

## Standard Terms and Conditions for Sub Agency

### 1. DEFINITIONS AND INTERPRETATION

1.1 The following expressions shall have the following meaning in this Agreement:

“**Affiliate**” means:

- (i) in the case of WSS, Wilhelmsen Ships Service AS a company registered in Norway, with Norwegian registration number 917 019 215 and with registered address at Strandveien 20, 1324 Lysaker, Norway or any company owned or controlled by Wilhelmsen Ships Service AS or any company managed by Wilhelmsen Ships Service AS pursuant to a management agreement irrespective of whether such company is owned or controlled by Wilhelmsen Ships Service AS; and
- (ii) Barwil Agencies AS a company registered in Norway, with Norwegian registration number 917 042 276 and with registered address at Strandveien 20, 1366 Lysaker, Norway or any company owned or controlled by Barwil Agencies AS or any company managed by Barwil Agencies AS pursuant to a management agreement irrespective of whether such company is owned or controlled by Barwil Agencies AS;
- (iii) in the case of Agent, any company owned or controlled by Agent or its ultimate parent or under common control with the Agent,

where control means direct or indirect ownership of at least 50% of the voting stock or interest in the company or control;

“**Agent**” means the legal entity engaged by WSS to provide the Services pursuant to the Particulars;

“**Agreement**” means the terms and conditions of this agreement (including any document referred to in it) as amended by the parties in writing from time to time;

“**Applicable Laws**” means any laws, rules and regulations applicable to WSS, the Agent or the Services;

“**Appointment**” means the engagement by WSS of the Agent to perform Services to a Principal pursuant to this Agreement;

“**Confidential Information**” means, in relation to WSS, all information of a confidential nature not known to the public relating to the business and/or operations of WSS or its Affiliates (whether such information is disclosed in writing, by delivery of items, orally, by visual presentation, by means of providing access to such information (when, for example, the information is contained on a database or otherwise)) including but not limited to: (i) any such

information subsisting in any Intellectual Property Rights; (ii) any such information which is commercially sensitive or price sensitive; (iii) any such information about the business, customers, suppliers, finances, systems or other affairs; and (iv) the provisions and subject matter of this Agreement and the Particulars;

“**Force Majeure Event**” means an event, including the following: acts of god, war, explosions, fires, bad weather, floods, tempests, earthquake, insurrection, acts of terrorism or terrorist threats, arrest or restraint by princes, rulers and people, closure or congestion of ports, quarantine and epidemics, riot, civil disturbance, rebellion, strike, lock-out or labour dispute but not a strike, lock-out or labour dispute relating to the party relying on the Force Majeure Event; or any other event whatsoever that is beyond the reasonable control of either party;

“**Information**” means that information provided pursuant to condition 3.1(viii);

“**Intellectual Property Rights**” means:

- (i) patents, inventions, designs, copyright and related rights, database rights, trade marks and related goodwill, trade names (whether registered or unregistered), and rights to apply for registration;
- (ii) proprietary rights in domain names;
- (iii) knowhow and Confidential Information;
- (iv) applications, extensions and renewals in relation to any of these rights; and
- (v) all other rights of a similar nature or having an equivalent effect anywhere in the world;

“**Key Performance Indicators**” means those obligations listed in Section 3. Subsection 3. clause 1.2 Requirements on information and communication of Standard Operating Procedure.

“**Particulars**” means the document titled ‘Sub Agent Particulars Document’ signed by both WSS and the Agent in which establishes the mechanism to be able to utilize this Agreement except in the event there is not a document titled ‘Sub Agent Particulars Document’ signed by both WSS and the Agent, in which case any reference to ‘Particulars’ shall be deemed a reference to the Standing Instructions;

“**Permitted Purpose**” means the use by WSS and/or the WSS Affiliate of the Information for any purpose including the supply of information services to its customers, the copying, issuing of copies, distribution, communication, modification, amendment and adaptation of the Information in any way (including for commercial sales)

throughout the world and the granting of sub-licences of the Information;

“**Public Official**” means:

