

**CIRCULAR REF: 2012/016**

**CIRCULATED TO ALL MEMBERS, BROKERS AND DIRECTORS  
ATTENTION INSURANCE DEPARTMENT**

**29 MARCH 2012  
MJS/JAG**

## **BIMCO GUARDCON CONTRACT FOR THE EMPLOYMENT OF SECURITY GUARDS ON VESSELS**

Members are referred to BIMCO's GUARDCON contract for the employment of security guards on vessels (GUARDCON), published on 28 March 2012.

The decision as to whether to employ guards (whether armed or unarmed) is an operational one for Members. In making that decision Members must always comply with Flag State law as well as any applicable local laws. Members are also reminded of their obligation to follow the due diligence principles set out in IMO MSC Circular 1405 [1] and recommended to comply with Best Management Practices (currently Version 4, August 2011). Members of North of England may also continue to benefit from the North/Gray Page Armed Maritime Security Vetting Programme when evaluating the suitability of potential Armed Guards.

BIMCO and the International Group recognise that the growth in the number of Private Maritime Security Contractors (PMSC's), each with differing contractual terms, has resulted in uncertainty. Accordingly, to benefit the wider shipping community, BIMCO has developed GUARDCON, drafted by a working group comprising of shipowners, property underwriters, IG P&I Club representatives, maritime lawyers, representatives of security companies and other shipowner and marine insurance associations. GUARDCON is intended to harmonise terms of engagement of PMSC's (described in GUARDCON as Contractors) as well as simplifying the processes for vetting and approval of contracts by Members and their P&I Clubs.

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**1 MSC.1/Circ. 1405-Rev.1 Revised Interim Guidance to Shipowners, Ship Operators, and Shipmasters**

## **CIRCULAR**

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Members are reminded that GUARDCON does not represent a recommendation by BIMCO or the International Group of P&I Clubs for, or endorsement of, the use of security guards on board vessels. Nor are security guards a substitute for strict compliance with Best Management Practices. Placing security guards on board a vessel should also only be considered after a risk assessment has been carried out and the Master should be involved in the decision-making process. However, the provisions of GUARDCON have been reviewed by the International Group's Maritime Security Sub Committee and conform with Club cover and Pooling requirements.

GUARDCON addresses a number of key issues, including:

- standards to which the Contractor (PMSC) must conform to in terms of:
  - o providing adequate insurance to cover their liabilities and contractual indemnities (which Members should verify); and
  - o having in place the necessary permits and licences to allow them to lawfully transport and carry weapons
- liability and indemnity provisions based on knock for knock principles; and
- the Master's responsibility for the safe navigation and overall command of the vessel.

For those Members who choose to contract on an unamended GUARDCON it will no longer be necessary to provide the Association with a copy of the contract for review. However, if Members decide to use an amended version of GUARDCON, or a different contract, they are recommended to consult with their Club well in advance of any contemplated embarkation of PMSCs to ensure that the proposed amendments or different contract comply with Club cover and Pooling requirements.

GUARDCON is accompanied by a separate guidance document "Guidance on the Rules for the Use of Force". That guidance is aimed at assisting Members in respect of agreeing on the rules for the use of force that must form part of any contract for the employment of PMSCs. Members should however note that the rules for the use of force must comply with the provisions of MSC.1/Circ.1405 and with Flag State and applicable national laws.

Should Members have any questions regarding GUARDCON they should contact the Club.

All Clubs in the International Group of P&I Clubs have issued similar circulars.

MIKE SALTHOUSE  
DIRECTOR - North Insurance Management Limited  
As Managers on behalf of the North of England P&I Association Limited



# BIMCO

## **Guidance on Rules for the Use of Force (RUF) by Privately Contracted Armed Security Personnel (PCASP) in Defence of a Merchant Vessel (MV)**

### **References:**

- A. GUARDCON**
- B. IMO MSC Circular 1405 Rev1.**

### **1. Introduction**

This Paper provides guidance to ship owners (and their Masters) and Private Maritime Security Companies (PMSC) in areas and in those exceptional circumstances where the use of armed guards are permitted by the Flag State.

This guidance is written to assist ship owners and PMSC meet the requirements listed in the References and agree RUF in support of the above References. It sets out guidelines for a graduated response by armed security guards to any actual, perceived or threatened act of piracy and/or violent robbery and/or capture/seizure by third parties in order to protect the crew and defend a vessel from being hijacked.

In providing this Guidance it is assumed that no armed guards shall be deployed without a detailed risk assessment by the Ship owners and that the deployment of armed guards shall not be an alternative to the implementation of the current Best Management Practices (BMP) and other protective measures.

### **2. Aim of the Guidance**

**The aim of this Guidance is to assist Ship owners and PMSC to review RUF, pertaining to the type, carriage and use of firearms and equipment, in order to provide an accurate and graduated level of response for employment by PCASP that is reasonable and proportionate.**

### **3. Scope**

The general requirements of any RUF should be that they are:

**(a)** In accordance with Flag state law;

**(b)** In accordance with regulations of any port and any Port and Coastal state laws which govern the storage and use by PCASP of their weapons and Security Equipment;

- (c) Consistent with the aim of protecting and defending the crew and vessel;
- (d) Consistent with the use of force only being used when essential and then using the minimum level necessary;
- (e) Part of a detailed and graduated response plan which is reasonable and proportionate;
- (f) Clear in setting out the roles of the Master and the Team Leader of the PCASP;
- (g) Documented, agreed and signed by the Owners and the Contractors as an Annex to any contract/agreement for the provision of security services on board a ship; and
- (h) Recommended to be submitted by the Owners to the Flag State prior to embarkation of the PCASP.

#### **4. PMSC and PCASP Obligations**

The RUF should reflect the obligations imposed and agreed under any contract/agreement and should ensure that the PMSC Team Leader (TL) and the PCASP confirm that they understand these obligations. The RUF should contain guidance that PCASP:

- (a) Are trained and qualified to relevant documented PMSC standards in the appropriate use of force in accordance with Flag state law;
- (b) If they use force it is in a manner consistent with applicable law;
- (c) If they use force it does not exceed what is strictly necessary;
- (d) Use of force is proportionate and appropriate to the situation;
- (e) Have clear and unambiguous instructions and training on when and how force may be used; and
- (f) Take all reasonable steps to avoid the use of lethal force.

#### **5. Self-Defence and the inherent right to exercise it**

The RUF should reflect that each of the Security Personnel shall always have the sole responsibility for any decision taken by him for the use of lethal force, including targeting and weapon discharge, always in accordance with the Rules for the Use of Force and applicable national law. Under most national laws individuals have a right to use reasonable force to prevent a serious crime and the right to use force in their own personal self-defence, and the RUF should reflect these rights as appropriate.

## 6. Chain of Command

The RUF should reflect the regime set out in Clause 8 (Master's Authority and Division of Responsibilities) of GUARDCON and Reference B, namely that the Master has overall control of the vessel and that any decisions made by the Master shall be binding.

It is envisaged that once the Team Leader has decided that there is an actual, perceived or threatened attack he will advise the Master or the Officer of the Watch that he intends to invoke the RUF. It is recognised that consultation with the Master may not always be possible, but there is always a responsible officer on the bridge of the vessel with whom the TL should be able to communicate.

The RUF should reflect that once the RUF has been invoked the TL is responsible for all decisions on the use of force, save that the Master maintains the right to order a ceasefire.

## 7. Graduated and Proportional Defence

The RUF should reflect the following guidance on graduated and proportional use of force:

### (a) Principles

- (i) To enable the graduated approach and command and control of the situation defined above the force used must be necessary and proportional;
- (ii) Respect for human dignity and the human rights of all persons should prevail; and
- (iii) Attempts at non-violent means should be applied first.

### (b) Non-violent measures

Examples of non-violent means for consideration are:

- (i) Presence – being visible on the upper deck and bridge wings to potential attackers;
- (ii) Visual – the use of flares or lasers initially aimed over a potential attackers head and then at them;
- (iii) Sound – the use of long range acoustic signalling devices (LRAD) giving warnings or any other means such as loud hailer or even written banners; and
- (iv) Show Intent – the use of passive measures such as hoses, releasing objects to hinder approaches of skiffs (nets, logs etc), showing PCASP weapons and raising them to indicate intent to use.

**(c) Weapon states**

Firearms are to be stowed in a firearms' container when not required. The keys to the container should be under the control of the TL as guided by the Master.

