



THE JAPAN SHIP OWNERS' MUTUAL PROTECTION & INDEMNITY ASSOCIATION

SPECIAL CIRCULAR

No. 14-001
9 April 2014

To the Members

Dear Sirs,

GUARDCON West Africa

Members are referred to the Japan P&I News [No.644](#) dated 22 August 2013 having introduced the International Group's Piracy FAQs and the Special Circular [No.11-029](#) dated 29 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 (Attachment 1) 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" (Attachment 2) – 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. 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 (Attachment 3) 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,

The Japan Ship Owners' Mutual Protection & Indemnity Association

Attachment1: BIMCO Special Circular No.1
Attachment2: GUARDCON West Africa
Attachment3: IMO Circular MSC.1/1405/Rev 2



BIMCO

SPECIAL CIRCULAR

No. 1 – 20 February 2014

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Guidelines for the use of GUARDCON when engaging PMSCs as intermediaries to employ local security guards within territorial waters

GUARDCON was published in March 2012 with the specific aim of addressing industry demand for a set of harmonised terms and conditions for the employment of armed or unarmed security guards on board merchant vessels passing through the High Risk Area in the Indian Ocean.

It has been very widely and rapidly adopted by the industry as the standard for contracting for maritime security services for vessel transits through the Indian Ocean. In view of the widespread use of GUARDCON and the very positive response from the industry since its inception, BIMCO has no plans to revise the contract in the near future. Evidence suggests that it currently serves the industry very well for the purpose which it was designed and that parties have no problems in getting the contract agreed and approved by their insurers.

However, BIMCO is fully aware that the industry has recently become more focused on the risk of pirate attacks taking place in the Gulf of Guinea. The type of pirate attacks taking place in this region are very different in character to those of Somalian pirate attacks in the Indian Ocean and require a different approach. The chief difference is that unlike the Somalian pirate attacks in the Indian Ocean on vessels in transit on the high seas, the attacks in areas such as the Gulf of Guinea often take place on vessels entering or leaving ports, or at anchor within the territorial waters of a littoral state. National law in the affected countries dictates that foreign security guards are not permitted to carry firearms on board merchant vessels within their territorial waters. Shipowners who want armed security personnel to protect their ships in these areas must rely on local security or law enforcement forces (commonly marine police or naval personnel). It is also understood that in Nigeria, for example, the Navy will provide small patrol craft to protect shipping.

To employ local military/police personnel as on board security guards a shipowner has two main options. Firstly, the owner can use a local agent with direct links to the military/police in that country to employ local security guards. Secondly, the owner can engage the services of a PMSC to act as an intermediary to employ local guards and to provide additional logistical and administrative support.

GUARDCON is worded to provide a framework agreement for the provision of on board security teams for vessel transits on the high seas through areas at risk of piracy. It is geared towards the use of foreign armed guards simply to reflect the free choice of service providers that an owner has when engaging security services for high seas transits. When a vessel leaves the high seas to enter

a port or loading/discharging location with territorial waters, different rules and regulations prevail concerning the deployment of armed guards.

If an owner wishes to have or continue to have armed support on board his vessel then any non-local armed guards must disembark the vessel and be replaced with local security personnel. An owner who has relied on the services of a PMSC for providing armed security for his vessel on the high seas may wish to continue to rely on that expertise to arrange security within territorial waters. This arrangement can be achieved using GUARDCON but it does require that the contract be amended to reflect that the PMSC will only be acting as an intermediary in engaging local security guards on the owners' behalf. This is a very important distinction that owners should be fully aware of before entering into any agreements. Local military personnel placed on board merchant vessels in areas such as the Gulf of Guinea will operate under their own national rules of engagement, be subject to local law and jurisdiction, and accountable under the terms of their employment as security or law enforcement personnel. The ability of a PMSC through their on board representative ("Team Leader") to effectively control local security guards will therefore be limited in scope. It is also important to ensure that any Team Leader employed in territorial waters complies with local visa regulations.

The purpose of this Special Circular is twofold. Firstly, it is to provide a "health warning" to anyone contemplating using GUARDCON for purposes other than the high seas security services for which it was designed. It should not be used to engage local security personnel through a local agent. It is simply the wrong type of contract for that purpose. If a PMSC is to be used as an intermediary to engage local security personnel, GUARDCON cannot be used without special adaptations. This is because GUARDCON contains provisions for liabilities, responsibilities and insurances that contemplate the direct employment and control of security personnel by the PMSC. The fact that only local security guards can be used changes the game, requiring careful consideration of the contract.

