

PUBLIC PRIVATE PARTNERSHIP AGREEMENT (PPP)

BETWEEN

**NIGERIAN MARITIME ADMINISTRATION AND SAFETY AGENCY
(AGENCY)**

AND

**GLOBAL WEST VESSEL SPECIALIST NIGERIA LIMITED
(SERVICE PROVIDER)**

FOR

**THE PROVISION OF SECURITY, MONITORING AND
ENFORCEMENT OPERATIONAL PLATFORMS.**

Dated this 3RD day of APRIL, 2012.

Matte

CONTENTS

Contents	.....	i
Clause 1	Parties	.....1
Clause 2	Recitals	.....1
Clause 3	Testatum	.....4
Clause 4	Definitions	.....5
Clause 5	Scope of Service	.....7
Clause 6	Personnel on Board	.....8
Clause 7	Duration	.....8
Clause 8	Territorial Jurisdiction	.....8
Clause 9	Agreement Objective	.....9
Clause 10	Commencement of Agreement	.....10
Clause 11	Termination of Agreement /Step-in-Clause	.....10
Clause 12	Obligations of the Service Provider	.....11
Clause 13	Output Specifications	.....12
Clause 14	Obligations of the Agency	.....13
Clause 15	Insurance	.....14
Clause 16	Service Provider's Warranties	.....14
Clause 17	Agency's Warranties	.....16

Matte

Clause 18	Applicable Law/Change in the Law	.....16
Clause 19	Mode of Operation and Standard Requirement	.....17
Clause 20	Service Quality and Performance Measures	.....17
Clause 21	Maintenance and Deployment of the Vessels	.....18
Clause 22	Independent Expert	.....18
Clause 23	General Maintenance Procedure	.....19
Clause 24	Regulatory Authority	.....20
Clause 25	Remuneration Mode	.....21
Clause 26	Information	.....22
Clause 27	Risk Allocation	.....23
Clause 28	Risk Management	.....23
Clause 29	Reports	.....24
Clause 30	Liability	.....24
Clause 31	Agency Defaults	.....24
Clause 32	Termination for Agency Default	.....25
Clause 33	Service Provider Defaults	..... 25
Clause 34	Termination for Corrupt Act	..... 26

CONTENTS

Contents	1
Clause 1 Parties	1
Clause 2 Recitals	1
Clause 3 Testatum	4
Clause 4 Definitions	5
Clause 5 Scope of Service	7
Clause 6 Personnel on Board	8
Clause 7 Duration	8
Clause 8 Territorial Jurisdiction	8
Clause 9 Agreement Objective	9
Clause 10 Commencement of Agreement	10
Clause 11 Termination of Agreement / Step-in-Clause	10
Clause 12 Obligations of the Service Provider	11
Clause 13 Output Specifications	12
Clause 14 Obligations of the Agency	13
Clause 15 Insurance	14
Clause 16 Service Provider's Warranties	14
Clause 17 Agency's Warranties	16

Walt

Clause 35	Other Grounds for Termination	28
Clause 36	Dispute Resolution	28
Clause 37	Arbitration	29
Clause 38	Delay	32
Clause 39	Force Majeure	32
Clause 40	Indemnity	33
Clause 41	Corrupt Act	34
Clause 42	Variation	34
Clause 43	Change in Ownership or Key Personnel of the Service Provider	35
Clause 44	Meetings	35
Clause 45	Compliance with Relevant Laws	35
Clause 46	Assignment	35
Clause 47	Service Provider's Undertakings	36
Clause 48	Confidentiality	36
Clause 49	Miscellaneous Provisions	37
Clause 50	Entire Agreement	38
Clause 51	Notices and Addresses	38
Clause 52	Interpretation	39

Clause 18	Applicable Law/Change in the Law	.....16
Clause 19	Mode of Operation and Standard Requirement	.....17
Clause 20	Service Quality and Performance Measures	.....17
Clause 21	Maintenance and Deployment of the Vessels	.....18
Clause 22	Independent Expert	.....18
Clause 23	General Maintenance Procedure	.....19
Clause 24	Regulatory Authority	.....20
Clause 25	Remuneration Mode	.....21
Clause 26	Information	.....22
Clause 27	Risk Allocation	.....23
Clause 28	Risk Management	.....23
Clause 29	Reports	.....24
Clause 30	Liability	.....24
Clause 31	Agency Defaults	.....24
Clause 32	Termination for Agency Default	.....25
Clause 33	Service Provider Defaults	..... 25
Clause 34	Termination for Corrupt Act	..... 26

Schedule 1	.....41
Schedule 2	.....43
Schedule 3	.....50

Matte

PUBLIC-PRIVATE PARTNERSHIP AGREEMENT BETWEEN NIGERIAN MARITIME ADMINISTRATION AND SAFETY AGENCY (AGENCY) AND GLOBAL WEST VESSEL SPECIALIST NIGERIA LIMITED (SERVICE PROVIDER).

1. **THIS AGREEMENT** is made this 3RD day of APRIL 2012 BETWEEN **NIGERIAN MARITIME ADMINISTRATION AND SAFETY AGENCY (AGENCY)**, a statutory body established under the Nigerian Maritime Administration and Safety Agency Act No.17 2007, and having its Head Office at No. 4, Burma Road, Apapa, Lagos (hereinafter called "**The Agency**") which expression shall where the context so admits include its successors-in-title and assigns of the one part

AND

GLOBAL WEST VESSEL SPECIALIST NIGERIA LIMITED of 8, Ashanti Close, off Bombay Crescent, Apapa, Lagos, a Limited Liability Company incorporated under the Companies and Allied Matters Act, Cap. C20, Volume 3, Laws of Federation of Nigeria, 2004 (hereinafter called "**The Service Provider**") which expression shall where the context so admits, include its successors-in-title and assigns of the other part.

2. **WHEREAS**

- a) The Agency is the apex Maritime Regulatory and Administrative body in Nigeria designated with the responsibility of ensuring due compliance with the International Ship and Port Facility Security (ISPS) Code, under Chapter X1-2 of the Safety of Life at Sea (SOLAS) Convention (1974/78), of which Nigeria is a signatory and has made same part of its municipal laws;
- b) The Agency desires to effectively enhance the security of ships and ports, minimize the incidents of piracy and armed robbery at sea, and other incidents of maritime security breaches within

Walter

Nigerian waters and generally protect the Nigerian Maritime Domain in consonance with the aforementioned International Maritime Organization (IMO) Conventions and in collaboration with the Nigerian Navy for effective patrol of Nigerian waters.

- c) The Agency also desires to enforce the Cabotage regime and trade enforcement by enforcing compliance with the payment of the statutory 2% Cabotage contract surcharge and the 3% levy on gross freight from inbound and outbound international shipping traffic, thereby generating more revenue for Nigerian Government.
- d) The Agency is desirous to engage the Service Provider for the provision of Maritime Platforms for the Monitoring and Enforcement of the Agency's Regulatory compliance on a Public Private Partnership (PPP) basis.
- e) The Agency at present lacks the necessary modern equipment, facilities and technical expertise to carry out a comprehensive intelligence gathering, surveillance and compliance monitoring and enforcement duties within the Nigerian maritime domain.
- f) The overall goal of this PPP is to assist the Agency carry out its statutory regulatory responsibilities of monitoring and enforcing its regulatory compliance within the Nigerian maritime domain.
- g) The Service Provider – a private sector firm of vessel specialists and maritime security and surveillance operators with requisite technical and financial capabilities has been invited to partner with the Agency on this PPP project.
- h) Further to this PPP arrangement, the Service Provider will have the concession to provide the required maritime platforms, associated facilities and personnel for the Agency's monitoring and enforcement of its regulatory compliance within the Nigerian maritime jurisdiction on a Supply-Operate-and-Transfer (SOT) basis for an initial period of 10 years.


Watt

- i) The provision of platforms by the Service Provider will be fit for the purpose and ensure the enforcement of the maritime regulations as specified in the Agency's Act 2007, the provision of the requisite maritime platforms under this project model will also be used to enforce the provisions of the Cabotage Act 2003, the Merchant Shipping Act, Cap. M11 Vol. 9 Laws of Federation of Nigeria, 2004; as well as the laws and conventions of the International Maritime Organization (IMO) and the International Maritime Labour Organization which Nigeria is a party.
- j) The platforms shall also be deployed to vessels and cargoes tracking and surveillance activities on Nigerian waters. This will ensure adequate and accurate tracking of international and Cabotage vessel traffic on the Nigerian waters and ultimately adequate and accurate collection of improved levies for the Agency subject to Section 22 (1) (h) of the Nigerian Maritime Administration and Safety Agency Act No.17 2007.
- k) Safety, port security services as well as coastal and flag state responsibilities constitute other specific activity under this project, and by the use of fast-speed boats and fast support intervention vessels (FSIVs) adequate and constant monitoring of Nigeria's maritime zone will be achieved. This will stem, if not eliminate illegal activities on the Nigerian waters as well as provide immediate emergency responses pursuant to the Search and Rescue Services as statutorily required of the Agency under Section 22 (1) (o) of its enabling Act.
- l) The Service Provider is a company which is in partnership with The Global West Vessel Specialist U.S.A, 6210A Vicki John Dr. Houston, TX 77096, United States of America, with specialty in ocean surveillance, ship and cargo monitoring, administration of high speed patrol boats equipped with communication equipment, including satellite phones, AIS antennas, port vision antenna and cameras suitable for the use of the Agency for the discharge of its maritime security responsibilities.