**(d)** The RUF should consider "states of readiness" for the PCASP. It is suggested that there should be three states for consideration:

- (i)** Normal: Firearms are stowed in the container/locker with PCASP maintaining normal watchkeeping;
- (ii)** Heightened: Firearms out of the container/locker with PCASP on watches with crew and weapons loaded but made safe; and
- (iii)** Stand To: PCASP prepares stand to positions with weapons made ready with safety catches applied and under orders of the TL.

**(e)** The following actions should then be considered:

- (i)** The TL assesses the precise level of risk and decides on action to be taken;
- (ii)** The TL issues fire control orders to the PCASP team clearly identifying the intended target/s and type of fire;
- (iii)** PCASP open fire as directed by the TL.

**(f) Types of Fire**

- (i)** The decision to open fire having been taken by the TL, the type of fire should be defined in the RUF taking into account the distance and behaviour of the suspect craft.
- (ii)** First, warning shots should be:
  - (1)** fired into the air a safe distance above the skiff/over the pirates' heads or, to the side of the skiff, to display clearly the armed capability of the PCASP;
  - (2)** fired into the water ahead of the skiff for the same purpose;
  - (3)** utilised to assess the accurate range, speed and angle of approach of the target skiff.
- (iii)** Second, disabling fire should be used against the skiff engine or hull in order to stop the attack but without intentionally using lethal force.
- (iv)** Third, deliberate direct fire should be used against the attackers when all other methods have failed.

**(g) Use of Lethal Force and Opening Fire at a Person**

- (i) Lethal force should be used only as a last resort and in accordance with the principles referred to in Paragraph 5 above. The circumstances where lethal force in self-defence can be used will vary. Such circumstances may include an armed attack of an MV where the attackers are, for example:

- (1) Firing directly at the MV or persons on board in circumstances where the attackers have failed to heed warning shots or other deterrent measures (assuming there was sufficient time for such measures).

- (2) Preparing to fire or firing at the vessel whilst clearly demonstrating an intention to close with vessel in an attempt to board, by positioning very close or alongside and preparing climbing ladders for that purpose.


- (3) Aiming, launching, rocket propelled grenade or equivalent.

- (h) If a PCASP opens fire the RUF should explain that only:

- (i) Aimed shots should be fired to stop the attack;
  - (ii) No more rounds than are necessary should be fired in order to stop the attack; and
  - (iii) All precautions should be taken not to injure anyone other than the targeted person.

**8. Post Incident Action**

The RUF should provide that any attack should be reported immediately to UKMTO (the UK Maritime Trade Operations office in Dubai) and other authorities, as appropriate; furthermore that the use of firearms needs to be reported to the Flag State. The RUF should also consider the necessary reporting responsibilities which may involve their personnel having to give statements.

 <h1 style="display: inline;">BIMCO</h1>		<h1 style="text-align: right;">GUARDCON</h1> <p style="text-align: right;"><b>CONTRACT FOR THE EMPLOYMENT OF SECURITY GUARDS ON VESSELS PART I</b></p>	
1. Place and date of Contract		2. Date of commencement of Contract ( <a href="#">Cl. 2</a> and <a href="#">30</a> )	
3. Owners ( <a href="#">Cl. 1</a> and <a href="#">14</a> ) (i) Name: (ii) Place of registered office:		4. Contractors ( <a href="#">Cl. 1</a> ) (i) Name: (ii) Place of registered office:	
5. Vessel (name and details) (or as per Instruction Notice) ( <a href="#">Cl. 1</a> ) (i) Name: (ii) IMO Number: (iii) P&I Club:		6. Single or Multiple Transits (tick one option only) ( <a href="#">Cl. 2</a> and <a href="#">4</a> ) (i) Single Transit <input type="checkbox"/> (ii) Multiple Transits <input type="checkbox"/>	
7. Security Services (state which services apply) ( <a href="#">Cl. 1</a> and <a href="#">3</a> ) Firearms (tick one option only): Yes <input type="checkbox"/> No <input type="checkbox"/>		8. Geographical scope of operation ( <a href="#">Cl. 4</a> )	
9. Time and date of embarkation (or as per Instruction Notice) ( <a href="#">Cl. 1</a> and <a href="#">3</a> )		10. Place of embarkation/disembarkation (or as per Instruction Notice) ( <a href="#">Cl. 1</a> and <a href="#">3</a> )	
11. Contractors' Permits (listing of national operating and trade control licences) ( <a href="#">Cl. 10</a> )		12. Contractors' insurance policy limits ( <a href="#">Cl. 12</a> and <a href="#">15</a> )	
13. Daily Rate/Lump Sum ( <a href="#">Cl. 13</a> and <a href="#">18</a> ) (state currency and amount)		14. Mobilisation Fee ( <a href="#">Cl. 1</a> and <a href="#">13</a> ) (state currency and amount)	
15. Contractors' Bank Details ( <a href="#">Cl. 13</a> )		16. Standby Rate ( <a href="#">Cl. 13</a> ) (state currency and amount)	
		17. Cancellation Rates ( <a href="#">Cl. 19</a> ) (state currency and amount)	
18. Additional clauses, if any, covering special provisions		19. Dispute Resolution (state alternative <a href="#">Cl. 24(a)</a> , <a href="#">(b)</a> or <a href="#">(c)</a> ; if (c) agreed, place of arbitration <u>must</u> be stated) ( <a href="#">Cl. 24</a> )	
20. Communication (state full style contact details for communicating with the Owners) ( <a href="#">Cl. 26</a> )		21. Communication (state full style contact details for communicating with the Contractors) ( <a href="#">Cl. 6</a> and <a href="#">26</a> )	

It is mutually agreed between the party stated in [Box 3](#) and the party stated in [Box 4](#) that this Contract consisting of PART I and any additional clauses, if agreed and stated in [Box 18](#), and PART II as well as Annexes "A" (Security Equipment), "B" (Rules for the Use of Force), "C" (Instruction Notice), "D" (Individual Waiver), "E" (Schedule of Charges) and "F" (Standard Operating Procedures) attached hereto, shall be performed subject to the conditions contained herein. In the event of a conflict of conditions, the provisions of PART I and Annexes "A", "B", "C", "D", "E" and "F" shall prevail over those of PART II to the extent of such conflict but no further.

Signature(s) (Owners)	Signature(s) (Contractors)
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*Note: List firearms and ammunition and, as applicable, non-lethal weapons and other security-related equipment to be provided by the Contractors.*

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*Note: Attach Rules for the Use of Force as agreed between Owners and Contractors.*

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**ANNEX C (INSTRUCTION NOTICE)**  
**BIMCO STANDARD CONTRACT FOR THE EMPLOYMENT OF SECURITY GUARDS ON VESSELS**  
**CODE NAME: GUARDCON**

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To:  
Tel:  
Fax:  
Email:

For the attention of:

From:

GUARDCON Agreement dated            made between            Owners            and            Contractors (the "Contract")

**INSTRUCTION NOTICE**

This is an Instruction Notice as described in the Contract referred to above. Defined terms set out in the Contract shall have the same meaning when set out in this Instruction Notice.

Under the terms of the Contract referred to above, we hereby give you notice that we require the Contractors to provide us with the Security Services:

**On-Board Security**

Vessel:

IMO number:

REVIEW WILL BE MADE DURING IMPLEMENTATION

Date of Departure:

Embarkation Time:

Embarkation Point:

Disembarkation Point:

Number of Security Personnel:

Armed/Unarmed Guards:

Estimated Number of Days Transit:

We would be grateful if you could contact [OWNERS CONTACT; EMAIL] in order to verify our requirements and confirm the provision of the Security Services as required, including the names and passport numbers of each member of the Security Personnel, Firearms particulars (with serial numbers) and details of other Security Equipment to be embarked.

Yours

Signature of Owners

Date:

**ANNEX D (INDIVIDUAL WAIVER)**  
**BIMCO STANDARD CONTRACT FOR THE EMPLOYMENT OF SECURITY GUARDS ON VESSELS**  
**CODE NAME: GUARDCON**

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**INDIVIDUAL WAIVER TO BE SIGNED BY SECURITY PERSONNEL PRIOR TO BOARDING VESSEL:**

To: the Master of M.V.

