the Rental Payments for financial statement or tax purposes. For the term of the Lease (or until a default has occurred hereunder) we hereby assign to you any and all Supplier's warranties, service agreements and patent indemnities, if any, with respect to the Property to the extent they are assignable by us, provided, however, that your sole remedy for the breach of any such warranty or indemnification shall be against the Manufacturer or Supplier and not against us, nor shall any such breach have any effect whatsoever on the rights and obligations of either party with respect to this Lease.

**3. USE AND REPAIR; RETURN.** You will maintain the Property in accordance with manufacturer recommended standards and in compliance with all applicable operating standards. At your cost, you will keep the Property in compliance with all applicable laws and in substantially the same condition as it was at Lease Commencement, except ordinary wear and tear. You will make all alterations or additions to the Property that are required by the manufacturer, or by law. Otherwise, you will not make any alterations, additions or replacements to the Property without our prior written consent. All alterations, additions and replacements will become part of the Property at no cost to us. We may inspect the Property at any reasonable time. Unless you purchase the Property in accordance with this Agreement, at the end of this Agreement you will immediately deliver the Property to us at your cost and expense in as good condition as at Lease Commencement, except for ordinary wear and tear, to any place in the United States that we tell you. All Property returned to us must be eligible, without any additional cost to us, for any manufacturer's certification and/or maintenance warranty, return, or similar program, or at our option you will pay us an inspection and refurbishment fee equal to 10% of the Lessor's Capitalized Cost for such Property returned. You will pay all expenses of deinstalling, crating and shipping to us at the location indicated by us, and you will insure the Property for its full replacement value during such shipping.



**4. TAXES AND FEES.** You will pay when due, all taxes, fines and penalties relating to this Agreement or the Property that are now or in the future assessed or levied by any state, local or federal government authority. For Property subject to personal property taxes, to liquidate such taxes you agree to pay us an annual amount ("Assessed Amount") which shall be based upon the Property price, reduced by depreciation calculated in accordance with applicable depreciation schedules used by the applicable taxing jurisdiction at the applicable tax rate. The Assessed Amount shall be payable by you without regard to any discounts or reduction we may obtain by reason of early payment or otherwise. We will file personal property, use or other tax returns (unless we direct you otherwise). We have no obligation to contest any taxes, liens or penalties. You will pay estimated property taxes with each Rental Payment or annually, as invoiced.

**5. LOSS OR DAMAGE.** You are responsible for any loss, theft or destruction of, or damage to any of the Property (collectively "Loss") from any cause at all, whether or not insured, until it is delivered to us at the end of this Agreement. You are required to make all Rental Payments even if there is a Loss. You must notify us in writing immediately of any Loss. Then, at our option, you will either (a) repair the Property so that it is in good condition and working order, eligible for any manufacturer's certification, or (b) pay us the amounts specified in Section 11(h) below.

**6. INSURANCE.** You will provide and maintain at your expense (a) property insurance against the loss, theft or destruction of, or damage to, the Property for its full replacement value naming us as loss payee; and (b) public liability and third party property insurance, naming us as an additional insured. In the case of motor vehicles, such public liability insurance shall be in the amount of at least one million dollars combined single limit. You will give us certificates or other evidence of such insurance upon delivery of the Property.

Such insurance will be in a form, amount and with companies acceptable to us, and will provide that we will be given thirty (30) days advance notice of any cancellation or material change of such insurance. If you do not give us such evidence of insurance, or if you request coverage, we have the right, but not the obligation, to arrange either property insurance or liability insurance or both at your expense to protect our interests.

Your expense may include the full premium paid by us (not reduced by any credit or refund due or paid to us) and any customary charges or fees of ours and of our designee(s) associated with such insurance. You agree to pay such amounts in equal installments allocated to each Rental Payment plus interest on such amounts at the lesser of the highest rate permitted by law or 3% per month, non-cancellable for the full term of the Lease. If insurance is placed by us, you will cooperate with our insurance agent with respect to the placement of insurance and the processing of claims.

Nothing in this Agreement will create an insurance relationship of any type between us and any other person. You acknowledge that we are not required to secure or maintain any insurance, and we will not be liable to you if we terminate any insurance coverage that we arrange. If we replace or renew any insurance coverage, we are not obligated to provide replacement or renewal coverage under the same terms, costs, limits, or conditions as the previous coverage. You hereby appoint us as your attorney-in-fact to make claims for, receive payment of, and execute and endorse all documents, checks or drafts for loss or damage under any of your insurance policies.

