



April 2014

## To the Members

Dear Sirs,

### **GUARDCON West Africa – Contract for the use of Security Guards**

Members are referred to the International Group's Piracy FAQs and the Club's circular B.572 published in March 2012, confirming that the BIMCO GUARDCON contract for the employment of private maritime security companies (PMSCs) on vessels conforms with club cover and pooling arrangements.

GUARDCON has been in existence since 2012 and has become the industry-standard contract for the employment of PMSCs, harmonising terms of engagement and making the process simpler and quicker for shipowners.

GUARDCON was designed with East Africa in mind but since its inception, the shipping industry's focus has widened to include piracy and other threats to shipping in the Gulf of Guinea off West Africa.

GUARDCON in its unamended form is not a suitable contract to use for the engagement of PMSCs off West Africa where it is contemplated armed security personnel provided by littoral states will operate alongside unarmed PMSCs. This protection model has evolved in response to the littoral states' prohibition on the use of armed PMSCs on board vessels in their territorial waters.

Members are referred to BIMCO's Special Circular No. 1 – 20 February 2014 which sets out recommended amendments to GUARDCON for use off West Africa, developed by BIMCO with input from International Group clubs. Whilst BIMCO has stated it has no intention of producing an amended version of GUARDCON for use off West Africa, the International Group clubs have produced the attached version of the contract – called "GUARDCON West Africa" – which incorporates recommended amendments.

GUARDCON West Africa is approved by all of the International Group clubs. It will provide contract certainty and make it simpler and quicker for shipowners to put in place appropriate security arrangements when trading in the high risk areas off West Africa.

However, this circular should not be read as a recommendation for members to use armed security. Members are reminded that the use of PMSCs and other security personnel should not be seen as an alternative to compliance with the current version of the Interim Guidelines for Owners, Operators and Masters for protection against piracy in the Gulf of Guinea region.

B.625

#### **THE STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION (BERMUDA) LIMITED**

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Authorised and regulated by the Bermuda Monetary Authority and authorised by the United Kingdom Prudential Regulation Authority and regulated by the United Kingdom Financial Conduct Authority and Prudential Regulation Authority (PRA and FCA registration number 202762)

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Placing armed security guards on board a vessel should only be considered after a thorough risk assessment. Members should also follow IMO Circular MSC.1/1405/Rev 2 and ensure they comply with all applicable laws and regulations, including those of their Flag State, littoral states and any other relevant authority.

All clubs in the International Group have issued a similar circular.

Yours faithfully,

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## GUARDCON West Africa – IG recommended wording

### SECTION 1 – Basis of the contract

#### 1. Definitions

In this Contract save where the context otherwise requires, the following words and expressions shall have the meanings hereby assigned to them:

“BMP” means, at the date of this Contract, BMP4 (Best Management Practices for Protection Against Somalia Based Piracy) or such updated version as may have been introduced at the date of the Instruction Notice.

“Contractors” means the party identified in Box 4.

“Crew” means the Vessel’s Master, officers and crew and any supernumeraries carried on board save for the Security Personnel and Local Security Personnel.

“Disembarkation Point” means the place or places of disembarkation of Security Personnel and Local Security Personnel stated in the Instruction Notice or Box 10.

“Embarkation Point” means the place or places of embarkation of Security Personnel and Local Security Personnel stated in the Instruction Notice or Box 10.

“Embarkation Time” means the time and date stated in the Instruction Notice or Box 9.

“Firearms” means the firearms and ammunition listed in Annex A (Security Equipment).

“Flag State” means the State whose flag the Vessel is flying.

“Instruction Notice” means a request for the provision of Security Services in the form set out in Annex C (Instruction Notice).

“Interim Guidelines” means Interim Guidelines for Owners, Operators and Masters for protection against piracy in the Gulf of Guinea region or such updated version as may have been introduced at the date of the Instruction Notice.

“Local Security Personnel” means serving members of national security forces of littoral states provided by the Contractors for the performance of the Security Services on board the Vessel.

“LSP Firearms” means the firearms and ammunition carried by Local Security Personnel.

“Mobilisation Fee” means the fee stated in Box 14 per Transit or as per Annex E (Schedule of Charges).

~~“MSCHOA” means the Maritime Security Centre (Horn of Africa).~~

“Owners” means the owners or disponent owners identified in Box 3.

“Permits” means, as the context requires, permits, certificates, licences, consents, authorisations, permissions, approvals and visas.

“Rules for the Use of Force” means the rules under which the Security Personnel shall act as set out in Annex B (Rules for the Use of Force) and in accordance with Clause 8 (Master’s Authority and Division of Responsibilities).

“Security Equipment” means the equipment listed in Annex A (Security Equipment), including the Firearms, if any, **for avoidance of doubt excluding LSP Firearms.**

“Security Personnel” means the personnel directly engaged or employed by the Contractors for the performance of the Security Services on board the Vessel, **for avoidance of doubt excluding Local Security Personnel.**

“Security Services” means the services specified in Box 7 and Clause 3 (Security Services) and all other functions performed by the Contractors under the terms of this Contract.

“Standard Operating Procedures” means the Contractors' standard operating procedures in accordance with which the Security Personnel will provide the Security Services as set out in Annex F (Standard Operating Procedures).

“STCW” means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended in 1995 and 2010 and any amendment thereto or substitution thereof.