BIMCO would like to make it very clear that GUARDCON is designed exclusively for contractual arrangements between PMSCs and shipowners. If GUARDCON is to be used in any other circumstances then shipowners are strongly encouraged to check with their underwriters and P&I Club beforehand. The P&I Clubs that belong to the International Group have reviewed these Guidelines and prepared a Circular to their members indicating approval of amendments, where necessary, based on these Guidelines. Please refer to the Club Circular before contacting your P&I Club.

BIMCO will not issue any form of amended GUARDCON or any "special edition" of the contract for use in areas such as the Gulf of Guinea. However, the secondary purpose of this Special Circular is to provide some guidance as to the type of adaptations that owners and PMSCs may wish to consider when drawing up a GUARDCON agreement to provide additional security services within territorial waters. Owners should also check with their Flag state about any regulations concerning the use of local armed guards on board vessels in territorial waters.

Clause 1 (Definitions)

A number of the definitions found in GUARDCON are specific to Indian Ocean piracy and are therefore not relevant when using the contract outside this area. For the sake of clarity you might wish to consider deleting the definitions of "MSCHOA" and "UKMT0".

A number of shipping associations have jointly developed a set of Interim Guidelines to address piracy in the Gulf of Guinea and it is recommended that these Guidelines be read in conjunction with Best Management Practices (BMP). A suggested definition of the Interim Guidelines is as follows:

“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.

It is important to make a clear distinction between any security personnel provided and employed by the PMSC and local security personnel. It is possible for the contract to cover both, as part of the “transit” may occur on the high seas where the PMSC can use their own personnel before switching to local guards once the vessel enters territorial waters. A suggested definition of local security personnel is as follows:

“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.

Local security guards will have use of their own weapons on board the vessel. Unlike the cached firearms used by the PMSCs own personnel, the local militia will have their own standard issue personal firearms and ammunition that they will carry when boarding the vessel. A definition to distinguish between firearms is suggested:

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

Simply for the sake of clarity, it is suggested that a clear distinction is made between the PMSCs own personnel and the local security personnel – perhaps through a minor amendment to the definition of “Security Personnel” as follows:

“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.**

Additional references to “Local Security Personnel”

There are a number of places in GUARDCON where it will be necessary to refer to “Local Security Personnel” as defined, as well as Security Personnel. For example, in the definitions of “Disembarkation Point” and “Embarkation Point” these should refer after “Security Personnel” to “Local Security Personnel” as the provision applies to both.

We suggest that similar amendments are made after “Security Personnel” in the following Clauses: Sub-clause 6(c)(ii); Sub-clause 7(g); Sub-clause 7(i); Sub-clause 8(a); Sub-clause 8(c); Sub-clause 8(d); Sub-clause 9(c); Sub-clause 10(a); Sub-clause 13(a); Sub-clause 13(j); Sub-clause 15(a)(ii); Clause 16; Sub-clause 18(a); Sub-clause 19(a); Sub-clause 19(b)(iv)(2); Clause 21; Clause 22; and Clause 23.

Clause 2 (Commencement, Appointment and Duration)

In Sub-clause (b) where there are references to “Security Personnel” embarking and disembarking there should also be a reference to “Local Security Personnel”.

Clause 3 (Security Services)

The basic manning level for the security team under GUARDCON is a Team Leader plus at least three other security guards. When using local security teams it will not usually be possible to specify the number of guards as this will be determined by their own commanders and is not generally negotiable. Feedback from shipowners suggests that at least four guards will be assigned to each ship, sometimes more. The PMSC should of course retain a Team Leader to act as a liaison officer on board. To distinguish between manning levels for PMSC guards and local guards you may wish

to add wording to the preamble of this clause to the effect that “...or, where Local Security Personnel are to be provided, one Team Leader and four (4) or more Local Security Personnel”.

In Sub-clause 3(b) there is a reference to the use of Security Equipment to protect and defend the vessel. As the local security guards will use their own firearms you should consider adding a reference to “LSP Firearms” as these are distinct from the defined “Security Equipment” belonging to the PMSC. This should also be applied in Sub-clause 11(a) (Investigations and Claims).