**7. TITLE; RECORDING.** We are the owner of and will hold title to the Property throughout the Lease Term, except to the extent the Property includes licensed software in which event you shall maintain a perpetual right to use and possess such software and shall abandon such perpetual right at the end of this Agreement. If any other person attempts to claim ownership of the Property by asserting a claim against you or through you, you agree, at your expense to protect and defend our title to the Property. You will keep the Property free of all liens and encumbrances and you shall give us immediate notice if any legal process or lien is asserted or made against the Property.

You agree that each Lease is cross collateralized with all Leases you have with us and in the event of your default of any Lease, we may exercise our rights and remedies as if you had defaulted on all Leases. If this transaction is deemed to be a lease intended for security, then you grant us a security interest in the Property. You will deliver to us signed financing statements or other documents we request to protect our interests under this Agreement. **YOU AUTHORIZE US TO FILE A COPY OF THIS AGREEMENT AS A FINANCING STATEMENT AND APPOINT US OR OUR DESIGNEE AS YOUR ATTORNEY-IN-FACT TO EXECUTE AND FILE ON YOUR BEHALF, FINANCING STATEMENTS PROTECTING OUR INTERESTS UNDER THIS AGREEMENT AND IN THE PROPERTY AND COLLATERAL HEREUNDER.**

**8. LIQUIDATED DAMAGES.** Liquidated Damages. We are entitled to the "Liquidated Damages" in the event of your Default (as defined below) under this Agreement, which shall be our anticipated benefit from this Lease transaction. Our Liquidated Damages, as stipulated to herein, shall include any Tax Benefits (as hereafter defined) which may be associated with Lessor's ownership of the Property plus a) the present value of all remaining Rental Payments attributable to such item, using a discount rate of 2% plus (b) the Fair Market Value of the Property at the time of such Default, with a minimum of 20% of the Capitalized Cost associated with such Property.

**9. TAX INDEMNITY.** If we are treated for Federal, state and local income tax purposes as the owner of the Property, we shall be entitled to take into

account in computing our income tax liabilities all items of income, deduction (including depreciation), credit, gain or loss relating to ownership of the Property as are provided to owners of similar Property under the Internal Revenue Code and applicable state and local tax laws, (collectively, the "Tax Benefits").

In such event, if we lose, are delayed in claiming, are required to recapture, or cannot claim as a result of a written opinion of Lessor's tax advisor, all or any portion of Tax Benefits, or if we are required to include in our gross income with respect to any Lease any amount at any time other than Rental Payments and other amounts as and when accrued in accordance with the express terms of the Lease (together, "Tax Loss"), then, upon our demand all further rental payments shall be increased by an amount, which shall in either case maintain Lessor's anticipated return from this Lease transaction on an after-tax basis, based on an assumed combined Federal, state and local income tax rate for Lessor of 38% and other assumptions originally used by us in setting the Rental Payments. You shall also pay us on demand all interest, costs (including attorney costs), penalties and additions to tax associated with the Tax Loss. You shall be under no obligation to make a payment under the preceding paragraph relating to a Tax Loss to the extent that the Tax Loss is caused by our failure to have sufficient taxable income to benefit from any Tax Benefits. We shall have no obligation to contest any Tax Loss.

**10. DEFAULT.** Each of the following is a "Default" under this Agreement: (a) you fail to pay any Rental Payment or any other payment within 5 days of its due date, (b) you do not perform any of your other obligations under this Agreement or in any other agreement with us and this failure continues for 10 days, (c) you become insolvent, you dissolve or are dissolved, or you assign your assets for the benefit of your creditors, or you file bankruptcy, or an involuntarily bankruptcy is filed against you, (d) you have, in our reasonable judgment, a major change in ownership or control, (e) any guarantor of this Agreement dies, does not perform its obligations under the guaranty or becomes subject to one of the events listed above.

**11. REMEDIES.** If a Default occurs, we may: (a) Cancel or terminate this Agreement and/or any other agreements that we have with you; (b) Require you to pay us as compensation for loss of our bargain and not as a penalty, the Liquidated Damages provided for in Section 8; (c) Require you to deliver the Property to us as set forth in Section 3; (d) Peacefully repossess the Property without court order and you will not make any claims against us for damages or trespass or any other reason, (e) Notify any manufacturer to revoke any applicable software licenses, terminate access to software, and terminate other support, and (f) Exercise any other right or remedy available at law or in equity.