“Team Leader” means a member of the Security Personnel designated by the Contractors as team leader and identified to the Owners.

“Transit” means any voyage under this Contract or for which an Instruction Notice has been issued by the Owners for the provision of the Security Services.

~~“UKMTO” means the UK Maritime Trade Operations office in Dubai.~~

“Vessel” means the vessel or vessels details of which are set out in Box 5 or in the Instruction Notice.

## **2. Commencement, Appointment and Duration**

**(a)** With effect from the date stated in Box 2 for the commencement of the Contract the Owners hereby appoint the Contractors and the Contractors hereby agree to provide Security Services to the Vessel.

**(b)** If for a Single Transit as stated in Box 6(i), this Contract shall terminate upon disembarkation of the Security Personnel **and Local Security Personnel** and the Security Equipment **and LSP Firearms**, unless earlier terminated in accordance with Clause 19 (Cancellation and Termination). If for Multiple Transits as stated in Box 6(ii), this Contract shall have an initial term of twelve (12) months from the date stated in Box 2 and thereafter shall continue in force until terminated by either party giving not less than thirty (30) days’

notice to the other party (whereupon this Contract shall terminate, unless a Transit is then underway in which case this Contract shall terminate upon **final** disembarkation of the Security Personnel **and Local Security Personnel**, the Security Equipment **and LSP Firearms**), unless earlier terminated in accordance with Clause 19 (Cancellation and Termination).

(c) This Contract is not an exclusive appointment of the Contractors and if used for Multiple Transits the Owners do not guarantee a minimum number of Transits per year.

## **SECTION 2 – Security Services**

### **3. Security Services**

The Contractors shall provide the Owners with Security Personnel for a Transit comprising of a minimum of a four (4) man team consisting of one (1) Team Leader and three (3) or more Security Personnel **or, where Local Security Personnel are to be provided, one Team Leader and four (4) or more Local Security Personnel**, and who shall undertake the following:

(a) embark the Vessel at the Embarkation Point at the Embarkation Time and accompany the Vessel to the Disembarkation Point;

(b) protect and defend the Vessel during Transit against any actual, perceived or threatened acts of piracy and/or violent robbery and/or capture/seizure. Such means shall include the use of Security Equipment, **and where Local Security Personnel are to be provided, LSP Firearms**, where appropriate and always in accordance with the Rules for the Use of Force, relevant national laws and Standard Operating Procedures (as may be provided by the Contractors to the Owners); and

(c) act, during the Transit, upon the lawful instructions of the Master.

**(d) notwithstanding any other provisions of this Contract, the Owners accept that the Contractors do not have the same degree of control over Local Security Personnel as they do over the Security Personnel. Whilst the Contractors will use their best endeavours to ensure that Local Security Personnel act upon the lawful instructions of the Master, act in accordance with the directions of the Security Personnel act in accordance with the Rules for the Use of Force and provide the Security Services with reasonable skill and care, the Contractors do not warrant that Local Security Personnel will provide the Security Services with reasonable skill and care.**

### **4. Engagement of Security Services**

If this Contract is for Multiple Transits according to Box 6(ii), the Owners shall notify the Contractors of their requirement for Security Services by issuing an Instruction Notice. The Contractors shall be obliged to provide Security Services for Transits only within the geographical scope of operation stated in Box 8 and provided such Instruction Notice is not issued less than seventy-two (72) hours prior the Embarkation Time.

### **5. Change of Specification of Security Services**

If either party reasonably considers changes are required to the specification of the Security Services to conform to any applicable law or regulatory requirement that may be brought in or enacted from time to time, that party shall implement such changes provided that nothing in this Clause shall require the Owners to agree fewer Security Personnel or higher fees under this Contract.

### **SECTION 3 – Obligations and Responsibilities**

#### **6. Contractors' Obligations and Responsibilities**

(a) The Contractors undertake to provide the Security Services using all reasonable skill and care and their responsibilities shall include the following (and other responsibilities as may be agreed):

(i) providing general guidance to the Crew and also carrying out such drills, training and preparations for the Transit as the Contractors may recommend to the Master and the Master may agree;

(ii) advising and/or assisting with the hardening of the Vessel in accordance with Owners' instructions and, where applicable, in accordance with the guidance of BMP and the Interim Guidelines;

(iii) monitoring suspicious vessels or craft during the Transit;

(iv) advising the Master on security-related routeing issues;

(v) assisting the Master in liaising with ~~UKMTO and MSCHOA and other~~ the appropriate local authorities ~~as appropriate~~ and reporting incidents in accordance with the relevant procedures set out in BMP and in the Interim Guidelines;

(vi) providing post-Transit reports to the Owners;

(vii) ensuring that at no time the Crew are permitted to handle Firearms or LSP Firearms;

(viii) providing and maintaining the resources to perform the Security Services in accordance with the terms of this Contract;

(ix) establishing and maintaining an operational point of contact available twenty-four (24) hours a day prior to and during the deployment of the Security Personnel and Local Security Personnel to deal with operational issues and queries arising out of the performance of the Security Services, whose contact details are as stated in Box 21; and

(x) arranging transportation from the Vessel, at their cost, of sick or injured Security Personnel and Local Security Personnel.

