

FLARMCON 2017
Vessel Based Armoury Contract for PMSCs (Version 3.1)

Please note that full acceptance of the terms and conditions of this contract by the PMSC will be inferred if the PMSC, books, arranges or avails itself of any service offered by the Service Provider.

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:

“Service Provider” shall mean the party stated in Box 3. It can also refer variously to any of the Service Provider’s affiliated companies and/or companies within the Group of companies owned, or partly owned by the holding company.

“PMSC” shall mean the party stated in Box 4.

“Armourer” means the MNG Team member employed to account for and service the PMSCs’ firearms and equipment. MNG armourers shall be qualified to the UK Military standard Class I or Class II, or their equivalent.

“Athens Convention” means the Athens Convention relating to the carriage of passengers and their luggage by sea. The Convention was adopted at a conference, convened in Athens in 1974 and established a regime of liability for damage suffered by passengers carried on a seagoing vessel. It declared a carrier liable for damage or loss suffered by a passenger if the incident causing the damage occurred in the course of the carriage and was due to the fault or neglect of the carrier.

“Controlled Goods” means those goods, including firearms, body armour and helmets and other military use items which are subject to licensing approvals for import and export in accordance with the details of *the Export Control Order 2008*.

“Coxswain” means the MNG Team member at the helm of the transfer craft (RIB) for any given task. All MNG coxswains on task are qualified to a minimum level of RYA Powerboat 2.

“Crew” means the Vessel’s Master, officers and crew save for the MNG Team.

“Embarkation/Disembarkation Time” means the time and date at which the transfer took place, agreed by the SSO and client vessel’s master and recorded in the completion confirmation e-mail sent by the SSO.

“Employees” shall mean employees, directors, officers, servants, agents, contractors, sub-contractors, crew members of chartered vessels or invitees.

“ETA” means the estimated time of arrival of a client vessel at the transfer RV.

“Firearms” means firearms, ammunition and ancillaries.

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

“GoA” means Gulf of Aden.

“GOO” means Gulf of Oman.

“Home Port” means the port predominantly used by that shuttle vessel and listed in Annex A. Use of this port is not exclusive, and the shuttle may use, or divert to, and convenient local port, provided it is authorised to do so, and by agreement with the PMSC, if the PMSC has personnel on that shuttle.

“Hotel Services” means the provision of a military-style bunk per person, in a dormitory cabin, with appropriate ablution facilities, self-help laundry facilities, cleaning of communal areas and the delivery of three tasty and nutritious meals per day, along with drinking water and tea, coffee and squash.

“Insurance Policies” means the policies described in Clause 15.

“Logistic and Security Services” means those services listed in Clause 3.

“LC” means the MNG Team member holding a specialist qualification (SQ) from the *Landing Craft* branch of the Royal Marines. At all times the MNG team on board will comprise a minimum of one LC who shall hold responsibility for the conduct of small boat operations but will not necessarily always cox the craft.

“Mid-Indian Ocean” refers to a VBA RV location between Socotra Island and Galle and is sometimes referred to by others as the Arabian Sea. It can be divided into MIO North and MIO South, with MIO(N) referring to locations at the eastern end of the Gulf of Aden, and MIO(S) covering services between Socotra and Galle.

“MIO” means Mid-Indian Ocean (qv)

“MNG Team” means the MNG employees who make up the embarked VBA security team and perform the operational management functions on board the VBA.

“MSO” means maritime security operator and can refer either to the PMSC’s personnel, or the Service Provider’s personnel, who are charged with the task of providing maritime security.

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

“PW” means the MNG Team member holding a specialist qualification from the *Platoon Weapons* branch of the Royal Marines. The embarked PW, if there is one, holds the necessary qualifications to conduct weapons training, run ranges and deliver MSO training as required.

“RIB” means rigid inflatable boat (sometimes RHIB – rigid hulled inflatable boat), which is a type of small craft 3m-15m long, constructed from a rigid hull, and possessing an inflatable protective (and buoyant) collar. The Service Provider principally uses RIBs to conduct transfers.

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

“RYA” means the Royal Yachting Association, which issues internationally recognised boating qualifications.

“Shuttle Vessel” or **“Shuttle”** means the vessel used to convey PMSC personnel between the respective VBA and the most convenient port with air facilities. These are listed at Annex A.

“SoH” means Straits of Hormuz.

“SSO” means Ship’s Security Officer and refers to the senior MNG Team member on board the VBA, who also acts as the ship’s SSO. He is more normally referred to as the Vessel Manager (VM).

“Standard Operating Procedures” means the service provider’s standard operating procedures in accordance with which the MNG Team will provide the 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.

“Technical Personnel” means PMSC’s security personnel who have completed the four standard, basic modules of STCW training. Whilst on board shuttles, VBAs and transfer craft they shall hold this status and are thereby not subject to the *Athens Convention*.

“Transfer Request Form” (TRF) means the MNG form, or agreed equivalent, which details the specific individual logistic task required of the Service Provider by the PMSC, and lists the exact items of equipment, and the personnel involved.

“Transfer RV” means the designated place of embarkation or disembarkation of Security Personnel and refers to the centre of a 5nm circle in which the transfer may take place. The



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currently approved and authorised Transfer RVs are listed at Annex A.

“VBA” means vessel-based armoury, also known as “floating armoury”; “logistic vessel” or “transfer vessel”. Operational vessels at the time of the signing of this contract are named in Annex 1. These may be changed from time to time to other such vessels as may be provided by the Service Provider, in order to deliver the same services as otherwise covered by this contract, and meeting all other requirements of this contract.

“Vessel Owner” means the legal owner of the Vessel. In some cases the Service Provider is not the legal owner, but merely charters the vessel from the owner under terms specified in the Charter Party between the vessel owner and the charterer (Service Provider).

“Vessel” shall mean the vessels named at Annex A (particulars available on request). These may be changed from time to time to other such vessels as may be provided by the Service Provider, in order to deliver the same services as otherwise covered by this contract, and meeting all other requirements of this contract.

“Vessel Manager” or “VM” refers to the senior MNG Team member on board the VBA, who also acts as the ship’s SSO.

2. Commencement, Appointment and Duration.

(a) With effect from the date stated in Box 2 for the commencement of the Contract the PMSC hereby appoints the Service Provider and the Service Provider hereby agrees to provide the agreed logistic and security services. Where such services have been provided to the PMSC by the Service Provider in advance of the signing of this contract, those services shall not be deemed to be covered by the terms of this contract.

(b) 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 the number of days’ notice in Box 10 to the other party, whereupon this Contract shall terminate.

(c) This Contract is not an exclusive appointment of the Service Provider by the PMSC.

