

MARSEC 2011
 Agreement for the provision of
 Maritime Security services
PART I

1. Date and Place of Agreement	
2. Owner/place of business	3. Contractor/place of business
4. Vessel Specifications	5. Nature of services (delete as appropriate) ARMED OR UNARMED
a) Name	6. Permits and Licences held by Contractor and Personnel
b) Flag	
c) Place of Registry	
d) Classification Society	
e) Gross tonnage	
f) Nature of cargo	
	7. Contractor's public liability insurance Amount :
	8. Owner's P&I Club
	9. Owner's Hull & Machinery insurers
	10. Broker/Commission
11. Expected date of embarkation	12. Embarkation port or place

13. Disembarkation port or place	14. Contemplated route if known
15. a) Daily rate of hire for equipment and Personnel (See Annex 1) b) Lump sum	16. Daily standby rate of hire for equipment and personnel in case of delay/travel (See Annex 1)
17. Mobilisation fee	18. Minimum period of Services, if any agreed
19. Commencement of period of hire	20. Termination of period of hire
21. Termination fee	22. Dispute Resolution (see Cl. 12)
23. Numbers of additional clauses, covering special provisions, if agreed	

It is agreed that this Agreement shall be performed subject to its terms and conditions which consist of PART I, including any additional clauses agreed, PART II, Annex I, Schedule of Personnel and Equipment, and any other annexes attached to this Agreement.

In the event of a conflict between the terms and conditions in this Agreement, the provisions of PART I, including any additional clauses agreed, shall prevail over those of PART II to the extent of such conflict but no further.

The undersigned warrant that they have full power and authority to sign this Agreement on behalf of the parties they represent.

Signature (for and on behalf of the Owner)	Signature (for and on behalf of the Contractor)

PART II

1. DEFINITIONS

- 1.1 In construing this Agreement, the following words shall have the meanings hereby assigned to them:
- 1.1.1 **“Crew”** means the crew of the Vessel.
 - 1.1.2 **“Commencement Date”** means the date specified in Box 1.
 - 1.1.3 **“Equipment”** means the equipment listed in Annex 1.
 - 1.1.4 **“Personnel”** means the Contractor’s personnel listed in Annex 1.
 - 1.1.5 **“Services”** means the security services set out in this Agreement as requested by the Owner and to be performed by the Contractor for the Owner.
 - 1.1.6 **“Territory”** means the high risk area(s) where the Services are to be provided.
 - 1.1.7 **“Contractor”** means the company that has been engaged by the Owner to provide the Services to the Vessel.
 - 1.1.8 **“Owner”** means the registered owner of the Vessel that has engaged the Contractor to provide the Services to the Vessel.
 - 1.1.9 **“Vessel”** means the vessel and/or other asset set out in Box 4 owned by the Owner in relation to which the Services are to be provided.
- 1.2 The headings in this Agreement shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction thereof of this Agreement.
- 1.3 References to clauses and annexes are to the clauses and annexes of this Agreement.

2. CONTRACTORS OBLIGATIONS

- 2.1 The Contractor will use best endeavours to provide the Services required by the Owner and its responsibilities will include, but are not limited to, the following:
- 2.1.1 Providing general guidance to the Master and crew and carrying out where required drills, training and preparations for the transit of the Territory.