(b) The Contractors shall provide suitably qualified, trained and experienced Security Personnel for the Vessel as required by the Owners and undertake that:

(i) each of the Security Personnel has:

(1) passed a medical examination with a qualified doctor certifying that they are fit for the duties for which they are engaged and are in possession of valid medical certificates (ENG1 Medical or equivalent) issued in accordance with Flag State requirements or such higher standard of medical examination as may be agreed with the Owners. In the absence of any applicable Flag State requirements the medical certificate shall be valid at the time the respective Security Personnel member arrives on board the Vessel and shall be maintained for the duration of their service on board the Vessel;

(2) relevant STCW and, where applicable, BMP training;

(3) relevant experience and suitable training in the use and carriage of the Firearms, if any, and the other Security Equipment and all necessary personal handling licences and certificates;

(4) a valid passport, appropriate visas, and a yellow fever card;

(5) no criminal convictions that would ordinarily preclude them from applying for and/or holding a firearms certificate or equivalent from their country of origin and on request they shall produce substantiating evidence of such checks/certificates;

(6) prior military or law enforcement service or other service acceptable to the Owners;

(7) not been discharged for any disciplinary reasons from military, law enforcement or other service;

(8) a command of the common working language between members of the Security Personnel and the Master, and has a command of the English language; in each case of a standard to enable him to perform his duties safely; and

(9) a level of mental and physical fitness appropriate to the provision of the Security Services in the circumstances contemplated by this Contract;

(ii) the Team Leader has prior experience of performing services equivalent to the Security Services on board a merchant vessel; and at least one member of the Security Personnel has been trained in first aid trauma treatment.

(c) The Contractors shall:

(i) provide and maintain insurance in accordance with [Clause 12](#) (Insurance Policies);

(ii) be responsible for the management of the Security Personnel and Local Security Personnel, for the payment of salaries and all other benefits and emoluments and/or all other payments whatsoever to the Security Personnel and for the provision of accident and medical expense insurance (in accordance with [Clause 12](#) (Insurance Policies)) for the Security Personnel during the term of this Contract; and

(iii) provide the Security Equipment, compliant with all applicable rules and regulations, and maintained for the satisfactory provision of the Security Services on board the Vessel. The Security Equipment shall be securely transported to and from the Vessel at the Contractors' risk.

**(d) Contractors' Right to Sub-Contract**

(i) The Contractors shall not sub-contract any of their obligations hereunder, **other than the provision of Local Security Personnel**, without the prior written consent of the Owners. In the event of such permitted sub-contracting the Contractors shall remain fully liable for the due performance of their obligations under this Contract.

(ii) Where the Contractors sub-contract personnel (or a company substantially all of whose shares are owned by an individual) who are not in the direct employment of the Contractors (**excluding Local Security Personnel**), the Contractors shall ensure that such sub-contracted personnel agree to be bound by all the terms and conditions of this Contract.

**(iii) The Contractors shall use their best endeavours to ensure that Local Security Personnel act upon the lawful instructions of the Master, act in accordance with the directions of the Security Personnel, act in accordance with the Rules for the Use of Force and provide the Security Services with reasonable skill and care, although do not warrant that Local Security Personnel will provide the Security Services with reasonable skill and care.**

**7. Owners' Obligations and Responsibilities**

The Owners' responsibilities shall consist of the following (and other responsibilities as may be agreed):

(a) paying all sums due to the Contractors punctually in accordance with the terms of this Contract;

(b) paying all usual voyage and Vessel expenses;

(c) supplying and paying for all materials required to harden the Vessel;

(d) ensuring that the Contractors are provided with such access to the Vessel and other premises as may be necessary for the provision of the Security Services and providing such information and materials as the Contractors may reasonably require to provide the Security Services (which the Owners shall use reasonable endeavours to ensure is accurate in all material respects);

(e) being responsible for informing all interested parties, including but not limited to Flag State, hull and machinery underwriters, P&I underwriters, war risk underwriters and charterers, that the Vessel will be protected by a security team, and of any other relevant details, including whether the Security Personnel will be armed or unarmed;

(f) liaising with ~~UKMTO and MSCHOA as appropriate~~ **the appropriate local authorities and reporting incidents** in accordance with the **relevant** procedures set out in the **BMP and in the Interim Guidelines**;



(g) providing victualling and accommodation reasonably required for the Security Personnel and Local Security Personnel at the Owners' expense during the provision of the Security Services equivalent to that provided to the Vessel's officers;

(h) providing a secure location for the storage and safe-keeping of any Firearms on board, including LSP Firearms;

(i) deviating the Vessel at their cost to the nearest port or place for the purposes of the disembarkation of sick or injured Security Personnel and Local Security Personnel; and

(j) ensuring that the Security Personnel and Local Security Personnel are entered onto the Vessel's crew list as supernumeraries upon embarkation and are given ship-board familiarisation training.

## **SECTION 4 – Master's Authority, Division of Responsibilities and Hijacking**

### **8. Master's Authority and Division of Responsibilities**

(a) The Master shall, at all times throughout the duration of this Contract and the performance of the Security Services, have and retain ultimate responsibility for the safe navigation and overall command of the Vessel. Any decisions made by the Master shall be binding and the Contractors undertake to instruct the Security Personnel and Local Security Personnel accordingly.

(b) In the event of any actual, perceived or threatened act of piracy and/or violent robbery and/or capture/seizure by third parties the Team Leader shall advise the Master or (in the Master's absence) the Officer of the Watch that he or Local Security Personnel intend to invoke the Rules for the Use of Force.