Matte

- m) The Agency is therefore desirous of entering into an agreement for the Provision of 12 (twelve) vessels fit for purpose at first instance (subject to a maximum of 20 vessels) under a Public Private Partnership (PPP) initiative to serve as operational platforms to enhance its statutory responsibilities.
- n) The Agency has taken steps to comply with the requirements of the Infrastructure Concession Regulatory Commission Act (ICRC) No. 18, 2005 as it relates to the Public Private Partnership initiative as mentioned in paragraph (m) above.
- o) The Agency through its Parastatal Tenders Board (PTB), after considering the offer and proposal of the Service Provider and the recommendation of the Maritime Safety and Seafarers Standards Department (MSSSD) as well as the assent of the Infrastructure Concession Regulatory Commission by its letter dated on the 30th day of November 2011, and approval of the Federal Government has approved and accepted the offer as made by the Service Provider.

3. NOW THIS AGREEMENT WITNESSES as follows:

- a) The Service Provider has offered to provide, 12 (twelve) vessels fit for purpose, at first instance, to the Agency for a period of 10 years certain to perform the Agency's statutory Responsibilities and in consideration for certain concessions and benefits which includes 50% of the year to year improvement of the Agency's revenue from the commencement of this Agreement and during the pendency of this agreement, which is more particularly described in Schedule III to this Agreement.
- b) Further and in pursuance to this Agreement, the Service Provider has offered to undertake maintenance of the Vessels referred to in paragraph (a) above after providing same and also during and throughout the pendency of this Agreement subject only to the terms and conditions contained herein. 

- c) The Service Provider has offered to provide the 12 Offshore service vessels (OSV) at first instance (subject to a maximum of 20 vessels) as stated in Clause (a) above and the Agency has accepted the offer subject only to the terms and conditions contained in this Agreement.

4. DEFINITIONS

In this PPP Contract, unless the context otherwise requires, the following capitalized terms shall have the meaning assigned to them below:

“no cure, no pay”	That the Agency will only discharge its monetary obligation under this Agreement only where there is appreciable improvement in its revenue over the period of the Agreement and less incidents of piracy and other criminal attacks.
Agency	Nigerian Maritime Administration and Safety Agency (THE AGENCY) interested in the PPP Project;
Appreciable Increase	This means any increase in revenue over the agreed benchmark in schedule III of this agreement.
AIS	Automatic Identification System.
ARPA	Automatic Radar Plotting Aid.
ATU	Automatic Antenna Tuning Unit.
Business Day	Any day except Saturday and Sunday or any public holiday;
DGPS	Differential Global Positioning System.
DSC	Digital Selective Calling.
EPIRB	Emergency Position-Indicating Radio Beacon.
Execution Date	The date of signing this PPP Contract by the last signing Party;
Expiry Date	The [10 th] anniversary of the [Commencement Date];
GMDSS	Global Maritime Distress and Safety System.
GPS	Global Positioning System.

HF	High Frequency.
LCD	Liquid Crystal Display.
Lenders	Any organization, person, or company providing financing to the Service Provider under a financing Contract in respect of this PPP agreement;
LRIT	Long Range Identification and Tracking.
MF	Medium Frequency.
NBDP	Narrow Band Direct Printing (Radio Telex).
Nigerian Maritime Domain	This refers to Nigerian waters ordinarily covering 200 nautical miles from the Nigerian Coastal waters as defined by the Exclusive Economic Zone Act.
OSV	As contained in Schedule II to this Agreement.
Output Specification	All the deliverables that the Service Provider is expected to provide under the terms of this Contract;
Parties	The Agency and the Service Provider;
Payment Deductions	The Availability and the Performance deduction.
Payments	The charges payable to the Service Provider in connection with performing its obligations included in Schedule III.
Period of Agreement	A term of 10 years certain, subject to renewals in accordance with this Agreement.
PPP Contract	This Public Private Partnership (PPP) Contract between the Parties. "PPP contract" may be used interchangeably with the word "Agreement" throughout this agreement.
Project Assets	All platforms and other assets as required to design, construct, install, operate, and/or maintain the project including facilities, books and records, spare parts and tools, Intellectual Properties.
Project Director	Each party shall have a Project Director.
Project Managers	Each party shall appoint a Project Manager.

Scope of work	The manner of performing the service herein by the Service Provider under this Agreement as specified in the Schedules I and II herein and any modification thereof or addition thereto submitted by the Service Provider and approved by the Agency.
Service Commencement	The date upon which the services referred to in this agreement are to commence, i.e (insert date)
Service Commencement Date	The date of Service Commencement.
Services	This refers to the supply of the vessels, repairs and such other services as are specified in Clause 12 and Schedule 1 of this agreement.
Sub-Partner	The counter-parties of the Private Partner The Service Provider.
Step-in-Clause	This clause enables the Agency to temporarily take over the obligations of the service provider where the services of the Service Provider falls short of the standard required under this agreement.
The Service Provider	Global West Vessel Specialist Nigeria Limited
VHF	Very High Frequency.

5. SCOPE OF SERVICE

The Service Provider shall, at first instance, provide 12 (twelve) vessels fit for purpose (subject to a maximum of 20 Vessels) for a period of 10 years certain as a Public Private Partnership to serve as Operational Platforms as agreed upon by the Parties herein and as contained in the Schedules I and II to this Agreement. The parties also further agree that the Service Provider shall provide the other 8 offshore service vessels not later than 4 years after the commencement of this Agreement.

In consideration for the provision of the initial 12 vessels fit for purpose and such other vessels and platforms which may hereafter

Walter 7

be provided by the Service Provider under this Agreement, subject to a maximum of 20 vessels, the Agency shall over the period of the 10 years, pay to the Service Provider the sum of 50% of total improvements on the Agency's year to year revenue in accordance with the sum and cost analysis contained in the Schedule III to this Agreement subject only to the policy of "no cure, no pay".

6. PERSONNEL ON BOARD THE VESSELS

- (a) The Service Provider shall provide the technical crew and the Agency shall provide the surveillance crew on the 12 (twelve) vessels fit for purpose which shall be provided, at first instance, by the Service Provider. The technical crew that shall be provided by the Service Provider shall not be less than 12 persons which number shall not at anytime exceed 18 persons per vessel. The surveillance crew that shall be provided by the Agency shall not be less than 12 persons, which number shall not at anytime exceed 18 persons or such other number of persons as may be necessary from time to time and subject only to the Agency's needs.
- (b) The Service Provider shall train and impart technical knowledge and skills on the personnel of the Agency on board the vessels.

7. DURATION

The term of this Agreement, subject to Clause 33 shall be for a period of 10 years, commencing from the date of execution, unless, otherwise terminated in accordance with the provision of this Agreement. The Agreement may be renewed for another period of 10 (ten) year, subject to new terms and conditions to be agreed by the parties.

8. TERRITORIAL JURISDICTION

This PPP contract shall have effect and shall be performed only within the entire Nigerian Maritime Domain, to wit: waters, ports and other places within Nigeria as the case may be.

Malte

It is further declared that nothing done by either of the parties outside the jurisdiction of Nigeria in respect of this Agreement hereof shall bind the other party to it thereto.

9. AGREEMENT OBJECTIVE

This Agreement is a Public Private Partnership Agreement entered into between the Agency and the Service provider for the purpose of achieving the objectives hereunder stated:

- a) To improve the Nigeria's overall rating amongst members of the international maritime community as Nigeria would be perceived as a responsible and responsive coastal, flag and port state that strives to safeguard and sustain international shipping and by implication, global trade and commerce by providing safe and secured shipping environment.
- b) To enhance the competitiveness of Nigeria's economy by reducing transaction costs which have heightened freight rates occasioned by war risk insurance premium charges on ships on voyage to Nigeria as a result of current security risk on Nigeria's waters.
- c) To improve Government revenue stream by stemming ship traffic diversion to neighbouring countries as a result of security risk in our waters, as well as enhance payment of statutory revenue resulting from better compliance enforcement, particularly in the payment of the 2 % Cabotage contract surcharge and 3% levy on gross freight from inbound and outbound international shipping traffic.
- d) To enhance national defence architecture through the provision of improved maritime domain awareness information to the security Agencies.
- e) To ensure safety of lives and properties by reducing the incidence of mishap on Nigeria's waters as well as reducing

casualty scale in the event of incident through quick response to search and rescue operations.

- f) To safeguard Nigeria's eco-maritime endowment through pollution prevention, control and quick intervention in the event of occurrence.

10. COMMENCEMENT OF AGREEMENT

This Agreement shall take effect and start on the day of 2012, which shall be the commencement date and shall remain in force for a period of 10 years certain, subject to any renewals as provided herein.