In consideration of (i) the sum of USD10 (the receipt and adequacy of which I hereby acknowledge) and (ii) your allowing me to form part of the Security Personnel on board the M/V \_\_\_\_\_ flying the flag of \_\_\_\_\_ (the "Vessel") and to make the Transit from \_\_\_\_\_ to \_\_\_\_\_ pursuant to the contract for the provision of security services using designated security equipment (the "Security Services") made on the BIMCO GUARDCON form dated \_\_\_\_\_ between the owners and/or operators and/or managers of the Vessel as Owners and my employers \_\_\_\_\_ as Contractors, I undertake to the Owners as follows:

1. This undertaking, and any non-contractual obligation arising out of this undertaking (including, without limitation, questions of the Owner's liability), is governed by English law. Any dispute arising out of this undertaking is to be decided by the English High Court to the exclusion of the courts or tribunals of any other jurisdiction.
2. I acknowledge and agree that, at all times throughout the duration of the Voyage and the performance of the Security Services, the Master shall have and retain ultimate responsibility for the safe navigation and overall command of the Vessel and that any decisions made by the Master shall be binding on me. I undertake to act upon the instructions of the Master at all times during the Transit. For the avoidance of doubt, nothing in this Clause shall compromise my right of self-defence in accordance with applicable national law.
3. I confirm that I have read and understood the Rules for the Use of Force which have been agreed between the Owners and the Contractors to apply during the Transit. I undertake to perform the Security Services always in accordance with such Rules for the Use of Force and all relevant national laws.
4. I expressly undertake and agree on behalf of myself, my heirs, executors and assignees forever that the Vessel, its Master, officers and crew, its insurers, the Owners and their subsidiaries and/or affiliate companies, the registered owner of the Vessel (if not the Owners), and each of their respective directors, employees and agents and any persons permitted by the Master to travel on board the Vessel other than myself and my team (together, the "Owners' Group") shall be under no liability whatsoever to me (or to my heirs, executors and assignees) in respect of loss of life, illness, injury or loss of or damage to personal effects, luggage or other property, by reason of having allowed me on board the Vessel, even if the loss of life, illness, injury or loss of or damage to personal effects, luggage or other property is caused by the negligence of the Owners' Group. Accordingly, I expressly agree to assume any and all risks concerning my loss of life, illness, injury and loss of or damage to my personal effects or luggage or other property whilst on board the Vessel and during embarkation and disembarkation.
5. The Contractors have insured against the risks, losses and liabilities dealt with in this letter and that to the extent that I or my heirs, executors and assignees may have a claim arising from my deployment, that claim will be notified and made to the Contractors and not to you or any other member of the Owners' Group. I or my heirs, executors and assignees undertake to pay any and all expenses for medical treatment, maintenance, transportation, repatriation, burial and/or other expenses incurred by reason of my loss of life, illness or injury, whether or not caused by negligence of the Owners' Group. To the extent that any of Owners' Group are nevertheless held liable by any third party to pay any or all such expenses, I or my heirs, executors and assignees expressly undertake to hold harmless, defend, indemnify and waive all rights of recourse against the Owners' Group for all such expenses.
6. I confirm that I and/or the Contractors have arranged appropriate insurance to cover my own personal injury or death compensation and associated medical costs, transportation, repatriation, burial and/or other costs and expenses incurred by reason of my loss of life, illness or injury.
7. I warrant my compliance with all quarantine, passport, weapons licensing and other regulations for all ports of call during the Transit and I undertake to hold harmless, defend, indemnify and waive all rights of recourse against the Owners for all additional expenses which they may incur by reason of my non-compliance with this Clause 7, whether negligent or not, including but not limited to additional harbour, tonnage and light dues, fines and expenses arising out of delay or detention of the Vessel.
8. If any provision of this undertaking relating to claims for death or personal injury is found to be void or unenforceable, it is my intention and agreement that all other provisions of this undertaking shall remain in full force and effect unless the provisions which are invalid or unenforceable shall substantially affect the rights or obligations granted to, or undertaken by, me or any member of the Owners' Group relating to my death or personal injury. In such case I confirm my instruction and agreement to replace the invalid or unenforceable term with the following term:

"The provisions of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea done in Athens on 13 December 1974 (the "Athens Convention") excluding any Protocols thereto are hereby incorporated into the terms and conditions of this Waiver (but not any Protocols thereto) as if this Waiver were a Contract of Carriage to which the Athens Convention were applicable. For this purpose the person signing hereunder shall be deemed to be a "passenger" and the contemplated voyage and/or visit shall be deemed to be "international carriage" as defined in the Athens Convention. In the event of any inconsistency between the terms and conditions of this

Waiver and the terms of the Athens Convention, the terms of the Athens Convention shall prevail but without prejudice to the terms and conditions of this Waiver to the extent that they are not so inconsistent."

The undersigned further represents and warrants to have read and understood in full the above and has willingly and under no duress agreed to its terms.

Name:

Address:

Domicile:

Phone:

Passport No:

Signature:

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**ANNEX E (SCHEDULE OF CHARGES)**

**BIMCO STANDARD CONTRACT FOR THE EMPLOYMENT OF SECURITY GUARDS ON VESSELS  
CODE NAME: GUARDCON**

SCHEDULE OF PORT EMBARKATION AND DISEMBARKATION CHARGES	
PORT	CHARGE
18N, Red Sea:	
Fujairah:	
Muscat:	
Indian ports:	
Galle:	
Toliara:	
Durban:	
Other:	
Firearms Drop Off/ Pick Up Only (applicable at any port):	

**ANNEX F (STANDARD OPERATING PROCEDURES)**  
**BIMCO STANDARD CONTRACT FOR THE EMPLOYMENT OF SECURITY GUARDS ON VESSELS**  
**CODE NAME: GUARDCON**

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*Note: If the Contractors have Standard Operating Procedures that apply to the provision of Security Services under this Contract, they should be attached to this Annex F.*

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**PART II**  
**GUARDCON – CONTRACT FOR THE EMPLOYMENT OF SECURITY GUARDS ON VESSELS**

**Interpretation**  
In this Contract:

*Singular/Plural*

The singular includes the plural and vice versa as the context admits or requires.

*Headings*

The headings to the clauses and annexes to this Contract are for convenience only and shall not affect its construction or interpretation.

**SECTION 1 – Basis of the Contract**

**1. Definitions**

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

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

“Contractors” means the party identified in [Box 4](#).

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

“Disembarkation Point” means the place or places of disembarkation of Security Personnel stated in the Instruction Notice or [Box 10](#).

“Embarkation Point” means the place or places of embarkation of Security Personnel stated in the Instruction Notice or [Box 10](#).

“Embarkation Time” means the time and date stated in the Instruction Notice or [Box 9](#).

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

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

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

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

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

“Owners” means the owners or disponent owners identified in [Box 3](#).

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

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

“Security Equipment” means the equipment listed in [Annex A](#) (Security Equipment), including the Firearms, if any.

“Security Personnel” means the personnel directly engaged or employed by the Contractors for the performance of the Security Services on board the Vessel.

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

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

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



**PART II**  
**GUARDCON – CONTRACT FOR THE EMPLOYMENT OF SECURITY GUARDS ON VESSELS**

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

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

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

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

**2. Commencement, Appointment and Duration**

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

(b) If for a Single Transit as stated in [Box 6\(i\)](#), this Contract shall terminate upon disembarkation of the Security Personnel and the Security Equipment, unless earlier terminated in accordance with [Clause 19](#) (Cancellation and Termination). If for Multiple Transits as stated in [Box 6\(ii\)](#), this Contract shall have an initial term of twelve (12) months from the date stated in [Box 2](#) and thereafter shall continue in force until terminated by either party giving not less than thirty (30) days’ notice to the other party (whereupon this Contract shall terminate, unless a Transit is then underway in which case this Contract shall terminate upon disembarkation of the Security Personnel and the Security Equipment), unless earlier terminated in accordance with [Clause 19](#) (Cancellation and Termination).

