

NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

THE INTERNATIONAL ASSOCIATION OF MARITIME SECURITY PROFESSIONALS

**THIS AGREEMENT** effective as of the <<enter date>> (the %Effective Date+).

**BETWEEN:**

**The International Association of Maritime Security Professionals**, an alliance of professionals seeking to improve professionalism within the maritime security industry;

**AND:**

<<Company Name / Individual Name>> (<<Company Officer Name>>), an individual or corporation (delete which does not apply) under the laws of <<Country Name>> in the <<Region Name>> and <<having offices or residing>> at <<Full Mailing Address . no PO Boxes>>;

**WHEREAS:**

- A. each Party has developed, owns, possesses or has custody of information which it deems proprietary; and
- B. the Parties wish to exchange portions of such proprietary information on a confidential basis for their mutual benefit and pursuant to a working relationship which has been or may be established;

**NOW THEREFORE** the Parties agree as follows:

- 1. As used herein, %Confidential Information+means any communication or data in any form, including, but not limited to, oral, written, graphic or electromagnetic forms which a Party desires to protect as confidential hereunder and against unrestricted disclosure, unauthorized use or competitive use, and which is designated as %CONFIDENTIAL+in the manner provided by this Agreement by a Party (the %Discloser+with the Party receiving such information being the %Recipient+).
- 2. Anything disclosed to a Recipient by a Discloser hereunder that is to be protected as Confidential Information shall:
  - (a) if in writing or other tangible form, be conspicuously labelled as %CONFIDENTIAL+at the time of delivery; and
  - (b) if oral, be identified prior to disclosure as proprietary or confidential, and after disclosure shall be summarized and reduced to writing or other tangible form no later than fifteen (15) calendar days thereafter and delivered to the Recipient consistent with subparagraph (a) above.

All disclosure of Confidential Information subject to this Agreement shall be completed within the disclosure period stated in Schedule A+(the %Disclosure Period+) and this Agreement shall terminate at the end of the Disclosure Period except that the obligations of confidentiality in section 4 shall continue after the end of the Disclosure Period during any confidentiality period (the %Confidentiality Period+) stated in Schedule %A+.

- 4. Each party acknowledges that the Confidential Information of a Discloser which is to be treated as confidential hereunder by the Recipient includes commercial assets of considerable value to the Discloser and undertakes and agrees:

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- (a) to treat all such Confidential Information as confidential and not to disclose such Confidential Information to any person except as permitted under this Agreement or otherwise in writing by the Discloser;
- (b) to safeguard such Confidential Information in the same manner that the Recipient treats its own confidential information and trade secrets, with not less than a reasonable degree of care;
- (c) to effect and maintain adequate security measures to safeguard such Confidential Information from unauthorized access, use, and misappropriation and to notify the Discloser promptly of any unauthorized use, copying, or disclosure of such Confidential Information and to provide all reasonable assistance to terminate such unauthorized use or disclosure;
- (d) to use such Confidential Information solely for the purpose (the ~~%Purpose+~~) and only during the usage period (the ~~%Usage Period+~~) stated in Schedule ~~%A+~~;
- (e) not to decompile, reverse engineer or chemically analyze any physical samples or other Confidential Information provided under this Agreement where such actions are not necessary for the Purpose;
- (f) not to disclose any such Confidential Information to any third parties except (i) its officers, staff, , and employees who have a need to know directly related to the Purpose and (ii) third parties who are directly concerned with the Purpose and who have been expressly authorized in writing by the Discloser to receive the Confidential Information prior to its disclosure to that third party (other members of the International Association of Maritime Security Professionals satisfy this requirement as long as they are in good standing); and
- (g) to ensure that all persons and bodies mentioned in the preceding paragraph (f) are (i) made aware of both the confidentiality provisions of this Agreement governing such Confidential Information, which the relevant party shall ensure are enforced, and the confidential nature of the Confidential Information, and (ii) bound by terms of confidentiality at least as strict as those in this Agreement.