(c) Each of the Security Personnel and Local Security Personnel shall always have the sole responsibility for any decision taken by him for the use of any force, including targeting and weapon discharge, always in accordance with the Rules for the Use of Force and applicable national law.

(d) Nothing in this Contract shall be construed as a derogation of the Master's authority under SOLAS. Accordingly, the Master retains the authority to order the Security Personnel and Local Security Personnel to cease firing under all circumstances. However, for the avoidance of doubt, nothing in this Clause shall compromise each of the Security Personnel and Local Security Personnel's right of self-defence in accordance with applicable national law.

### **9. Hijacking**

The Contractors do not guarantee the safety of the Vessel or Crew during the provision of the Security Services. If the Vessel is hijacked:

(a) The Contractors shall be entitled to be briefed by the Owners' Incident Management Team or other relevant person(s) in charge of the management of the hijacking incident. The

Contractors shall be entitled to receive regular weekly reports as to the progress of the negotiations.

**(b)** The Contractors, Security Personnel and Local Security Personnel shall not do anything to endanger the lives of the Crew and/or other persons permitted by the Master to travel on board the Vessel.

**(c)** The Contractors shall be under no obligation to contribute to ransom payments to secure the release of the Vessel and Crew (whether or not the Security Personnel or Local Security Personnel are on board the Vessel at the time of release).

**(d)** The Security Personnel and Local Security Personnel shall be entitled to arrest and detain any hijacker provided that in doing so the Security Personnel and Local Security Personnel act in accordance with all applicable laws. If the Security Personnel, Local Security Personnel or the Crew arrest and detain any hijacker then the Contractors shall be responsible for the conduct of such detention subject to the overall responsibility of the Master.

**(e)** The Contractors shall ensure that the Security Personnel and Local Security Personnel conduct and supervise all detentions in accordance with the following principles:

**(i)** the minimum restraint necessary shall be used so as to preserve the safety of the Vessel, the Crew and the detainee(s);

**(ii)** all restraints shall be applied in accordance with manufacturers' guidelines and in any event so as not to cause any pain and so as to minimise discomfort;

**(iii)** all necessary medical treatment shall be provided to detainees insofar as the Security Personnel and Local Security Personnel's skills and equipment will allow;

**(iv)** detainees shall be provided with access to water and sanitary facilities on demand;

**(v)** detainees shall be provided with reasonable access to food;

**(vi)** no violence, threats of violence or interrogation shall be used against detainees;

**(vii)** no sensory deprivation or other forms of torture shall be used against detainees;

**(viii)** the detention shall be supervised and at all times consistent with the Master's instructions; and

**(ix)** the Security Personnel shall keep a full and accurate log of the detention.

**(f)** The Owners shall ensure that:

**(i)** the Master does not require the Security Personnel or Local Security Personnel to act inconsistently with the principles set out in Clause 9(e);

**(ii)** the Master complies with his obligations under Article 8 of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation 1988 ('SUA') in relation to transferring detainees to a State Party, as defined in SUA.

(g) The Contractors shall support the Master's decisions in relation to his obligations referred to in clause 9(f)(ii) above.

## **SECTION 5 – Permits and Licences, Investigations and Claims**

### **10. Permits and Licences**

(a) The Owners shall obtain and maintain any and all Permits which may be required for the Vessel to carry the Security Personnel **or Local Security Personnel** on board the Vessel and/or for the performance of the Security Services on board the Vessel including the carriage and use of the Firearms, other Security Equipment **and LSP Firearms**.

(b) The Contractors shall obtain and maintain any and all Permits which may be required in order for the Contractors and the Security Personnel to undertake the Security Services using any Firearms and other Security Equipment **save for LSP Firearms**. Such Permits shall include (as necessary) those required under the laws of:

(i) the country of incorporation and/or operation of the Contractors;

(ii) the country in which each of the Security Personnel takes his nationality; and

(iii) the countries of Embarkation Point/Disembarkation Point.

(c) Details of Permits (as necessary) held by the Contractors for these purposes are set out in [Box 11](#).

(d) For the avoidance of doubt:

(i) If the Owners have not obtained the required Permits in accordance with [Sub-clause \(a\)](#) above, the Owners shall indemnify the Contractors for any fines, penalties, losses, costs, legal fees and disbursements as a result of the Owners' failure to perform such obligations.

(ii) If the Contractors have not obtained the required Permits in accordance with [Sub-clause \(b\)](#) above, the Contractors shall indemnify the Owners for any fines, penalties, losses, costs, legal fees and disbursements as a result of the Contractors' failure to perform such obligations.

(e) Each party shall provide the other party with a copy of the required Permits upon request.

### **11. Investigations and Claims**

(a) Following any incident where a discharge of Firearms **or LSP Firearms** occurs, the Master and the Team Leader shall provide formal written records of the incident as may be required by applicable national law.

(b) If an incident takes place which leads to an investigation by the Owners and/or Flag State and/or other authorised body, the Contractors shall cooperate in such an investigation.

(c) Each party shall assist the other party in defending any third party claims arising out of the provision of the Security Services, in which case the reasonable costs of such assistance shall be borne by the defending party.