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

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**SECTION 2 – Security Services**

**3. Security Services**

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

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

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

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

**4. Engagement of Security Services**

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

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

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

**SECTION 3 – Obligations and Responsibilities**

**6. Contractors' Obligations and Responsibilities**

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

- (i) providing general guidance to the Crew and also carrying out such drills, training and preparations for the Transit as the Contractors may recommend to the Master and the Master may agree;
- (ii) advising and/or assisting with the hardening of the Vessel in accordance with Owners' instructions and, where applicable, in accordance with the guidance of BMP;
- (iii) monitoring suspicious vessels or craft during the Transit;
- (iv) advising the Master on security-related routeing issues;
- (v) assisting the Master in liaising with UKMTO and MSCHOA and other authorities as appropriate and in accordance with the procedures set out in the BMP;
- (vi) providing post-Transit reports to the Owners;
- (vii) ensuring that at no time the Crew are permitted to handle the Firearms;
- (viii) providing and maintaining the resources to perform the Security Services in accordance with the terms of this Contract;
- (ix) establishing and maintaining an operational point of contact available twenty-four (24) hours a day prior to and during the deployment of the Security Personnel to deal with operational issues and queries arising out of the performance of the Security Services, whose contact details are as stated in [Box 21](#); and
- (x) arranging transportation from the Vessel, at their cost, of sick or injured Security Personnel.

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

(i) each of the Security Personnel has:

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

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

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

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

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

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

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

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

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- 115 (9) a level of mental and physical fitness appropriate to the provision of the Security Services in the  
116 circumstances contemplated by this Contract;
- 117 (ii) the Team Leader has prior experience of performing services equivalent to the Security Services on board a  
118 merchant vessel; and at least one member of the Security Personnel has been trained in first aid trauma  
119 treatment.
- 120 (c) The Contractors shall:
- 121 (i) provide and maintain insurance in accordance with [Clause 12](#) (Insurance Policies);
- 122 (ii) be responsible for the management of the Security Personnel, for the payment of salaries and all other  
123 benefits and emoluments and/or all other payments whatsoever and for the provision of accident and  
124 medical expense insurance (in accordance with [Clause 12](#) (Insurance Policies)) for the Security Personnel  
125 during the term of this Contract; and
- 126 (iii) provide the Security Equipment, compliant with all applicable rules and regulations, and maintained for the  
127 satisfactory provision of the Security Services on board the Vessel. The Security Equipment shall be  
128 securely transported to and from the Vessel at the Contractors' risk.
- 129 (d) Contractors' Right to Sub-Contract
- 130 (i) The Contractors shall not sub-contract any of their obligations hereunder without the prior written consent of  
131 the Owners. In the event of such permitted sub-contracting the Contractors shall remain fully liable for the  
132 due performance of their obligations under this Contract.
- 133 (ii) Where the Contractors sub-contract personnel (or a company substantially all of whose shares are owned  
134 by an individual) who are not in the direct employment of the Contractors, the Contractors shall ensure that  
135 such sub-contracted personnel agree to be bound by all the terms and conditions of this Contract.
- 136 **7. Owners' Obligations and Responsibilities**
- 137 The Owners' responsibilities shall consist of the following (and other responsibilities as may be agreed):
- 138 (a) paying all sums due to the Contractors punctually in accordance with the terms of this Contract;
- 139 (b) paying all usual voyage and Vessel expenses;
- 140 (c) supplying and paying for all materials required to harden the Vessel;
- 141 (d) ensuring that the Contractors are provided with such access to the Vessel and other premises as may be  
142 necessary for the provision of the Security Services and providing such information and materials as the  
143 Contractors may reasonably require to provide the Security Services (which the Owners shall use reasonable  
144 endeavours to ensure is accurate in all material respects);
- 145 (e) being responsible for informing all interested parties, including but not limited to Flag State, hull and machinery  
146 underwriters, P&I underwriters, war risk underwriters and charterers, that the Vessel will be protected by a security  
147 team, and of any other relevant details, including whether the Security Personnel will be armed or unarmed;
- 148 (f) liaising with UKMTO and MSCHOA as appropriate and in accordance with the procedures set out in BMP;
- 149 (g) providing victualing and accommodation reasonably required for the Security Personnel at the Owners'  
150 expense during the provision of the Security Services equivalent to that provided to the Vessel's officers;
- 151 (h) providing a secure location for the storage and safe-keeping of any Firearms on board;
- 152 (i) deviating the Vessel at their cost to the nearest port or place for the purposes of the disembarkation of sick or  
153 injured Security Personnel; and
- 154 (j) ensuring that the Security Personnel are entered onto the Vessel's crew list as supernumeraries upon  
155 embarkation and are given ship-board familiarisation training.

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

**8. Master’s Authority and Division of Responsibilities**

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

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

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

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

**9. Hijacking**

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

(a) The Contractors shall be entitled to be briefed by the Owners’ Incident Management Team or other relevant person(s) in charge of the management of the hijacking incident. The Contractors shall be entitled to receive regular weekly reports as to the progress of the negotiations.

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

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

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

**10. Permits and Licences**

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

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

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

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

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

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

(d) For the avoidance of doubt:

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

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

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

**11. Investigations and Claims**

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

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

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

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

**12. Insurance Policies**

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

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

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

The Contractors shall ensure that the use of Firearms or Security Equipment whilst on board shall not invalidate the above insurances.

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

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

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

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

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

**13. Fees and Expenses**

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

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

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

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

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



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

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

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

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

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

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

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

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

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

**14. Taxes**

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

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

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

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



**SECTION 7 – Legal and Liabilities**

**15. Liabilities and Indemnities**

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

- (i) "Owners' Group" means the Owners, the registered owner of the Vessel (if not the Owners), and each of their subsidiaries and/or affiliate companies, employees, directors, officers, agents and insurers, the Crew, and any persons permitted by the Master to travel on board the Vessel (save for the Security Personnel).
- (ii) "Contractors' Group" means the Contractors and their subsidiaries and/or affiliate companies, employees, sub-contracted personnel (including, without limitation, the Security Personnel), directors, officers, agents and insurers.

**(b) Knock for Knock**

**(i) Owners**

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

**(ii) Contractors**

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

**(c) Third party liability**

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

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

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

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

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**(d) Limitation of liability**

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

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

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

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

**16. Security Personnel Liability**

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

**17. Security Personnel – Waiver**

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

**18. Delay**

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

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

**19. Cancellation and Termination**

**(a) Pre-Transit cancellation**

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

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

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

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

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

**(b) Termination**

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- (i) The Owners may terminate this Contract forthwith at any time by written notice if the Flag State either withdraws or does not in the first instance agree in writing to permit and give the Flag State authorisation or licence necessary for the Security Services provided under this Contract.
- (ii) The Contractors may terminate this Contract forthwith at any time by written notice if any undisputed sums remain unpaid under the terms of this Contract for seven (7) days after receipt by the Owners of the Contractors' written notice of default in payment.
- (iii) Either party may terminate this Contract forthwith by giving notice in writing to the other if the other party:
- (1) is in material breach of its obligations under this Contract and, save as provided for breach of payments provided in [Sub-clause \(b\)\(ii\)](#) above, fails to remedy that breach (if remediable) within twenty-four (24) hours of receiving notice of such breach from the innocent party; or
  - (2) becomes bankrupt or insolvent, or has a receiving order made against it, or compound with its creditors, or being a corporation commences to be wound up (not being a members' voluntary winding up for the purpose of amalgamation or reconstruction) or carries on its business under a receiver for the benefit of its creditors or any of them. Under any of these circumstances the other party shall be at liberty to terminate this Contract forthwith by notice in writing to the party or to the receiver or liquidator or to any person in whom this Contract may become vested.
- (iv) Upon termination of this Contract:
- (1) the Owners shall pay any and all sums then due and payable by the Owners under the terms of this Contract; and
  - (2) the Contractors shall discontinue performance of the Security Services and disembark the Security Personnel and the Security Equipment from the Vessel as soon as reasonably practicable and safe to do so and will otherwise comply with the Owners' reasonable instructions regarding such termination.
- (c) [Clause 15](#) (Liabilities and Indemnities), [Clause 16](#) (Security Personnel Liability), [Clause 24](#) (Dispute Resolution) and [Clause 27](#) (Confidentiality) shall survive the termination of this Contract.
- (d) The right to terminate in this Clause is without prejudice to any other rights or remedies the party terminating the Contract may have in this Contract or by law.
- 20. Compliance with Laws and Regulations**  
Each of the Parties shall not do or permit to be done anything which might cause any breach or infringement of national laws and international conventions including, without limitation, regulations of the Flag State and the places where the Vessel trades.
- 21. Health, Safety and Environmental Regulations**  
Whilst on board the Vessel, the Contractors and the Security Personnel shall comply with such of the Owners' health and safety requirements as the Owners may have notified to the Security Personnel.
- 22. Drug and Alcohol Policy**  
The Security Personnel shall not bring or consume alcohol or drugs on board the Vessel.
- 23. No Salvage**  
The Contractors and the Security Personnel hereby waive their rights to claim any award for salvage performed on the Vessel or life salvage.
- 24. Dispute Resolution**  
(a) This Contract and any non-contractual obligations arising out of it shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Contract shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.
- The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.
- The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within fourteen (14) calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the fourteen (14) days specified, the party referring a dispute to arbitration may, without the requirement of any

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further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by Contract.