**You will pay all of our costs of enforcing our rights against you, including attorneys' fees (both inside and outside counsel).** If we take possession of the Property, we may, but are not required to, re-lease the Property, sell or dispose of it with or without notice, at a public or private sale and apply the net proceeds (after we have deducted all costs related to the sale or disposition of the Property) to the amounts that you owe us. You agree that if notice of sale is required by law to be given, 10 days' notice shall constitute reasonable notice. You will remain responsible for any amounts that are due after we have applied such net proceeds. For the sake of clarity, our remedies are cumulative. For the sake of further clarity, while some of these remedies are of a nature typically associated with security interests under Article 9 of the Uniform Commercial Code, the parties agree that this Agreement is a true lease rather than a security agreement and further agree that to the extent a court of competent jurisdiction nonetheless determines this Agreement constitutes a security agreement that Lessor has all of the rights provided herein.

**12. FINANCE AGREEMENT STATUS.** You agree that if Article 2A of the Uniform Commercial Code applies to this Agreement, this Agreement will be considered a "finance lease" as that term is defined in Article 2A. **TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOU WAIVE ANY AND ALL RIGHTS AND REMEDIES CONFERRED UPON A LESSEE BY ARTICLE 2A.**

**13. ASSIGNMENT.** YOU MAY NOT ASSIGN, SUBLEASE, SELL, OR TRANSFER THE PROPERTY OR YOUR INTEREST IN THIS AGREEMENT. We may, without notifying you, sell, assign, or transfer this Agreement and our rights in the Property. You agree that the new holder will have the same rights and benefits that we have now under this Agreement but not our obligations. The rights of the new holder will not be subject to any claim, defense or set off that you may have against us.

**14. END OF TERM; PURCHASE; EARLY BUYOUT; RETURN; RENEWAL.** If no event of Default has existed under this Agreement, you may elect to purchase the Property for the greater of its Fair Market Value (as defined below) or 20% of the Lessor's Capitalized Cost for such Property. Any election to so act is referred to as the "Purchase Option." Provided, however, that you must provide Lessor with 180 days' notice of your intention to exercise the Purchase Option.

**IF YOU DO NOT ELECT THE PURCHASE OPTION THEN THE TERM OF THIS LEASE SHALL AUTOMATICALLY BE EXTENDED FOR A PERIOD OF ONE YEAR (the "Extension") WITH ALL MONTHLY PAYMENTS REMAINING THE SAME AS IN THE LEASE TERM.** At the end of the Extension you shall either surrender and deliver the Property in accordance with Section 3 of this Agreement or purchase the Property for the greater of its Fair Market Value



or 20% of the Lessor's Capitalized Cost for such Property. For the sake of clarity, the Purchase Option must be elected with respect to all or none of the Property unless otherwise agreed to in writing by Lessor.

"Fair Market Value" or "FMV" is the price or rent, as applicable, that would be obtained at arm's length between informed and willing parties, neither under compulsion to contract, for the sale or lease of Property assuming the Property is: installed, in continued, uninterrupted use by the buyer or Lessee, in the condition required by this Lease, and, if applicable, being sold with the software necessary for its use.

If you exercise the Purchase Option, Lessor shall transfer its interest in the Property "AS IS, WHERE IS" without any representation or warranty whatsoever, upon your payment of the Purchase Option price.

We will use our reasonable judgment to determine the FMV of the Property. If you do not agree with this determination, the FMV (on a retail basis) will be determined at your expense by an independent appraiser selected by us.

Notwithstanding any of the above, Lessee shall have a one-time option ("Early Buyout Option") to purchase the Property "AS-IS, WHERE-IS" without any representations of warranty whatsoever by Lessor on the thirteen month anniversary of this Lease for a purchase price of \$1,755,384.00 (the "Early Buyout Price"). For purposes of clarity, the Security Deposit shall not be a credit against the Early Buyout Price, but rather, will be retained by Lessor to compensate Lessor for the residual value of the Property. In order to exercise the Early Buyout Option, Lessee must give Lessor a minimum of 90 days written notice that Lessee will be exercising the Early Buyout Option and there must be no events of Default at the time of the option is exercised and at the time the Early Buyout Price is paid.

**15. REPRESENTATIONS AND WARRANTIES.** You hereby represent, warrant and covenant that: (a) The execution, delivery and performance of the Lease has been duly authorized by all necessary corporate or business action; (b) The individual executing such is duly authorized to do so; (c) The Lease constitutes a legal, valid and binding agreement, enforceable in accordance with its terms; (d) Any and all financial statements or other information you and any guarantor have provided or caused to be provided to us is true and complete and does not omit any information which might otherwise have affected our credit decision. The foregoing representations and warranties shall survive the Lease Term.