## **SECTION 6 – Insurance, Fees and Taxes**

### **12. Insurance Policies**

(a) The Contractors shall at all times during the period of this Contract maintain insurances to cover their liabilities and contractual indemnities, including those under [Clause 15](#) (Liabilities and Indemnities), as follows:

- (i) employer’s liability insurance covering the Contractors' liability to the Security Personnel;
- (ii) comprehensive liability insurance including insuring the Contractors' liability to third parties for personal injury and death, property damage and other loss;
- (iii) professional indemnity insurance; and
- (iv) personal accident insurance for each of the Security Personnel in a sum not less than United States Dollars two hundred and fifty thousand (US\$250,000) per person.

The policies above shall provide the Contractors with cover for emergency medical expenses and repatriation costs.

The Contractors shall ensure that the use of Firearms, **other Security Equipment, LSP Firearms or Local Security Personnel** on board **the Vessel** shall not invalidate the above insurances.

(b) These insurances shall be placed with reputable insurers and in respect of the insurances listed in Sub-clauses (a)(i) to (a)(iii) shall have (i) policy limits not less than United States Dollars five million (US\$5,000,000) or as stated in [Box 12](#), whichever is the higher amount, and (ii) reasonable deductibles (by reference to market practice), which deductibles shall be for the account of the Contractors. The Contractors shall upon request furnish the Owners with copies of the cover notes which provide information to verify that the Contractors have complied with the insurance requirements of this Contract.

(c) The Owners confirm that the Vessel is entered with a P&I Club that is a member of the International Group of P&I Clubs or another internationally reputable marine liability insurer.

(d) The Owners shall be under no obligation to disclose the existence of any kidnap and ransom (K&R) insurance they may have placed. In any event, if there is K&R or similar insurance in place, the Contractors acknowledge that such a policy may not respond in respect of the Security Personnel in circumstances where they are not on board the Vessel.

(e) Each of the parties shall use reasonable endeavours to ensure that its underwriters waive their rights of subrogation against the other party.

(f) For purposes of this [Clause 12](#) (Insurance Policies) rights extended to the Owners and Contractors shall be extended to the Owners' Group and Contractors' Group respectively (as such expressions are defined in [Subclauses 15\(a\)\(i\)](#) and [15\(a\)\(ii\)](#)) of [Clause 15](#) (Liabilities and Indemnities)).

### **13. Fees and Expenses**

(a) In consideration of the Security Services, the Owners shall pay the Contractors the daily rate for all the Security Personnel **and Local Security Personnel** or lump sum for the Transit in the currency and amount stated in [Box 13](#) from the actual date and time of embarkation of the Security Personnel, **Local Security Personnel**, the Security Equipment **and LSP Firearms** until the actual date and time of their disembarkation.

(b) The Owners shall pay the Contractors the Mobilisation Fee, if any, on the signing of this Contract for a Single Transit and upon issuing the Instruction Notice in respect of Multiple Transits.

(c) The Contractors shall provide the Owners with invoices not more than thirty (30) days after Disembarkation specifying the fees due for the Security Services provided during the currency of any Instruction Notice or, as the case may be, this Contract.

(d) Save in respect of the Mobilisation Fee and any agreed advance payments, the Owners shall pay all invoices issued to them by the Contractors within twenty-one (21) days of the date of receipt of the invoice. If the Owners do not pay within twenty-one (21) days the Contractors shall have the right to issue a written notice of default and the Owners shall have a further seven (7) days in which to pay, failing which the Contractors shall have the right to suspend all or part of the Security Services and/or terminate this Contract in accordance with [Clause 19](#) (Cancellation and Termination).

(e) The Owners shall make payment of each invoice by electronic transfer to the Contractors' bank account stated in [Box 15](#).

(f) If the Contractors provide an invoice to the Owners which is disputed, the Owners shall pay the Contractors the undisputed amount of such invoice on the due date and shall notify the Contractors in writing of any disputed amount as soon as practicable.

(g) If the Owners require the Contractors to perform services additional to those set out herein, both parties will agree in writing, prior to such services being provided, on the nature of the additional services to be provided and the additional fees to be paid by the Owner.

(h) If a daily rate is agreed and specified in [Box 13](#), the rate shall be payable for each and every twenty-four (24) hour period and pro rata for each part day thereof that the Security Services are provided.

(i) If the Owners require the Embarkation Time to be re-scheduled for any reason, the Owners shall notify the Contractors in writing and the Embarkation Time will be re-scheduled to the Owners' chosen time and date provided that:

(i) where the Owners give such notice at least **forty-eight (48)** hours before the original Embarkation Time, no financial penalty or additional fees will be incurred by the Owners and the daily rate will be payable from the re-scheduled Embarkation Time;

(ii) where the Owners give such notice less than **forty-eight (48)** hours before the original Embarkation Time, the daily rate will be payable from the original Embarkation Time.

(j) The standby rate specified in **Box 16** is payable by the Owners to the Contractors for one period of twenty-four (24) hours after the date at which the Vessel arrives at the Disembarkation Point, in respect of demobilisation of the Security Personnel, **Local Security Personnel**, Security Equipment and **LSP Firearms**.

(k) If the Vessel is hijacked and the hijackers have control of the Vessel then all daily payments will be suspended and liability on the part of the Owners to pay the daily rate shall cease.

(l) Save where a lump sum has been agreed, the Owners shall reimburse the Contractors for any additional costs, expenses and/or disbursements, including but not limited to transport and accommodation charges, incurred by the Contractors with the agreement of the Owners and accompanied by supporting documentation.