- (i) any official or employee of any government agency or government-owned or controlled enterprise;
- (ii) any person performing a public function;
- (iii) any official or employee of a public international organisation;
- (iv) any candidate for political office; or
- (v) any political party or an official of a political party;

“**Principal**” means the ship owner or charterer for whom WSS is appointed as agent or sub-agent to perform various services relating to their vessels;

“**Service Providers**” means stevedores, watchmen, tallymen, hauliers and other third party suppliers recommended and/or engaged by the Agent in the performance of the Services;

“**Services**” means those obligations outlined in condition 4.1 and Particulars as requested by WSS from Agent;

“**Standard Operating Procedure**” means those obligations outlined at <https://www.wilhelmsen.com/globalassets/ships-agency/documents/sub-ag-2.pdf>;

“**Standing Instructions**” means the email (or its attachment) with subject ‘Standing Instructions’ from WSS to Agent which confirms the Appointment;

“**Territory**” means the port(s) identified in the Particulars;

“**WSS**” means (as applicable) Wilhelmsen Ships Service AS, Barwil Agencies AS or the Affiliate which is listed in the Particulars.

1.2 All documentation related to this Agreement shall be made in the English language.

1.3 Any phrase in this Agreement introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.4 A reference to “**party**” shall mean either WSS or Agent. A reference to the “**parties**” shall mean WSS and the Agent.

1.5 A reference to **writing** or **written** includes faxes and email.

1.6 Clause, Conditions, Schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.8 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

## **2. APPOINTMENT - TERM**

2.1 WSS appoints the Agent as its non-exclusive agent to provide Services to the Principal.

2.2 The duration of the Appointment shall be the length of the vessel’s stay.

## **3. AGENT’S OBLIGATIONS**

3.1 The Agent undertakes and agrees with WSS at all times during the performance of the Services:

(i) to act towards WSS and the Principal conscientiously and in good faith and not to allow its interests to conflict with the duties that it owes to WSS or Principal under this Agreement and any Applicable Laws;

(ii) act in accordance with the standard expected of a first class agent;

(iii) to act within the scope of the authority granted to it under this Agreement only;

(iv) to carry out its duties with reasonable dispatch;

(v) except as authorised by WSS, not to act in a way which will incur any liability on behalf of WSS or to pledge the credit of WSS;

(vi) use its best endeavours to comply at all times with any reasonable and specific instructions which WSS may give;

(vii) in consultation with WSS, to recommend and/or appoint Service Providers and, in relation to such Appointment, the Agent shall inform such Service Providers that the Agent is acting as agent for the Principal. The Agent shall not have any liability to WSS for the negligent acts or defaults of any such persons unless:

- (a) the Agent fails to exercise due care in the Appointment and provision of instructions to any such persons; and/or
- (b) such persons are under the same beneficial ownership as the Agent.
- (viii) to keep WSS fully and promptly informed of conditions and developments in the market and the Territory (whether advantageous or disadvantageous) of which it becomes aware and of developments, customers and potential customers, competing products and services and the activities of WSS' competitors in the Territory and generally of such information that the Agent is or becomes aware of that an experienced Agent in the industry would reasonably regard as being of interest to WSS or Principal and such other information as WSS may reasonably request from time to time or as otherwise agreed between the parties; and
- (ix) to comply at all times with any reasonable and specific instructions, policies or guidelines which WSS may give, including but not limited those related to data protection, insurance and service delivery.
- 3.2 The Agent shall at all the times comply with and operate under the WSS Supplier Code of Conduct, a copy of which can be found at <https://www.wilhelmsen.com/globalassets/ships-agency/suppliers/wss-supplier-code-of-conduct.pdf>. If the Agent or any of its agents, sub-contractors or employees breaches condition 3.2, WSS may terminate this Agreement and Particulars with immediate effect. Any termination pursuant to this condition 3.2 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to WSS.
- 3.3 The Agent shall at all the times comply with and operate under the Standard Operating Procedure.
- 3.4 The Agent shall as required by WSS from time to time use the applicable IT systems for port call management and quality assurance at the Agent's cost.
- 3.5 The Agent shall co-operate and provide assistance to WSS and Principal (and their auditors) in conducting periodic audits of all relevant documentation and processes relating to the Services (including, without limitation, making available its accounts and financial records and statements relating to this Agreement for inspection by WSS and/or Principal), provided that WSS gives 7 day(s) written notice to the Agent before conducting such audit. Such audit right shall survive termination or expiry for a further period of six (6) years from the date of termination or expiry.
- 3.6 Immediately acquaint WSS with relevant local custom or practice and to furnish WSS with a copy of the local general conditions if any. Agent shall advise WSS of all amendments to port tariffs and other charges and regulations as they become known.
- 3.7 Undertake e-learning when directed by WSS.
- 3.8 The Agent will remove any member of personnel from the Services immediately upon direction of WSS.
- 3.9 The Agent shall pay Service Providers in full and on time.
- 3.10 The Agent shall not place any liens on Principal's or Principal's Affiliates vessels or goods in connection with the Services unless approved by WSS in writing.
- 3.11 The Agent shall pass on to WSS the benefit of all Service Provider discounts, commissions, bonuses and rebates.
- 3.12 The Agent shall produce all documentation needed in a format and within a timeframe specified by WSS in respect to, without limitation: systems, compliance, policies, procedures, licenses.
- 3.13 The Agent shall maintain its information technology systems and policies and procedures as reasonably expected of an international port agency company.
- 3.14 The Agent warrants that all staff are competent and experienced and appropriately qualified to perform the Services.
- 3.15 The Agent shall keep WSS in copy on all correspondence with the Principal.
- 3.16 The Agent shall use reasonable endeavours to facilitate an efficient handover in the event this Agreement or the Particulars are terminated.
- 3.17 The Agent shall use those templates in the performance of its obligations as reasonably directed by WSS.
- 3.18 The Agent shall immediately notify WSS in the event it has or has reason to believe it may be listed on a sanctions or prohibitions list.

- 3.19 The Agent shall immediately notify WSS in the event it has or has reason to believe it will lose or change the terms of its operating license.
- 3.20 The Agent shall at all times comply with the Key Performance Indicators with respect to the provision of Services and its obligations under this Agreement.
- 3.21 The Agent shall provide all supporting documentation along with all submitted invoices.
- 3.22 The Agent shall, with respect to the processing of personal data, comply with the following terms which can be found at [https://www.wilhelmsen.com/globalassets/ships-agency/suppliers/subagent\\_spot\\_data-sub-processing-agreement.pdf](https://www.wilhelmsen.com/globalassets/ships-agency/suppliers/subagent_spot_data-sub-processing-agreement.pdf)
- (viii) to report to WSS the vessel's position and to prepare a statement of facts of the call and/or a port log;
- (ix) to keep WSS regularly and timely informed on port and working conditions likely to affect the despatch of vessels;
- (x) any other service reasonably expected to be performed by a port agent.

## **5 ACCOUNTING AND FINANCE**

### **4. SERVICES**

4.1 The Agent undertakes and agrees to provide the following services to WSS and Principal when requested by WSS and/or Principal:

- (i) to arrange for berthing of vessels, loading and discharging of the cargo;
- (ii) to arrange and co-ordinate all activities of Service Providers, in the interest of obtaining the best possible operation, price and safe and timely despatch of the vessels for which WSS is appointed agent;
- (iii) to arrange for calling forward, reception and loading of outward cargo and discharge and release of inward cargo and to attend to the transhipment of through cargo;
- (iv) to arrange for bunkering, repairs, husbandry, crew changes, passengers, ship's stores, spare parts and technical, nautical and medical assistance;
- (v) to co-operate and assist WSS with its requirements concerning claims handling, P&I matters, General Average and/or insurance, and the appointment of Surveyors;
- (vi) to attend to all necessary documentation and to attend to consular requirements;
- (vii) to arrange for and attend to the clearance of the vessel and to arrange for all other services pertaining to the vessel's movements through the port;

5.1 The Agent undertakes and agrees with WSS at all times during the Term:

- (i) to properly maintain in accordance with generally accepted international accounting practice all records of WSS' financial position concerning the obligations undertaken by the Agent under this Agreement on WSS' behalf and to make such records promptly available for inspection by WSS on request; and
- (ii) to check all vouchers received from Service Providers and to prepare promptly a proper, accurate and true disbursement account in respect of each voyage or accounting period in an agreed format, with timing and delivery as per WSS' instructions or if there are no instructions, as reasonably expected.