11. TERMINATION OF AGREEMENT /STEP-IN-CLAUSE

- a. The Agency may by written notice terminate this Agreement immediately and without liability for compensation or damages if the service provider fails or ceases to perform its obligations under this agreement to the Agency's reasonable satisfaction provided however, that the service provider shall have the right to sue for breach of agreement if the Agency unreasonably terminates the agreement without any justifiable cause.
- b. Where the service performance by the Service Provider falls short of the standard required under this agreement, the Agency shall have the discretion to step-in and take over the provision of the services while using the platforms supplied by the Service Provider hereunder and shall, in doing so, discharge any and all service obligation reserved for the Service Provider provided that this shall not serve to repudiate or terminate this agreement but shall work to reduce the sharing margin reserved for the Service Provider under this agreement by 20% to 40% for the period for which the Agency stepped in to provide the services herein instead of the Service Provider.
- c. Where the Service Provider fails, and/or refuses and/or neglects to improve its services after the first step-in of or by the Agency,

Walter

and the Agency is again required to step-in a second time to provide the services agreed herein in place of the Service Provider, the Agency may at its own discretion terminate this agreement.

12. THE FOLLOWING ARE THE OBLIGATIONS OF THE SERVICE PROVIDER UNDER THIS AGREEMENT.

- a) The service provider shall provide 12(twelve) Offshore service vessels and operational platforms of the exact specification as stated and contained in the schedule II to this agreement.
- b) The Service Provider shall, before or on the completion date aforementioned, provide all the Platforms required under this agreement, including but not limited to the 12 Offshore Service Vessels (which shall be provided at first instance subject to any subsequent increase thereof).
- c) The Service Provider shall provide at least six (6) of the Offshore Service Vessels not later than two (months) after the date on which this agreement comes into effect, which shall be the date of signing of the agreement by both parties.
- d) The Service Provider shall provide the remaining six (6) Offshore Service Vessels not later than 6 (six) months from the date on which this agreement is signed by both parties.
- e) The Service Provider shall undertake and carry on all technical maintenance of all the Offshore service vessels and operational platforms after provision of same.
- f) The Service Provider shall at all times ensure that all the Offshore service vessels and operational platforms are put in a state of repair, fair wear and tear, exempted. *Walter*

- g) The service provider shall carry on all necessary repairs of the 12(twelve) Offshore service vessels and operational platforms in the event of any mechanical mishap.
- h) The service provider shall bear all operational responsibility in respect of all the Offshore service vessels and operational platforms which shall be provided at first instance.
- i) The service provider shall ensure that proper safe guards are put in place in discharging its obligation herein and shall use high powered and proven technologies to ensure the protection and safety of the environment.
- j) **Concession Fees Clause:** The Service Provider shall, at the inception of this PPP contract, pay an entry fee which shall be 5% of the Service Provider's projected income under this PPP contract for the first year of this agreement. It is further agreed that the Service Provider shall pay an entry fee at the beginning of every year during the pendency of this PPP contract, which shall be 3% of the total revenue or income accrued to the Service Provider under this agreement for the preceding year.

13. OUTPUT SPECIFICATIONS

It is agreed by both parties that the essence of this Agreement is primarily for the Service Provider to provide the platforms and associated surveillance and monitoring systems to enhance the performance of the Agency's statutory responsibilities in the entire Nigerian maritime domain. The output specifications are comprehensively contained and described in Schedule I to this Agreement. The followings are some of the outputs required:

- a) Monitoring and enforcement of the Agency's responsibilities in the maritime domain: the Service Provider shall ensure that the vessels so provided under this Agreement as well as the technical crew thereon are sufficiently efficient and have the capability to ensure regulatory compliance in the Nigerian maritime domain and

thereby assisting the Federal Government in reducing piracy and other illegal activities in Nigerian waters.

- b) Improved data collection: the service provider shall, in the discharge of its obligations under this agreement, ensure that the operational platforms and other equipments as may be provided are efficiently applied to improve data collection on the Nigerian waters and maritime domain Search and rescue implementation and enforcement operations, thereby increasing data generation for research and report purposes. It will also ensure that data collected are transferred to relevant user-departments.
- c) Enforcement of marine environmental protection laws and Cabotage compliance enforcement: the service provider shall, in collaboration with the agency's surveillance crew aboard the Offshore Service Vessels work jointly towards the actualization and enforcement of the relevant maritime laws as well as the enforcement of the Cabotage regime, consequently, increasing the revenue of the agency and the government.
- d) Assessment of ship's physical structure: in satisfying this goal, the service provider shall have aided increase of safety of life at sea and enhancement of search and rescue (SOLARS).
- e) Enforcement of levies, charges and increase in revenue: the service provider shall ensure that the relevant levies and charges, to wit: 3% statutory levy, 2% Cabotage charges and 0.5 stevedoring charges are adequately enforced thereby increasing the agency's revenue which in effect increases government's revenue.

14. OBLIGATIONS OF THE AGENCY UNDER THIS AGREEMENT

The Agency shall ensure that all surveillance as would be carried out with the initial 12 vessels fit for purpose and Operational Platforms on

the entire Nigerian Maritime Domain complies with the requirements of all applicable laws.

15. INSURANCE

The Service Provider shall insure the initial 12 (twelve) vessels fit for purpose and Operational Platforms (as well as such number of vessels as may be supplied later under this Agreement) and keep them comprehensively insured against all loss or damage by fire and all such other risks as may be agreed with the Agency in the joint names of the Service Provider and the Agency with an insurance company approved by the Agency.

The Service Provider shall pay punctually all premiums and make any other payments necessary to effect and maintain the policy, produce the policy and the receipt for each premium to the Agency on demand and shall not do anything which might invalidate the insurance.

If any of the Vessels is damaged and the damage can be made good, all insurance moneys paid under this policy shall be applied in making good the damage. If any of the Vessels is damaged beyond repair or destroyed then those moneys shall be applied in acquiring and providing another one in place of the damaged or destroyed Vessel.

The Service Provider shall insure all members of the crew on board the initial 12 Offshore service vessels and Operational Platforms and keep them insured at all times during the pendency of this Agreement.

16. SERVICE PROVIDER'S WARRANTIES

The Service Provider Warrants as follows:

- a) That the initial 12 vessels fit for purpose and Operational Platforms and other additional vessels that may be procured shall be free from any defect and shall be seaworthy throughout the pendency of this Agreement and shall meet all specifications as enumerated in Schedule II.

Warrant

- b) That in the event that any of the 12 vessels fit for purpose (including other vessels as may be provided by the Service Provider) or any of its parts fails to function properly during the Period of the Agreement and upon receiving notice in writing from the Agency, the Service Provider shall remedy the defects/s to make the Vessels and /or the defective parts suitable for the ordinary purpose for which the parties intended under this Agreement.
- c) That the technical crew that will be provided by the Service Provider shall be worthy and professionally qualified personnel, capable of manning the Vessels in all material particular.
- d) That the Telecommunication (IT) facilities on the Vessels, including any and all surveillance devices on the Vessels shall be of internationally approved standard.
- e) That any loss arising from breach of clause 16(a) and 16(b) above shall serve to vitiate this Agreement to the extent that the Agency shall not incur any liability to the Service Provider or third party(ies) for any pecuniary, material or human loss;
- f) Where, however, the Agency incurs any pecuniary, material or human loss as a result of the breach of clauses 16(a) and 16(b) above, the Service Provider shall indemnify the Agency to the full amount of the loss incurred.
- g) That they are licensed ship owners and ship managers.
- h) This Agreement constitutes a legal, valid and binding obligation of the Service Provider and is enforceable against the Service Provider in accordance with its terms; and that of the date hereof, there is no pending or, to the best of the Service Provider's knowledge, threatened action or proceeding affecting the Service Provider before any legal authority or arbitrator that could reasonably be expected to materially and adversely affect the financial condition or operations of the Service Provider or the ability of the Service

Watsf

Provider to perform its obligations hereunder, or that purports to affect the legality, validity or enforceability of this Agreement.

17. AGENCY'S WARRANTIES

The Agency Warrants as follows:

- a. That the Agency shall pay to the Service Provider 50% (fifty percent) of the total sum amounting to the year on year improvements on the entire revenue collected by the Agency pursuant to this agreement and as properly defined in the schedule III, only on the basis of no cure , no pay.
- b. That it has procured all necessary approvals under the law enabling it to enter into this PPP agreement.
- c. The Agency agrees that it has entered into this agreement only with Service Provider and shall not, unless this agreement is terminated or discharged either by performance or otherwise, enter into any contract with a third party to provide and or supply any platforms or to perform or carryout any of the services contained under this agreement.
- d. The Agency further undertakes not to enter into any agreement with a third party to provide the same or any of the services which forms the subject matter of this agreement.

18. APPLICABLE LAW/CHANGE IN THE LAW

- a. This Agreement shall be governed by and construed in accordance with the Laws for the time being in force in the Federal Republic of Nigeria and the Parties consent subject to the Dispute Resolution Clause of this agreement to the exclusive jurisdiction of Nigerian Courts in all matters regarding this Agreement PROVIDED that when there is a change in any of the Laws such change in the law shall not operate to frustrate any of the terms of this Agreement.