SECTION 2 – LOGISTIC SERVICES

3. Logistic and Security Services. Always subject to Clause 6 below, the Service Provider shall provide the PMSC with maritime and land-based logistic and security services for their security teams to enable them to deliver security services to client vessels. These services shall include, but not exclusively, the following core services:

(a) use best endeavours to protect and defend the VBA, including the PMSC’s embarked personnel, firearms and/or equipment against any actual, perceived or threatened acts of piracy and/or violent robbery and/or capture/seizure and/or acts of terrorism. Such means shall include the use of firearms, and may include the use of lethal force, 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 Service Provider to the PMSC);

(b) embark the PMSC’s security team onto the nominated client vessel, from the VBA, at the Transfer RV at the notified and periodically adjusted ETA;

(c) disembark the PMSC’s security team from the nominated client vessel, to the VBA, at the Transfer RV, at the notified and periodically adjusted ETA;

(d) provide the requisite Hotel Services to the PMSC’s employees on board the VBA;

(e) provide storage facilities for the PMSC’s firearms, equipment and any other controlled goods;

(f) perform annual maintenance checks, by a qualified armorer, on the PMSC’s firearms to ensure, where possible, that the interval between maintenance checks does not exceed 365 days, and issue certificates accordingly; in addition to repairing unserviceable weapons, where repairable, including the procurement of spare parts as necessary;

(g) conducting unannounced drug and alcohol tests as requested by the PMSC on the PMSC’s employees on board the VBA, in accordance with D&A test procedures issued by the Service Provider;

(h) conducting additional training for the PMSC’s personnel, on request, to include any or all of MSO training, weapon handling skills/tests, live firing, weapon maintenance, RUF, Company SOPs etc., or other training requested by the PMSC;

(j) providing shuttle services for the PMSC’s personnel between the VBA and the most suitable nearby port;

(k) providing, by means of sub-contracted agencies, agency services to meet and greet personnel, procure appropriate visas, transport personnel between airport and port and vice versa and, where necessary, provide accommodation; and

(l) providing any other maritime logistic service, as requested by the PMSC, provided it is feasible and legal, under mutually agreed terms.

4. Engagement of Logistic Services. The PMSC shall notify the Service Provider of their requirement for Logistic Services by issuing a Transfer Request Form (TRF). The Service Provider shall be obliged to provide the Logistic Services only at the specified Transfer RV and only provided the transfer has been accepted at the time of booking. The TRF should ideally be issued as soon as possible, with not less than twenty-four (24) hours prior the Embarkation Time being the minimum standard. Where notice is offered in shorter timeframes the Service Provider will make all reasonable efforts to fulfil the request.

5. Change of Specification of Logistic Services. If either party reasonably considers changes are required to the specification of the logistic and 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 propose implementation of such changes to the other, which might necessarily result in a reduced level of service to the PMSC, or higher fees, which will be agreed at the time.

SECTION 3 – SERVICE PROVIDER’S OBLIGATIONS AND RESPONSIBILITIES

6. The Service Provider undertakes to provide the Logistic and Security Services listed under Section 3 using all reasonable skill and care and their responsibilities shall include the following (and other responsibilities as may be agreed):

(a) providing appropriate safety briefings to the PMSC’s employees prior to all activities where there is judged to be enhanced risk;

(b) providing all necessary serviceable safety equipment and personal protective equipment required in the delivery of the logistic services;



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(c) monitoring the approach of the PMSC's client vessel and reacting to new ETAs periodically adjusted by that vessel's master, in order to execute the transfer without undue delay to the client vessel;

(d) providing hotel services reasonably required for the PMSC's personnel, at the PMSC's expense (fees listed at Annex B), equivalent to that provided to the Service Provider's officers;

(e) providing a secure location for the storage and safe-keeping of any firearms and equipment on board the VBA, ensuring that at all times they are securely and legally stored and protected from theft or interference;

(f) making arrangements for the disembarkation of sick or injured PMSC Personnel, at the PMSC's expense;

(g) ensuring that the PMSC's Personnel are entered onto the VBA's souls-on-board list as technical personnel upon embarkation and are given ship-board familiarisation training;

(h) providing post-transfer confirmation reports to the PMSC, and to the PMSC's client;

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

(k) establishing and maintaining an operational point of contact available twenty-four (24) hours a day to deal with operational issues and queries arising out of the performance of the Logistic and Security Services, which contact details are as stated in Box 11;

(l) ensuring that any vehicles used to transport PMSC personnel are insured, and licenced to carry passengers as well as being suitable to carry the PMSC personnel with their equipment and air-conditioned. The driver will hold a full driving licence for the type of vehicle without any endorsements. Taxis may be used in exceptional circumstances and agreed in writing in advance with the PMSC. Drivers will not use telephones, even with hands free equipment, when the vehicle is in motion;

(m) ensuring that emergency equipment including fire-fighting equipment, life vests used on MNG vessels and craft, whether owned, chartered or leased, are fit for purpose and serviced in accordance with ordinary safety standards applicable to the relevant vessel or craft; and

(n) undertaking that they have a policy on drugs and alcohol use (the "D&A Policy") that prohibits any of its employees, crews, chartered vessel crews or other personnel from consuming alcohol or illicit drugs whilst working (a "zero tolerance" policy). The Service Provider shall exercise due diligence to ensure that the D&A Policy is understood and complied with on all its vessels. Any actual impairment, shall not in and itself mean that the Service Provider has failed to exercise due diligence.

7. The Service Provider shall provide suitably qualified, trained and experienced personnel and undertake that:

(a) each of the MNG Team members has:

(i) 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. The medical certificate shall be valid for the duration that the respective MNG Team member remains on board the Vessel;

(ii) requisite STCW training;

(iii) relevant experience and suitable training in the use and carriage of firearms and all necessary personal handling licences and certificates;

(iv) necessary additional qualifications (e.g. LC, PW or armourer) appropriate to his billet;

(v) 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;

(vi) a minimum of 4 years' prior military service;

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

(viii) a command of the English language; in each case of a standard to enable him to perform his duties safely; and

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

(b) the MNG Team SSO and his deputy have prior experience of performing services equivalent to the Security Services on board a merchant vessel; and at least one member of the VBA security team has been trained in first aid trauma treatment.

(c) each of the vessel crew members of any MNG owned, chartered, leased or contracted vessel is suitably qualified for performing his role or function.

8. In addition the Service Provider shall:

(a) provide and maintain insurance in accordance with Clause 15 (Insurance Policies); and

(b) be responsible for the management of the Logistic and Security Personnel, for the payment of salaries and all other benefits and emoluments and/or all other payments whatsoever and for the provision of accident and medical expense insurance (in accordance with Clause 15 (Insurance Policies)) for the Service Provider's personnel during the term of this Contract.