**5.** The obligations of confidentiality in section 4 above shall not apply to any portion of the Confidential Information where either Party can demonstrate that the Confidential Information concerned is or has been:

- (a) generally available to the public through no breach of this Agreement;
- (b) already in the possession of the Recipient or its employees without restriction and prior to disclosure of that specific Confidential Information hereunder;
- (c) lawfully disclosed to the Recipient by a third party without an obligation of confidentiality upon the Recipient;
- (d) developed independently by the Recipient without access to, or knowledge of, the Confidential Information of the Discloser; or
- (e) ordered disclosed by the Recipient pursuant to order of a court of competent jurisdiction and, where lawfully permitted to do so, the Recipient has informed the Discloser, within a reasonable time after being required to make the disclosure, of the requirement to disclose and the information required to be disclosed.

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- 6.** Each Party shall have or enter into agreements as necessary with its officers, staff and employees sufficient to safeguard the Confidential Information disclosed hereunder in the manner contemplated by this Agreement and, for this purpose, each entity shall be entitled to use the Non-Disclosure Agreement Acknowledgement And Covenant To Be Bound attached as Schedule ~~9B~~+hereto.
- 7.** Specific Confidential Information shall not be deemed to be within the exceptions of section 5 above merely because such specific Confidential Information may be construed as being within broader, non-confidential information which is either in the public domain or in the possession of the Recipient at the time of its disclosure. Neither shall a combination of features that form confidential information be deemed to be non-confidential merely because the individual features, without being combined, are non-confidential.
- 8.** In the event a Recipient is required by operation of law to disclose any Confidential Information, where lawfully permitted to do so, the Recipient shall promptly notify the Discloser so that the Discloser may seek appropriate means to protect the confidentiality of its Confidential Information and the Recipient shall use reasonable efforts to delay any such disclosure until the Discloser has had an opportunity to oppose such disclosure.
- 9.** The Parties each acknowledge that disclosure of the Confidential Information of the other or other breach of this Agreement would cause serious and irreparable damage and harm to the other and that the remedies at law would be inadequate to protect against breach of this Agreement. As such, the Parties agree in advance that each Party, without proof of actual damages and without necessity to post a bond, is entitled to injunctive relief in its favour and specific enforcement of the terms of this Agreement in addition to any other remedy to which it would be entitled in the event of any anticipated unauthorized disclosure of the Confidential Information of that Party by the other Party or other breach of this Agreement.
- 10.** The rights in the Confidential Information are and will at all times remain the property of the Disclosure and nothing in this Agreement grants a Recipient any right, title, or interest in the Confidential Information. Nothing in this Agreement and no action performed under this Agreement shall transfer any interest in intellectual property of either Party. Without limiting the generality of the foregoing, no license, title or right with respect to any intellectual property in the Confidential Information, including but not limited to any patents, patent applications, trademarks, copyrights or trade secrets, is granted by either Party to the other Party through disclosure of the Confidential Information under this Agreement.
- 11.** If any provisions of this Agreement should be deemed to violate time or geographical limitations, or any other limitations, permitted by applicable law in any jurisdiction, such provisions shall be deemed reformed in such jurisdiction so as to continue to apply to the maximum permitted by applicable law and this Agreement shall continue in full force and effect with regard to all other provisions.
- 12.** No waiver of any provision, breach or default under this Agreement shall be deemed a waiver of any subsequent provision breach or default, nor shall any such waiver constitute a continuing waiver.
- 13.** The Parties acknowledge and agree that the Confidential Information is experimental in nature and that any use of the Confidential Information by a Recipient will be at the sole risk and liability of Recipient. THE DISCLOSER MAKES NO REPRESENTATION OR WARRANTY, WHETHER EXPRESSED OR IMPLIED, WITH RESPECT TO THE INFORMATION, INCLUDING ANY REPRESENTATION OR WARRANTY AS TO ITS ACCURACY, COMPLETENESS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT ON THIRD PARTY PROPRIETARY RIGHTS. ALSO, DISCLOSER WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL,

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INCIDENTAL OR CONSEQUENTIAL DAMAGE OR LOSS ARISING FROM ANY USE OF THE INFORMATION BY RECIPIENT EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS.

