

THIS AGREEMENT is made on the _____ of _____ 2010

BETWEEN:

HALLIDAY FINCH LIMITED, a limited liability company incorporated in the Republic of Kenya, whose address is Post Office Box Number 1283 – 00502, Nairobi, Kenya, herein duly represented by Mr. Sam Mattock, Chief Executive Officer, a British national bearer of passport no: 761294102 (hereinafter called "**the Company**", which expression shall where the context so admits include its successors and assigns);

TRANSITIONAL FEDERAL GOVERNMENT OF SOMALIA, the internationally recognized government of the Republic of Somalia, whose address is Mogadishu, Republic of Somalia, herein duly represented by the Prime Minister, **Mr. Mohamed Abdullahi Mohamed**, a Somali national, bearer of passport no: _____ (hereinafter called "**the TFG**", which expression shall where the context so admits include its successors and assigns);

MINISTRY OF FISHERIES AND MARINE RESOURCES OF TRANSITIONAL FEDERAL GOVERNMENT OF SOMALIA, the internationally recognized government of the Republic of Somalia, whose address is Mogadishu, Republic of Somalia, herein duly represented by the Minister of Fisheries, Dr. Mohamed M. Hassan a Somali national, bearer of passport no: _____ (hereinafter called "**the Ministry of Fisheries**", which expression shall where the context so admits include its successors and assigns);

AND

The Anti-Piracy Task Force of the Transitional Federal Government of Somalia, whose address is in Mogadishu, Somalia, herein duly represented by Professor Muhyadin Ali Yusuf, the duly elected Chairman, a Somali national, bearer of passport no: _____ (hereinafter called "**the APTF**" which expression shall where the context so admits include its successors and assigns).

"The Company", **"The TFG"**, **"the Ministry of Fisheries"** and **"the APTF"** shall where the context permits be referred to individually as the **"Party"** and jointly to as the **"Parties"**.

Whereas:

- A) The APTF, with the express approval and knowledge of the TFG and the Ministry of Fisheries, has instructed the Company (Letter of Appointment annexed herein as Schedule (1)) to develop a strategy that shall provide a National Coast Guard solution (hereinafter referred to as **"The National Coast Guard Strategy"**) to address the Somali piracy problem, illegal toxic waste dumping in the Somali seas; and to enhance the ability of the TFG and the Ministry of Fisheries to regulate and enforce the issuance of fishing licenses in the Territory (hereinafter defined).
- B) The APTF, with the express approval and knowledge of the TFG and the Ministry of Fisheries, has also instructed the Company to purchase and supply the APTF with the Equipment (hereinafter defined) required to implement the National Coast Guard Strategy.
- C) The Parties hereby expressly agree that the Company shall provide the aforementioned Services subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the Parties hereby agree as follows:

1. Preamble

The Preamble and the Schedules attached hereto shall be considered as an integral part of this Agreement.

2. Definitions

- 2.1 The following terms for the purposes of this Agreement shall have the definitions indicated herein below:

“Appointed Auditor” means KMPG International or any other international auditing firm of good repute that is appointed by the Parties to solely manage and audit all of the Funds;

“Confidential Information” includes, without limitation, any financial, technical, commercial and scientific information, know-how, trade secrets, processes, technical specifications or data of whatever form, including ideas, data, plans, concepts, designs, inventions, specifications and operating experience which the Company has developed or acquired, which is not in the public domain, and which is not already in the lawful possession of the other Parties, or communicated to the other Parties, or acquired by the other Parties from the Company pursuant to this Agreement;

“Duration” means the term of this Agreement as stated in clause 3 of this Agreement;

“Equipment” means any Equipment purchased and supplied by the Company to the APTF and which is required to implement the Somali National Coast Guard Strategy;

“Fees” means the Fees and or any consideration payable by the TFG, The Ministry of Fisheries and the APTF to the Company;

“Fishing Revenue” means all the Fishing Revenue earned from issuing and enforcing fishing licences and regulating vessels in the Territory;

“Funds” means the Funds raised by the Parties to develop and implement the National Coast Guard Strategy;

“Force Majeure” means any act beyond reasonable control of a Party including but not limited to government’s decisions, flood, earthquake, wind, storm or other natural disaster; terrorist attacks, war, invasion, act of foreign enemies, hostilities, labour disputes including but not limited to strike, lockout or boycott; interruptions of failure of utility service; or any other matter or cause beyond the control of either of the Parties;