#### **14. Taxes**

(a) Subject to **Sub-clause (d)**, the Owners shall be responsible for the payment of all taxes, duties, levies, charges and contributions (and any interest or penalties thereon) imposed by law on the Owners' property or personnel (including, without limitation, the Vessel and Crew), whether or not they are calculated by reference to the wages, salaries, benefits or expenses and other remuneration paid directly or indirectly to persons engaged or employed by the Owners.

(b) The Contractors shall be responsible for the payment of all taxes, duties, levies, charges and contributions (and any interest or penalties thereon) imposed by law on the Contractors' equipment or personnel (including, without limitation, the Security Equipment and the Security Personnel), whether or not they are calculated by reference to the wages, salaries, benefits or expenses and other remuneration paid directly or indirectly to persons engaged or employed by the Contractors.

(c) Where any taxable supply for VAT (or equivalent indirect sales tax) purposes is made under the Contract by the Contractors to the Owners, the Owners shall, on receipt of a valid VAT invoice from the Contractors, pay to the Contractors such additional amounts in respect of VAT as are chargeable on the supply of the Security Services at the same time as payment is due for the supply of the Security Services.

(d) Withholding taxes shall be for the Contractors' account. Any amounts paid by the Owners to the Contractors hereunder shall be net of any withholding taxes required to be deducted from such amounts by relevant taxation authorities, in which case the Owners shall supply the Contractors with a certificate from the relevant taxation authorities that such withholding taxes have been paid. The Owners shall take reasonable steps to make all relevant information and documentation available to the Contractors to enable them to reduce or

eliminate any withholding taxes demanded by any taxation authority, or in recovering such withholding taxes.

## **SECTION 7 – Legal and Liabilities**

### **15. Liabilities and Indemnities**

(a) Definitions - For the purpose of this Clause:

(i) “Owners’ Group” means the Owners, the registered owner of the Vessel (if not the Owners), and each of their subsidiaries and/or affiliate companies, employees, directors, officers, agents and insurers, the Crew, and any persons permitted by the Master to travel on board the Vessel (save for the Security Personnel).

(ii) “Contractors’ Group” means the Contractors and their subsidiaries and/or affiliate companies, employees, sub-contracted personnel (including, without limitation, the Security Personnel and Local Security Personnel), directors, officers, agents and insurers.

(b) Knock for Knock

(i) Owners

The Owners’ Group shall not be responsible for loss of or damage caused to or sustained by the property of the Contractors’ Group (whether on board the Vessel or not) or incur any liability in respect of personal injury, illness or death of any individual member of the Contractors’ Group (whether on board the Vessel or not) arising out of or in any way connected with the performance of this Contract, even if such loss, damage, injury or death is caused wholly or partially by (i) the act, neglect or default of the Owners’ Group and/or (ii) the unseaworthiness of the Vessel. The Contractors expressly agree and undertake to hold harmless, defend, indemnify and waive all rights of recourse against the Owners’ Group from and against any and all claims, demands, liabilities or causes of action of any kind or character, made by or available to any person or party, for injury to, illness or death of any of the Contractors’ Group, or for damage to or loss of property (except cargo) owned by or in the possession of, the Contractors’ Group.

(ii) Contractors

The Contractors’ Group shall not be responsible for loss of or damage caused to or sustained by the property of the Owners’ Group (including, without limitation, the Vessel) or incur any liability in respect of personal injury, illness or death of any individual member of the Owners’ Group (whether on board the Vessel or not) arising out of or in any way connected with the performance of this Contract, even if such loss, damage, injury or death is caused wholly or partially by the act, neglect or default of the Contractors’ Group. The Owners expressly agree and undertake to hold harmless, defend, indemnify and waive all rights of recourse against the Contractors’ Group from and against any and all claims, demands, liabilities or causes of action of any kind or character, made by or available to any person or party, for injury to, illness or death of any of the Owners’ Group, or for damage to or loss of

property (except cargo, unless owned by Owners' Group) owned by or in the possession of, the Owners' Group.

**(c) Third party liability**

**(i)** The Contractors expressly agree to hold harmless, defend, indemnify and waive all rights of recourse against the Owners' Group from and against any and all claims, demands, liabilities, costs or causes of action of any kind, made by or available to any third party (including, without limitation, governmental authorities) arising out of any unlawful and/or negligent act or omission by the Contractors' Group in the performance of this Contract save to the extent of the Owners' own negligence.

**(ii)** The Owners expressly agree to hold harmless, defend, indemnify and waive all rights of recourse against the Contractors' Group from and against any and all claims, demands, liabilities, costs or causes of action of any kind, made by or available to any third party (including, without limitation, governmental authorities) arising out of any unlawful and/or negligent act or omission by the Owners' Group in the performance of this Contract save to the extent of the Contractors' own negligence.

**(iii)** Notwithstanding any other Clause of this Contract save for Sub-clause (d) below, the Owners' Group shall be indemnified by the Contractors for all claims, liabilities, losses, liabilities to Crew and third parties (including costs, expenses and fines) whatsoever and howsoever arising out of or in connection with the accidental and/or negligent discharge of any Firearms by the Security Personnel **or LSP Firearms by Local Security Personnel**.

**(iv)** Each party shall give notice to the other party as soon as practicable of any circumstances of which they become aware during the period of the Contract which may give rise to a loss or a claim against the other party. The party from whom the indemnity is being sought shall cooperate fully with the other party and shall have the right, subject to the other party's agreement, to take over the claim including defending and settling, as appropriate, any liability for which the indemnifying party would be liable to indemnify the other party.