- b. This agreement shall be subject to the custody of the Infrastructure Concession Regulatory Commission or shall be in the custody of the said commission in accordance with the provisions of section 20 (a) Infrastructure Concession Regulatory Commission Act, No. 18, 2005.
- c. This agreement shall comply with the provision of section 20 (b) of Infrastructure Concession Regulatory Commission Act, No. 18, 2005, which is to the effect that the Commission (ICRC) shall have the power to ensure efficient execution of all concession agreement entered into by government which includes this agreement.
- d. This agreement shall comply with the provisions of the Infrastructure Concession Regulatory Commission Act, No. 18, 2005.

19. MODE OF OPERATION AND STANDARD REQUIREMENT

It is further agreed that the service provider shall deliver the project and services which is the subject matter of this agreement in compliance with all relevant national and international regulations, standard, orders and rules regulating maritime operations and provision of any services relating to maritime operations or activities.

20. SERVICE QUALITY AND PERFORMANCE MEASURES

The Service Provider shall deliver satisfactorily to the intendments of the Parties under this Agreement and the services that shall be provided by the Service Provider shall be assessed by the Agency on the basis of the Performance measures stated hereunder:

- a. Decrease in the number of piracy and related incidents reported to the Agency.
- b. Faster reporting of incidents to the Agency.
- c. Reduction of armed attacks on vessels.
- d. Effective monitoring, surveillance and enforcement of Nigeria's maritime domain.

- e. Improved response to and control of environmental emergencies including but not limited to spills from ships and rigs.
- f. Improved revenue earnings to the Government through the Agency.
- g. Reduction of vessels mishap on Nigerian waters.
- h. Reduction of illegal oil bunkering and fishing and all other measures incidental thereto.

21. MAINTENANCE AND DEPLOYMENT OF THE VESSELS

The Service Provider shall ensure that the 12 Vessels and Operational Platforms (which shall be supplied by the Service Provider at first instance and others which may later be supplied under this agreement subject to a maximum of 20 vessels) are in good working condition at commencement and during the pendency of this Agreement.

- a) The Service Provider shall be responsible for the management and navigation of the Vessels.
- b) The Agency shall through its designated officers, communicate to the Service Provider the deployment of the Vessels for operational purposes.

22. INDEPENDENT EXPERT

- a. The Agency shall appoint an independent expert acceptable to the Service Provider and the expert shall, at the end of each year evaluate the services being delivered by the Service Provider to ensure that it meets the needs and purpose of this agreement.
- b. The Independent Expert must, as a condition of its appointment as such, show that it has experience and proven track record in marine operations and on other services to which this agreement relates.
- c. The Independent Expert shall, during the pendency of this agreement, have all right of access to the project assets or sites, particularly but not limited to such time scheduled for inspection and evaluation by it.

- d. During the course of its evaluation, the Independent Expert shall be entitled to inspect the entire project, review all relevant documents and records kept by the Service Provider.
- e. It is further stated that the Independent Expert shall forward its findings and observation derived from any evaluation of the entire project to the Infrastructure Concession Regulatory Commission and the parties to this agreement.
- f. All fees as may be charged and payable to the Independent Expert shall be divided equally in the ratio of 50:50 between the parties.

23. GENERAL MAINTENANCE PROCEDURE

The Service Provider shall ensure at all times that its maintenance procedures are sufficient to ensure that:

- a) The service is continuously available.
- b) It shall maintain the designed intentions of the assets to achieve its output specifications.
- c) If the Agency reasonably believes that the Service Provider is in breach of its obligations under **Clause 21** then the Agency may conduct a survey to make sure that the assets are in a condition as specified in **Schedule II**. This right can be executed once every year, except that additional inspections are also permitted to address exceptional, unforeseeable circumstances.
- d) The Agency shall notify the Service Provider in writing ten [10] days in advance of the intended survey. The Agency shall in good faith consider any request by the Service Provider to conduct the survey on a different date if this request is made at least five [5] days before the notified date.

Walter

- e) If the survey shows that the Service Provider is in breach of its obligations under **Schedule II** the Agency shall:
- i. Notify the Service Provider of the condition in which the assets should be in.
 - ii. Specify a reasonable period in which the Service Provider can carry out necessary rectifications and maintenance procedures.
 - iii. Be entitled to be reimbursed by the Service Provider for the costs of the survey.
 - iv. The Service Provider shall carry out the rectification and maintenance procedures within the period specified, and all costs incurred as such shall be borne by the Service Provider.

24. REGULATORY AUTHORITY

For the purpose of this Agreement, the Service Provider shall promptly comply with any and every directives or demands made unto it by the Agency in the exercise of its statutory functions under the Nigerian Maritime Administration and Safety Agency Act, No. 17, 2007 PROVIDED that:

- a) The Agency shall not in the exercise of its function exert any undue influence and impose unreasonable, rigid or harsh conditions which were never intended by both parties under this Agreement.
- b) The Agency shall not under any pretext of exercising its statutory functions introduce any term which was not contemplated by the parties under the Agreement.
- c) The Service Provider shall not be bound by any directives, demands or order(s) made on it by the Agency which contradicts and /or contravenes the terms of this Agreement and which is unfairly prejudicial to it. *Walter*

25. REMUNERATION MODE

The Agency shall pay to the Service Provider an incentive fee which shall be calculated at 50% (fifty percent) of the year to year improvement of the Agency's revenue under this Agreement for a period of ten [10] years certain and as is contained in the Schedule III to this Agreement PROVIDED that the Service Provider shall not be entitled to any remuneration unless there is an appreciable increase in the revenue of the Agency from year to year during the pendency of this Agreement.

a) **Payment:** The Service Provider shall not be entitled to receive any Payment until the Service Commencement Date. The Agency shall pay the Service Provider for all Services each monthly in arrears, following the Service Commencement Date;

b) **Payment Arrangements:**

The invoicing arrangements with respect to the Payment shall be as follows:

- i. The Payments shall accrue in arrears in respect of each month and shall be invoiced and paid in the following month.
- ii. The Agency shall make the monthly revenue collection data and records available to the service provider two days after the end of every month to enable the Service Provider raise its invoice.
- iii. On the third Business Day of each month the Service Provider shall submit to the Agency a report which sets out the Payment due in respect of the previous month.
- iv. If the Agency agrees with the Payment Invoice Report, then it should pay the amount on or before the Payment Date five [5] working days after the receipt of the invoice.
- v. The "Payment Date" is the fifth [5th] Business Day from the receipt of the Invoice Report by the Agency.

- vi. All payments under this PPP Contract shall be made in Dollars or Naira (as may have been agreed by the parties) by the Agency into the bank account designated by The Service Provider for this purpose.
 - vii. If either Party disputes part or all of the Payment, the undisputed amount of the Payment shall be paid by the Agency. The Parties shall spare no effort to resolve the dispute within five [5] Business Days of the dispute arising. If they fail to resolve the dispute, either Party may refer the dispute for resolution in accordance with the **Dispute Resolution** provision of this agreement. Following the settlement of the dispute, the Service Provider shall withdraw the original invoices and submit replacement invoices reflecting the new amounts if any.
 - viii. It is further agreed that upon the execution of this agreement but before each of the parties take any steps to perform its obligation hereunder, both parties shall agree on the take off bench mark financial figures as stated in Outline Business Case (OBC) submitted by the Service Provider.
- c) The Service Provider shall be paid as contained herein Provided that at the end of three years from the commencement of this agreement and every three years thereafter, both parties may mutually agree to review the incentive fee of 50% of the Service Provider.

26. INFORMATION

- a) The Service Provider shall provide the Agency with any documents, records, information and the like in its possession as may reasonably be requested by the Agency for the purpose of complying with any of its statutory reporting obligations, including its reporting obligations under the law.

- b) The Service Provider shall ensure that Sub-Partners shall provide information required by the Agency.

27. RISK ALLOCATION

The following key risks shall be borne by both parties to this Agreement as stated hereunder:

- a) The Service Provider shall bear the following risks under this Agreement –
- i. All management and operational risks.
 - ii. All technical risks including safety and environmental risks.
 - iii. All financial risks including any risks regarding any transaction in Foreign Exchange, interest rates, debt service cover and taxation.
- b) The Agency shall bear the following risks under this Agreement –
- i. All legal risks
 - ii. All political risks

28. RISK MANAGEMENT

The Parties to this Agreement shall take reasonable steps to manage the risks allocated to it by agreement of both parties in the clause above respectively as follows:

- a) **Service Provider** may
- i. Enter into committed supply contract and also by providing qualified and suitable crew members.
 - ii. Enter into contracts with committed sub contractors of proven technologies and by further consulting the public when necessary.
 - iii. Operate an escrow account.
 - iv. Take up insurance.

b) **The Agency** may

- i. Ensure pre-contractual compliance with all regulations.
- ii. Obtain state support and guarantee.

29. REPORTS

The Service Provider and the Agency's designated representative shall jointly submit a report on the activities on the deployment of the vessels to the Agency's management on a monthly basis.

30. LIABILITY

The Service Provider shall be liable for any and every environmental hazard occasioned by any act of recklessness, carelessness or negligence of any member of its technical crew aboard any or all of the 12(twelve) or more vessels and operational platforms.

It is further agreed that the Service Provider shall not incur any liability on behalf of the Agency or in any way pledge or purport to pledge the Agency's credit or accept any order or make any contract binding on the Agency without the prior written consent of the Agency.