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

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

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

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

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

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

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

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

(iii) The other party shall thereupon within fourteen (14) calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further fourteen (14) calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.

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

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

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

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

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

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

**PART II**  
**GUARDCON – CONTRACT FOR THE EMPLOYMENT OF SECURITY GUARDS ON VESSELS**

506 (e) If [Box 19](#) in Part I is not appropriately filled in, [Sub-clause \(a\)](#) of this Clause shall apply.

507 *Note: [Sub-clauses \(a\)](#), [\(b\)](#) and [\(c\)](#) are alternatives; indicate alternative agreed in [Box 19](#). [Sub-clause \(d\)](#) shall apply*  
508 *in all cases.*

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**PART II**  
**GUARDCON – CONTRACT FOR THE EMPLOYMENT OF SECURITY GUARDS ON VESSELS**

**SECTION 8 – General**

**25. Assignment**

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

**26. Notices**

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

**27. Confidentiality**

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

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

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

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

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

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

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

**28. Third Party Rights**

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

**29. Partial Validity**

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

**30. Entire Contract**

This Contract constitutes the entire Contract between the parties and no promise, undertaking, representation, warranty or statement by either party prior to the date stated in [Box 2](#) shall affect this Contract. Any modification of this Contract shall not be of any effect unless in writing signed by or on behalf of the parties.



# **GUARDCON**

## **Standard Contract for the Employment of Security Guards on Vessels**

BIMCO has developed GUARDCON to assist the industry, and in particular shipowners and their P&I Clubs, by providing a clearly worded and comprehensive standard contract on which they can conclude agreements for security services. The employment of security guards on ships is something that shipowners, unfortunately, have recently become all too familiar with due to the continuing threat of piracy to shipping in the Indian Ocean and other areas around the world.

In response to ship owners' increasing demand for security services, an ever growing number of private maritime security companies have entered the market to meet that demand. A recent count of such companies stood at more than 200 – each with their own set of terms and conditions of employment. There is presently very little regulation governing the activities of these companies and no formal recognised accreditation system to ensure minimum standards. While there are a number of well-established, professional and highly reputable maritime security firms in operation, there are also many that are less well-founded and who may be operating with inadequate insurance cover and without the necessary permits and licences.

The use of GUARDCON is not in any way intended to be a substitute for the proper exercise of due diligence by ship owners as part of the pre-contractual process when selecting a security company to provide unarmed or armed guards for a ship. While there is no substitute for due diligence, GUARDCON aims to raise the bar in terms of the standards to which security companies must reach in terms of insurance cover for their risks, and permits and licences to allow them to lawfully transport and carry weapons. The insurance requirements alone are set at such a level as will potentially exclude smaller companies from being able to offer their services using GUARDCON if they lack the necessary financial resources. This is deliberate and is intended, along with the permits and licences provisions, to weed out operators who may potentially place shipowners and their crews at risk.

Of equal importance is that ship owners employ security guards as a supplement to existing anti-piracy and BMP measures and not as an alternative. In this respect, GUARDCON emphasises that ship owners should not seek to reduce costs by employing less than the number of guards recommended. Risk analysis has shown that in the majority of cases the recommended minimum number will be four guards. This number has been proven to give the best protection against attack because all quarters of the ship can be covered and a proper round the clock watch system can be maintained.

At the November 2011 meeting of the Documentary Committee in Copenhagen, it was agreed that the development of a standard contract for the employment of security guards on vessels should be given the highest priority. A Sub-committee was chosen immediately after the November DC meeting to undertake the drafting work. The selected group brought expertise drawn from ship

owners, underwriters, P&I Clubs and lawyers. The first meeting of the Sub-committee took place in December 2011 with the concluding meeting to finalise the draft taking place on 16 March.

The speed at which GUARDCON has been drafted, in just a little over 3 months, is a considerable credit to the Sub-committee members who devoted many long hours free of charge to the project. BIMCO is indebted to the Sub-committee for all their hard work. The members of the GUARDCON Sub-committee are as follows:

- Mr Tor Langrud, Wilhelmsen, Norway (Owner) (Chairman)
- Mr Daniel Carr, Stolt-Nielsen, USA (Owner)
- Mr. Chris South, West of England P&I Club, UK
- Mr Andrew Moulton, Ascot Underwriters, UK
- Mr Stephen Askins, Ince & Co, UK
- Ms Elinor Dautlich, Holman Fenwick Willan, UK

We must also thank those who took part in the consultation process during the drafting. A number of reputable international private maritime security companies, including Drum-Cussac, PVI Ltd, MAST and Salama Fakira were invited to submit comments on the draft. The feedback we received from the security firms was positive and constructive. We also benefited from the useful advice of a number of leading marine underwriters including Ascot Underwriters (who were represented on the Sub-committee), Hiscox, Canopus and Aegis as well as valuable input provided by the Piracy Sub-committee of the International Group of P&I Clubs. Lastly, but not least, we thank the members of BIMCO's Documentary Committee for their constructive feedback and useful suggestions on the draft during development and for their agreement to fast-track the approval of GUARDCON for publication.

In parallel with the development of GUARDCON, BIMCO has also prepared Guidance on the Rules for the Use of Force. It is outside of BIMCO's remit to draft a set of standard Rules for the Use of Force as such because, ultimately, the content of such Rules is a matter of national law. While the BIMCO Guidance on RUF will undoubtedly be of great assistance to owners and private maritime security companies when drawing up and agreeing RUF for their own purposes, the Guidance itself does not form part of the GUARDCON contract.

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## **Explanatory Notes**

The following notes are intended to provide some of the thinking behind the provisions of GUARDCON.

### **Nature of the Contract**

GUARDCON is intended to be a multi-functional agreement which can be used for single transits or as a framework agreement for multiple transits. Although it is geared towards the employment of private armed guards on board ships, it may equally also be used for the employment of unarmed guards. It does not cover the use of security escort vessels as different principles apply which, if incorporated, would create an unduly complex contract.



The liabilities and indemnities provisions of GUARDCON are based on knock for knock principles. In drafting GUARDCON the Sub-committee has drawn upon examples of clauses commonly found in existing contracts agreed between shipowners and reputable international private maritime security firms.

The contract follows the usual BIMCO pattern of a Part I box layout where the parties will enter the variable information of the agreement; a Part II terms and conditions; plus several annexes covering matters such as instruction notices, security equipment, rules for the use of force and individual waiver.

The provisions of GUARDCON are not cast in stone; they are designed to provide a well thought through and solid contractual platform on which the parties can base their agreements. It is expected that ship owners and security companies may wish to negotiate and subsequently amend some of the more commercial terms, such as those relating to payments and fees. However, we strongly recommend against any amendments to the key clauses – namely those dealing with insurance, liabilities, Master’s authority, and permits and licences. Any changes to these provisions may result in a ship owners’ P&I Club cover being prejudiced and so should be avoided.

## **SECTION 1 – Basis of the Contract**

### **1. Definitions**

In common with other BIMCO contracts, a list of definitions is provided of terms used throughout the Contract.

It should be noted that GUARDCON is designed to be a contract between the owners of the vessel and the security contractors and that the liability, insurance and other important provisions are constructed on this basis. While we acknowledge that in some cases it may be the charterers who arrange and pay for the security guards, it is essential that the owners are identified as the contracting party. If the contract is entered into by charterers or ship managers then the names and details of these parties should be added to the “owners” box in Part I along with the vessel’s owners details or the contract should be signed “for and on behalf of owners”.

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

GUARDCON is an “evergreen” contract when used as a framework agreement and will continue beyond the initial 12 month contract period until terminated by one of the parties giving 30 days’ notice. For single transit purposes, the contract ends when the security guards disembark the vessel at the end of the transit.

Sub-clause (c) emphasises that when GUARDCON is used as a framework agreement it does not oblige the owners to use the contractors’ services exclusively during the contract period or require them to guarantee a minimum number of transits. Owners require a degree of flexibility in providing security guards for their vessels to ensure that services are available when needed. As smaller security companies may not always have the personnel resources available to provide guards as and when needed by the owners, the contract allows the owners to obtain services elsewhere to meet their vessel scheduling requirements.