Clause 6 (Contractor’s Obligations and Responsibilities)

In Sub-clause 6(a)(v) there are references to “UKMTO” and “MSCHOA” which are not relevant to operations outside the Indian Ocean. It would be appropriate to delete these references and refer instead just to “local authorities”. This wording also occurs in Sub-clause 7(f) where a similar amendment would be helpful for the sake of consistency.

BMP is written with Indian Ocean piracy in mind. However there are still measures and practices contained in the BMP that have application in areas such as the Gulf of Guinea. We would suggest that in this context the reference to BMP in Sub-clause 6(a)(v) is supplemented by “...in conjunction with the Interim Guidelines”. These additional words should also be considered for Sub-clause 7(f).

In Sub-clause 6(a)(vii) the crew should not be permitted to handle any firearms and so an additional reference to the “LSP Firearms” would add clarity.

In Sub-clause 6(d)(i) – Contractors’ Right to Sub-contract – the PMSC needs to retain the right to sub-contract solely for the purposes of engaging local security guards on behalf of the owners. It would be helpful to clarify this exception in the clause by adding wording to the effect of “other than the provision of Local Security Personnel”.

Sub-clause 6(d)(ii) deals with security personnel sub-contracted by the PMSC. Local security guards are not sub-contractors of the PMSC, they are employed by the local military. For the sake of clarity it would be helpful to add “(excluding Local Security Personnel)” after the reference to those not in the direct employment of the Contractors.

A very important consideration when using GUARDCON with a PMSC acting as an intermediary is what the PMSC can reasonably be expected to warrant in terms of providing local guards and the level of control that they can exercise over them. Owners should be fully aware that it is difficult if not impossible for a PMSC to bind local security guards to the provisions of GUARDCON, Rules for the Use of Force and the PMSC’s own operating procedures. However, the PMSC should exercise due diligence in the provision of local guards and, at the very least, make them aware of the scope of the services and most importantly, the authority of the Master. Some helpful wording to form a new Sub-clause 6(d)(iii) might be “The Contractors shall use all reasonable skill and care in the provision of Local Security Personnel including making them aware of the scope of the Security Services, Rules for the Use of Force and the authority of the Master.”

Clause 12 (Insurance Policies)

The insurance provisions of GUARDCON are an essential feature of the contract as they establish a clear benchmark for minimum insurance levels under the agreement. Particular care should be taken before considering any amendment of Clause 12. It may well be possible for a PMSC to extend insurance cover for their own personnel so that the \$250,000 per person personal accident insurance is also available to the local security guards. All insurance related matters should be checked with insurance providers before including any references to local security guards in this clause.

However, one important suggested change is to include a reference “Local Security Personnel, LSP Firearms” in the final sentence of Sub-clause 12(a) to ensure that the use of local militia with their own weapons on board does not invalidate the PMSC’s insurances.

Clause 15 (Liabilities and Indemnities)

Similar to Clause 12 (Insurance Policies) BIMCO would not recommend making any significant changes to this important clause in case they inadvertently alter the careful balance of liabilities and indemnities written into the contract. GUARDCON incorporates a "knock for knock" liability regime and in order to maintain the balance of the regime, responsibility for the local security guards should be allocated. In BIMCO's view, the responsibility for the local security guards should fall within the "Contractors' Group" and so a reference to the local guards should be added to Sub-clause 15(a)(ii).

In terms of third party liability, you may wish to include a reference to "**LSP Firearms by Local Security Personnel**" in Sub-clause 15(c)(iii) in relation to the indemnity provided by the Contractors to the Owners' Group in respect of any negligent or accidental discharge of firearms by security personnel.

* * * * *

The suggested changes to GUARDCON set out above are provided purely for guidance to owners wishing to use PMSCs as intermediaries to employ local security guards for operations within territorial waters. It is not intended to be an exhaustive list and the parties may well wish to agree further more extensive amendments or additional clauses to suit their particular circumstances. In all cases BIMCO strongly recommends that owners consult closely with their P&I Clubs before agreeing any amendments – particularly those which may have a bearing on the owners' level of risk (which is likely to be higher when engaging PMSCs as intermediaries).

Grant Hunter
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20 February 2014
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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.