**16. INDEMNIFICATION.** You are responsible for any losses, damages, penalties, claims, suits and actions (collectively "Claims"), whether based on a theory of strict liability or otherwise caused by or related to (a) the manufacture, installation, ownership, use, rental, possession, or delivery of the Property, (b) any defects in the Property, (c) any tax liability, or (d) any acts, omissions, or any misrepresentations made by you in connection with this Agreement. You will reimburse us for and if we request, to defend us against any Claims.

**17. ADDITIONAL SECURITY.** In any jurisdiction where the Uniform Commercial Code is in effect, you grant to us a security interest in all the property you own, including any goods, chattels, fixtures, furniture, property, assets, accounts receivable, contract rights and general intangibles, wherever located as well as any related proceeds. Any security interest created by this Agreement secures your obligations and obligations of any of your affiliates (whether they exist now or later) to us.

**18. CREDIT INFORMATION.** YOU AUTHORIZE US TO OBTAIN CREDIT BUREAU REPORTS AND MAKE OTHER INQUIRIES THAT WE DEEM NECESSARY. ON YOUR WRITTEN REQUEST, WE WILL INFORM YOU IF WE HAVE REQUESTED A CONSUMER CREDIT REPORT AND THE NAME AND ADDRESS OF ANY CONSUMER CREDIT REPORTING AGENCY THAT FURNISHED A REPORT. YOU AGREE THAT WITHOUT FURTHER NOTICE WE MAY OBTAIN ADDITIONAL CREDIT BUREAU REPORTS TO UPDATE OUR INFORMATION. IF WE REQUEST, YOU AGREE TO FURNISH YOUR ANNUAL AUDITED AND OR QUARTERLY FINANCIAL STATEMENTS, INCLUDING INCOME STATEMENTS AND BALANCE SHEETS, BY AN OUTSIDE ACCOUNTING FIRM. SHOULD AUDITED FINANCIAL STATEMENTS NOT BE AVAILABLE, YOU AGREE TO FURNISH US THE COMPANY'S ANNUAL TAX RETURNS, AND ANY OTHER FINANCIAL INFORMATION REQUESTED FROM TIME TO TIME.

**19. MISCELLANEOUS.** (a) You agree that the terms and conditions herein make up the entire agreement between you and us regarding the rental of the Property. This Agreement is not binding on us until we sign it. Any change in any of the terms and conditions of this Agreement must be in writing and signed by us. You agree, however, that we are authorized, without notice to you, to supply missing information or correct obvious errors in this Agreement. (b) If we delay or fail to enforce any of our rights under this Agreement, we will still be entitled to enforce those rights at a later time. All notices shall be given in writing by the party sending the notice and shall be effective when mailed by certified or registered mail or overnight courier addressed to the party receiving the notice at its address shown on the front of this Agreement with postage prepaid. You agree and consent that we may serve you for any action or proceeding by registered or certified mail or overnight courier. (c) All of our rights and your indemnities will survive the termination of this Agreement. (d) Any provisions hereof prohibited by or unenforceable under any applicable law shall be ineffective without validating the remaining provisions of this Agreement; provided, however, that to the

extent that any provisions of any such applicable law may be waived, they are hereby waived by us to the full extent permitted by law so that this Agreement shall be deemed to be valid, binding and enforceable in accordance with its terms. (e) Any restrictive endorsement on any check given us in payment of any amount due hereunder shall be void. (f) You may not prepay this Agreement without our prior written consent. (g) Time is of the essence with respect to your obligations under this Agreement. (h) It is the express intent of the parties not to violate any applicable usury laws or to exceed the maximum amount of time price differential or interest, as applicable, permitted to be charged or collected by applicable law, and any such excess payment will be applied to Rental Payments, and any remaining excess will be refunded to you. (i) If you do not perform any of your obligations under this Agreement, we have the right, but not the obligation to take any action or pay any amounts that we believe are necessary to protect our interests. You agree to reimburse us immediately upon our demand for any such amounts that we pay. (j) Notwithstanding anything in any prior agreement to the contrary, this Agreement contains the entire agreement between Lessor and Lessee and it totally supersedes any and all such prior agreements. (k) Notwithstanding anything in any prior agreement to the contrary, this Agreement contains the entire agreement between Lessor and Lessee and it totally supersedes any and all such prior agreements. (l) If any provision of this Agreement is determined to be invalid, illegal or unenforceable, but if the essential terms and conditions of this Agreement for each party remain valid, binding and enforceable, then the remaining provisions of this Agreement remain in full force. (m) The parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page electronically or by facsimile is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement.