9. Service Provider's Right to Sub-Contract.

(a) The Service Provider shall remain fully liable for the due performance of their obligations under this Contract where goods and services are provided by a sub-contractor.

(b) Where the Service Provider sub-contracts personnel who are not in the direct employment of the Contractors, the Contractors shall ensure that such



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sub-contracted personnel agree to be bound by all the terms and conditions of this Contract.

SECTION 4 – PMSC’S OBLIGATIONS AND RESPONSIBILITIES

10. The PMSC’s responsibilities shall consist of the following (and other responsibilities as may be agreed):

- (a) paying all sums due to the Service Provider punctually in accordance with the terms of this Contract;
- (b) supplying copies of all necessary documentation to:
 - (i) prove the legal incorporation of the PMSC and identify its home state, or state of nationality;
 - (ii) prove that the PMSC is licensed, approved and/or authorised by its home state to import and export controlled goods between jurisdictions, namely flagged vessels operating in international waters; and
 - (iii) prove that the controlled goods to be embarked have been legally procured and are fully owned by the contracting PMSC, and are neither borrowed nor rented from a third party.
- (c) providing and maintaining the insurances in accordance with Clause 15 (Insurance Policies);
- (d) ensuring that their employees obey all instructions of the Master and crew of the VBA, shuttles and MNG Teams and personnel;
- (e) ensuring that their employees understand that the MNG Team has sole responsibility for the protection of the VBAs and that, under normal circumstances PMSC personnel will not have any responsibilities in the event of an attack, nor will they be given access to their firearms;
- (f) being responsible for informing the PMSC’s client vessel owners that their security team will be transferred by the Service Provider, and providing the necessary communications link (“handshake”) by e-mail to enable the Master of the client vessel and the Service Provider to talk directly;
- (g) procuring that the PMSC, or his client vessel’s Master, will keep the VBA informed of the client vessel’s latest ETA in writing so that the Embarkation or Disembarkation Time can be re-scheduled to the PMSC’s chosen time and date, provided that the change in timing does not result in VBA occupancy exceeding the specified SOLAS limit for that vessel.
- (h) agreeing that the transfer of PMSC personnel and any weapons and equipment is undertaken at the PMSC’s own risk;
- (i) ensuring that the PMSC personnel are medically fit, and appropriately trained for embarking and disembarking client vessels by pilot ladder, combination ladder or other common means of (dis)embarkation;
- (j) ensuring that the PMSC’s personnel will not carry or consume alcohol or any illicit substances or drugs;

(k) ensuring that the PMSC’s personnel do not import, carry or export any offensive materials, (including without limitation, pornography, alcohol, un-prescribed controlled medicines, illicit drugs) to or from any country in which the Logistic and Security Services or any part of them are performed, and where the import, carriage or export of such materials would constitute a breach of local law;

(l) ensuring that the PMSC’s team leader manages the safe transfer of the PMSC’s personnel and ensure that no transfer takes place until the team leader has satisfied himself that the same can be conducted in a safe and orderly manner;

(m) using its best endeavours to procure that its clients and the masters and crews of its clients’ vessels comply with all instructions given by the Master and team of MNG vessels.

(n) establishing and maintaining an operational point of contact available twenty-four (24) hours a day to deal with operational issues and queries arising out of the performance of the Logistic and Security Services, which contact details are as stated in Box 12;

SECTION 5 – MASTER’S AUTHORITY, DIVISION OF RESPONSIBILITIES AND HIJACKING

11. **Master’s Authority, Service Provider’s and PMSCs’ Personnel’s Role and Division of Responsibilities.**

(a) The Master of the VBA or shuttle shall, at all times throughout the duration of this Contract and the performance of the security and logistic services by the Service Provider’s team, have and retain ultimate responsibility for the safe navigation and overall command of the Vessel. Any decisions made by the Master, or by the Master in conjunction with the Service Provider’s SSO shall be binding and the PMSC undertakes to instruct his personnel accordingly.

(b) None of the embarked PMSC’s personnel will normally have any role to play in the event of any actual, perceived or threatened act of piracy and/or violent robbery and/or capture/seizure by third parties, and they will be instructed to proceed to a place of safety down below. This action will be covered during the initial briefing. In exceptional circumstances, and at the invitation of the MNG SSO, some client personnel may be asked to assist with the protection of the vessel.

(c) Notwithstanding 11(b) above, should any PMSC personnel be given a role by the MNG Team in the defence of the VBA, then they will be bound by the international principles of self-defence. Each of the PMSC’s personnel shall always have the sole responsibility for any decision taken by them for the use of any force, including targeting and weapon discharge, always in accordance with their 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 to cease firing under all circumstances. However, for the avoidance of doubt, nothing in this Clause shall compromise any individual’s right of self-defence in accordance with applicable national law.

12. **Hijacking.** The Service Provider does not guarantee the safety of the PMSC’s personnel during the provision of the



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Security and Logistic Services. If the Vessel is hijacked with the PMSC's personnel on board:

- (a) The Vessel Owner's insurers will take the lead in the management of the hijacking incident.
- (b) The PMSC shall be entitled to be briefed by the Vessel Owner's Incident Management Team or other relevant person(s) in charge of the management of the hijacking incident. The PMSC shall be entitled to receive regular weekly reports as to the progress of the negotiations.
- (c) The PMSC's personnel shall not do anything to endanger the lives of the Crew, MNG Team other PMSC's personnel and/or other persons permitted by the Master to travel on board the Vessel.
- (d) The PMSC shall be under no obligation to contribute to ransom payments to secure the release of the Vessel, Crew, MNG team or own or other PMSC personnel (whether or not PMSC Personnel are on board the Vessel at the time of release).