E

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MSC.1/Circ.1405/Rev.2
25 May 2012

**REVISED INTERIM GUIDANCE TO SHIPOWNERS, SHIP OPERATORS AND
SHIPMASTERS ON THE USE OF PRIVATELY CONTRACTED ARMED SECURITY
PERSONNEL ON BOARD SHIPS IN THE HIGH RISK AREA¹**

1 The Maritime Safety Committee, at its eighty-ninth session (11 to 20 May 2011), approved interim guidance to shipowners, ship operators and shipmasters on the use of privately contracted armed security personnel on board ships in the High Risk Area.

2 Given the importance and urgent nature of the issue, and the need to further develop and promulgate detailed guidance and recommendations as soon as possible, the Committee approved and the Council authorized the convening of an intersessional meeting of the Maritime Security and Piracy Working Group (13 to 15 September 2011) to update the guidance.

3 The interim guidance was subsequently revised by the Maritime Safety Committee at its ninetieth session (16 to 25 May 2012) to take into account consequential amendments arising from the development of the interim guidance to private maritime security companies set out in MSC.1/Circ.1443 on Interim guidance to private maritime security companies providing privately contracted armed security personnel on board ships in the High Risk Area.

4 The Revised interim guidance to shipowners, ship operators and shipmasters on the use of privately contracted armed security personnel on board ships in the High Risk Area is set out in the annex.

5 The attached revised interim guidance should be read in conjunction with the interim recommendations set out in MSC.1/Circ.1443; MSC.1/Circ.1406/Rev.2 on Revised interim recommendations for flag States regarding the use of privately contracted armed security personnel on board ships in the High Risk Area; and MSC.1/Circ.1408/Rev.1 on Revised interim recommendations for port and coastal States regarding the use of privately contracted armed security personnel on board ships in the High Risk Area²; and the information provided in MSC-FAL.1/Circ.2 on Questionnaire on information on port and coastal State requirements related to privately contracted armed security personnel on board ships, as well as the other recommendations and guidance developed by the Organization for preventing and suppressing piracy and armed robbery against ships.

¹ High Risk Area: an area as defined in the Best Management Practices for Protection against Somalia Based Piracy (MSC.1/Circ.1339), unless otherwise defined by the flag State.

² As they may be revised.

6 Member Governments are urged to bring this circular to the attention of all national agencies concerned with anti-piracy activities, shipowners, ship operators, shipping companies, shipmasters and crews.

7 Member Governments are also urged to take any necessary action to implement, as appropriate, the revised interim guidance given in the annex.

8 Member Governments, international organizations and non-governmental organizations with consultative status are invited to bring to the attention of the Committee, at the earliest opportunity, the results of the experience gained from the use of the revised interim guidance so as to assist the Committee in deciding on any action to be taken.

9 MSC.1/Circ.1405/Rev.1 is hereby revoked.

ANNEX

REVISED INTERIM GUIDANCE TO SHIPOWNERS, SHIP OPERATORS AND SHIPMASTERS ON THE USE OF PRIVATELY CONTRACTED ARMED SECURITY PERSONNEL ON BOARD SHIPS IN THE HIGH RISK AREA¹

1 Introduction

1.1 The increased threat to commercial shipping by Somalia-based pirates has led to extended use of armed guards and a marked expansion in the number of firms offering armed maritime security services for ships transiting the High Risk Area (HRA). The Organization, whilst not endorsing the use of privately contracted armed security personnel (PCASP), understands that shipping companies may find it difficult to identify reliable, professional private providers of armed security.

1.2 The decision on the employment of PCASP on board ships is a complex one for a shipowner. The absence of applicable regulation and industry self-regulation coupled with complex legal requirements governing the legitimate transport, carriage and use of firearms² gives cause for concern. This situation is further complicated by the rapid growth in the number of private maritime security companies (PMSC) and doubts about the capabilities and maturity of some of these companies. Significant competence and quality variations are present across the spectrum of contractors offering services.

1.3 The purpose of this guidance is to assist shipowners, ship operators and shipmasters considering the use of PCASP on board ships to provide additional protection against piracy.

1.4 It is important to note that flag State jurisdiction and thus any laws and regulations imposed by the flag State concerning the use of PMSC and PCASP apply to their ships. Furthermore it is also important to note that port and coastal States' laws may also apply to such ships.

1.5 The use of PCASP should not be considered as an alternative to Best Management Practices (BMP) and other protective measures. Placing armed guards on board as a means to secure and protect the ship and its crew should only be considered after a risk assessment has been carried out. It is also important to involve the Master in the decision making process.