31. AGENCY DEFAULTS: Agency Default means any one of the following events:

- a) An expropriation of a material part of the Project Assets and/or the shares of the Service Provider by the Agency.
- b) A failure by the Agency to pay amounts of money due to the Service Provider which are not included in disputes which exceeds Twenty-Five Million Naira (or its Dollars equivalent) and such failure continues for ten [10] Business Days from receipt by the Agency of a notice of non-payment by the Service Provider. *Mothep*

- c) A breach by the Agency of its obligations under this PPP Contract which materially renders the Service Provider unable to perform its obligations under this PPP Contract for three months continuously.

32. TERMINATION FOR AGENCY DEFAULT SHALL FOLLOW THESE PROCEDURES:

- a) Within thirty [30] days after the Service Provider becomes aware of the occurrence of an Agency Default, the Service Provider shall submit a notice in writing to the Agency on the occurrence of the default. If the default has not been rectified within thirty [30] Business Days from the date of receipt of the notice by the Agency, the Service Provider may send a written notice to the Agency terminating the PPP Contract with immediate effect;
- b) The Service Provider shall not exercise any rights to terminate this PPP Contract except as expressly provided herein.

33. SERVICE PROVIDER DEFAULTS

- a) The Service Provider Default means any of the following events or circumstances:
 - i. Any compromise or arrangement with or for the benefit of the creditors being entered into by the Service Provider.
 - ii. The Service Provider ceases to carry on business, due to bankruptcy, insolvency, business failure or other reasons.
 - iii. The Service Provider ceases to provide all or substantial part of the Services under this PPP Contract (other than when the Service Provider is impacted by Agency Default).

Malte

- iv. A failure by the Service Provider to pay amounts of money due to the Agency which are not included in disputes, which exceed Twenty-Five Million Naira (or its Dollars equivalent) and such failure continues for ten [10] Business Days from receipt by the Service Provider of a notice of non-payment by the Agency.
 - v. Any breach of the provisions of this PPP Contract that has occurred more than once and the Agency has given an initial warning about the breach, and the Agency stated by a notice that if the breach recurs, consequences can include termination of the PPP Contract.
 - vi. The Agency has issued a second and final warning about any breach of the provisions of this agreement, and the Service Provider continues the breach.
- b) On the occurrence of the Service Provider Default the Agency may:
- i. Terminate this Contract in its entirety by notice in writing; the Agency shall serve a notice to the Service Provider to remedy the default within ten [10] Business Days from the receipt of the notice. If the Service Provider is unable to do so, the Agency is entitled to terminate the PPP Contract with immediate effect.
 - ii. The Agency shall not exercise any rights to terminate this PPP Contract except as expressly provided herein.

34. TERMINATION FOR CORRUPT ACT

- a) The Service Provider warrants that in entering into this PPP Contract that it has not committed any Corrupt Act. *Natig*

- b) If the Service Provider or anyone employed by the Service Provider or the Sub-Contractor or anyone employed by the Sub-Contractor commit any Corrupt Act, then the Agency is entitled to act in accordance with this agreement.
- c) If the Corrupt Act is committed by the Service Provider, any director of the Service Provider, or any employee of the Service Provider with the knowledge of the Service Provider, then the Agency may terminate this PPP Contract with immediate effect by a written notice to the Service Provider.
- d) If the Corrupt Act is committed by an employee of the Service Provider, then the Agency may terminate this PPP Contract with a written notice, unless the Service Provider within [10] Business Days of the receipt of the notice ensures that the employee's involvement in the project is terminated and all the work assigned to the employee is reassigned to somebody else with same qualifications or better.
- e) If the Corrupt Act is committed by a Sub-PPP Contractor of the Service Provider, or by any of the Sub-PPP Contractors directors or employees, then the Agency may terminate the PPP Contract by a written notice, unless the Service Provider within [20] Business Days of the receipt of the notice ensures that the Sub-PPP Partner's involvement in the project is terminated and substituted with another with the same capabilities and qualifications or better.
- f) Any notice of termination under this clause shall include:
 - i. The nature of the Corrupt Act committed.
 - ii. The Parties that were involved in the Corrupt Act. *Mate*

iii. The date on which this PPP Contract shall terminate.

35. OTHER GROUNDS UPON WHICH AGREEMENT MAY BE TERMINATED

In addition to the grounds stated in this agreement above, the Agency may by written notice terminate this Agreement or suspend its performance of all or any of its obligation under this Agreement immediately and without liability for compensation or damages if:

- a) The Vessels delivered by the Service Provider are not of the same specification stated and contained in the Schedule II.
- b) The Service Provider fails to comply with any of its obligations under this Agreement.
- c) Any circumstances arise which give reasonable grounds in the Agency's opinion for its belief that the Service Provider has or may become incapable of performing its obligations under this Agreement.

36. DISPUTE RESOLUTION

- a) Referable Disputes: The provisions of this clause shall apply to any dispute arising in relation to any aspect of this PPP Contract between the Parties to this project.
- b) Internal Referral
 - i. If a dispute arises in relation to any aspect of this PPP Contract, the Parties shall first endeavor in good faith to resolve their dispute using the following informal process: *Natte*

- ii. Disputes shall first be referred to a meeting of the Project Managers of the parties or other designated executives who are actively involved in the project and
- iii. If the Parties are unable to resolve the dispute within ten [10] Business Days of referral to the meeting specified above, either Party may refer the dispute for a resolution by the higher executive authorities – the Project Directors of the Service Provider and the Agency;
- iv. Any dispute which has not been resolved by the Project Directors within fifteen [15] Business Days of the dispute being referred to them shall be treated as a dispute in respect of which informal dispute resolution has failed.
- v. Performance to continue: No dispute arising shall relieve either Party from its obligations under this PPP Contract.

37. ARBITRATION

- a) All disputes, differences and questions of any nature which at anytime arise between the parties or any of them out of construction of or concerning anything contained in, arising from or in connection with this agreement, as to the rights, duties or liabilities of the parties under it and which has remained unresolved after employing any of the aforementioned means of internal dispute resolution stated above, shall be referred to Arbitration in Nigeria in accordance with the Arbitration and Conciliation Act, Cap A18, Vol. 1, Laws of Federation of Nigeria, 2004 Provided that in the event that the Arbitration and Conciliation Act is or has been repealed the Arbitration under this clause shall be commenced under and in accordance with the relevant Arbitration Act for the time being in force in Nigeria at the date of such dispute. *Walter*

- b) In the event of any such disputes, the parties shall submit themselves to Arbitrators who shall be fellows of the Chartered Institute of Arbitrators, U.K. (Nigerian Branch) and the findings of the Arbitrators shall be binding on the parties hereto.
- c) Where any dispute is referred to arbitration, the arbitration proceedings shall be presided over by three (3) arbitrators. One (1) each of the arbitrators shall be appointed by each of the parties under this agreement, while both arbitrators as appointed by the parties shall mutually appoint an additional arbitrator, who shall be the presiding arbitrator.
- d) Upon appointing an arbitrator, each of the parties shall give notice to the other of the appointment within three [3] business days of such appointment.
- e) The two arbitrators as may be appointed by each of the parties shall, upon exercising their power to appoint an additional arbitrator under this agreement, give notice of such appointment to the parties hereto within three (3) business days of such appointment.
- f) The initial costs of arbitration shall be borne by the parties in equal shares.
- g) In the event that any dispute is referred to Arbitration under this agreement, the Arbitrators shall at the close of the Arbitral Proceedings, make their findings, including their award, in writing on the said dispute within a period not exceeding thirty [30] business days from the date of the commencement of the arbitration or arbitral hearing.
- h) Following the provisions of this agreement, if either party, on or after the commencement of the arbitral proceedings, fails after reasonable notice to attend the proceedings, the Arbitrators and the other party may proceed without him/her and any decision reached at the conclusion thereof shall be binding on the party.

- i) Any decision or arbitral award made by the Arbitrators hereunder shall be binding on the parties as though made by a High Court having jurisdiction to determine any dispute in Nigeria and such decision or arbitral award shall have binding force on the parties whether or not it has been registered as a consent judgment of any court of competent jurisdiction.
- j) Notwithstanding terms and conditions contained herein, either party may and has the right to apply to court, in the event of any dispute, to obtain any injunctive remedy or relief against the other Provided that where the said relief sought is contingent on or may require that the parties proceed to full trial of the substantive matter, the applicant party shall withdraw his application and instead submit the matter to arbitration.
- k) The powers of the Arbitrators hereunder shall not be limited to arbitral awards but shall extend to the granting of injunctions where necessary. It is further agreed that the Arbitrators shall have the power to award or include in the arbitral award, any relief which they deem proper in the circumstances including but not limited to money damages, specific performance, cost of action and costs Provided that the Arbitrator shall not Award exemplary or punitive damages.
- l) Either party shall be entitled, at his discretion and if he so elects, to legal representation by a legal practitioner of his own choice and in so doing, he shall be responsible to pay any legal fees chargeable by the said legal practitioner.
- m) Upon the commencement of arbitral proceedings, there shall be no stay of proceeding in relation to the dispute.
- n) The Arbitrators shall not be liable to the parties for any act or omission in connection with services provided by them in, or in relation to, the Arbitration, unless the act or omission is

Mathe

fraudulent or involves willful misconduct or a breach of natural justice.