- 2.1.2 Advising on the hardening, and helping to harden, the Vessel. All materials required to harden the Vessel shall be supplied by the Owner.
 - 2.1.3 Providing constant monitoring and tracking of the movements of any suspicious sea targets in the Territory.
 - 2.1.4 Using proportionate and considered means to engage with sea borne threats in the Territory to prevent the Vessel from being hijacked.
 - 2.1.5 Where appropriate and always in accordance with the Rules for the Use of Force ("RUF"), Standard Operating Procedures ("SOP") and relevant national laws, using weapons in an anti-piracy role. The RUF and SOP are to be provided by the Contractor and agreed with the Owner and Master and are to be annexed to this Agreement (see Annex 2 and Annex 3).
 - 2.1.6 Advising the Master and Crew on routing issues. It is understood that the Master has ultimate responsibility for the safe navigation of the Vessel. Nothing in this Agreement shall be construed as a derogation of the Master's authority under SOLAS.
 - 2.1.7 Liaising with UKMTO and MSCHOA as appropriate and in accordance with the procedures set out in Best Management Practice Guidelines 3 (or subsequent updated version). [APPLICABLE TO SOMALI PIRACY ONLY].
- 2.2 The Contractor will provide and maintain sufficient resources to perform the Services in accordance with the terms of this Agreement.
- 2.3 The Contractor will provide suitable Personnel and Equipment, compliant with all applicable rules and regulations, appropriately trained and/or maintained for the satisfactory provision of the Services. The CVs of those individuals to be deployed will be provided to the Owner on request. The Contractor warrants that the Personnel deployed pursuant to this Agreement do not have criminal records which would ordinarily preclude them from applying for and/or holding a UK Shotgun Certificate. Where applicable, the Contractor warrants that the Personnel deployed pursuant to

this Agreement have not been discharged from military service of any type for medical or disciplinary reasons. The Contractor warrants that the Equipment shall be purchased, carried and kept in accordance with the laws and regulations of the Flag State.

- 2.4 The Contractor does not guarantee the safety of the Vessel or Crew during the course of the Services. In particular, the Contractor does not guarantee that the Vessel will not be the subject of pirate attack(s) and/or be hijacked.
- 2.5 The Contractor alone shall be responsible for the management of the Personnel, for the payment of salaries and all other benefits and emoluments and for the provision of accident and medical expense insurance to the Personnel during the term of this Agreement.
- 2.6 The Contractor will have in place all permits, consents, licences and end-user certificates or undertakings that may be required for the provision by the Contractor of the Services in light of the information supplied in PART I of this Agreement. Details of the permits and licences held by the Contractor for this purpose are set out in box 6.
- 2.7 The Contractor reserves the right to make any changes, subject to giving reasonable notice to the Owner, to the specification of the Services herein, that may be required for operational reasons or to conform to any applicable law or regulatory requirement that may be brought in or enacted from time to time.
- 2.8 In the event that an incident takes place which leads to an investigation by the Owner and/or Flag State and/or authorised body, the Contractor will cooperate with such an investigation so far as is reasonable and always without prejudice to its rights and the rights of its Personnel.
- 2.9 The Contractor will comply with all laws and regulations which may materially affect the provision of the Services.

2.10 Where the Contractor employs consultants, sub-contractors and/or other specialists who are not in the direct employment of the Contractor, the Contractor shall ensure that such persons agree to be bound by all the terms and conditions of this Agreement.

3. **OWNER'S OBLIGATIONS**

3.1. The Owner warrants that it has all necessary rights and access to the Vessel to permit the Contractor to carry out its responsibilities under this Agreement.

3.2. The Owner shall ensure that the Contractor is provided such access to the Vessel and other premises as may be necessary for the provision of the Services. The Owner shall provide such information and materials as the Contractor may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects.

3.3. The Owner shall be responsible for informing all interested parties, including but not limited to Hull and Machinery underwriters, P&I Club, 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 team will be armed or unarmed.

3.4. The Owner shall use its best endeavours and shall provide the Contractor with all relevant information and documentation available to assist the Contractor to obtain such permits and licenses as may be required for the provision by the Contractor of the Services.

3.5. Where applicable, the Owner shall facilitate the obtaining of any and all permits, consents, licenses which may be required to facilitate the performance of the Services by the Contractor, including but not limited to any and all permits, consents and licenses that may be required with respect to the carriage of weapons and associated ammunition and the carriage of the Contractor's Personnel.

3.6. The Owner shall provide victualling and accommodation reasonably required for the Personnel at the Owner's expense during the provision of the Services on the Vessel.