2 Definitions

High Risk Area: an area as defined in the BMP unless otherwise defined by the flag State.

Private maritime security companies (PMSC): Private contractors employed to provide security personnel, both armed and unarmed, on board for protection against piracy.

Privately contracted armed security personnel (PCASP): armed employees of PMSC.

¹ High Risk Area: an area as defined in the Best Management Practices for Protection against Somalia Based Piracy (MSC.1/Circ.1339) unless otherwise defined by the flag State.

² In the present guidance, all references to firearms include the associated ammunition, consumables, spare parts and maintenance equipment for use by PCASP, and all references to security-related equipment include protective and communication equipment for use by PCASP.

3 Risk assessment

3.1 Shipowners should ensure that the flag State is consulted at an early stage in their consideration of the decision to place PCASP on board to ensure that any statutory requirements are met.

3.2 Whether to use PCASP within the HRA is a decision for the individual shipowner after a thorough risk assessment and after ensuring all other practical means of self-protection have been employed.

3.3 The risk assessment should include and document the following factors and considerations, prior to making the determination to take such actions:

- .1 ship and crew security, safety and protection;
- .2 whether all practical means of self-protection have been effectively implemented in advance;
- .3 the potential misuse of firearms resulting in bodily injury or death;
- .4 the potential for unforeseen accidents;
- .5 liability issues;
- .6 the potential for escalation of the situation at hand; and
- .7 compliance with international and national law.

4 PMSC selection criteria

4.1 As with any other type of contractor, it is important to undertake the usual due diligence, which normally includes investigation and enquiries in relation to:

- .1 company structure and place of registration;
- .2 company ownership;
- .3 financial position (e.g. annual accounts/bank references);
- .4 extent of insurance cover (in particular covering third-party risks);
- .5 senior management experience; and
- .6 quality management indicators – e.g. ISO certification.

PMSC background information

4.2 To assess the capability of PMSC to carry out a proposed task, a thorough enquiry regarding the prospective PMSC should be undertaken, particularly in the absence of a robust certification scheme for PMSC.

4.3 PMSC should be able to provide documentary evidence which may include:

- .1 maritime (as opposed to land-based) experience;

- .2 written procedures on management including team-leading skills, chain of authority, change in command, responsibilities in life saving;
- .3 understanding of flag State, port State and coastal State requirements with respect to carriage and usage of firearms;
- .4 availability of written testimonials/references from previous clients in the maritime industry;
- .5 availability of documentary evidence that firearms are procured, stored, carried, used, transported, embarked and disembarked legally;
- .6 understanding of the Somalia-based piracy threat including the military operations in the area, and the means to maintain current knowledge;
- .7 understanding of BMP and, in particular, ship protection measures; and
- .8 access to competent maritime legal advice (e.g. in-house counsel/external legal advisers) on a 24/7 basis.

Selection and vetting of PMSC

4.4 As the quality of the service delivery depends to a very great extent on the quality and experience of the individuals that make up the onboard PCASP team, the quality of the selection and vetting of that team is essential. PMSC should demonstrate that they have verifiable, written internal policies and procedures for determining suitability of their employees.

4.5 PMSC should be able to provide documentary evidence which may include:

- .1 criminal background checks;
- .2 history of employment checks;
- .3 military and law enforcement background checks, where applicable;
- .4 records of medical, physical, and mental fitness of personnel (including regular drug and alcohol testing);
- .5 verifiable systems in place to ensure continued suitability for employment of their personnel;
- .6 documentary evidence of relevant experience and certification in the use and carriage of firearms to be deployed; and
- .7 systems for provision of security identity documentation, travel documents and visas.

Training of PCASP

4.6 As the quality of professional training given to PCASP is of extreme importance, the shipowner should verify that PMSC have adequate training procedures in place. The records of that training should give confidence that the PCASP have been provided with appropriate knowledge and skills.

- 4.7 PMSC should be able to provide documentary evidence which may include:
- .1 comprehensive and detailed records of training, both initial and refresher training, available for inspection;
 - .2 that subject to any additional requirements of the flag State, PCASP have received, as a minimum, shipboard familiarization training, including communication protocols;
 - .3 that personnel have been trained and qualified to documented company standards in the appropriate use of force following recognized principles/guidelines recognized by the flag State;
 - .4 that personnel have been trained to operate the specific firearms and other security equipment that will be used on the ships on which they will be deployed;
 - .5 that personnel have been given medical training to a recognized international standard; and
 - .6 that personnel have been given appropriate training and/or briefing with specific reference to the ship type, where that ship will be operating, and the provisions of the International Ship and Port Facility Security (ISPS) Code, International Safety Management (ISM) Code and BMP.