“Somali Coastline” means the length of the Somali Coastline which is in distance approximately three thousand eight hundred kilometres (3800 Km);

Halliday Finch Ltd

P.O Box 1283 – 00502, Nairobi Kenya

Tel: +254 (020) 354 6371

Email: info@hallidayfinch.org

Website: www.hallidayfinch.org

“Services” means the Services which the Company shall provide the APTF pursuant to the terms and conditions of this Agreement; and

“Territory” means the Republic of Somalia and the Somali Seas, including the Somali Economic Enforcement Zone (EEZ), and any other Somali maritime zone areas legally recognized by international maritime laws presently and in the future.

- 2.2 Except where the context renders it absurd or impossible, every reference to any Party to this Agreement shall include its successors in title and assigns, by and against whom this Agreement shall be enforceable as if they had been originally named as Parties.
- 2.3 Headings are included in this Agreement for ease of reference only and shall not affect interpretation or construction.
- 2.4 Unless inconsistent with or a contrary intention clearly appears from the context, in this Agreement:
- 2.4.1 Words expressed in any gender shall where the context so requires or permits include any other gender;
- 2.4.2 Words importing persons shall also include corporate bodies and partnerships and any other entities and vice versa; and
- 2.4.3 Words expressed in the singular shall where the context so requires or permits include the plural.

3. Duration

The Parties hereby agree that this Agreement shall be binding for a period of 5 (five) years, commencing on the _____ December, 2010; and shall expire on the 1st January, 2016.

4. Services

4.1 The TFG, the Ministry of Fisheries and the APTF hereby expressly contract the Company to perform the following Services:

- i) To develop the National Coast Guard Strategy for the APTF within three (3) months from the date of the 27th September, 2010, in accordance with the Letter of Appointment annexed herein as Schedule (1), its mandate and the applicable laws;
- ii) To advise the APTF and the TFG on implementation of the National Coast Guard Strategy.
- iii) To purchase and supply the APTF with the Equipment required to implement the National Coast Guard Strategy;
- iv) To assist the APTF to raise sufficient funds to implement and maintain the National Coast Guard Strategy for the duration of this Agreement;
- v) To assist the APTF to recruit, train and manage the Somali National Coast Guard;
- vi) To assist the APTF with 'Life Support Services" for the Somali National Coast Guard;
- vii) To assist the APTF to set up and establish its offices in Bosaso and Mogadishu or any other town as required by the said strategy; and
- viii) To provide any other Service that the Company, the APTF, the Ministry of Fisheries and the TFG may reasonably deem proper to implement the National Coast Guard Strategy.

- 4.2 The Company voluntarily, willingly, and knowingly assumes any and all risks, known and unknown, and in any way associated with performing the Services, including travelling to and from and being within the Territory.
- 4.3 The Parties hereby agree that the Company to date, that is at date of the commencement of this Agreement, has invested a sum of United States Dollars Ninety Seven Thousand and Five Hundred and Twenty Dollars (USD \$ 97,520) (as specified in Schedule 2 herein), for the development of National Coast Guard Strategy pursuant to its Letter of Commitment dated 31st October, 2010, (annexed herein Schedule 3) sent via email to the Chairman of APTF.

5. Consideration

- 5.1 In consideration of the Company providing the Services; and upon the Appointed Auditor's receipt of the Funds and or the Fishing Revenue; the TFG hereby undertakes to pay the Company via the Appointed Auditor as follows:

i) The TFG shall pay the Company a Project Management Fee which shall cover all costs incurred by the Company to implement and manage the National Coast Guard Strategy. This fee shall be payable three (3) months in advance pursuant to the Company's quarterly invoices sent to the Appointed Auditor (herein annexed at Schedule 4 is a Summary of the Estimated Budget for first twelve (12) months of the Project Management Fees); and

ii) The TFG shall pay the Company a fee equivalent to the sum of thirty percent (30%) of all Fishing Revenue for the duration of this Agreement pursuant to the Company's invoices sent to the Appointed Auditor. Thereafter, that is, after the expiration of this Agreement, the TFG shall pay the Company a sum equivalent to two percent (2%) of the Fishing Revenue in perpetuity pursuant to the Company's quarterly invoices sent to the TFG.