3.7. The Owner shall pay for all usual expenses of the voyage and the Vessel.

- 3.8. The Owner shall provide all first aid treatment for the Personnel on the Vessel or at any other place as may be required where injury is sustained in the course of performance of the Services.
- 3.9. The Owner shall provide all temporary medical aid and transportation for sick or injured Personnel from the Vessel to the nearest port where medical assistance can be provided.
- 3.10. The Owner shall take all reasonable steps to ensure that the Contractor or its Personnel or any person onboard is not placed in unnecessary danger.

4. PAYMENT

- 4.1. In consideration of the Services, the Owner shall pay the Contractor the daily rate of hire or lump sum for equipment and personnel specified in box 15. If any minimum period of hire is agreed, this should be specified in box 18.
- 4.2. The Owner shall pay the Contractor the mobilisation fee specified in box 17 on the signing of this Agreement.
- 4.3. The Contractor shall provide the Owner with monthly invoices specifying the fees due for the Services provided during the currency of this Agreement.
- 4.4. The Owner shall pay all invoices issued to it by the Contractor within 30 days of the date of the invoice.
- 4.5. The Owner shall make payment of the invoice by telegraphic transfer to the following bank account: [INSERT BANK DETAILS]
- 4.6. In the event that the Contractor submits an invoice to the Owner which is disputed, the Owner shall pay the Contractor all uncontested elements of such invoice on the due date and shall notify the Contractor in writing of any disputed element as soon as practicable and in any event within 7 days of receipt of the invoice from the Contractor.

- 4.7. If the Owner fails to settle invoices in accordance with this clause, the Contractor reserves the right to charge the Owner interest on outstanding late payments in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.8. When an undisputed account remains unpaid beyond the due date for payment, and having given seven (7) days prior written notice thereof to the Owner, the Contractor shall be entitled to remove, cease, suspend or terminate the Services supplied under this Agreement without prejudice to the Contractor's other rights under this Agreement.
- 4.9. The Owner shall indemnify the Contractor against any direct or indirect losses whatsoever and howsoever caused as a result of the Owner's failure to comply with its obligations under this Agreement.
- 4.10. If the Owner requires the Contractor to perform services additional to those agreed set out herein, both parties will agree in writing, prior to such services being provided, on the nature of the services to be provided and the additional fees to be paid by the Owner.
- 4.11. The daily rate of hire for equipment and personnel specified in box 15 shall be payable for each and every 24 hour period or part 24 hour period that the Services are required starting from the day of embarkation and including the day of disembarkation.
- 4.12. The standby rate of hire specified in box 16 is payable by the Owner to the Contractor per day or pro rata in the event that the Vessel is not ready on the expected day of embarkation as set out in box 11.
- 4.13. The standby rate of hire for equipment and personnel specified in box 16 is payable by the Owner to the Contractor for one day after the day of disembarkation for demobilisation of Personnel and Equipment.

- 4.14. In the event of a hijacking where there is no immediate release without payment of a ransom then all daily payments will be suspended and liability on the part of the Owner to pay the daily rate will cease.
- 4.15. The Owner shall reimburse the Contractor for any additional costs and/ or disbursements, including but not limited to transport, accommodation charges and the provision of hardening materials, incurred by the Contractor which shall be set out in writing and agreed by the Owner and then invoiced, accompanied by supporting documentation

5. ASSIGNMENT

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

6. HEALTH, SAFETY AND ENVIRONMENT REGULATIONS

- 6.1 The Contractor shall at all times comply and ensure that its Personnel and other personnel for which it may be responsible from time to time comply with all reasonable applicable health, safety and environmental regulations required by applicable legislation or applicable licensing or certified bodies as relate to the provision of the Services.
- 6.2 The Contractor and its Personnel shall comply with all reasonable health and safety requirements of the Owner in the course of the provision of the Services. Such requirements should be notified to the Contractor in writing in advance of the expected date of embarkation specified in box 11, or the actual embarkation date, whichever is the earlier.

7. SALVAGE

7.1 The Contractor and its Personnel hereby waive their rights to claim any award for salvage performed on the Vessel always provided that the Vessel was the subject of the salvage operation.