5 Service provision considerations

Insurance

5.1 Owners should verify that PMSC maintain insurance cover for themselves, their personnel and third-party liability cover and that the PMSC terms of engagement do not prejudice or potentially prejudice the shipowner's insurance cover.

Shipowner's insurance cover

5.2 Liabilities, losses and expenses arising out of the deployment of PCASP may impact on the shipowner's property and liability insurance cover. Shipowners are strongly recommended to consult with their insurers prior to contracting with and embarking PCASP to assess the potential impact on their insurance cover, particularly as it relates to armed engagements and liability insurance held by the PMSC.

PMSC insurance cover

5.3 PMSC should provide evidence that they hold and will maintain for the duration of the contract:

- .1 public and employer's liability insurance cover to an appropriate level and as required by the shipowner; and
- .2 personal accident, medical expenses, hospitalization and repatriation insurance.

5.4 PMSC should insure their personnel to carry and use firearms on such voyages for accident, injury and damage arising from the use of firearms and liability for any claim that might arise from the carriage and/or negligent or intentional misuse of firearms.

5.5 It is vital that shipowners, charterers and underwriters review all provisions in their charters and policies and ensure adequate attention is paid to the questions raised.

PCASP team size, composition and equipment

5.6 The size, composition and equipment of the proposed PCASP team should be carefully discussed and agreed as necessary by the shipowner contracting with the PMSC. Factors for consideration may include:

- .1 **Size of the PCASP team** – this will be influenced by factors including: length of the estimated time of the ship transit, latest threat assessment, the agreed duties of the PCASP team (e.g. will they act as additional lookouts and assist with rigging self-protection measures?) and the size and type of ship, its speed and freeboard. The analysis should indicate the minimum number of persons that should form the security team, taking into account the need for continuity of protection in the event of injury or illness;
- .2 **Ship safety certificate** – the size of the PCASP team plus the crew should not exceed that specified in the ship's safety certificate. If the ship safety certificate requirements cannot be met due to added security personnel, then the flag Administration should be consulted;
- .3 **Composition** – it is important that there is an appropriate hierarchy, experience and skill mix within the onboard PCASP team. The team leader should be competent in ship vulnerability and risk assessments and be able to advise on ship protection measures. It is recommended that one of the PCASP personnel be qualified as the team medic;
- .4 **Equipment requirements** – this will be influenced by factors including: length of the estimated time of the ship transit, latest threat assessment, the agreed duties of the PCASP team (will they act as additional lookouts, utilize day- and night-vision equipment, assist with rigging self-protection measures?) and the size and type of ship. Enhanced medical equipment is recommended; and
- .5 **Firearms** – the appropriate firearms package to be employed in accordance with the applicable flag State national legislation pertaining to the type, carriage and use of firearms by PCASP, in order to provide an accurate and graduated level of deterrence, at a distance.

Command and control

5.7 A shipowner/operator when entering into a contract with a PMSC should ensure that the command and control structure linking the ship operator, the master, the ship's officers and the PCASP team leader has been clearly defined and documented.

5.8 Further, prior to boarding the PCASP, the shipowner should ensure that the master and crew are briefed and exercises are planned and conducted so that all the roles and responsibilities are understood by all personnel on board prior to entering the HRA.

5.9 In order to provide the required clarity, the documented command and control structure should provide:

- .1 a clear statement recognizing that at all times the Master remains in command and retains the overriding authority on board, and an agreed procedure in the event of the Master being unavailable;
- .2 a clearly documented set of ship and voyage-specific governance procedures, inter alia, covering procedures for the conduct of exercises and real incidents;
- .3 a documented list of duties, expected conduct, behaviour and documentation of PCASP actions on board; and
- .4 transparent two-way information flow and recognizable coordination and cooperation between the shipowner, charterer, PCASP, PMSC and the ship's master, officers and crew throughout deployment.