13. **Unforeseen Requirements.** The Service Provider will be required to take account of any instructions from the vessel owners (where this is not the Service Provider himself, and if it is, he may be required to comply). In such circumstances, the Service Provider will make every effort to accommodate the requirements of the PMSC, whether this be to transfer PMSC personnel and equipment to another vessel, or to port, or any other reasonable requirement of the PMSC. In these circumstances, the PSMC agrees to pay any additional costs and charges that may thereby be incurred and agrees to indemnify the Service Provider against any consequential liabilities arising from such circumstances. Such circumstances are the requirement for the owners:-

- (a) to comply with all orders, directions, recommendations or advice as to departure, arrival, routes, sailing in convoy, ports of call, stoppages, destinations, discharge of cargo, delivery, or in any other way whatsoever, which are given by the Government of the Nation under whose flag the Vessel sails, or other Government to whose laws the Owners are subject, or any other Government, body or group whatsoever acting with the power to compel compliance with their orders or directions;
- (b) to comply with the order, directions or recommendations of any war risks underwriters who have the authority to give the same under the terms of the war risks insurance;
- (c) to comply with the terms of any resolution of the Security Council of the United Nations, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Vessel Owners and or Service Providers are subject, and to obey the orders and directions of those who are charged with their enforcement;
- (d) to discharge at any other port any cargo or part thereof which may render the Vessel liable to confiscation as a contraband carrier;

SECTION 6 – PERMITS AND LICENCES, INVESTIGATIONS AND CLAIMS

14. **Permits and Licences.**

- (a) The Service Provider shall obtain and maintain any and all Permits which may be required for the Service Provider's vessels to carry the PMSC's personnel, and store the PMSC's firearms and equipment on board the Vessel as well as those

necessary to permit the import and export (transfer) of those firearms and other controlled goods, between jurisdictions (flag states) in international waters.

- (b) The Service Provider shall obtain and maintain any and all Permits which may be required in order for the Service Provider's own Security Personnel to undertake security services on board VBAs using Service Provider-owned Firearms and other Security Equipment.

(c) Such Permits required under Sub-Clauses 14(a) and 14(b) above shall include (as necessary) those required under the laws of:

- (i) the country of incorporation (UK) and/or operation (UK) of the Service Provider, and the country in which the "import/export" broking activity takes place (UK);
- (ii) the country in which the Service Provider's Head of the security team (SSO) takes his nationality (UK);
- (iii) the flag state of the VBAs; and
- (iv) any country in whose territorial waters the Embarkation or Disembarkation points sits, where this is not in International Waters.

(d) The PMSC shall obtain and maintain any and all Permits which may be required in order to evidence legal procurement and ownership of their firearms and other controlled goods and also to transfer such firearms and other controlled goods between jurisdictions, on land, in territorial waters and in international waters, between vessels of identified flag states, as well as to utilise those firearms and controlled goods for the stated counter-piracy task. Such Permits shall include (as necessary) those required under the laws of:

- (i) the country of incorporation and/or operation of the PMSC;
- (ii) the flag state of the client vessel to/from which the controlled goods will be transferred; and
- (iii) any country in whose territorial waters the Embarkation or Disembarkation points sits, where this is not in International Waters.

(e) Details of Permits (as necessary) held by the Service Provider for these purposes are set out in Box 5.

(f) Details of Permits (as necessary) held by the PMSC for these purposes are set out in Box 6.

(g) For the avoidance of doubt:

(i) If the Service Provider has not obtained the required Permits in accordance with Sub-clause (a), (b) and (c) above, the Service Provider shall indemnify the PMSC for any fines, penalties, losses, costs, legal fees and disbursements as a result of the Service Provider's failure to perform such obligations.

(ii) If the PMSC has not obtained the required Permits in accordance with Sub-clause (d) above, the PMSC shall



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indemnify the Service Provider for any fines, penalties, losses, costs, legal fees and disbursements as a result of the PMSC's failure to perform such obligations.

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

SECTION 7 – INSURANCE, FEES AND TAXES

15. Insurance Policies.

(a) The PMSC shall at all times during the period of this Contract maintain insurances to cover their liabilities and contractual indemnities, including those under Clauses 19-20 (Liabilities and Indemnities), as follows:

(i) employer's liability insurance covering the PMSC's liability to its personnel;

(ii) comprehensive liability insurance including insuring the PMSC's liability to third parties for personal injury and death, property damage and other loss; and

(iii) personal accident insurance for each of its 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 PMSC's personnel with cover for emergency medical expenses and repatriation costs.

(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) and (ii) reasonable deductibles (by reference to market practice), which deductibles shall be for the account of the PMSC. The PMSC shall, upon request, furnish the Service Provider with copies of the cover notes which provide information to verify that the PMSC has complied with the insurance requirements of this Contract.

(c) The Service Provider confirms that the Vessels are 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 Service Provider further confirms that it shall at all times during the period of this Contract maintain insurances to cover their liabilities and contractual indemnities, including those under Clauses 19-20 (Liabilities and Indemnities), as follows:

(i) employer's liability insurance covering the Service Provider's liability to its personnel in a sum of £10,000,000;

(ii) combined liability insurance including insuring the Service Provider's liability to third parties for personal injury and death, property damage, products liability, pollution liability and other loss including professional indemnity in a sum of \$5,000,000;

(iii) Management liability, including directors' and officers' liability in a sum of £5,000,000; and

(iv) personal accident insurance for each of its personnel in a sum of US\$250,000 per person.

(e) The Service Provider 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 PMSC acknowledges that such a policy may not respond in respect of the PMSC personnel on board the Vessel.

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

(g) For purposes of this Clause 15 (Insurance Policies) rights extended to the Service Provider and PMSC shall be extended to the Service Provider's Group and PMSC Group respectively (as such expressions are defined in Clauses 19-20 (Liabilities and Indemnities)).

(h) The PMSC stores all firearms and equipment and all other goods, whether controlled or not, at their own risk.

16. Fees and Expenses.

(a) In consideration of the Security and Logistic Services, the PMSCs shall pay the Service Provider the sums agreed for the respective services as listed at Annex B, and amended as necessary from time to time, and agreed in writing, in the currency and amount stated.

(b) The Service Provider shall provide the PMSC with invoices not more than three (3) days after delivery of the service specifying the fees due for the logistic service provided during the currency of any Instruction Notice or, as the case may be, this Contract. Weekly statements of account can be provided on request.

(c) Save in respect of any agreed advance payments, the PMSC shall pay all invoices issued to them by the Service Provider within twenty-one (21) days of the date of receipt of the invoice, or as stated in Box 9. If payment is not received by the Service Providers within 5 banking days following the due date the Service Provider is entitled to charge interest at the rate stated in Box 8 on the amount outstanding from and including the due date until payment is received.

(d) Where there is a failure to pay invoices by the due date, as a result of errors or omissions of the PMSC employees, bankers or agents or otherwise for any reason, the Service Provider will give notice to the PMSC to rectify the error and make payment within five banking days. In the event that the PMSC fails to make such a payment, the Service Provider will have the right to suspend performance of any, or all, of their obligations under this contract until such time as all the invoices due to the Service Provider under the Contract have been received by the Service Provider, including, but not limited to:

(i) the transfer of any PMSC's personnel off and/or onto one or more of the Service Provider's vessels listed at Annex A, to/from the PMSC's client vessel.