## **SECTION 2 – Security Services**

### **3. Security Services**

The contractors are to provide a security team of at least four members, one of whom must be an appropriately experienced leader. Four is considered to be the minimum number of guards necessary to operate an efficient round-the-clock watch on board a vessel during a transit and providing the required level of protection. Certain circumstances, such as a lack of accommodation on board, may preclude a four man team being deployed; however, accepting any less than four guards should be agreed carefully on a case by case basis between owners and contractors and should follow from a proper risk analysis.

The opening sentence of sub-clause (b) is lifted from BIMCO's Piracy Clause which means that the contract will also encompass seaborne armed robbery that takes place in inshore or territorial waters, such as in the Gulf of Guinea (which would not usually come under the definition of "piracy").

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

If GUARDCON is used for multiple transits, the owners must notify the contractors on each occasion and at least 72 hours in advance by issuing an Instruction Notice (as per Annex C) setting out their requirements and intended transit dates. The use of the contract is not limited to the current High Risk Area, but can be used within any defined geographical area agreed between the owners and contractors.

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

New legal and regulatory requirements may dictate a change to the specification of the security services supplied by the contractors. While such requirements are to be implemented, this clause ensures that any changes to the specification do not include a reduction in the number of guards or an increase in fees.

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

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

There is no established "best industry practice" in the maritime security sector as yet. Consequently, the contract requires the contractors to use "all reasonable skill and care" as the benchmark for providing the agreed security services.

Sub-clause (a)(ii) requires the contractors to advise on and/or help the owners implementing security measures on board the vessel (hardening) but makes it clear that such hardening is based on the owners' instructions. This has been done to avoid situations where the contractors might attempt to claim that the level of hardening does not meet their requirements and use that as an excuse to not board their team. However, it should be noted that the employment of private security guards on ships is not a substitute for other security measures – it is simply another layer on top of existing security. Reference is made to BMP in this respect, but BMP will only apply where the transit is through the High Risk Area and not to other areas such as the Gulf of Guinea (this also applies to the provisions of sub-clause 6(a)(v)).

Sub-clause (a)(iv) relates to advice provided by the security team to the Master in respect of routeing. The clause makes it clear that such advice is strictly limited to security related matters concerning the routeing of the vessel and does not undermine the Master's overall authority in respect of the navigation of the vessel.

Sub-clause (a)(ix) requires the contractors to have sufficient shore based resources to provide operational and administrative backup to the security team during the transit. It is essential that security firms are adequately resourced to be able to manage and advise their guards during deployment and for the owners to have a round-the-clock point of contact for the contractors.

Sub-clause (a)(x) deals with the contractors' responsibility for their sick or injured personnel. Deviating to a place where the sick or injured personnel can be taken ashore for medical attention and repatriation is the owners' responsibility under Clause 7 (Owners Obligations and Responsibilities) - sub-clause 7(i) - and will be covered by their P&I Club; however, arranging for the transportation of the injured personnel to shore and then home is a cost to be met by the contractors and they will need to be appropriately insured to cover this cost (see Clause 12 (Insurances)).

Sub-clause (b) sets out the qualifications, training and experience required of the security guards. Sub-clause (b)(i)(2) refers to STCW training – this is intended to cover basic shipboard fire-fighting skills, personal safety and survival craft proficiency. It is not intended that the security guards should be STCW qualified or certified. The sub-clause also refers to BMP training – but it should be noted that this will only apply where the owners require security guards for transits through the High Risk Area.

Sub-clause (b)(i)(6) relates to the background experience of the guards – it does not limit the guards to only ex-military personnel but recognises that ex-law enforcement personnel and also those from other relevant backgrounds may be equally suited to the task. It is not intended that the reference to “or other service acceptable to the Owners” is a back-door to allowing security contractors to provide personnel ill-suited to the task; GUARDCON is not a substitute for the exercise of due diligence by ship owners to ensure that the security contractors are able to provide personnel that are appropriately qualified and experienced.

Sub-clause (b)(i)(8) covers working languages. It is important that the guards are able to communicate effectively with the Master of the vessel and, of course, among each other.

Sub-clause (b)(ii) requires that the team leader has some prior experience of providing shipboard security services and that at least one of the guards has had advanced first aid training (which in military terms would be the ability to provide first aid to victims of gunshot and other similar life-threatening wounds).

Sub-clause (c) emphasises one of the key principles of the contract – that the contractors must have and maintain adequate insurance.

The contractors' do not have an automatic right to sub-contract. Owners will have carried out due diligence on the company that they have contracted with to provide security services. Sub-clause (d) reflects that it would be unreasonable to allow contractors under these circumstances to farm out the contract to another company that the owners have not checked.

Sub-clause (d)(ii), however, addresses the fact that it is common practice in the security industry for individual guards to be sub-contracted by security companies rather than being directly employed. In some cases, for tax reasons, individual guards will set themselves up as a “company” (where they are the sole shareholder/employee). This provision allows sub-contracting in these specific circumstances and does not require the owners' approval.

## **7. Owners' Obligations and Responsibilities**

The nature of the GUARDCON contract dictates that the owners' obligations will be a shorter list than those of the contractor – however, the Sub-committee has done its best to “balance” the obligations of the parties.

The key obligation is the payment of all sums due to the contractors. Other notable obligations include the notification of all relevant parties that the vessel will be carrying armed/unarmed security guards; the provision of a secure location for the storage of firearms, if carried (It is common practice for the bridge of the ship to be used for this purpose where the locked firearms containers used by the guards to transport their weapons can be stored); and the entering of the guards on the crew manifest as supernumeraries and giving them shipboard familiarisation training. Listing the guards as supernumeraries on board the vessel is done to avoid issues in certain ports as to the status of non-crew on the ship – if not listed as supernumeraries they could be considered as passengers that might create difficulties in terms of their employment on board and the carriage of their security equipment.

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

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

Clause 8 is undoubtedly one of the most important provisions in GUARDCON and the one which has perhaps been most discussed during the drafting process.

The concept of providing for the use of force, including lethal force, in a commercial contract is unique in the maritime field. It is worth remembering that the police in most countries are subject to robust and onerous regulations and procedures before weapons are used with each step assessed and recorded in a Decision Log. Transparency and accountability is fundamental. At the moment the maritime security industry does not have anything like the same level of scrutiny.

As a “test” for the GUARDCON regime the Sub-committee discussed the issue with the UK Crown Prosecution Service (CPS) who looked at the draft GUARDCON and the Guidance for the Rules for the Use of Force. Although the CPS will not at this stage be providing a formal response or issuing their own guidelines, they have confirmed that the approach in GUARDCON is right at least as a matter of English Law where force used to prevent a potential hijacking must be proportionate and necessary. The CPS cautioned against allowing the Master to be involved in the decision to open fire in case he should fall foul of the rules on “joint enterprise” and be tainted by the actions of the security personnel.

The CPS have also advised that there should be a point in time when it is clear that a decision has been made to the effect that the use of force MAY be used to deal with an escalating or existing threat and that the Rules for the Use of Force are invoked.

The most fundamental aspect of carrying armed civilian guards on board a merchant vessel is that under no circumstances should there be a derogation of the Master's authority – he retains at all times full command of and responsibility for the vessel. This is a SOLAS requirement and is expressly stated in the contract.

However, GUARDCON also acknowledges that the Master of a merchant vessel does not have the necessary expertise to command a team of armed guards in the use of firearms or necessarily to decide upon situations where a graduated response by the guards is appropriate. Clause 8 does not require the Master to invoke the Rules for the Use of Force (RUF), which is consistent with the advice given by the CPS above to avoid the risk of “joint enterprise”. If the Master was to invoke the

RUF and the guards, acting on his orders, unlawfully fatally injure a third party, the Master could be exposed to criminal liability.

It is important to note that the RUF are invoked only in response to a specific threat – they are therefore not necessarily in effect for the whole duration of a transit. Could the RUF be made effective at the time the guards embark the vessel until the end of the transit, thus avoiding any decision making process about who invokes them and when? In BIMCO's view the concept of effectively giving weapons control to the security guards while the vessel is within the territorial waters of a Coastal State would create many more legal and practical issues than it resolved.