8. TAXES

8.1 The Owner shall be responsible for the payment of all taxes, duties, levies, charges and contributions (and any interest or penalties thereon) for which the Owner is liable as imposed by any appropriate government authority in any country relevant to the Services or the Owner's equipment or 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 Owner.

8.2 The Contractor shall be responsible for the payment of withholding taxes. Any amounts paid by the Owner to the Contractor hereunder shall be net of any withholding taxes required to be deducted from amounts due by the revenue authorities of the jurisdiction in which the Agreement services are performed, in which case the Owner will supply the Contractor with a certificate from the Revenue authorities that such withholding taxes have been paid. The Owner will provide every assistance, and will make all relevant information and documentation available, to the Contractor to enable it to reduce or eliminate any withholding taxes demanded by any taxation authority, or in recovering such withholding taxes.

9. LIABILITY

9.1 The Contractor will not be responsible for loss of or damage to the property of the Owner, including the Vessel and all equipment on board the Vessel, or incur any liability in respect of personal injury or death of any member of the Crew arising out of or in any way connected with the performance of the Services under this Agreement, even if such loss, damage, injury or death is caused wholly or partially by the act, neglect, or default of the Contractor or the Personnel and the Owner shall indemnify, protect, defend and hold harmless the Contractor from any and against all claims, costs, expenses, actions, proceedings and liabilities whatsoever and howsoever arising out of or in connection with such loss, damage, personal injury or death.

- 9.2 The Owner shall not be responsible for loss of or damage caused to or sustained by the Contractor or its Personnel (whether on board or not) or the property of the Contractor or Personnel, or incur any liability in respect of personal injury or death of any of the Contractor's Personnel arising out of or in any way connected with the performance under this Agreement even if such loss, damage, liability, injury or death is caused wholly or partially by the act, neglect or default of the Owner or Crew and even if such loss, damage or liability injury or death is caused wholly or partially by the unseaworthiness of the Vessel, and the Contractor will indemnify, protect, defend and hold harmless the Owner from any and against all claims, costs, expenses, actions, proceedings and liabilities whatsoever and howsoever arising out of or in connection with such loss, damage, liability, personal injury or death.
- 9.3 The Contractor shall indemnify, protect, defend, and hold harmless the Owner from and against all claims, costs, expenses, actions, proceedings and liabilities whatsoever and howsoever arising out of or in connection with the personal injury to or death of third parties and/or as a result of any loss of and /or damage to a third party's property caused by the negligence by the Contractor or its Personnel or by the Contractor's material breach of this Agreement.
- 9.4 The Owner shall indemnify, protect, defend, and hold harmless the Contractor from and against all claims, costs, expenses, actions, proceedings and liabilities whatsoever and howsoever arising out of or in connection with the personal injury to or death of third parties and/or as a result of any loss of and /or damage to a third party's property caused by the negligence by the Owner or its Crew or by the Owner's material breach of this Agreement.
- 9.5 Nothing in this Agreement excludes or limits the liability of either party for death or personal injury caused by the negligence of the other party or for any damage or liability caused by fraud or fraudulent misrepresentation by the other party.
- 9.6 The Contractor shall not be liable to the Owner, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss or damages, including but not limited to loss of use, profit, anticipated earnings and revenue, arising under or in connection with this Agreement.