5.2 The Agent undertakes to use any funds which have been advanced to the Agent by WSS for the disbursements pertaining to the Services only. The Agent shall only utilise such funds towards matters relating to that specific port call for which funds have been advanced and the Agent shall not be entitled to set-off such funds against any other claims, dues or other matters in dispute that the Agent has towards WSS or WSS Affiliate or Principal or Principal Affiliate, nor shall the Agent be entitled to appropriate such funds towards any other liabilities of the Agent in its business.

## **6 WSS' OBLIGATIONS**

6.1 WSS undertakes and agrees with the Agent that it shall:

- (i) give full and timely information regarding vessel's schedules and ports of call insofar as it affects the Services; and
- (ii) provide the Agent with all necessary funds to cover advance disbursements or as otherwise

agreed by the parties in writing from time to time (including the Particulars).

6.2 WSS shall provide such access and training to its proprietary IT and other systems as WSS deems appropriate to enable the Agent to perform the Services (including the port call management, reporting and quality assurance) in accordance with this Agreement.

## **7 REMUNERATION**

7.1 WSS agrees to pay the Agent remuneration for the Services as agreed between the parties in the Particulars. The Agent acknowledges that WSS shall only be liable to pay any amounts due hereunder when such corresponding amounts have been received by WSS from Principal.

7.2 The remuneration is in respect of the anticipated duties of the Agent within the scope of this Agreement.

7.3 The price is deemed inclusive of all taxes and charges including, communication, faxing, photocopying and courier costs.

7.4 WSS may withhold taxes pursuant to its obligation under Applicable Law.

7.5 WSS may retain payment of such funds pursuant to its obligation under Applicable Law.

7.6 WSS may offset any amount owed to Agent against any outstanding debt or liability pursuant to any agreement (including this Agreement) owed to WSS or WSS Affiliate.

7.7 Payment to Agent from WSS shall not be construed as acceptance of the Services and in no way shall such payment be deemed a waiver of any WSS or WSS Affiliate's rights.

7.8 Agent acknowledges that Agent shall invoice WSS before WSS can make payment of funds to Agent.

7.9 WSS shall settle any amounts due in accordance with the 'Payment Terms' section of the Particulars.

## **8 INSURANCE**

8.1 The Agent shall effect and maintain at all times throughout the Services and for a period of six (6) years following the termination or expiry of this Agreement, with a reputable insurer an errors and omissions or professional indemnity policy covering the liabilities assumed under this

Agreement to the value of at least five hundred thousand (500,000) USD and all insurances required by Applicable Law. The Agent shall send a copy of the certificate of entry to WSS upon request.

8.2 The Agent shall provide thirty (30) days' prior written notice to WSS of any changes and/or cancellations to its insurance policies referenced above. If, for whatever reason, the Agent fails to give effect to and maintain the insurances required by this Agreement, WSS may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Agent.

## **9 LIABILITY AND INDEMNIFICATION**

9.1 Nothing in this Agreement shall limit or exclude the liability of either party for:

(i) death or personal injury resulting from negligence;

(ii) fraud or fraudulent misrepresentation; and/or

(iii) any liability which cannot be limited or excluded by Applicable Laws.

9.2 Subject to condition 9.1, the Agent's total liability whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement shall not in any circumstances exceed, per event or series of related events, the amount of loss incurred by WSS or the amount of one million US dollars (\$1,000,000), whichever is higher.