Sub-clause 8(b) deals with the assessment by the security team leader of threats to the vessel. If, in the team leader's professional opinion, the threat warrants a graduated response from the security guards, he has to advise the Master or, in the Master's absence, the officer of the watch, that he intends to invoke the RUF. During the development of GUARDCON, the Sub-committee discussed various scenarios that might impact on the obligation of the team leader to advise the Master – in particular in the case of a surprise attack where there might not be time to advise the bridge team. However, experience of Somali piracy attacks indicate that with vigilant bridge and security teams there is always forewarning of an attack and therefore there should always be time for the guards to make the bridge team aware of their intentions.

It is very important to note that invoking the RUF does not necessarily mean the use of lethal force or indeed force of any kind by the security guards. A properly drafted and agreed RUF provides a means of graduated response to a threat which must be proportionate to that threat. It may well be that the highly visible presence of security guards on deck is sufficient to deter a threat without further action being taken.

In terms of the actual use of force, Sub-clause 8(c) clearly allocates the decision to each of the security guards alone. This means that the Master cannot order a guard to shoot – each guard must act in accordance with the RUF and national law in deciding upon the appropriate use of force and will be held liable for the consequences. In this way the Master is unlikely to be exposed to any criminal action at a later date.

Sub-clause 8(d) echoes the sentiment of Sub-clause (a) in terms of emphasising the Master's absolute authority at all times as conferred by the SOLAS Convention. Although the Master does not invoke the RUF or order the use of force by the security guards, he retains the right under all circumstances to order the guards to stop firing.

However, it should be noted that the Master's right to order the guards to stop firing is set against the individual right of each guard to exercise self-defence. Simply put, an individual has the right to take whatever appropriate action he feels is necessary and proportionate to defend himself (in accordance with national law). If a guard thinks that to stop shooting would lead directly to him being killed or injured, then he can take the sole decision to continue firing regardless of orders to the contrary.

## **9. Hijacking**

The preamble to Clause 9 makes the clear statement that the contractors cannot and do not guarantee that the security services they provide will prevent the vessel from being attacked. The wording is intended to convey that if the vessel is hijacked despite the best efforts of the guards, then it does not mean that all liabilities and losses pass to the contractors.

The Clause goes on to deal with what happens if the vessel is hijacked by pirates. Although the owners will normally appoint a team of specialists to manage the hijack, the contractors and the families of the captured security guards will understandably also want to be kept advised of what's happening. Sub-clause (a) provides for the owners to arrange for the contractors to receive weekly situation reports.

Sub-clause (b) is intended to avoid situations where the contractors and the captured security guards may place the crew of the vessel at risk by attempting to communicate with each other in order to escape from their captors.

For the purposes of negotiating with and paying ransom to the pirates, Sub-clause (c) sets out that the security guards on the seized vessel are to be considered as crew members. As such, the contractors are not obliged to contribute to any ransom payment by the owners to secure the release of the vessel and crew. Cargo does not contribute to ransoms as they rely on general average (GA) and similarly crew are not expected to contribute to their proportion in GA.

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

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

There is concern in the industry that an apparent sizable number private maritime security firms are operating without the necessary permits and licences to transport and carry weapons. The consequences of contractors failing to have the required permits and licences effectively makes the carriage of weapons illegal, the consequences of which could result in significant delays to the vessel. In response to this concern, GUARDCON contains a comprehensive clause dealing with permits and licences which place a strict obligation on the contractors to ensure that they meet all such requirements. This is an important clause and parties should take careful note of its provisions.

Clause 10, however, is not one-sided as it recognises that the owners also have obligations in respects of various permissions that need to be obtained in order to carry armed guards on board. It places a mutual obligation on the owners and the contractors to obtain all necessary permits and to maintain them during the transit and provide copies to the other party on request. Each party is also obliged to indemnify the other against the consequences of failing to obtain the required permits. Permit has been defined for the purposes of the Clause to mean, in addition to permits, certificates, licences, authorisations, consents, permissions, approvals and visas.

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

If there is an incident on board the vessel involving firearms, this will generally result in an enquiry by the vessel's Flag State or, at the very least, by the vessel's owners. In such cases the contractors are obliged to assist in the enquiry – which may entail the submission of written reports from the Master, team leader and other members of the security team/crew.

If there is a third party claim against the contractors or the owners as a consequence of the security services (for example, a claim by a fisherman for damage to his boat resulting from security measures), Sub-clause (c) provides for the parties to assist each other in defending claims.

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

### **12. Insurance Policies**

One of the key features of GUARDCON is the all-important Insurance Policies Clause. It is highly recommended that parties carefully read the provisions of Clause 12 to make sure that they fully understand their obligations.

Sub-clause 12(a) sets out the minimum insurance cover that the contractors must maintain to cover their liabilities during the contract period. The policy limits for the contractors' insurances set out in the Clause reflect a level which should be considered the industry accepted norm. BIMCO acknowledges that the insurance requirements in GUARDCON will "raise the bar" on insurance cover for many security contractors. The result may be that the widespread adoption of GUARDCON will weed out some of the less well-resourced companies who are unable or unwilling to meet the insurance requirements. However, given the fundamental importance of ensuring that security contractors are adequately insured to cover their risks, BIMCO feels that GUARDCON has an essential role to play in regulating this aspect of the commercial arrangement between owners and contractors.

The Insurance Policies Clause has been drafted in consultation with the underwriter representative on the GUARDCON Sub-committee, Mr Andrew Moulton of Ascot Underwriters, with additional input provided by a number of other leading marine insurance underwriters including Hiscox, Canopus and Aegis. It has been a fundamental part of the development of GUARDCON to ensure that underwriters are comfortable with the contract and prepared to write appropriate cover for it. We are aware of at least one prominent insurance broker that has been working with a leading underwriter to produce a tailored "GUARDCON insurance package" for security contractors and we are confident that similar packages will be developed to coincide with GUARDCON's publication.

Sub-clause (b) deals with policy limits which are set at \$5 million (or other higher figure as may be agreed by the parties). While the application of deductibles to help reduce premiums is a perfectly acceptable practice, the contract provides that to avoid contractors agreeing deductibles that in the event of a claim they may not have the financial resources to meet, such deductibles have to reflect market practice. The contractors are obliged to provide the owners with evidence of insurance with copies of cover notes if the owners so require.

Owners should also be adequately insured and have appropriate P&I cover – this is dealt with in Sub-clause (c).

Sub-clause (d) deals with kidnap and ransom insurance. As is common with this type of insurance, if you have it you cannot say you have it because it may be invalidated as a result. However, K&R policies normally extend to every person on board a vessel including supernumeraries and so if the owners have K&R cover the security guards will be embraced by that policy while they are on board the vessel. Should the vessel be hijacked and the security guards removed from the vessel then the Clause addresses the fact that once off the ship, the guards are no longer covered by the owners' kidnap and ransom policy and therefore the contractors will need to make alternative arrangements or at least be aware that the owners' insurance may not respond.

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

The fees and expenses provisions of the contract encompass two main methods of employing security guards – namely a daily rate or a lump sum agreement. BIMCO acknowledges that the security industry operates with a number of permutations in respect of fees and expenses – in some cases combining the two. However, to avoid GUARDCON becoming overly complex, only daily rate and lump sum are contemplated. If the commercial parties wish to negotiate and agree upon

alternative fee structures and payment methods they are free to amend the contract accordingly to suit their needs.

The parties should not only agree the amount of the fees but also clearly state the currency to apply. This is done by filling in Box 13.

Sub-clause (b) deals with mobilisation fees, if any have been agreed. Again, the amount and currency should be stated in the appropriate box in Part I.

Invoicing is on the basis of latest 30 days after the security guards have disembarked the vessel is provided in Sub-clause (c). The owners have 21 days in which to settle invoices issued by the contractors. If the owners fail to pay within 21 days then Sub-clause (d) provides the contractors with various sanctions against the owners.

If the owners decide that they require additional services to those originally agreed, then Sub-clause (g) provides for agreement to be reached in writing setting out what the additional services are and what extra fees the owners have to pay for the additional services.

Sub-clause (i) deals with rescheduling of the transit by the owners where the date of embarkation of the guards is delayed. If the owners are unable or fail to give more than 48 hours' notice of the delay then the contractors will be entitled to be paid as of the original agreed date of embarkation.

If the vessel is hijacked then according to Sub-clause (k) no further daily rate payments will be made by the owners to the contractors until the vessel is released and if/when security services are resumed – so even though the contractors assume no liability for the seizure of the vessel the consequence is that all payments are suspended for the duration of the hijack.