**20. CONFESSION OF JUDGMENT.** The undersigned hereby irrevocably authorizes and empowers any attorney-at-law to appear in any court of record and to confess judgment against the undersigned for the unpaid amount of this Lease as evidenced by an affidavit signed by an officer of Lessor setting forth the amount then due, plus attorneys' fees as provided in this Lease, plus costs of suit, and to release all errors, and waive all rights of appeal. If a copy of this Lease, verified by an affidavit, shall have been filed in the proceeding, it will not be necessary to file the original as a warrant of attorney. The undersigned waives the right to any stay of execution and the benefit of all exemption laws now or hereafter in effect. No single exercise of the foregoing warrant and power to confess judgment will be deemed to exhaust the power, whether or not any such exercise shall be held by any court to be invalid, voidable or void; but the power will continue undiminished and may be exercised from time to time as Lessor may elect until all amounts owing on this Lease have been paid in full.

**21. FINANCIAL STATEMENTS AND INFORMATION.** During the term of this Lease, Lessee shall furnish to Lessor upon Lessor's or its assignee's written request, Lessee's balance sheet and income statement for its most recent fiscal year, all prepared in accordance with generally accepted accounting principles consistently applied, and, from time-to-time, such other information concerning the Property as Lessor or its assignee may reasonably request.

**22. VENUE.** Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement may bring the legal action or proceeding in the United States District Court for the Northern District of Illinois or in any court in the State of Illinois sitting in the City of Chicago. Each party waives, to the fullest extent permitted by law: (i) any objection that it may now or later have to the laying of venue or any legal action or proceeding arising out of or relating to this Agreement brought in any court of the State of Illinois sitting in the City of Chicago, or the United States District Court for the Northern District of Illinois; and any claim that any action or proceeding brought in any court specified in this paragraph has been brought in an inconvenient forum.

**23. GOVERNING LAW.** The laws of the State of Illinois (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement and the transactions it contemplates, including, without limitation, its interpretation, construction, performance and enforcement.

**24. ATTORNEY REVIEW.** You acknowledge that your attorney has reviewed this Agreement or that you had ample opportunity to have your attorney review it but you elected not to do so.

**25. WARRANTS.** In further consideration for this Lease, and its termination option at the end of the first year, Lessee hereby grants to Lessor a warrant to purchase 50,000 (fifty thousand) shares of Lessee's common stock at a fixed exercise price of .65 (sixty five cents) per share. The warrant will have a five year term and will only vest upon the exercise of the Lessee's option to terminate the lease at the end of year one. The warrant will expire unvested if the Lessee does not exercise its option to terminate the Lease before the end of the two year term. Such warrants will be evidenced by the Lessee issuing a warrant agreement to Lessor within thirty days of closing.



SIGNATURE PAGE FOR MASTER LEASE

LESSOR:

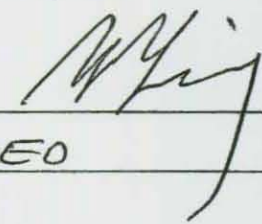
BCL-EQUIPMENT LEASING LLC

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

Its: Member \_\_\_\_\_

LESSEE:

HII TECHNOLOGIES, INC.

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

Its: CEO \_\_\_\_\_

## SCHEDULE # 1

TO THE MASTER LEASE AGREEMENT DATED AS OF JUNE \_\_, 2014  
 BETWEEN BCL-EQUIPMENT LEASING LLC ("LESSOR") AND HII TECHNOLOGIES, INC. ("LESSEE")

**TO OUR VALUED CUSTOMER:** This Schedule to Master Lease Agreement ("Lease" or "Agreement") and the Terms and Conditions herein, have been written in "Plain English". When we use the words "you" and "your" in this Lease, we mean you, our customer, the Lessee as indicated below. When we use the words "we", "us", and "our" in this Agreement, we mean the Lessor, BCL-EQUIPMENT LEASING LLC which may include our assignees, successors or designees. Our address is 450 Skokie Blvd., Bldg. 600, Northbrook, IL 60062. Our telephone number is (847) 656-1234. Our fax number is 847-656-1100.