(ii) the transfer of any PMSC's equipment off any of the Service Provider's vessels listed at Annex A, onto a PMSC's client vessel.



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- (iii) the provision of shuttle services.
- (e) The suspension of any obligations will not affect the PMSC's obligation to continue to pay for Logistic and Security Services being provided under this contract in respect of personnel and weapons and equipment.
- (f) The Service Provider shall have the right to retain all PMSC owned weapons, equipment and related documentation held on any of the Service Provider's vessels as security for all claims and/or loss and/or outstanding debts. The Service Provider at his discretion may exercise a lien over the weapons and equipment and related documentation and sell or otherwise dispose of said property in order to recover the sums owed.
- (g) Where the Service Provider chooses not to exercise any of the rights afforded to them by this Clause 16 in respect of any particular late payment of invoices, or a series of late payments of invoices, under the Contract, this shall not be construed as a waiver of their right either to suspend services under Clause 16(d) or subsequently to apply interest to overdue sums under Clause 16(c), or to seize assets under Clause 16(e) in respect of any subsequent late payment under this Contract.
- (h) The PMSC shall indemnify the Service Provider in respect of any liabilities incurred by the PMSC as a consequence of the Service Provider's proper suspension of and/or withdrawal from any or all of their obligations under this Contract.
- (j) The PMSC shall make payment of each invoice by electronic transfer to the Service Provider's bank account stated in Box 7(a) for all payments except those for Malacca services, or the account in Box 7(b) for Malacca services.
- (k) Notwithstanding the EEA agreement that all bank charges are shared equally between payer and payee, any PMSC payment shall be net of all bank charges by the PMSC's bank and any intermediary bank. On receipt of funds from the PMSC, the PMSC will be credited with the net total received into the Service Provider's account.
- (l) If the Service Provider provides an invoice to the PMSC which is disputed, the PMSC shall pay the Service Provider the undisputed amount of such invoice on the due date and shall notify the Service Provider, in writing, of any disputed amount as soon as practicable. **If the PMSC believes some or all of an invoice has been incorrectly issued and is therefore disputed, this must be brought to the attention of the Service Provider no later than 30 days from the date that the invoice was issued. Disputes raised after 30 days will not be entertained.**
- (m) If the PMSC requires the Service Provider 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 PMSC.
- (n) If the Vessel is hijacked and the hijackers have control of the Vessel then all food and accommodation charges, if any, will be suspended and liability on the part of the PMSC to pay the daily rate shall cease.
- (o) The Service Provider's right to suspend performance under this Clause shall be without prejudice to any other rights they may have under this Contract.

17. **Taxes.**

- (a) Subject to Sub-clause (d), the Service Provider 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 Service Provider's property or personnel (including, without limitation, the Vessel, Crew and MNG Team), 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 Service Provider.
- (b) The PMSC 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 PMSC'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 PMSC.
- (c) Where any taxable supply for VAT (or equivalent indirect sales tax) purposes is made under the Contract by the Service Provider to the PMSC, the PMSC shall, on receipt of a valid VAT invoice from the Service Provider, pay to the Service Provider such additional amounts in respect of VAT as are chargeable on the supply of the Logistic and Security Services at the same time as payment is due for the supply of the Logistic and Security Services.
- (d) Withholding taxes shall be for the Service Provider's account. Any amounts paid by the PMSC to the Service Provider hereunder shall be net of any withholding taxes required to be deducted from such amounts by relevant taxation authorities, in which case the PMSC shall supply the Contractors with a certificate from the relevant taxation authorities that such withholding taxes have been paid. The PMSC shall take reasonable steps to make all relevant information and documentation available to the Service Provider to enable them to reduce or eliminate any withholding taxes demanded by any taxation authority, or in recovering such withholding taxes.

SECTION 8 – LEGAL AND LIABILITIES

18. **Liabilities and Indemnities.** For the purpose of Clauses 19 and 20:

- (a) **"Service Provider's Group"** means the Service Provider, each of their subsidiaries and/or affiliate companies, employees, directors, officers, agents, the owners of the vessels listed at Annex A, and their crew, sub-contracted personnel (including, without limitation, MNG Team members) and insurers.
- (b) **"PMSC Group"** means the PMSC and their subsidiaries and/or affiliate companies, employees, sub-contracted personnel, directors, officers, agents and insurers.

19. **Knock for Knock.**

- (a) **Service Provider.** The Service Provider's Group shall not be responsible for loss of or damage caused to or sustained by the property of the PMSC Group (whether on board a Vessel or not) or incur any liability in respect of personal injury, illness or death of any individual member of the PMSC Group (whether on board a Vessel or not) arising out of or in any way connected with the



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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 Service Provider's Group and/or (ii) the unseaworthiness of its Vessels. The PMSC expressly agrees and undertakes to hold harmless, defend, indemnify and waive all rights of recourse against the Service Provider's 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 PMSC Group, or for damage to or loss of property owned by or in the possession of, the PMSC Group.

(b) **PMSC.** The PMSC Group shall not be responsible for loss of or damage caused to or sustained by the property of the Service Provider's Group (including, without limitation, the Vessels) or incur any liability in respect of personal injury, illness or death of any individual member of the Service Provider's Group (whether on board a 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 PMSC Group. The Service Provider expressly agrees and undertakes to hold harmless, defend, indemnify and waive all rights of recourse against the PMSC 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 Service Provider's Group, or for damage to or loss of property owned by or in the possession of, the Service Provider's Group.

20. Third party liability.

(a) The PMSC expressly agrees to hold harmless, defend, indemnify and waive all rights of recourse against the Service Provider's 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 PMSC Group in the performance of this Contract save to the extent of the Service Provider's own negligence.

(b) The Service Provider expressly agrees to hold harmless, defend, indemnify and waive all rights of recourse against the PMSC 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 Service Provider's Group in the performance of this Contract save to the extent of the PMSC own negligence.

(c) Notwithstanding any other Clause of this Contract, the Service Provider's Group shall be indemnified by the PMSC for all claims, liabilities, losses, liabilities to the PMSC personnel 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 Service Provider's Security Personnel, or by the PMSC's personnel.

(d) 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.

21. **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), without prejudice to the right of the Service Provider's Group to limit their liability under any applicable national law or international convention.

22. Neither the Service Provider nor the PMSC 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.

23. Delay.

(a) The Service Provider shall use his best endeavours to avoid delays in embarkation and/or disembarkation of the PMSC personnel and equipment.