**(d) Limitation of liability**

Unless otherwise agreed, the liability of each party to the other for any loss, damage, liability or indemnity under this Contract shall be limited to United States Dollars five million (US\$5,000,000) or as stated in **Box 12**, whichever is the higher amount, without prejudice to the right of the Owners' Group to limit their liability under any applicable national law or international convention.

**(e)** Neither the Owners nor the Contractors shall be liable to the other party for:

**(i)** any loss of profit, loss of use or loss of production whatsoever and whether arising directly or indirectly from the performance or non-performance of this Contract, and whether or not the same is due to negligence or any other fault on the part of either party, their servants or agents; or

**(ii)** any consequential loss or damage for any reason whatsoever, whether or not the same is due to any breach of contract, negligence or any other fault on the part of either party, their servants or agents.



## **16. Security Personnel Liability**

None of the Security Personnel or Local Security Personnel shall in any circumstances whatsoever be under any personal liability whatsoever to the Owners for any loss, damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on his part while acting in the course of or in connection with his employment and, without prejudice to the generality of the foregoing provisions in this Clause, every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Contractors or to which the Contractors are entitled hereunder shall also be available and shall extend to protect each of the Security Personnel and Local Security Personnel acting as aforesaid and for the purpose of all the foregoing provisions of this Clause the Contractors are or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or might be his servants or agents from time to time (including sub-contractors as aforesaid) and all such persons shall to this extent be or be deemed to be parties to this Contract.

## **17. Security Personnel – Waiver**

The Contractors undertake to procure from each member of the Security Personnel and to use their best endeavours to procure from each member of the Local Security Personnel, prior to their boarding the Vessel, individual waivers in substantively the form attached to this Contract in Annex D (Individual Waiver).

## **18. Delay**

(a) The Contractors shall use their best endeavours to avoid delays in embarkation and/or disembarkation of the Security Personnel and Security Equipment, Local Security Personnel and LSP Firearms but shall not be responsible for the first twenty-four (24) hours of any delay, prior to the actual time and date of embarkation/disembarkation.

(b) In the event of adverse weather conditions as a result of which the duration of the Security Services is extended, any additional time required for the completion of the Security Services will be payable at the daily rate stated in Box 13.

## **19. Cancellation and Termination**

### **(a) Pre-Transit cancellation**

If an embarkation of Security Personnel and/or Security Equipment and/or Local Security Personnel and LSP Firearms in respect of any Transit is delayed by more than twenty-four (24) hours for any reason whatsoever other than Owners' default, the Owners shall be entitled to cancel the Transit forthwith.

If a Transit is cancelled by the Owners, other than by reason of delay above, the Owners shall pay to the Contractors:

(i) on cancellation with less than seventy two (72) hours' notice, ten per cent (10%) of the fees for the estimated Transit period at the daily rate/lump sum (unless otherwise stated in [Box 17](#)) in addition to the Mobilisation Fee;

(ii) on cancellation with less than forty-eight (48) hours' notice, thirty per cent (30%) of the fees for the estimated Transit period at the daily rate/lump sum (unless otherwise stated in [Box 17](#)) in addition to the Mobilisation Fee; or

(iii) On cancellation with less than twenty-four (24) hours' notice, fifty per cent (50%) of the fees for the estimated Transit period at the daily rate/lump sum (unless otherwise stated in [Box 17](#)) in addition to the Mobilisation Fee.

**(b) Termination**

(i) The Owners may terminate this Contract forthwith at any time by written notice if the Flag State either withdraws or does not in the first instance agree in writing to permit and give the Flag State authorisation or licence necessary for the Security Services provided under this Contract.

(ii) The Contractors may terminate this Contract forthwith at any time by written notice if any undisputed sums remain unpaid under the terms of this Contract for seven (7) days after receipt by the Owners of the Contractors' written notice of default in payment.

(iii) Either party may terminate this Contract forthwith by giving notice in writing to the other if the other party:

(1) is in material breach of its obligations under this Contract and, save as provided for breach of payments provided in [Sub-clause \(b\)\(ii\)](#) above, fails to remedy that breach (if remediable) within twenty-four (24) hours of receiving notice of such breach from the innocent party; or

(2) becomes bankrupt or insolvent, or has a receiving order made against it, or compound with its creditors, or being a corporation commences to be wound up (not being a members' voluntary winding up for the purpose of amalgamation or reconstruction) or carries on its business under a receiver for the benefit of its creditors or any of them. Under any of these circumstances the other party shall be at liberty to terminate this Contract forthwith by notice in writing to the party or to the receiver or liquidator or to any person in whom this Contract may become vested.

(iv) Upon termination of this Contract:

(1) the Owners shall pay any and all sums then due and payable by the Owners under the terms of this Contract; and

(2) the Contractors shall discontinue performance of the Security Services and disembark the Security Personnel and the Security Equipment, **Local Security Personnel and LSP Firearms** from the Vessel as soon as reasonably practicable and safe to do so and will otherwise comply with the Owners' reasonable instructions regarding such termination.

(c) [Clause 15](#) (Liabilities and Indemnities), [Clause 16](#) (Security Personnel Liability), [Clause 24](#) (Dispute Resolution) and [Clause 27](#) (Confidentiality) shall survive the termination of this Contract.