38. DELAY

This Agreement shall commence on the date contained in this Agreement and either party is not permitted, for any reason whatsoever, to delay the essence of this Agreement by postponing its obligation under this Agreement PROVIDED that a party may be excused from timeously carrying out its obligation hereunder only on the ground of the occurrence of an event occasioned by an act of God.

The Agency shall inspect and approve the technical specifications of the platforms to ensure that they meet the specifications set out in Schedule II prior to the commencement of the services of the Service Provider.

The Service Provider shall commence performance of its obligations and provision of the services provided in the output specification clause not later than 90 days after the date of execution of the contract.

Failure to commence its service obligations on that date shall give the Agency an option to terminate the agreement or to re-affirm the contract, in which case, The Service Provider shall pay the Agency (\$10,000) Ten Thousand U.S. Dollars (or its equivalent in Naira) for everyday it is in default as liquidated damages for the first (30) thirty days and thereafter, \$20,000 (Twenty Thousand Dollars) or its equivalent in Naira for every day from day 31 to 90 days after which this contract shall terminate for failure of performance.

39. FORCE MAJEURE

- (a) Any failure or delay on the part of any party in the performance of its obligations or duties under this Agreement shall be excused to the extent attributable to force majeure. A force majeure situation includes delays, defaults or inability to perform under this Agreement due to any event beyond the reasonable control of any party. Such event may be, but is not limited to, any act happening or occurrence due to natural causes and acts or perils of

navigation, fire, hostilities, war (declared or undeclared), blockage, labour disturbances, strikes, riots, insurrection, civil commotion, quarantine restrictions, epidemics, storms, floods, earthquakes, accidents, blow outs, fighting, and acts of or orders of Government.

- (b) If the performance of this Agreement is delayed, curtailed or prevented by force majeure, then the time for carrying out the obligations and duties thereby affected and rights and obligations hereunder shall be extended for a period equal to the period of such delay.
- (c) The party who is unable to perform its obligations as a result of the force majeure shall promptly notify the other parties thereof not later than 48 (forty eight) hours after the establishment of the commencement of the force majeure, stating the cause, and the parties shall do all that is reasonably within their powers to remove such cause. At the cessation of the force majeure situation the party who declared the force majeure shall promptly notify the other parties.
- (d) An event shall not be considered force majeure if the notice in clause 39(c) above is not given.
- (e) Should force majeure prevent the Service Provider from performing services for more than 90 days, the Agency shall be entitled to terminate this Agreement without further liability or obligation to the Service Provider, except for liabilities incurred prior to such termination.
- (f) The Service Provider's failure or inability to perform for reasons other than as specified in clause 39(a) hereof shall not be deemed force majeure.

40. INDEMNITY

The Service Provider hereby undertakes to the Agency except in so far as the Service Provider's performance is prevented by any event of Force Majeure within clause 39 above, that at all times Service Provider will

duly perform, observe and keep the terms and conditions on the part of the Service Provider to be performed, observed and kept pursuant to this Agreement and that the Service Provider will indemnify and keep indemnified the Agency in respect of any losses costs and expenses sustained by the Agency through the default of the Service Provider with respect to any of its obligations.

41. "CORRUPT ACT" MEANS:

- a) Giving, agreeing to give, or offering to the Agency or any other member of other agencies of the federal government or any person employed on behalf of the Agency or on behalf of other members of other agencies of the federal government, any gift or any consideration of any kind as an inducement or reward for doing or not doing (or for having done or not having done) any act for the obtaining or the performance of this PPP Contract with the Agency.
- b) Entering into this PPP Contract with the Agency or any other PPP Contract with other agencies of the Federal Government in connection with which, a commission has been paid or has been agreed to be paid by the Service Provider or on its behalf or to its knowledge unless such commission has been agreed to in a written notice by the Agency;
- c) Committing any criminal offence under any law from time to time dealing with bribery, corruption, fraud, or extortion;
- d) Defrauding, attempting to defraud, or conspiring to defraud the Agency or any other public agencies.

42. VARIATION

Except as expressly provided in this Agreement, no variation or amendment of this Agreement or oral promise or commitment related to it shall be valid unless committed to writing and signed by or on behalf of both parties.

43. CHANGE IN OWNERSHIP OR KEY PERSONNEL OF THE SERVICE PROVIDER

The Public Private Partnership created between the Agency and the Service Provider under this Agreement shall not be determined or affected by any change in the composition of the Service Provider's company, directors or shareholders but shall be binding between the Agency and the members and officers of the Service Provider's company for the time being so long as the company howsoever constituted continues in business and the Agency shall on demand execute such document as the Service Provider requires to novate the Agreement with the persons for the time being constituting the company.

44. MEETINGS

For the purpose of the Public Private Partnership under this Agreement the representatives of the Service Provider shall on the first working day of every month meet with relevant officers of the Agency with a view of fashioning out best means of carrying out their obligations hereunder.

45. COMPLIANCE WITH RELEVANT LAWS

It is further agreed that pursuant to this Agreement, the Service Provider shall comply with all relevant environmental, shipping and cabotage laws and other laws and international standards as may be required to enable it carry out its obligations under this Agreement PROVIDED that for the purpose of this Agreement both parties shall be bound by the general law of contract.

46. ASSIGNMENT

- a) The Service Provider shall not without the written consent of the Agency, such consent not be unreasonably withheld, assign, transfer, or contract the benefits or obligations hereof to any person(s), organization or company.
- b) In the event of any such assignment or transfer of the benefits or obligations by the Service Provider, the Service Provider and the Assignee shall remain jointly and severally liable for the

discharge or performance of the Service Provider's obligations under this Agreement.

47. SERVICE PROVIDER'S UNDERTAKINGS

- a) The Service Provider hereby pledges not to offer any bribe, monetary or material inducement to any person whatsoever, arising from or in the course of the execution of this Agreement.
- b) The Service Provider hereby pledges to disclose the details and particulars of all its commissioned agents.
- c) Any breach arising from clauses (a) and (b) hereof shall serve to vitiate this agreement to the extent that the Agency shall not incur any pecuniary or material loss and shall reserve the right to sue or not to sue.

48. CONFIDENTIALITY

- a) The Service Provider covenants that it (including members of its staff) shall not at any time whether before, during or after the termination of this PPP contract, divulge or use any information obtained in the course of its obligation under this PPP contract or such other information including the entire terms, conditions and content of this PPP contract and/or any information of a technical nature derived as a result of this contract.
- b) Both Parties hereto shall, during the pendency of this agreement and after its termination, keep confidential the object, terms and such other information related or consequent upon this contract and shall not disclose or attempt to disclose any such information save as authorized by and under this agreement.
- c) The restrictions under this clause shall not apply to information which either of the parties establishes:
 - i. is within its knowledge and known to him before or at the date of disclosure as evidenced by and from its written records.

ii. is after the date of disclosure acquired by either party in good faith from an independent third party.

iii. has in its entirety become public knowledge otherwise than in breach of these restrictions.

d) The existence of this agreement and its terms are confidential and none of the parties may disclose anything about this agreement or its subject matter or implementation to any person except:

i. if required by law to do so; or

ii. in the form of and terms previously agreed with the other party;

iii. in confidence to its professional advisers.

49. MISCELLANEOUS PROVISIONS

a) OBLIGATION TO COMPLY WITH THE ICRC ACT

i. This agreement shall be subject to the custody of the Infrastructure Concession Regulatory Commission or shall be in the custody of the said commission in accordance with the provisions of section 20 (a) Infrastructure Concession Regulatory Commission Act, No. 18, 2005.

ii. This agreement shall comply with the provision of section 20 (b) of Infrastructure Concession Regulatory Commission Act, No. 18, 2005, which is to the effect that the Commission (ICRC) shall have the power to ensure efficient execution of all concession agreement entered into by government which includes this agreement.

iii. This agreement shall comply with the provisions of the Infrastructure Concession Regulatory Commission Act, No. 18, 2005.

- b) **Re-Tendering Clause:** Upon the peaceable termination or discharge of this agreement by performance, the Service Provider shall give or provide all necessary assistance to the Agency in the event that the Agency intends to contract out the services herein to another person other than the Service Provider by way of re-tendering and such assistance as may be rendered by the Service Provider to the Agency includes, but not limited to, the provision of information on accounts of operation and all other necessary information as may be required by the Agency.

50. ENTIRE AGREEMENT

Each party hereby confirms that this Agreement sets out the entire agreement and understanding between the parties in relation to the transactions hereby contemplated and that it supersedes all previous agreements, arrangements and understandings between them or any of them with regard to these transactions and that it is not entering into this Agreement or any of the arrangements contemplated hereby in reliance upon any representation or warranty not expressly set out herein.

51. NOTICES AND ADDRESSES

- a) Any notice given under this deed shall be in writing and may be served:
- i. personally;
 - ii. by registered delivery mail;
 - iii. by email;
 - iv. by any other means which any party specifies by notice to the other as a means by which he is willing to accept service.