- 5.2 For the avoidance of doubt, the Parties agree that all the Fishing Revenue shall be deposited in an account managed by the Appointed Auditor. The TFG shall invoice the Appointed Auditor quarterly for the sum equivalent to seventy percent (70%) of the Fishing Revenue; and HF shall invoice the Appointed Auditor quarterly for the sum equivalent thirty percent (30%) of the Fishing Revenue; and after the expiration of this Agreement the Company shall invoice the TFG a sum equivalent to two percent (2%) of the Fishing Revenue in perpetuity.
- 5.3 The Parties agree that subject to the Company receiving its thirty percent (30%) portion of the Fishing Revenue; that the Company shall pay the operational costs of the APTF from its said portion for the duration of this Agreement, and that the TFG or the Ministry of Fisheries shall not be liable for the same.

6. Relationship between the Parties

- 6.1 For the purposes of this Agreement the Company shall at all times act as an independent contractor to the TFG, the Ministry of Fisheries and the APTF.
- 6.2 The Company shall at all times be solely liable for the personal safety of its employees in the Territory.
- 6.3 The Parties undertake not to work with any other person or party for whatever reason if there is a direct or indirect conflict of interest with the performance of its obligations under this Agreement.
- 6.4 The Company is not an agent of the TFG, the APTF or the Ministry of Fisheries and shall not be entitled to make any contract promise, or other agreement or obligation on behalf of the TFG, the APTF or the Ministry of Fisheries unless it receives prior express and written permission to do so.

7. Records & Accounts

- 7.1 The Parties hereby agree to appoint KPMG International as the sole auditor for the purpose of receiving and managing the Funds raised for implementing the National Coast Guard Strategy. KPMG shall manage, disburse and account for

the Funds subject to the instructions of the TFG and the Company and as per the terms of this Agreement.

- 7.2 The Parties hereby agree to appoint KPMG also as the sole auditor for the purpose of receiving and managing the Fishing Revenue earned from the issuance of fishing licences and active policing activities in the Territory. KPMG shall manage, disburse and account for the Fishing Revenue subject to the instructions of the Ministry of Fisheries and the Company and as per the terms of this Agreement.
- 7.3 However, the Parties hereby agree that if KPMG International declines to act as the auditor as per clause 7.1. and 7.2 then the Parties shall appoint another international auditing firm of good repute.
- 7.4 The Appointed Auditor shall have a right to deduct its fees and or charges from all sums invoiced by the Parties; this includes the TFG's invoices for its share of the Fishing Revenue.
- 7.5 Notwithstanding, the Company at its own expense shall keep complete and accurate books, records of accounts, and any other data pertaining to the performance of the Services and which is necessary for the management of this Agreement.
- 7.6 The TFG or the Appointed Auditor shall have full and unhindered access to inspect the aforesaid books, accounts and records during normal business hours and subject to providing the Company with reasonable notice.

8. Termination

- 8.1 The Company shall have the right to terminate this Agreement by serving the other Parties with a sixty (60) days written notice to that effect.
- 8.2 The TFG, the Ministry of Fisheries and the APTF shall have no right to terminate this Agreement unless the Company has committed a material breach of its obligations under this Agreement, and has failed to cure the said breach within thirty (30) days of receiving written notice to cure the material breach. Moreover, the TFG, the Ministry of Fisheries and the APTF shall also

have no right to terminate this Agreement unless the TFG, the Ministry of Fisheries and or the APTF have fully paid all the Company's outstanding invoices and other any payments due to the Company.

- 8.3 In event that the TFG, the Ministry of Fisheries and or the APTF terminate this Agreement before its expiry and or without serving the Company with thirty (30) days written notice to cure a material breach; then the TFG, the Ministry of Fisheries and or the APTF shall be jointly and severally liable to pay the Company liquidated damages amounting to total the sum of United States Dollars Seventy Two Million (USD \$72,000,000) within thirty (30) days of such termination.
- 8.4 **Force majeure:** neither party shall be liable for failure or delay in its performance of any obligation under this Agreement due to circumstances beyond its reasonable control or a Force Majeure event.
- 8.5 Each Party may exercise its rights and remedies at any time in its sole discretion. No delay, omission or failure by either Party to exercise any of its rights or remedies will be deemed to be a waiver or acquiescence.
- 8.6 If any provision of this Agreement is held unenforceable, the remaining provisions shall remain in effect and the Agreement reformed so as to carry out the intent of the excised provision to the extent that is lawfully permitted.