5.10 Factors to determine such success may include:

- .1 providing regular updated intelligence-based threat assessments throughout the contracted period on board, and utilizing this information to offer suggestions as to the ship's proposed routeing, amending same if required, and under the ship's contractual arrangements;
- .2 monitoring the daily activities of the onboard PCASP team;
- .3 having a 24-hour emergency response and a contingency plan in place covering all foreseeable actions; and
- .4 providing feedback on crew training and ship hardening requirements based upon reports received from their onboard PCASP team.

Management of firearms and ammunition from embarkation to disembarkation

5.11 An essential requirement of the PCASP team will be to demonstrate responsible management and use of weapons and ammunition at all times when on board.

5.12 Issues to be considered should include:

- .1 documented compliance with the applicable flag, coastal and port State legislation and relationships governing the transport, carriage, storage, provision and use of firearms, ammunition and security equipment to and from the points of embarkation and disembarkation or ports/places at which the ship may call as part of its intended voyage whilst the PCASP team is on board. PCASP should be able to prove that actual inventory carried matches all documented declarations including compliance with any applicable export/import licences;
- .2 appropriate containers for firearms, ammunition and security equipment at the point of transfer to and from the ship, in full legal compliance with national jurisdiction and port State laws;
- .3 documented standards and procedures for a complete inventory of all firearms, ammunition and security equipment available upon arrival aboard the ship (inventory should detail make, model, calibre, serial number and

- company end-user certificate and proof of purchase of all firearms and accessories; and details of ammunition natures and amount);
- .4 effective control procedures for separate and secure onboard stowage and deployment of firearms, ammunition and security equipment;
 - .5 areas where firearms may or may not be carried, together with the weapon state (e.g. unloaded and magazine off, magazine on and safety catch on and no round chambered) and what conditions will initiate a change in that state should be confirmed;
 - .6 detailed and exercised orders for when firearms may be loaded and made ready for use should be confirmed, trained and documented during certain periods as listed in the PCASP contract, to ensure the highest of safety and operational capabilities for use of firearms aboard the ship; and
 - .7 the inventory should be reconciled on disembarkation of all firearms and ammunition from the ship.

Rules for the use of force

5.13 It is essential that all PCASP have a complete understanding of the rules for the use of force as agreed between shipowner, PMSC and master and fully comply with them. PCASP should be fully aware that their role in regard to the above is exclusively for the protection of life of persons on board and the ship from armed pirate attacks. PMSC should provide a detailed graduated response plan to a pirate attack as part of their teams' operational procedures.

5.14 PMSC should require their personnel to take all reasonable steps to avoid the use of force. If force is used, it should be in a manner consistent with applicable law. In no case should the use of force exceed what is strictly necessary and reasonable in the circumstances. Care should be taken to minimize damage and injury and preserve human life.

5.15 PMSC should require that their personnel not use firearms against persons except in self-defence or defence of others.

Reporting and record-keeping

5.16 The master should maintain a log of every circumstance in which firearms are discharged, whether accidental or deliberate. Such actions should be fully documented in sufficient detail in order to produce a formal written report of the incident, for the shipowner/operator to forward to the flag State.

5.17 The requirements of a formal written report may be considered to include the following:

- .1 time and location of the incident;
- .2 details of events leading up to the incident;
- .3 written statements by all witnesses and those involved from the ship's crew and security team in the incident;

- .4 the identity and details of personnel involved in the incident;
- .5 details of the incident;
- .6 injuries and/or material damage sustained during the incident; and
- .7 lessons learned from the incident and, where applicable, recommended procedures to prevent a recurrence of the incident.

5.18 In the event that the PCASP use force, PCASP team leaders should be advised to photograph (if appropriate), log, report and collate contemporaneous written statements from PCASP present at the incident in anticipation of legal proceedings.

PCASP reporting

5.19 In addition to incident reporting it is suggested that following a tour of duty the PCASP team should submit a full report to the shipowner/ship operator, via their employers if required, giving full details of the deployment, operational matters, any training and/or ship hardening conducted, and offering advice as to any further enhancements to security that may be considered.

Category assigned to PCASP

5.20 Shipowners/operators should refer to any applicable national legislation of the flag State in relation to the categorization of PCASP on board their ships.

Reporting within the HRA

5.21 The master should report to the appropriate military authorities when a ship intending to transit, or transiting, the HRA is carrying PCASP, firearms and security-related equipment on board.

Familiarization for master and the crew

5.22 Shipowners and ship operators should ensure that the master and the crew receive familiarization in relation to this guidance.