Matt

- b) For service of all notices and other communications, the parties addresses shall, unless otherwise re-notified, be the following:

"AGENCY"

The Director-General
Nigerian Maritime
Administration and Safety
Agency
4, Burma Road, Apapa, Lagos.

"SERVICE PROVIDER"

The Managing Director
Global West Vessel
Specialist Nig. Ltd.
8, Ashanti Close,
Off Bombay Crescent,
Apapa, Lagos.

- c) All notices shall be in writing and shall be deemed sufficiently served when sent by registered post and recorded delivery made to the address of that party as stated in paragraph (b) above.

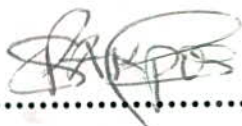
52. INTERPRETATION

- a) The headings to clauses in this agreement are inserted for ease of reference only and shall not affect the construction of this agreement.
- b) In this agreement, any references to any statutory provision refers to that provision or legislation as extended, modified, amended, re-enacted or replaced and that legislation shall in its present form having the force of law apply to regulate the terms of this deed.
- c) In this agreement,
- i. words expressed in any gender shall where the context so requires or permits include any other gender;
 - ii. words expressed in the singular shall where the context so requires or permits include the plural.
- d) References in this agreement to anything which any party is required to do or not to do shall include its acts, defaults, and omissions, whether:
- i. direct or indirect

- ii. on its own account
 - iii. for or through any person; and
 - iv. those which it permits or suffers to be done or not done by any other person.
- e) The effect of all the obligations affecting both parties to this agreement is cumulative and no obligation shall be limited or modified by any other of those obligations unless there is in this agreement an express limitation or modification.
- f) The schedules to this agreement shall form and be part of the terms of this agreement.

IN WITNESS WHEREOF the Agency and the Service Provider have caused their Common Seals to be hereunto affixed the day and year first above written

The Common Seal of the within named **NIGERIAN MARITIME ADMINISTRATION AND SAFETY AGENCY** is affixed in the presence of:

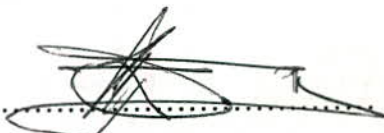


DIRECTOR- GENERAL



LEGAL ADVISER

The Common Seal of the within named The Global West Vessels Specialist Nigeria Limited is affixed in the presence of:



DIRECTOR



SECRETARY

SCHEDULE I

OUTPUT SPECIFICATIONS

1. IMPROVED SECURITY WITHIN THE MARITIME DOMAIN

- Reduce incidences of pirate attacks within our waters
- Reduce incidences of illegal activities within our waters
- Increase awareness of maritime safety and international safety compliance within our waters.

2. IMPROVED DATA COLLECTION

- Increase data generation for reports and research purposes on all vessels and offshore facilities
- Increase data collation and update for onward transfer to user departments
- Increased information analysis resulting in faster intervention and response time

3. INCREASE CABOTAGE AND REVENUE GENERATION ENFORCEMENT

- Enforcement of Local Content Act
- Increase participation of Nigerians' in the maritime labour workforce
- Monitor all export and import activities within our waters
- Enforcement of 3% statutory levy
- Enforcement of 2% cabotage charges
- Enforcement of 0.5% stevedoring charges

4. INCREASE IN SAFETY OF LIFE AT SEA AND ENHANCEMENT OF SEARCH AND RESCUE (SOLAS)

- Assessment of Ships' physical structure
- Certification of crew and minimum manning requirement
- Adequacy of ships' supplies to cover the voyage
- Cargo confirmation

5. IMPROVED POLLUTION CONTROL AND MANAGEMENT LEADING TO CLEANER WATERS (MARPOL)

- Increased monitoring of shipping activities which includes STS
- Increase monitoring of the sea to ensure a clean environment

Natig

- Increase monitoring of the sea to deter illegal dumping of waste
- Increase compliance of vessel and platforms with MARPOL regulation with respect to pollution prevention.

SCOPE OF WORK

The Agency's statutory activities cover three broad areas:

1. MONITORING AND PATROL

- Effective data collection, analysis and report of all maritime activities within our maritime domain.
- Obtaining continuous information with respect to the number of vessels and offshore facilities that comes in and out of our waters.
- Identifying the exact locations of maritime installations and all service vessels operating within our waters
- Ensuring effective monitoring of maritime activities and compliance with all relevant standards

2. ENFORCEMENT OF COVENTION

- Enforcement of Safety Regulations (SOLAS)
- Enforcement of Environmental Standards (MARPOL)
- Enforcement of Maritime Labour Conventions (MLC)
- Enforcement of Cabotage Laws – Ship registration and waivers, crew requirement

3. IMPROVEMENT OF REVENUE GENERATION

- Enforcement of 3% levy
- Enforcement of 2% cabotage charges
- Enforcement of 0.5% stevedoring charge

Matt

SCHEDULE II

TECHNICAL AND REQUIREMENTS SPECIFICATIONS.

1. TYPE OF BOAT : SURVEILLANCE AND PATROL BOAT
2. CLASSIFICATION : I.A.C.S [INTERNATIONAL ASSOCIATION OF CLASSIFICATION SOCIETY].
3. AGE : 10 YEARS MAX
4. INSURANCE [HULL & MACHINERY : AS REQUIRED
5. CIVIL LIABILITY CERTIFICATE : AS REQUIRED
6. NAVIGATION AND COMMUNICATION INSTRUMENTATION : IN ADDITION TO BASIC SHIP - AS ATTACHED.
7. MATERIAL : STEEL [PREFERABLE BULLET PROOF STEEL]
8. MACHINERY : AS APPROVED BY CLASS.
9. MARPOL EQUIPMENT : AS APPROVED BY CLASS
10. TEST LAB.[MARPOL] : THE AGENCY –REQUIREMENT.
11. THRUSTERS : BOW THRUSTERS –MINIMUM
12. AIR CONDITIONING : CENTRAL SYSTEM.

- | | | |
|------------------------------|---|------------------------|
| 13. SEWAGE | : | AS APPROVED BY CLASS. |
| 14. FRESH WATER
GENERATOR | : | 10 tons/day. |
| 15. DAVITS | : | 4 FAST RESPONSE CRAFTS |
| 16. CREW MEMBERS | : | 12 -18 PERSONS |
| 17. SECURITY CREW | : | 12 -18 PERSONS |
| 18. THE AGENCY CREW | : | 12-18 PERSONS |
| 19. HOSPITAL BATH | : | 10 PERSONS. |
| 20. FUEL COMSUMPTION | : | 8 -10mt/day |
| 21. LUB. OIL CONSUMPTION | : | 100ltrs/day |
| 22. RANGE | : | 500nm. |
| 23. SPEED | : | 15- 25 NAUTICAL MILES |

FAST INTERVENTION CRAFT

- | | | |
|-----------------|---|--------------------------|
| 1. TYPE | : | FAST INTERVENTION CRAFT. |
| 2. MATEAL | : | ALUMINUM |
| 3. NO PER CRAFT | : | 4 PERSONS |
| 4. PROPULSION | : | WATER TTHRUSTER. |
| 5. NO OF CRAFTS | : | 4 PCS. |
| 6. SPEED | : | 35 - 50 NAUTICAL MILES |

**AVERAGE COST OF A PLATFORM WITH ABOVE SPECIFICATIONS IS
SIX MILLION FIVE HUNDRED THOUSAND DOLLARS ONLY.**

[\$ 6,500,000.]

Nate

Redacted

The under-listed communications and aid to navigation equipment are chosen in order that the platform/boats will be able to meet both SOLAS Chapter regulations and the organization's needs, covering Search And Rescue, Maritime Security; Pollution control, Cabotage management and cargo monitoring.

A. OFFSHORE PLATFORM VESSEL [OSV] (Equipment per Platform)

	System	Qty	Specification	Remarks
1.	Marine Radar	1	120N/Mile range X-Band radar; minimum 18inch display screen; with ARPA capability 120N/Mile range S-Band radar; minimum 18inch display screen; with ARPA capability	
2.	Base VHF	2	VHF radio with DSC	
3.	MF/HF SSB RADIO	1	SSB radio, complete with ATU, 250Watts transmitter output; DSC and NBDP capability	
4.	INMARSAT C equipment	1	INMARSAT STANDARD C with e-mail capability. Can in-cooperate Ship Security Alert System(SSAS) and Long Range Identification and Tracking (LRIT) system	
5.	Echo Sounder	1		
6.	Public Address	1	LoudHailer with Intercom facility	
7.	Satellite Compass	1	Satellite compass with 3 interfacing GPS; minimum 4.5inch LCD display; maximum of 0.8 degree accuracy	
8.	GPS	2	DGPS, minimum 4.5inch colour display	

Walter

9.	A.I.S.	1	Class A Automatic Identification System	
10.	GMDSS Hand-held VHF radio	3■	Survival craft 2-way VHF apparatus; with requisite marine channels; with primary battery; charging arrangement in case it comes with secondary battery	
11.	Onboard Communication	6	Water-proof hand-held VHF radios for communication between crew	
12.	EPIRB	1	406MHz COSPAS/SARSAT Float-Free, with GPS	
13.	SAR Radar Transponder	2♦	9GHz Search and Rescue radar transponder	
14.	Satellite communication		Fleet Broadband Satellite equipment, capable of telephone, e-mail, data and fax	
15.	International NAVTEX Receiver	1	518kHz NAVTEX receiver	
			TOTAL PER OSV	