9. General

9.1 Notices

Any notice given pursuant to this Agreement shall be in writing and shall be served personally, by registered or recorded delivery mail, email or by fax.

9.2 Entire Agreement

This Agreement constitutes the entire Agreement between the Parties in relation to its subject matter and supersedes all prior agreements and understandings whether oral or written and no variation of this Agreement shall be effective unless reduced to writing and executed by all the Parties.

- 9.3 The Parties hereby expressly and unequivocally represent and warrant that they have the proper power and authority to enter into and perform their obligations under this Agreement.
- 9.4 The Parties hereby agree and undertake that upon execution of this Agreement neither Party may set aside or declare that this Agreement was entered into without its knowledge or proper authority.
- 9.5 Each Party hereby designate their representatives herein as a point of contact (POC) for the regular management of this Agreement.
- 9.6 Together, these POCs shall produce a monthly report updating the Parties on their activities related to this Agreement.
- 9.7 The Parties shall endeavour to meet for regular or extraordinary business related to this Agreement, the timing and necessity for such meetings to be determined by mutual agreement.
- 9.8 Confidentiality
The Parties hereby undertake not to disclose the terms and conditions of this Agreement without first obtaining the prior written approval of the other Party. Notwithstanding, in the event that one of the Parties wishes to make any public announcement either in writing or orally regarding the collaboration between the Parties under this Agreement, the Party seeking to make such publication must obtain prior written approval from the other Party after providing a complete description of the publication which the disclosing Party intends to make.
- 9.9 The Parties acknowledge and agree that any Confidential information disclosed to it by the other Party, including any documents, files and other items containing any Confidential information shall remain strictly confidential and shall not be disclosed to it by any third party.
- 9.10 Each Party acknowledges that the unauthorised disclosure of the Confidential information to a third party may cause irreparable loss, harm and damage to

the other Party and accordingly, the disclosing Party fully indemnifies and holds the other Party harmless against any loss, action, expense, claim, harm or damage, of whatever nature that may be suffered or sustained pursuant to a breach of confidentiality that is contrary to the provisions of this Agreement.

9.11 The obligations and indemnity provisions contained in clauses 9.8, 9.9 and 9.10, above shall remain in full force and effect notwithstanding the conclusion or otherwise termination of this Agreement.

9.12 Assignment

The Company shall have the right to assign this Agreement to any successor by way of merger or consolidation or the acquisition of substantially all of the assets of the Company; provided, however, that such successor shall expressly assume all of the obligations of the Company under this Agreement, and the Company provides the other Parties with written notice of such assignment.

10. Jurisdiction and Dispute Resolution

10.1 The laws of England shall exclusively govern the interpretation of this Agreement without any regard to the conflict of laws.

International Arbitration

10.2 In the event of any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the London Court of International Arbitration (LCIA) Rules, which Rules are deemed to be incorporated by reference into this clause.

10.3 The seat, and or legal place of the Arbitration shall take place in London, United Kingdom; unless the LCIA in view of all the circumstances decides that another seat is more appropriate.

10.4 The Arbitration shall be heard by single arbitrator.

10.5 The Arbitration shall be conducted in the English language.

10.6 The Parties hereby agree that the Arbitral award shall be fully binding and enforceable against all the Parties; and neither of the Parties shall have a right of appeal, review, or recourse to any state court or other judicial authority emanating from the said Arbitral award under any circumstances.

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be duly executed on the day and year hereinbefore written.

Signed by:
Mr. Sam Mattock
Chief Executive Officer
On behalf of the Company
Date:

In the presence of:
Witness

Signed by:
Mr. Mohamed Abdullahi Mohamed
Prime Minister
On behalf of the TFG
Date:

In the presence of:
Witness

Signed by:

Dr. Mohamed M. Hassan

On behalf of the Ministry of Fisheries

Date:

In the presence of:

Witness

Signed by:

Professor Muhyadin Yusuf

On behalf of the APTF

Date:

In the presence of:

Witness

Schedule (1)

Copy of APTF's Letter of Appointment, dated the 27th September, 2010.