9.3 Subject to condition 9.1, WSS's total liability whether in contract, tort (including negligence or breach of statutory duty), debt, misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement shall not in any circumstances exceed, per event or series of related events, the amount of five hundred thousand US dollars (\$500,000).

9.4 Subject to condition 9.1, under no circumstances shall WSS be liable to the Agent for any of the following types of loss or damage arising under or in relation to this Agreement or Services (whether arising from breach of contract, misrepresentation (whether tortious or statutory), tort (including but not limited to negligence), breach of statutory duty, or otherwise):



(i) any loss of profits, business, contracts, anticipated savings, goodwill, or revenue, any wasted expenditure, any loss of market, any loss, delay or expense arising from detention or delay of a vessel or any loss or corruption of data (regardless of whether any of these types of loss or damage are direct, indirect, special or consequential); or

(ii) any indirect, special or consequential loss or damage whatsoever, even if WSS and/or the Agent were aware of the possibility that such loss or damage might be incurred.

9.5 Subject to condition 9.1, under no circumstances shall Agent be liable to WSS for any indirect, special or consequential loss whatsoever, arising under or in relation to this Agreement or Services (whether arising from breach of contract, misrepresentation (whether tortious or statutory), tort (including but not limited to negligence), breach of statutory duty, or otherwise).

9.6 Subject to condition 9.1, condition 9.4, and condition 9.7, WSS shall indemnify the Agent against all liabilities, costs, expenses, damages, damage and losses (including any reasonable legal and other professional costs and expenses) (“Losses”) suffered or incurred by the Agent during the Term:

(i) arising out of the proper performance of the Agent's duties in accordance with this Agreement; and/or

(ii) in respect of any bonds, guarantees and any other forms of security provided by the Agent to customs or other statutory authorities in accordance with this Agreement.

9.7 The indemnity in condition 9.6 shall not extend to matters arising by reason of the negligence or wilful misconduct of the Agent. Subject to condition 9.5, the Agent shall remain fully liable to WSS and/or the relevant third party in respect of any Losses suffered or incurred by the Agent where the same arise out of the Agent's negligence or wilful misconduct.

9.8 Subject to condition 9.1 the Agent shall indemnify WSS and the WSS Affiliates against all Losses suffered or incurred by WSS arising out of:

(i) the Agent breaching any Applicable Laws;

(ii) any claim or Losses from the Principal or any third party (including the draw down on bank guarantees) arising out of the Agent's breach of

this Agreement, negligence or wilful misconduct; or

(iii) Agent's breach of this Agreement, negligence or wilful misconduct.

## 10 CONFIDENTIALITY

10.1 Agent undertakes to keep confidential any Confidential Information which it obtains under or in connection with this Agreement and not to use such information or disclose it to any other person, other than as permitted under condition 10.2.

10.2 Condition 10.1 shall not apply to the disclosure of Confidential Information:

(i) which relates to cargos and which the Agent reasonably needs to disclose in order to carry out its duties in accordance with this Agreement;

(ii) which is disclosed with the consent of WSS; or

(iii) if and to the extent that: (A) such disclosure is required by Applicable Laws; (B) such disclosure is required by any competent regulatory authority or recognised stock exchange; or (C) such Confidential Information is in the public domain other than through breach of this condition 10,

provided that any Confidential Information shall only be disclosed pursuant to this condition 10.2 by Agent after notification to WSS to which the information relates if such notification is reasonably practicable in the circumstances.

10.3 Upon written request, Agent shall promptly return to WSS all Confidential Information then in the Agent's possession or control, including any copies of the same.

## 11 INFORMATION

11.1 In relation to any Information supplied by the Agent pursuant to condition 3.1(viii), the Agent hereby grants to WSS and the WSS Affiliates a non-exclusive, worldwide, royalty-free, perpetual, transferable licence to use the Information in any format for the Permitted Purpose.