(b) The Service Provider holds no responsibility for any delay to any client vessel caused by:

(i) *force majeure* (Clause 43);

(ii) any delay caused by the servicing of other client vessels who arrived at the RV in advance of the PMSC's client vessel (vessels will be serviced in the order in which they arrive at the RV);

(iii) failure of the PMSC's client vessel to give an hour's notice of arrival at the RV, or to follow other notification requirements laid down in the procedures;

(iv) any failure of the PMSC's personnel, or the PMSC's client vessel's crew to be ready in all respects for the transfer at the appointed ETA; and

(v) any failure of the PMSC's client vessel Master to follow the standard instructions, especially regarding vessel speed and giving a lee.

(c) The PMSC agrees to indemnify the Service Provider against any consequences of delays covered by 23(b) above.

24. Cancellation and Termination.

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

(i) wishes to terminate the contract following the first 12 months and giving the notice specified in Box 18;



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(ii) is in material breach of its obligations under this Contract and, save as provided for breach of payments provided in Clause 16, fails to remedy that breach (if remediable) within twenty-four (24) hours of receiving notice of such breach from the innocent party; or

(ii) 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.

(b) Upon termination of this Contract:

(i) the Service Provider shall discontinue performance of the Logistic and Security Services;

(ii) the PMSC shall pay any and all sums then due and payable by the PMSC under the terms of this Contract and arrange to disembark its personnel and equipment, from the vessel(s) as soon as reasonably practicable and safe to do so and will otherwise comply with the service Provider's reasonable instructions regarding such termination;

(iii) where the disembarkation of the PMSC's personnel and equipment, following the termination of the contract, is effected by the Service Provider, the Service Provider may reasonably charge transfer fees for this service; where the disembarkation is conducted by the PMSC, or by a third party, fees *may* also be payable to cover the costs associated with mustering, accounting for, preparing and moving the kits; and

(iv) where the PMSC has historically failed to meet payment terms, the Service Provider may insist that all outstanding monies, including those not yet due and the fees for the final transfers referred to in Clause 24(b)(iii) above, are settled before any, some or all of the PMSC's equipment is transferred, the latter being held as a lien against payment.

(c) Clauses 19-20 15 (Liabilities and Indemnities), Clause 39 (Dispute Resolution) and Clause 42 (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.

SECTION 9 – RANGE AND LIVE FIRING

25. The Service Provider agrees to provide the PMSC's personnel with a Maritime Firearms Competency Course (MFCC) and/or Maritime Weapons Familiarisation Course/Refresher Course/Bespoke Course as required and subject to availability of instructors, weapons and a clear range.

26. Charges for courses are listed in Annex B.

27. Attendance on the course does not guarantee that the individual will pass the course. The Service Provider's instructors will make every effort, and take as much time as they deem necessary to bring the PMSC's personnel to the requisite standard of competence. If any individual, in the view of the Service Provider's instructor is incompetent and incapable of completing the course to the degree where the instructor is comfortable to sign off the individual as being "competent and safe to handle firearms" then the individual will be "failed". Course fees will still be applicable in the event of failure.

28. The Service Provider agrees to provide firearms training on up to 5 different families of firearm, including live firing on one of the firearms. The training will focus on the safe handling and operation of the specific families of firearm. At the end of the course, should the Service Provider's instructor be satisfied that the individual can competently handle the firearms used in the instruction safely, a certificate will be issued confirming the competence of the named individual in the named firearms.

29. The Service Provider agrees that:

(a) The instructor(s) providing the modules of training are qualified to perform the training they conduct.

(b) The range conducting officer(s) are qualified to conduct live firing range practices.

(c) The range danger area will be maintained by the officer of the watch (OOW).

30. The PMSC agrees that its personnel may use weapons owned by the PMSC for the purposes of the training, even when the individual is paying for the training himself.

31. The PMSC agrees that its personnel will adhere to all instructions issued by the Service Provider's instructors and staff.

32. Range safety procedures must be respected at all times. Individuals will receive a safety briefing before firing or handling.

33. The Service Provider reserves the right to cease providing services to the PMSC's personnel if any terms and conditions or Range Rules are broken, or wilful damage to property takes place. The PMSC and/or the individual will be liable for any civil or criminal actions and the PMSC or individual will still be liable for the course fees.

34. The PMSC agrees to indemnify and hold the Service Provider and its Directors, Employees, Agents and Instructors (as applicable) harmless from and against any claim, damages, proceedings, losses and damages of every kind and nature, including solicitors' fees, made by any third party due to or arising out of the PMSC's breach of this agreement or the terms and policies it incorporates by reference, or the PMSC's violation of any laws or the rights of third parties.

SECTION 10 - GENERAL

35. **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.

36. **Health, Safety and Environmental Regulations.** Whilst on board the Vessel, the PMSC personnel shall comply with such of the Service Provider's health and safety



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requirements as the Service Providers may have notified to the Security Personnel.

37. **Drug and Alcohol Policy.** PMSC Personnel shall not bring or consume alcohol or drugs on board the Vessel.

38. **No Salvage.** The PMSC and its Security Personnel hereby waive their rights to claim any award for salvage performed on the Vessel or life salvage.

39. **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



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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 13 in Part I is not appropriately filled in, Sub-clause (a) of this Clause shall apply.

Note: Sub-clauses (a), (b) and (c) are alternatives; indicate alternative agreed in Box 13. Sub-clause (d) shall apply in all cases.

40. **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.

41. **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 Service Provider's contact details are stated in Box 11 and the PMSC's contact details are stated in Box 12.

42. **Confidentiality.**

(a) Neither the Service Provider nor the PMSC 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 PMSC or the Service Provider are uncertain as to whether information is confidential, the PMSC or the Service Provider (as the case may be) shall consult with the other party.

(d) Should the PMSC or the Service Provider 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 Service Provider or the PMSC; 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.

43. **Force Majeure.** Neither party shall be liable for any loss, damage or delay due to any of the following *force majeure* events and/or conditions to the extent the party invoking *force majeure* is prevented or hindered from performing any or all of their obligations under this Charter Party, provided they have made all reasonable efforts to avoid, minimise or prevent the effect of such events and/or conditions:

- (a) acts of God;
- (b) acts of nature;
- (c) any Government requisition, control, intervention, requirement or interference;
- (d) flood, fog, earthquakes, landslides, excessive sea states, storms or other bad or extraordinary weather conditions;
- (e) power failure or failure of telecommunications;
- (f) failure or breakdown of plant, machinery, vehicles, craft or vessels;
- (g) failures or errors in an underlying computer system or operating system;
- (h) any circumstances arising out of war, threatened act of war or warlike operations, acts of terrorism, sabotage or piracy, or the consequences thereof;
- (j) riots, civil commotion, blockades or embargoes;
- (k) epidemics;
- (l) immigration delays;
- (m) unexpected traffic delays, or road traffic accidents;
- (n) cancelled flights, or PMSC personnel who miss flights;
- (o) strikes, lockouts or other industrial action, unless limited to the Employees of the party seeking to invoke *force majeure*;
- (p) fire, accident, explosion except where caused by negligence of the party seeking to invoke *force majeure*; and
- (q) any other similar cause or circumstance beyond the reasonable control of either party (a *force majeure* event).