10. INSURANCE

- 10.1 The Contractor will provide and maintain the following insurance cover from the date of the Agreement for themselves and/ or its Personnel and in the sums agreed:
- i. Public Liability Insurance in the sum of US\$5,000,000;
 - ii. Employer's Liability in the sum of US\$5,000,000;
 - iii. Professional Liability and Efficacy Insurance ;
 - iv. Business Travel;
 - v. Medical Expenses for hospitalization and repatriation; and
 - vi. Personnel Accident Insurance.
- 10.2 The Owner confirms that the Vessel is entered with a P&I Club that is a member of the International Group of P&I Clubs.
- 10.3 For the purposes of this Agreement, if Kidnap and Ransom Insurance is obtained by the Owners then the Contractor and its Personnel will be covered as crew under that Kidnap and Ransom Insurance Policy for the duration of this Agreement.. The Owner will be under no obligation to disclose its existence.
- 10.4 In the event that a hijacking takes place the Contractor will be entitled to have a representative join and be briefed by the Owner's Crisis Team or other relevant person(s) in charge of the management of the hijacking incident. The Contractor will be entitled to receive regular weekly reports as to the progress of the negotiations.
- 10.5 The Contractor shall use its reasonable endeavours to ensure that its underwriters waive their rights of subrogation against the Owner and to procure that the Owner is added as a named assured, where possible.

11. CONFIDENTIALITY

11.1 Neither party, Personnel, Crew, subcontractors or agents shall copy, use, disclose to, or enable any third party to use, copy, or have access to any information of a confidential nature which is disclosed or will be disclosed by the other party to it under this Agreement nor disclose any other confidential information communicated before or after the termination of this Agreement whether it be in relation to the agreement or not. Further, each party hereby undertakes to exercise due diligence to prevent its employees and any associated entity from making any such disclosure.

12. DISPUTE RESOLUTION

12.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales. Any disputes arising under this Agreement which cannot be resolved amicably shall be determined by arbitration in London.

12.2 The reference shall be to three Arbitrators. A party wishing to refer a dispute to Arbitration shall appoint its arbitrator and give notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 days of that notice and stating that it will appoint its own arbitrator as sole arbitrator within 14 calendar days of that notice unless the other party appoints its own arbitrator.

12.3 The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.

12.4 The decision of the arbitrator(s) shall be final and binding upon the parties.

13. FORCE MAJUERE

13.1 "Force majeure" in this Agreement means an act or event which is beyond the control and without the fault or negligence of the affected party and which that party is unable to prevent or provide against, by the exercise of reasonable diligence, including but not limited to, acts of God or the public enemy; expropriation or confiscation of facilities; war, rebellion, sabotage or riots; acts of terrorism and actions by civil or military

authorities resulting from such acts; floods, fires, explosions, or other catastrophes, strikes (other than those confined to the affected party's workforce); denial of the use of any railway, port, airport or other means of public transport, or other similar occurrences. Force Majeure does not include kidnap or hijack events, acts of maritime piracy, the insolvency of either party or the shortages of staff, materials or utilities or the failures of subcontractors unless those shortages or failures are themselves caused by Force Majeure as defined in this clause.

13.2 No delay or failure in performance by either party hereto shall constitute default hereunder or give rise to any claim for damages if, and to the extent, such delay or failure is caused by Force Majeure as defined in this clause.

13.3 For the avoidance of doubt it is recognised that delays can arise caused by the transit of weapons and equipment through ports and places where customs regulations can change with little notice. The Contractor will use its best endeavours to avoid such delays but the Contractor shall have the right to an additional thirty-six (36) working hours in order to transport any weapons and/or equipment and/or Personnel on board the Vessel once the Vessel is at the port of embarkation.

14. **TERMINATION**

14.1. Unless otherwise terminated in accordance with this Clause, this Agreement will terminate on the date specified in box 20.

14.2. Termination by the Owner:

14.2.1 The Owner reserves the right to terminate the Contractor's employment for the provision of the Services at any time by giving the Contractor twenty-eight (28) days written notice specifying the date of termination. On the date of such termination the Contractor shall discontinue performance of the Services and otherwise comply with the Owner's instructions regarding such termination.

14.2.2 The Owner may terminate this Agreement forthwith at any time by written notice in the event that the Flag State of the Vessel 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 Services provided under this Agreement.

14.2.3 Upon exercise of the Owner's right to cancel under clauses 14.2.1 or 14.2.2 above, the termination fee specified in box 21 shall be paid to the Contractor within seven (7) days of termination.

14.2.4 The Contractor shall disembark its Personnel and Equipment from the Vessel as soon as practicable following the termination of this Agreement in accordance with clauses 14.2.1 and 14.2.2 above.