(d) The right to terminate in this Clause is without prejudice to any other rights or remedies the party terminating the Contract may have in this Contract or by law.

## **20. Compliance with Laws and Regulations**

Each of the Parties shall not do or permit to be done anything which might cause any breach or infringement of national laws and international conventions including, without limitation, regulations of the Flag State and the places where the Vessel trades.

## **21. Health, Safety and Environmental Regulations**

Whilst on board the Vessel, the Contractors, the Security Personnel and **Local Security Personnel** shall comply with such of the Owners' health and safety requirements as the Owners may have notified to the Security Personnel.

## **22. Drug and Alcohol Policy**

The Security Personnel and **Local Security Personnel** shall not bring or consume alcohol or drugs on board the Vessel.

## **23. No Salvage**

The Contractors, the Security Personnel and **Local Security Personnel** hereby waive their rights to claim any award for salvage performed on the Vessel or life salvage.

## **24. Dispute Resolution**

(a) This Contract and any non-contractual obligations arising out of it shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Contract shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within fourteen (14) calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party

appoints its own arbitrator and gives notice that it has done so within the fourteen (14) days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the fourteen (14) days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by Contract.

Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of United States Dollars one hundred thousand (US\$100,000) (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

**(b)** This Contract and any non-contractual obligations arising out of it shall be governed by and construed in accordance with Title 9 of the United States Code and the substantive law (not including the choice of law rules) of the State of New York and any dispute arising out of or in connection with this Contract shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgment may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.

In cases where neither the claim nor any counterclaim exceeds the sum of United States Dollars one hundred thousand (US\$100,000) (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. current at the time when the arbitration proceedings are commenced.

**(c)** This Contract and any non-contractual obligations arising out of it shall be governed by and construed in accordance with the laws of the place mutually agreed by the parties and any dispute arising out of or in connection with this Contract shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there.

**(d)** Notwithstanding [Sub-clauses \(a\), \(b\) or \(c\)](#) above, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Contract.

**(i)** In the case of a dispute in respect of which arbitration has been commenced under [Sub-clauses \(a\), \(b\) or \(c\)](#) above, the following shall apply:

**(ii)** Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the "Mediation Notice") calling on the other party to agree to mediation.

**(iii)** The other party shall thereupon within fourteen (14) calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further fourteen (14) calendar days, failing which on the

application of either party a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.

(iv) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties.

(v) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest.

(vi) Either party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.

(vii) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator's costs and expenses.

(viii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.

*(Note: The parties should be aware that the mediation process may not necessarily interrupt time limits.)*

(e) If [Box 19](#) in Part I is not appropriately filled in, [Sub-clause \(a\)](#) of this Clause shall apply. 588 *Note: Sub-clauses (a), (b) and (c) are alternatives; indicate alternative agreed in [Box 19](#). Sub-clause (d) shall apply in all cases.*

## **SECTION 8 – General**

### **25. Assignment**

Neither of the parties shall assign any of their rights under this Contract without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

### **26. Notices**

Any party giving notice under this Contract shall ensure that it is effectively given and such notice shall be treated as received during the recipients' office hours. If such notice is sent outside the recipients' office hours it shall be treated as received during the recipients' next working day. For the purpose of giving notices the Owners' contact details are stated in [Box 20](#) and the Contractors' contact details are stated in [Box 21](#).

## **27. Confidentiality**

(a) Neither the Owners nor the Contractors shall disclose to third parties any confidential information relating to pre contractual discussions and/or the terms and conditions of this Contract, except with the prior written consent of the other party, or to the extent required by law, or by a request of a Government or agency thereof.

(b) The parties shall take reasonable precautions to ensure that no unauthorised disclosure of confidential information takes place.

(c) If the Contractors or the Owners are uncertain as to whether information is confidential, the Contractors or the Owners (as the case may be) shall consult with the other party.

(d) Should the Contractors or the Owners be required by law to disclose confidential information, the disclosing party will notify the other party and shall disclose only the minimum confidential information required to satisfy legal requirements.

(e) Neither party shall comment upon nor discuss this Contract nor any incident related to it with the media without the permission of the other party.

(f) Information is not confidential for the purposes of this Clause if it was in the possession of the party prior to receipt from the Owners or the Contractors; becomes publicly available other than as a result of a breach of this Contract by one of the parties; or is lawfully received from a third party.

(g) This Clause shall survive termination of this Contract.

## **28. Third Party Rights**

Except to the extent provided in [Clause 15](#) (Liabilities and Indemnities) and [Cl. 16](#) (Security Personnel Liability), no third parties may enforce any term of this Contract.

## **29. Partial Validity**

If any provision of this Contract is or becomes or is held by any arbitrator or other competent body to be illegal, invalid or unenforceable in any respect under any law or jurisdiction, the provision shall be deemed to be amended to the extent necessary to avoid such illegality, invalidity or unenforceability, or, if such amendment is not possible, the provision shall be deemed to be deleted from this Contract to the extent of such illegality, invalidity or unenforceability, and the remaining provisions shall continue in full force and effect and shall not in any way be affected or impaired thereby.

## **30. Entire Contract**

This Contract constitutes the entire Contract between the parties and no promise, undertaking, representation, warranty or statement by either party prior to the date stated in [Box 2](#) shall

affect this Contract. Any modification of this Contract shall not be of any effect unless in writing signed by or on behalf of the parties.