Jamhuuriyadda Soomaaliya
Xukuumadda Federaaliga KMG ee Soomaaliya



جمهورية الصومال
الحكومة الانتقالية الفيدرالية

*The Transitional Federal Government of the Somali Republic
Anti-piracy Task Force: Guddiga La Dagaalanka Burcad Badeeda*

Tir: LBB/0000.01/09/10

Taar: 27/09/2010

To: whom it may concern

Dear Sir,

As you will be aware, the piracy issue in the Gulf of Aden and Indian Ocean continues to be a source of major international concern and is disrupting trade and the development of our region.

The Transitional Federal Government of Somalia has appointed me to chair a task force which aims to find a lasting solution to the piracy issue.

With effect from today, I am pleased to inform you that we have made a significant step forward in this venture, and I have formally requested Halliday Finch Ltd to draw up the solution for this.

Halliday Finch Ltd is an organization that I have instructed and they are therefore acting on my behalf.

This letter and the content of it will remain valid, and in force for a period 3 months, during which time Halliday Finch have undertaken to explore all the key elements necessary to bring about a successful implementation of the strategy.

Amongst these key elements is the identification of credible and secure partners with the capacity to plan and execute an operation of this scale, and furthermore has the financial resources to apply to such a strategy.

Your support to Halliday Finch in this regard will be of great importance to the project and the longer term control of piracy.

Yours

The Chairman,

Prof. Muhyadin Ali



+252 6-1593 6908 Fax +2525-941017 E-mail: somali.antipiracy@yahoo.com
Mogadishu, Somalia

Halliday Finch Ltd
P.O Box 1283 – 00502, Nairobi Kenya
Tel: +254 (020) 354 6371
Email: info@hallidayfinch.org
Website: www.hallidayfinch.org

Schedule (2)

The Sum of monies invested by the Company for development of the National Coast Guard Strategy:

HF Management Costs incurred (for 4 months) as at 30th Nov. 2010	United States Dollars (USD \$)
CEO	USD \$40,000
Three members of HF Management	USD \$20,000
Legal advisors	USD \$20,000
Flights to and expenses in Kuwait for CEO of HF and Chairman of APTF	USD \$ 3020
Hotel accommodation for aforesaid trip to Kuwait	Paid by Agility Logistics
Cash expenses to refurbish the offices of the APTF and pay for staff salaries	USD \$14,500
Total Sum invested to date by HF	USD \$ 97,520



Schedule (3)

A copy of the Letter of Commitment sent to the Chairman of the APTF:

Halliday Finch Ltd
P.O Box 1283 – 00502, Nairobi Kenya
Tel: +254 (020) 354 6371
Email: info@hallidayfinch.org
Website: www.hallidayfinch.org

Schedule (4)

A Summary of the Estimated Budget of the Project Management Fees for the implementation of the National Coast Guard Strategy:

<u>Summary of the Estimated Budget for Project Management Fees</u> <u>(for the first 12 months)</u>	
Cost	United States Dollars (USD \$)
Cost for HF Project Management Team, this includes: <ul style="list-style-type: none"> • Salaries for Project Consultants (33) • HF office overheads • Equipment • The Project’s Media Campaigns 	USD \$8,466,500
Cost for implementation of Phase 1 & 2 (12 to 200 nautical miles) which includes: <ul style="list-style-type: none"> • Training and paying salaries for Officer Corps (500 men) • Training and paying salaries for Special Forces (2 x Sea borne Squadrons - 12 NM off shore out to 200; 2 x land Squadrons - from shore to 12 NM out to sea; 1 x land guarding Squadron guarding the camps, APTF offices and its officers) • 3 x spotter planes 	USD \$19,314,700

<ul style="list-style-type: none"> All maritime vessels required for task 	
<p>Cost for implementation of Phase 3 (land to 12 nautical miles), which includes:</p> <ul style="list-style-type: none"> Training and paying salaries for Two Regiments (1000 men) Equipping the same 	USD \$20,897,012
Total Project Management Fees	USD \$48,678,212
Plus a five percent (5%) buffer on Total Project Management Fees	USD \$2,433,911
Estimated Total Project Management Fees payable by the TFG (via the Appointed Auditor)	USD \$51,112,123