The party seeking to invoke *force majeure* shall notify the other party in writing within 2 working days of the occurrence of any such event/condition.

44. **Anti-Bribery Compliance.**

- (a) Both Parties shall procure that all of their employees and contractors:
 - (i) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the UK *Bribery Act 2010*;
 - (ii) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the UK *Bribery Act 2010* if such activity, practice or conduct had been carried out in the UK;
 - (iii) comply with the Service Provider's anti-bribery policy;
 - (iv) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the UK *Bribery*



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Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policy and Clause 44(a)(ii), and will enforce them where appropriate;

(v) promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by it or any of their Representatives in connection with the performance of this agreement;

(vi) immediately notify the other party in writing if a public official becomes connected or involved with the it in any way and such party warrants that they nor any of their Representatives have no connection or involvement with foreign public officials at the date of this agreement; and

(vii) ensure that they are at all times aware of the full detail of the Relevant Requirements and the Relevant Policy.

(b) Breach of this Clause 44 by either party shall be deemed a material breach.

(c) For the purpose of this Clause 44, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with Section 7(2) of the UK *Bribery Act 2010* (and any guidance issued under Section 9 of that Act), Sections 6(5) and 6(6) of that Act and Section 8 of that Act respectively.

45. **Human Rights.** The parties agree to respect human rights, including by conforming with relevant legal and regulatory obligations and the UN Guiding Principles on Business and Human Rights. As far as practicable this entails:

(a) avoiding infringing on the human rights of others and address adverse human rights impacts with which they might get involved;

(b) avoiding causing or contributing to adverse human rights impacts through their own activities, and address such impacts via risk assessment and when they occur;

(c) seeking to prevent or mitigate adverse human rights impacts that the parties can link directly to their operations or services;

(d) treating the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever the parties operate.

(e) raising awareness of known *human rights* issues within the Parties' sphere of influence;

(f) incorporating appropriate principles of *human rights* into contracts with sub-contractors, approved suppliers and business partners, inclusive of measures to combat child labour and forced/compulsory labour;

(g) considering minimum age requirements as may be set by local, home or flag state law, and, where national law is insufficient, taking account of international standards, including a commitment not to employ child labour as identified in ILO Convention 182 (worst forms of child labour) and 138 (minimum age). In no circumstances will the Parties employ any person younger than 21 in duties that might require the use of firearms;

(h) not using, or being complicit in the use of, or benefit from forced labour and where adherence to forced labour provisions of national laws and regulations is insufficient, the Parties shall take account of international standards;

(j) making available employment/ consultancy contracts to all employees and contractors, including security guards, stating the terms and conditions of service, the voluntary nature of employment/service provision, the freedom to leave (including the appropriate procedures) and any penalties that may be associated with a departure or cessation of work; and

(k) and where the Parties identify that they have caused or contributed to adverse impacts, they shall cooperate in their remediation through legitimate processes.

46. **Notices.**

(a) All notices given by either party or their agents to the other party or their agents in accordance with the provisions of this Contract shall be in writing.

(b) For the purposes of this Contract, "in writing" shall mean any method of legible communication. A notice may be given by any effective means including, but not limited to, cable, telex, fax, e-mail, registered or recorded mail, or by personal service.

47. **Headings.** The headings of this Contract are for identification only and shall not be deemed to be part hereof or be taken into consideration in the interpretation or construction of this Contract.

48. **Third Party Rights.** Except to the extent provided in Clauses 19-20 (Liabilities and Indemnities) no third parties may enforce any term of this Contract.

49. **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.

50. **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.

51. **Entry Into Effect.** These contractual terms being the default terms of MNG Maritime Ltd they are deemed to have come into effect on the date in Box 2, if the PMSC subsequently avails itself of a service from MNG Maritime, whether chargeable, non-chargeable or a complimentary trial, following the date in Box 2, whether or not signed by the PMSC.

~~SECTION 11 – MALACCA ADDITIONAL CLAUSES~~

~~52. ——— **Payments.** Payment for Malacca operations should be made separately to the bank account detailed in Box 7(b).~~

~~53. ——— **References.** In Sections 1-10, Section 12 and Annexes A and B. of the FLARMCON references to "the VBA" or "the vessel" refer equally to the "Malacca land based armoury".~~



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~~54. — **Permits and Licences.** For the avoidance of doubt, the Service Provider shall obtain and maintain any and all Permits which may be required for the Service Provider's armoury and transfer craft to carry the PMSC's personnel and store/transfer the PMSC's firearms and equipment in the land based Malacca armoury and on the transfer craft, as well as those necessary to permit the import and export (transfer) of those firearms and other controlled goods in Malaysian territorial waters in the Straits of Malacca.~~

~~55. — **Legal Jurisdiction.**~~

~~(a) — **Service Provider's Responsibilities.** The Service Provider is responsible for all interaction with the Malaysian authorities relating to the delivery of the services to be provided. Any action taken by the Malaysian authorities against the PMSC or its personnel directly related to the movement of personnel and controlled goods to/from the Straits of Malacca to/from the Malacca Armoury and/or to/from the international airport for the provision of the service is the responsibility of the Service Provider. The Service Provider agrees to indemnify the PMSC from the consequences of any action by the Malaysian authorities due to the failure of the Service Provider to obtain/maintain any of the necessary permits, permissions or authorities to deliver the required services.~~

~~(b) — **PMSC's Responsibilities.** While on Malaysian soil PMSC personnel are subject to the laws and jurisdiction of Malaysia and must behave accordingly. Whether within or without the armoury complex, and whether under the direct supervision of the Service Provider's personnel or not, the PMSC is responsible at all times for the behaviour of its personnel. The PMSC agrees to indemnify the Service Provider from the consequences of any breach of Malaysian law by their personnel, or any incident involving their personnel with the Malaysian authorities that is not directly related to the provision of the service by the Service Provider.~~

~~56. — **Storage Period.** The PMSC should note that under current Malaysian regulations, the Authorities permit the storage of PMSC kit in the Malacca Armoury for a maximum period of 6 months. At the end of the 6 month period, the Malaysian Authorities will seize and dispose of the kit as they see fit. The Service Provider agrees to give two months' and one month warning of any of the PMSC's kit that is approaching its "seizure date".~~