#### **14. Taxes**

This is a comprehensive mutual clause dealing with taxes payable by the owners and the contractors and also covering sales tax for security related items purchased by the contractors on the owners' behalf. Additionally, in Sub-clause (d) provision is made for withholding taxes which the owners are obliged to pay on behalf of the contractors to relevant tax authorities.

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

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

Along with the Clauses covering insurances and permits & licences, the liabilities and indemnities provisions are at the very heart of GUARDCON. The contract applies “knock for knock” mutual allocation of risk principles whereby each party is responsible for loss of/damage to and/or death of/injury to any of its own property and/or personnel or that of the entities within its defined “group”; responsibility is without recourse to the other party; and each party, in respect of the losses, damages or other liabilities it has assumed responsibility for, indemnifies the other party.

It should be noted that Sub-clause 15(b) is not an exclusion of liability. It is a contractual arrangement whereby two parties agree to hold each other harmless and indemnify each other for this liability (up to the contractual cap). It does not exclude liability to an injured/dead person (such as a fisherman killed by a security guard), who would still claim in the normal way against whichever of the contracting party is the party at fault (who may then be able to take the benefit of this indemnity to recover from the other contracting party).



Sub-clause (c) concerns third party liability. To be consistent with Sub-clause (b), the provision is reciprocal with each party indemnifying the other against claims by third parties with the exception of claims from third parties arising out of the owners' or contractors' own negligence. The reference to "unlawful" act is intended to cover scenarios such as a fisherman being killed by a security guard using unlawful force.

Sub-clause (c)(iii) addresses the issue of third party claims (including claims from the crew) in the event of a liability caused as a result of a firearm being accidentally or negligently fired by a security guard. This sort of accident could be the result, for example, of a guard tripping while carrying a loaded firearm. It is an exception to the knock for knock principle; the owners agree not to pursue individual security personnel but can still claim against the contractors under this indemnity.

The handling of claims is dealt with under Sub-clause (c)(iv) – the clause provides that the parties have the option to take over the handling of specific claims from the other party for which they would otherwise have to provide an indemnity.

Sub-clause (d) places a contractual cap on the liabilities under the contract as between the owners and the contractors of a minimum of US\$5 million while recognising that although the owners may have rights of limitation under international conventions and national law, the contractors will not have any such rights.

Sub-clause (e) is the consequential damages provision that has been lifted from TOWCON 2008.

#### **16. Security Personnel Liability**

Clause 16 is basically a "Himalaya" provision tailored to the requirements of the security personnel provided by the contractors which extend the contractual protections afforded the contractors to their employees.

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

The security guards are required to sign a waiver before embarking the vessel – a standard form of waiver has been drafted specifically addressing the terms of GUARDCON and attached as per Annex D. A number of security companies have reviewed the text of the waiver and seem satisfied that it fits the bill as currently worded.

#### **18. Delay**

Given the legal, logistical and regulatory difficulties that the contractors may face transporting weapons and personnel through and to various countries, Sub-clause (a) provides a grace period to the contractors to absorb the first twenty-four hours of any delay in embarking the security team and their equipment. It does not, however, absolve the contractors of their responsibility to do their utmost get their personnel and equipment on board as and when required.

Sub-clause (b) deals with delays due to weather which prevent the security team from disembarking the vessel as scheduled. In such cases the full daily rate continues to be payable until the guards finally disembark.

#### **19. Cancellation and Termination**

Sub-clause (a) deals with cancellation of an individual transit in advance of embarkation. If the contractors are unable to get their security team and equipment on board the vessel within the twenty-four hour grace period provided for in Clause 18, the owners have the right to cancel the agreed transit and no compensation is payable to the contractors.

Under other circumstances the owner may also wish to cancel a scheduled transit, perhaps due to a change of employment orders for the vessel. Sub-clauses (a)(i) to (iii) provide a compensation mechanism for the benefit of the contractors on a sliding scale depending on how close to the embarkation date notice of cancellation is given.

Termination for cause is dealt with under Sub-clause (b) and with the exception of (b)(i), dealing with flag state authorisation for the carriage of armed guards, is based on standard wording found in other BIMCO contracts.

When GUARDCON is used as a framework agreement it is an “evergreen” contract, so if the parties wish to bring it to an end for reasons other than fault, they are required to give the other party 30 days’ notice in accordance with Clause 2 (Commencement, Appointment and Duration). The minimum contract period is 12 months.

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

This is a standard BIMCO wording taken from the SHIPMAN Standard Ship Management Agreement.

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

Although it may perhaps seem a little strange to link the employment of armed guards with health and safety in the workplace requirements, this is a provision commonly found in current security guard contracts and is protective of owners (for example, the guards must follow smoking prohibitions on board).

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

This is a self-evident but nevertheless very important provision. The ban on drugs extends to prescription drugs if used or abused for purposes other than those for which they were medically prescribed.

## **23. No Salvage**

Bearing in mind that it might be as a result of the actions of the security team in defending the vessel that results in the vessel requiring salvaging, this Clause excludes claims for salvage awards and life salvage by the contractors and their security team.

## **24. Dispute Resolution**

This is the current version of the BIMCO Dispute Resolution Clause offering the parties three options on arbitration: London (which applies by default if no other venue is agreed as it currently handles by far and away the largest proportion of international maritime arbitrations); New York; and, finally, a free choice of venue as may be agreed between the parties. The mediation provision applies in all circumstances. It is very important that the parties agree which jurisdiction and arbitration venue is to apply to their contract and that they clearly indicate their choice in Box 19.

# **SECTION 8 – General**

## **25. Assignment**

A standard wording other than the fact that the words “or delayed” have been incorporated as a useful addition.

## **26. Notices**

This is a general notice provision dealing with how contractual notices should be given and when they should be treated as received.

## **27. Confidentiality**

Confidentiality is a matter of particular concern to both parties in this type of contract where security is of chief importance and so a comprehensive mutual provision has been drafted.

## **28. Third Party Rights**

The purpose of this Clause is to clarify that only third parties expressly identified in the Contract can benefit from it.

## **29. Partial Validity**

The Partial Validity Clause is designed to avoid a potential situation where the entire contract is held to be invalid simply because a particular provision is deemed by an arbitrator or other competent authority to be illegal, unenforceable or invalid. If the offending clause cannot be interpreted or amended in such a way as to make it valid, then this Clause provides for it to be considered deleted but for the rest of the contract to be unaffected.

## **30. Entire Contract**

This is a standard wording found in a number of other BIMCO contracts. The purpose of the Clause is to limit the rights of the parties to the written terms of the contract. As such it is intended to exclude representations, written and oral, not intended to be part of the final concluded contract.

## **ANNEXES**

### **Annex A (Security Equipment)**

This Annex is designed for the parties to attach a list of firearms, ammunition and other equipment (including non-lethal weapons) that will be provided by the contractors. It is intended to be a generic descriptive list and therefore not include actual serial numbers (these will be required, however, for the issue of permits and licences to the contractors).

### **Annex B (Rules for the Use of Force)**

This is a blank Annex to which the parties need to attach their agreed RUF to form part of the contract. BIMCO has developed Guidance on the Rules for the Use of Force to which the parties may refer as a useful source of inspiration when drafting and agreeing their own RUF.

### **Annex C (Instruction Notice)**

When the contract is used as a framework agreement for multiple transits, the owners are required to issue an instruction notice detailing their requirements for each transit. This Annex provides a pro forma Instruction Notice which can be used for this purpose.

### **Annex D (Individual Waiver)**

As mentioned in the notes above on Clause 17 (Security Personnel – Waiver), the members of the security team are required to sign individual waivers before boarding the vessel. This Annex provides a standard wording for the waiver that specifically refers to the terms of the contract.

### **Annex E (Schedule of Charges)**

This Annex covers mobilisation fees at various named ports and allows for charges for other ports to be added as agreed by the parties.

### **Annex F (Standard Operating Procedures)**

Many maritime security companies have their own standard operating procedures covering the provision of security services on board ships. If such procedures exist, they should be attached to this Annex.

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To use GUARDCON we recommend BIMCO's web-based charter party editing system, *idea*, which provides access to a secure Microsoft Word version of the contract that can be filled in and edited online and then exchanged by e-mail. For details of how to sign up to use *idea* please click on the Products tab on the BIMCO homepage at [www.bimco.org](http://www.bimco.org) or contact [idea@bimco.org](mailto:idea@bimco.org).