14.3 Termination for material breach:

14.3.1 Where one party is in material breach of this Agreement, the other party may give notice to it in writing to remedy the breach. In the event that the breach is not remedied within twenty-eight (28) days of receipt of such notice, the innocent party shall have the right to cancel this Agreement on written notice to the party in breach.

14.3.2 The right to terminate in this clause is without prejudice to any other rights or remedies the party terminating the Agreement may have in this contract or by law.

14.4 Bankruptcy:

14.4.1 If either party should become bankrupt or insolvent, or have a receiving order made against it, or compound with its creditors, or being a corporation commence to be wound up, not being a members' voluntary winding up for the purpose of amalgamation or reconstruction, or carry on its business under a receiver for the benefit of its creditors or any of them, the other party shall be at liberty to terminate this Agreement forthwith by

notice in writing to the party or to the receiver or liquidator or to any person in whom the Agreement may become vested.

15 EFFECTS OF TERMINATION

15.1 Upon termination of this Agreement for any reason, the Contractor shall cease to be under any obligation to provide the Services but shall be entitled to be paid on the same terms as set out in this Agreement for any part of the Services that the Contractor provides or continues to provide.

15.2 Upon termination, the Owner shall immediately pay to the Contractor all undisputed sums properly outstanding under this Agreement (including any fees accrued but unbilled at the time of termination).

15.3 Clauses 1, 9, 11, 12, 15 and 18 shall survive termination of this Agreement and any amendment of it.

16 NOTICES

16.1 Any notice or other communications to be given to the Owner or the Contractor under or in connection with this Agreement shall be given by fax to: [INSERT DETAILS].

17 GENERAL

17.1 If the terms of this Agreement conflict with any of the annexes, the terms of the main Agreement shall prevail.

17.2 No variation of this Agreement shall be effective unless it is in writing and signed by or on behalf of both parties.

17.3 No failure to exercise or delay in exercising any right or remedy provided under this Agreement or by law constitutes a waiver of such right or remedy, nor shall it prevent or restrict any future exercise or enforcement of such right or remedy.

- 17.4 This Agreement constitutes the entire agreement between the parties in connection with the subject matter of this Agreement, and supersedes all previous agreements and understandings between the parties with respect thereto.
- 17.5 This Agreement may be executed in any number of counterparts each of which executed shall be an original but all the counterparts together shall constitute one and the same document.
- 17.6 Nothing in this Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the Contractor and the Owner, nor constitute any party the agent of another party for any purpose. No party shall have the authority to act as agent for, or to bind, the other party in any way.
- 17.7 Wherever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provisions of this Agreement are held to be invalid, illegal or unenforceable in any respect under applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision and this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provisions had never been contained herein. Notwithstanding the above, in the event of the deemed removal of any provision in the Agreement, the parties shall negotiate in good faith in order to agree the terms of an acceptable alternative provision.

18 HIMALAYA CLAUSE

- 18.1 It is hereby expressly agreed that no employee, servant, agent, direct or indirect subcontractor of either party to this Agreement "First Party" shall in any circumstances whatsoever be under any liability whatsoever to the other party to this Agreement "Second Party" 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 the performance of this Agreement.
- 18.2 Without prejudice to the generality of the foregoing provisions in this clause, every exemption, limitation, condition and liberty contained herein and every right,

exemption from liability, defence and immunity of whatsoever nature applicable to the First Party or to which the First Party is entitled hereunder shall also be available and shall extend to every such employee, servant, agent, direct or indirect subcontractor who shall be entitled to enforce the same against the Second Party.

19 RIGHTS OF THIRD PARTIES

19.1 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any rights or remedy of a third party which exists or is available apart from that Act.

Signed for and on behalf of the Owner.....

Signed for and on behalf of the Contractor.....

ANNEX I

Schedule of Personnel and Equipment

ANNEX 2

Rules for the Use of Force

ANNEX 3

Standard Operating Procedures