**BCL-  
EQUIPMENT  
LEASING LLC**

**Lessee Legal Name:** HII TECHNOLOGIES, INC.

**Lease Number:**

**Billing Address:**

**Contact Information:** PHONE:

**Supplier Information:** See Attached Exhibit **Address:** 8700 W. HWY 199, SPRINGTOWN, TX 76082 **Representative:**

**Property Location:**

**Property Description:** See attached Exhibit

**Payment Schedule:** Amount payable to Lessor each Payment Period.  
 Sales or property taxes may be subject to change or adjustment by taxing authority.

	<u>Rent Due Lessor</u>	
<b>Property Rental Payment</b>	24 months @	\$150,768.62
<b>+ Allocated Sales Tax</b>	6%*	
<b>Total Payment Due *</b>		

**Advance Payment and Documentation Fee:**

When you sign this agreement, you agree to pay the following:

(A) Advance Payment:		\$646,933.33
(B) One time Documentation Fee:		0
(C) Other: BROKER FEE		
(D) Total Initial Payment (Total A+B+C):		

**Other Provisions:**

Initial Term: 24 MONTHS WITH 12 MONTH EXTENSION IF PURCHASE NOT MADE AT END OF 24 MONTHS

**End of Lease Term Provisions (Subject to terms herein plus applicable taxes).**

WITH 180 DAY'S NOTICE, PURCHASE OPTION TO BUY ALL EQUIPMENT AT THE GREATER OF FMV OR 20% OF LESSOR'S CAPITALIZED COSTS  
 WITH 90 DAYS NOTICE, OPTION TO PURCHASE FOR PRICE SET IN LEASE AT THIRTEEN MONTH ANNIVERSARY OF LEASE

**Lease Term and Lease Commencement Date:**

This Lease shall consist of an interim term, ("Interim Term"), an initial term, ("Initial Term") and a renewal term, ("Renewal Term"), collectively, the "Lease Term". The Lease Term shall commence when we execute this Lease, following your acceptance of the Property and execution by all parties of all required Lease documentation, (the "Lease Commencement Date"). The Initial Term shall begin on \_\_\_\_\_, 2014

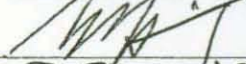
**\* Insurance and Taxes:**

You must provide and maintain insurance related to the Property, and pay any property, use and other taxes related to this Agreement or the Property. (See Insurance and Tax sections of this Agreement). If you are tax-exempt, you must furnish us satisfactory evidence of your exemption. If you do not provide evidence of insurance coverage or if you request coverage we may provide it for you and bill you for the insurance premium.

**Terms and Conditions:** BY SIGNING THIS AGREEMENT: (I) YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THE TERMS AND CONDITIONS ON ALL PAGES OF THIS AGREEMENT; (II) YOU AGREE THAT YOU CANNOT CANCEL THIS AGREEMENT UNDER ANY CIRCUMSTANCES. YOU HAVE AN UNCONDITIONAL OBLIGATION TO MAKE ALL PAYMENTS DUE UNDER THIS AGREEMENT, AND YOU CANNOT WITHHOLD, SET OFF OR REDUCE SUCH PAYMENTS FOR ANY REASON (III) YOU WILL USE THE PROPERTY ONLY FOR BUSINESS PURPOSES (IV) YOU WARRANT THAT THE PERSON SIGNING THIS AGREEMENT FOR YOU HAS THE AUTHORITY TO DO SO AND TO GRANT US THE POWER OF ATTORNEY SET FORTH IN THIS AGREEMENT (V) YOU CONFIRM THAT YOU DECIDED TO ENTER INTO THIS AGREEMENT RATHER THAN PURCHASE THE PROPERTY FOR ITS TOTAL CASH PRICE AND (VI) YOU AGREE THAT THIS AGREEMENT WILL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS, OR THE LAWS OF THE STATE OF ANY ASSIGNEE OF THIS LEASE, AND YOU CONSENT TO THE EXCLUSIVE JURISDICTION OF ANY COURT LOCATED IN COOK COUNTY, ILLINOIS, OR ANY COURT OF OUR ASSIGNEE. YOU AND WE EXPRESSLY WAIVE ANY RIGHTS TO A TRIAL BY JURY.

Agreed and Accepted: Lessee: HII TECHNOLOGIES, INC.

Agreed and Accepted: Lessor: BCL-EQUIPMENT LEASING LLC

Signature:  Date: 6/27/14  
 Name: MATT FLEMING Title: CEO

Signature:  Date: 6/30/14  
 Name: BCL-Equipment Leasing LLC Title: Member