14. Each Party hereby assumes any risks of personal injury and property damage attributable to the negligent acts or omissions of that Party and its directors, officers, employees and agents, and where applicable faculty and students.

15. This Agreement is subject to any agreement concerning publication rights as between any of the parties entered into prior to, concurrently with, or following the execution of the Agreement. Otherwise, this Agreement constitutes the entire understanding of the Parties with regard to the subject matter hereof and may not be modified, supplemented or rescinded except by an agreement in writing signed by the Parties hereto.

16. Any Amendments to this Agreement must be in writing and executed by authorized representatives of each Party.

17. Upon termination of this Agreement or at the written request and instruction of a Discloser, all copies of the Confidential Information of the Discloser in the possession of the Recipient shall be destroyed (with confirmation in writing to the Discloser) or returned to the Discloser within a reasonable period of time but, in any event, within ten (10) days.

18. No provision of this Agreement will be deemed waived or any breach excused, unless such waiver or consent excusing the breach is in writing and signed by the Discloser. A waiver of a provision of this Agreement will not be construed to be a waiver of a subsequent breach of the same provision.

19. This Agreement shall not be assignable (by operation of law or otherwise) by either Party without the prior written consent of the other Party.

20. This Agreement shall be governed by the laws of the United Kingdom. Where the dispute is between two groups under the same legal jurisdiction, consideration is to be given to the remedies and requirements associated with the common legal jurisdiction.

IN WITNESS THEREOF the Parties hereto have executed this Agreement on the dates below written but effective as of Effective Date written above.

SIGNED FOR **The International Association of Maritime Security Professionals** by:

Name:

Title:

Date:

SIGNED FOR THE **COMPANY** by: <<Company Officer Name>>

By its authorized signing officer

Name: <<Company Officer Name>>

Title: <<Position>>

Date: <<Date>>

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**SCHEDULE "A"**

**Disclosure Period:**

12 months commencing on the Effective Date

**Confidentiality Period:**

60 months commencing on the Effective Date

**OR**

for so long as and to the extent that the Confidential Information remains unpublished or otherwise not in the public domain.

**Purpose:**

**[e.g.]** discussing whether to collaborate with the other party in the Proposed Project, the preparation of any outline specification, proposal or workplan for the Proposed Project, and the submission of any application for funding for the Proposed Project\*\*

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**Usage Period:**

60 months commencing on the Effective Date

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**SCHEDULE "B"**

**NON-DISCLOSURE AGREEMENT ACKNOWLEDGEMENT AND COVENANT TO BE BOUND**

To: **The International Association of Maritime Security Professionals,**

Each of the undersigned hereby acknowledges having read and understood the terms of the Non-Disclosure Agreement dated 24 April 2010 between The International Association of Maritime Security Professionals and <<Company Name>> (<<Company Officer Name>>), and, as consideration for having access to the Confidential Information provided by the Company thereunder, hereby covenants and agrees to comply with and be bound by the terms of the Non-Disclosure Agreement as if a Recipient party thereto.

**In signing this Agreement, I acknowledge that I have been advised, and have been given the opportunity, to seek independent legal advice.**

SIGNED (MAY BE DIGITALLY SIGNED) FOR THE **COMPANY** by:

Name: <<Company Officer Name>>

Title: <<Position Title>>

Date: <<Date>>

**In signing this Agreement, I acknowledge that I have been advised, and have been given the opportunity, to seek independent legal advice.**

SIGNED BY THE **INTERNATIONAL ASSOCIATION OF MARITIME SECURITY PROFESSIONALS** by:

Name:

Date: <<Date>>

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