~~57. — **Transfer Fees.** The PMSC should note that the transfer fees at Annex B relating to the Malacca Armoury (fees 1(d) and 2(d)) are applied for the transfer of a single set of kit. If a PMSC either embarks or disembarks additional kits for the transfer, \$750 per additional kit is applicable. (This is a specific additional fee mandated by the Service Provider's partners in Malaysia and outside the Service Provider's control. The Service Provider is engaged on this issue and is using its best efforts to have this additional fee removed. Once this has been achieved, this Clause will be deleted.)~~

SECTION 12 – GENERAL DATA PROTECTION REGULATION

58. The Service Provider will comply with the EU's General Data Protection Regulation (GDPR), which was incorporated into UK Law as the *Data Protection Act 2018* (DPA18), replacing the repealed *Data Protection Act 1998*. In order to carry out the services of this engagement and for related purposes such as updating and enhancing the Service Provider's client records, analysis for management purposes and statutory returns, legal and regulatory compliance and crime prevention the Service Provider may obtain, process, use and disclose personal data about the PMSC and the PMSC's personnel.

59. When processing personal data for booking, recording souls on board, auditing, and related services, the Service Provider acts as the data controller. The Service Provider agrees to comply with the obligations the GDPR places on the Service Provider as a data controller.

60. For services such as applying for visas and other application activities with third parties, including booking personnel on third party shuttles, another entity acts as the data controller and the Service Provider acts as the data processor. The Service Provider agrees to comply with the obligations the GDPR places on the Service Provider as a data processor.

61. By signing the FLARMCON the PMSC agrees that they will ensure that any disclosure of personal data to the Service Provider complies with the GDPR. If the PMSC supplies the Service Provider with personal data or confidential information they shall ensure that the individual is aware of and understands MNG Maritime's Data Protection Policy (DPP) and their rights.

62. In order to comply with the Service Provider's obligation to provide the PMSC with 'fair processing information', the Service Provider has produced a Data Protection Policy (DPP) which can be found on the company website. This policy document includes:-

- (a) The Service Provider's lawful bases for processing personal data;
- (b) A description of the Service Provider's processing activities;
- (c) The Service Provider's obligations as a data controller;
- (d) The Service Provider's obligations as a data processor;
- (e) The PMSC and PMSC's personnel's rights as the data subject;
- (f) The security measures and practical guidelines the Service Provider has in place to protect personal data;
- (g) The Service Provider's procedures for recording and reporting a data breach.

59. The Service Provider commits to answering any PMSC or individual's reasonable enquiries to enable them to monitor compliance with this clause.

60. The PMSC consents to the Service Provider contacting them and their personnel regarding:

- (a) Networking and similar events;
- (b) Newsletters and service updates;
- (c) Additional products/services the Service Provider can offer.

SECTION 13 – MEDICAL ASSISTANCE

61. The Service Provider's vessels operate in remote areas, some distance from land and in areas where the nearest coastal states' facilities are generally less well founded than in Europe. The Service Provider furnishes the vessels, at some expense, with a reasonable stock of medical supplies, including prescription drugs, to cover for eventualities on board, both to the Service Provider's personnel and to the PMSCs. Dispensing any of those stocks will incur a charge (see Annex B).



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62. The Service Provider will provide such medical assistance to any of the PMSCs' contracted personnel on board any of the Service Provider's vessels such as is available.

63. The costs of any medical assistance rendered by the Service Provider may be recoverable by the PMSC from the PMSC's insurance provider.

64. This assistance may comprise, but is not limited to:

- (a) supply of non-prescription medication and medical supplies as available, and at promulgated cost, in slops;
- (b) first aid provided by first response trained MNG personnel;
- (c) prescription drugs issued on the advice of a medical doctor only (including by reach back);
- (d) a telephone connection in order for the casualty to get reach back medical advice (cost of the necessary calls will be chargeable); and/or
- (e) any other reasonable assistance that might be provided under such circumstances, depending on availability.

65. It is assumed that if one of the PMSC's personnel requires medical treatment of any description, that it will be rendered and that the costs will be paid by the PMSC. If this is not the case, the PMSC must notify the Service Provider in advance of the respective person or persons embarking the Service Provider's vessel.

66. The PMSC agrees to indemnify and hold the Service Provider and its Directors, Employees, Agents and Instructors (as applicable) harmless from and against any claim, damages, proceedings, losses and damages of every kind and nature, including solicitors' fees, made by any party due to or arising out of any medical assistance rendered to the PMSC's personnel. All medical assistance rendered under this section is rendered in good faith and with the best intentions.

67. Should any of the PMSC's personnel require medical evacuation (MEDEVAC) from one of the platforms, as much assistance will be rendered as possible, as follows:

- (a) **Gulf of Oman (GOO).**
 - (i) **Routine.** Casualty will travel on the next available shuttle to Sohar at standard shuttle rates.
 - (ii) **Emergency.** In an emergency a single bespoke, out of schedule, shuttle movement, including facilitation of necessary administration on arrival in port,

will be effected, with the PMSC's prior approval, at the promulgated fee.

(iii) **Alternate.** Should the Service Provider's shuttle not be available for the task, for whatever reason, the Service Provider will seek alternate provision, for which a third party provider would charge, and which would be pre-agreed with the PMSC.

(b) **Red Sea.**

(i) **Routine.** The casualty will travel on the next available routine shuttle to port, noting that these shuttles can run as infrequently as fortnightly.

(ii) **Emergency.** In an emergency, the Service Provider will activate the speediest mechanism for effecting the MEDEVAC in communication with the PMSC and the PMSC's insurers. This may be any of:

(1) A shuttle provided by the Service Provider.

(2) Any other locally available vessel.

(3) A client vessel passing or calling at the platform.

(4) Helicopter MEDEVAC (winch) if arranged by the insurers.

(5) *In extremis* passage of the armoury platform to the limit of the territorial waters of the nearest coastal state with suitable facilities, followed by a RIB transfer for the final 12nm to the port.

68. **Fatalities.** All MNG vessels hold a stock of body bags for fatality handling. Should a fatality occur, makeshift mortuary facilities will be made available for a short period of time, while the PMSC makes arrangements with the relevant Ministry in the fatality's country of nationality for repatriation. As this is a complex process, and nearby coastal states may be unwilling to repatriate a fatality through their country, it is anticipated that this might take some time. Should the process become unnecessarily protracted, i.e. longer than a week, the Service Provider reserves the right to conduct a burial at sea. Such a decision would be taken in consultation with the PMSC, the respective consular staff and the family of the fatality.