■ 2 units on a vessel of less than 500 GRT (Gross Registered Tonnage);

3 units on a vessel of 500 GRT and above

♦ 1 unit on a vessel of less than 500 GRT

2 units on a vessel of 500 GRT and above

B. FAST INTERVENTION CRAFT (Equipment per boat)

	System	Qty	Specification	Remarks
1	Base VHF	1	Base VHF radio to be installed with battery source of power	
2	GPS	1	DGPS, minimum 4.5inch colour display	
	AIS-SART	1	Search and rescue AIS-	

Walter

3			SART	
4	GMDSS Hand-held VHF radio	2	Survival craft 2-way VHF apparatus; with requisite marine channels; with primary battery; charging arrangement in case it comes with secondary battery	
5	Compass	1	Portable magnetic Compass	
	Onboard Communication	2	Water-proof hand-held VHF radios for communication between crew	
6	Portable GPS/COMPASS	1	Tactical GPS & Compass	
7	Public Address	1	LoudHailer with Intercom facility	
8	Radar	1	36N/Mile X-Band radar	

GLOSSARY OF USED ABBREVIATIONS

AIS	Automatic Identification System
ARPA	Automatic Radar Plotting Aid
ATU	(Automatic) Antenna Tuning Unit
DGPS	Differential Global Positioning System
DSC	Digital Selective Calling
EPIRB	Emergency Position-Indicating Radio Beacon
GMDSS	Global Maritime Distress and Safety System
GPS	Global Positioning System
HF	High Frequency
LCD	Liquid Crystal Display

Walter

LRIT	Long Range Identification and Tracking
MF	Medium Frequency
NBDP	Narrow Band Direct Printing (Radio Telex)
OSV	Offshore Service Vessel
VHF	Very High Frequency

Make

SCHEDULE III

FINANCIAL APPRAISAL AND FORECAST ANALYSIS

1.0 Financial Model

1.1 Benchmark Revenue

The proposed arrangement in respect of the provision of the platforms is contemplated to be structured on a 'no cure, no pay' basis. In other words, the private sector operator only gets paid on the deployment of the platforms and the achievement of specified measurable objectives.

In the proposed arrangement, the proposed objective is the total revenue that accrues to NIMASA from the following revenue line items which will be expected to be improved from the deployment of the platforms. The operator will be paid 50% of the revenue accrued in excess of the benchmark as determined by these line items.

Revenue Line Items
3% levy
2% Cabotage Surcharge
Cabotage Waiver
Ship Registry
Marine Safety Department
Marine Environment
Management
Stevedoring

Table 1: NIMASA Revenue line items expected to be impacted by deployment of platforms

In this regard, NIMASA already has a process for collecting the different revenue line items. Through existing measures, without deployment of platforms, historical revenues have shown a growth trajectory –growth of 28.4% and 19.2% in 2009 and 2010 over the preceding year as shown in Table 2.

Noted

Redacted

From review of historical trends and consultation with different NIMASA departments on revenue growth expectations, the following benchmark growth rates are believed to be reasonably expected rates of growth for NIMASA revenue with the Agency's current operations.

Redacted

¹ Naira components of individual revenue line items are converted to US Dollars at an exchange rate of N150/US\$.

² Naira components of individual revenue line items are converted to US Dollars at an exchange rate of N150/US\$.

1.2 Revenue Forecast

NIMASA revenue has been forecasted based on historical trends in individual revenue line items and an assessment of reasonable expectations of growth of these line items after the deployment of the platforms. The expected growth in headline NIMASA revenue is thus an agglomeration of forecasts for individual revenue items with the private sector operator entitled to 50% of the revenue accrued in excess of the benchmark.

3% Levy: This is expected to increase by 25% year on year from 2011 to 2014. This growth is expected to decline to 20% year on year from 2014 to 2017 and 15% year on year till 2020. The drop in growth rates will be attributable to more effective coverage of the coastal waters by the private sector operator. It is envisaged that there will be continued growth in Nigeria's volume of cargo throughput and vessel traffic in the future whilst Nigeria's dependence on imported cargo is not expected to change.

Redacted

Table 5: Forecasted 3% Levy and assumed growth rates. Shaded values are historical figures.

Cabotage Surcharge and Waiver: The Cabotage Surcharge is charged as 2% of the value of all Cabotage services that are provided within Nigeria's maritime domain. Any Cabotage services provided by an operator that does not meet the requirements under the Cabotage Act is required to apply for a waiver; the operator pays the Cabotage Waiver charge. With expected improvements in the Nigerian oil and gas industry and the surveillance capabilities that will be provided by the platforms, aggressive growth is projected in collections of the 2% surcharge. Improvements are also expected in the ability of Nigerian operators to provide Cabotage services. As such, while high growth rates for the Waiver charge are projected in the first years of the forecast, growth rates are expected to reduce sharply over the forecast period.

Make

Redacted

Shaded values are historical figures.

Ship Registry: Pursuant to legislation, rules and regulation relevant to maritime activities in Nigeria, all vessels operating within Nigeria's maritime domain are required to register with NIMASA. The Ship Registry fee is applicable to be paid as part of the registration of the vessel. With the deployment of the platforms and checks conducted as necessary, significant increase in this fee is projected.

Redacted

Marine Safety Department: All vessels and installations are required to be inspected regularly to ensure compliance with safety regulations. These inspections are also required as part of the vessel registration process. For all inspections, a fee is required to be paid to the Marine Safety Department of NIMASA. This fee is conservatively projected to grow at a flat 10% over the forecast period.

Redacted

Marine Environment Management: Revenues earned by this division of NIMASA are charges payable by maritime operators for pollution of the marine environment as recommended by MARPOL (the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978). A flat 10% year-on-year growth is assumed for such charges.

Redacted

Stevedoring: Terminal operators pay manning agents for providing dock workers. Under the NIMASA Act, these operators are required to remit to NIMASA 0.5% of the value of the fees paid to manning agents. This revenue component has witnessed significant declines over the last few years with the concessioning of port terminals and the subsequent automation of the operation of the ports by the new operators. NIMASA projects that the scope for reduced use of dock workers has plateaued. As such this revenue line item is projected to grow at 5%, slightly less than inflation, over the forecast horizon.

Redacted

Other Assumptions

To assess the viability of the proposed PPP arrangement for a private sector operator, the following are the base case scenario for other assumptions used:

NatEg

Redacted

Redacted

Matte

Redacted



Matt

2.0 Assessment Financial Viability

2.1 Viability Analysis

Based on the assumptions and parameters for PPP arrangement described above the **Pre-financing Internal Rate of Return (IRR)** of net cashflows to the private sector operator is used as metric of viability of the arrangement for the private sector operator. In other words, the project is only viable for the private sector operator if the IRR of net cashflows from the arrangement is greater than this cost of financing.

2.2 Financial Forecast

Redacted

Redacted

Redacted

Table 14: Cashflow statement for Private Sector Operator

Matte

Redacted

Based on the foregoing, under the described conditions, the PPP arrangement is viable for the Private Sector Operator.

2.4 Sensitivity Analysis

A sensitivity analysis is used to determine the impact of variations in key variables on the viability of the proposed PPP arrangement. Two (2) key variables have been identified: Base Fee and Incentive Fee

Sensitivity to Base Fee and Incentive Fee

The following data tables present the viability metrics for different values of the Base Fee and Incentive Fee while keeping all other variables constant

Redacted

Redacted

2.5 Conclusion and Justification

The purpose of the sensitivity analysis is primarily to gauge the optimal combination of Base Fee and Incentive Fee. Optimality in this case is the set of Base Fee and Incentive Fee that minimizes financial exposure by NIMASA while ensuring a financially viable undertaking from the private sector operator's perspective.

From the data presented in Table 15 and *Walter*

Redacted

Table 16 (derived using the assumptions in Table 11), the base case scenario - a **Base Fee of 0% and Incentive Fee of 50%** minimizes NIMASA financial exposure while keeping Pre-financing IRR above 8% (27.0%), the assumed threshold for viability. NPV is US\$38.2mn and total funding requirement from the private sector operator is US\$116.9mn.

After careful consideration of several economic and financial factors, we selected the aforementioned combination/sharing ratio based on the following factors:

- The very high costs (to include fuel and maintenance) of patrolling the waters for the private sector operator
- This is the ideal sharing ratio that makes the project viable to both parties and financiers with and interest in the project.
- Reduces and unforeseen risks that could drastically increases the costs of operations and hence project viability
- This serves as a very good incentive to any prospective investor as the likelihood of breaking even within the first 3-4 years is very high indeed.
- The ratio also ensures that NIMASA continues to benefit from an enhanced revenue stream without the necessary commitment of resources.

With the recommended fee combination (Base Fee: 0%, Incentive Fee:50%) and the other variables as stated in the base case scenario, the

Watt

following is a projecting of net revenues that will accrue to NIMASA over the life of the proposed PPP arrangement.

Redacted

Watt & Tj