11.2 The Agent warrants, represents and undertakes that, to the best of its knowledge and belief:

- (i) all Information supplied by it: (A) may be used freely by WSS and the WSS Affiliates for the Permitted Purpose; (B) is true, complete and accurate; and (C) is not defamatory, libellous or otherwise provided with malicious intent;
- (ii) it has all rights, consents, permissions and licences to license the receipt and use of the Information to WSS and the WSS Affiliates as contemplated in this Agreement; and
- (iii) the use of the Information by WSS and/or the WSS Affiliates shall not: (A) infringe the rights, including the Intellectual Property Rights, of any third party; (B) breach any obligations of confidentiality owed by the Agent or any other person; or (C) breach any Applicable Laws,

and the Agent warrants that it has undertaken reasonable efforts to verify the accuracy of these statements and it shall inform WSS as soon as reasonably practicable if it becomes aware that any of the matters described in this condition 11.2 become untrue.

11.3 For the avoidance of doubt, the Agent acknowledges and agrees that the remuneration payable to it by WSS as agreed in accordance with condition 7 of this Agreement is the only payment due to it in respect of the Agent's services and that:

- (i) unless otherwise agreed by the parties in writing, no royalty payment or any other additional form of financial compensation shall be due to the Agent or any other party from WSS and/or any of the WSS Affiliates in respect of the supply of Information by the Agent; and
- (ii) to the best of its knowledge and belief, no tax, levy, duty or charge shall be payable by WSS and/or any of the WSS Affiliates relating to state, government or any similar authority for WSS and/or the WSS Affiliates to use the Information for the Permitted Purpose, at any time now or in the future.

## **12 TERMINATION**

- 12.1 WSS may terminate this Agreement with immediate effect if the Agent commits a breach of its obligations under this Agreement which (a) cannot be remedied or (b) remains unremedied for a period of seven (7) days following written notice by WSS.
- 12.2 Either party may terminate this Agreement with immediate effect by giving written notice to the other party if the other party:

- (i) is declared bankrupt, becomes insolvent, is unable to pay debts or enters into an arrangement with its creditors; or
- (ii) has a petition presented, an order made or a resolution passed for its liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction), administration, bankruptcy or dissolution or if an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer is appointed to the other party and/or over all or any part of the assets of the other party.

12.3 Termination or expiry of this Agreement shall not prejudice any of the parties' rights and remedies which have accrued as at termination or expiry. The rights and obligations of the parties under this Agreement which are intended to continue beyond its termination or expiry shall survive termination or expiry.

## **13 NOTICES**

- 13.1 Any communications between the parties, including in relation to condition 23, can be effected electronically via post, electronic mail or fax.
- 13.2 Unless the contrary is proved, each such notice or communication shall be deemed to have been given or made and delivered, if by letter on the second working day after posting.
- 13.3 All notices shall be made out to the relevant address and where provided the contact person listed in the Particulars.

## **14 ASSIGNMENT AND SUBCONTRACTING**

- 14.1 Agent shall not assign or transfer any of its rights, benefits or obligations under this Agreement without WSS' prior written consent (such consent not be unreasonably withheld or delayed). WSS shall be entitled to assign or novate its rights and obligations under this Agreement to any Affiliate. Agent shall sign all necessary documents to complete such assignment or novation by WSS.
- 14.2 Agent shall not be permitted to sub contract the Services without the prior written consent of WSS. In the event WSS consents to such sub contracting. Agent shall remain solely liable for the performance and liabilities of such subcontractor.

## **15 FORCE MAJEURE**

15.1 If a Force Majeure Event occurs which prevents a party (the "**Affected Party**") from performing any of its obligations to the other (the "**Other Party**") the Affected Party shall not be liable to the Other Party and shall be released from its obligations to the extent that its ability to perform such obligations has been affected by the Force Majeure Event, provided that: (i) the lack of ability to perform the obligations caused by the Force Majeure Event could not have been prevented by reasonable precautions; (ii) the Affected Party notifies the Other Party in writing as soon as reasonably practical of the occurrence of the Force Majeure Event and the nature and likely duration of its impact upon the Other Party; (iii) the Affected Party takes all reasonable steps to mitigate the impact of the Force Majeure Event on the Other Party and in particular continues to perform those obligations affected by the Force Majeure Event but whose performance has not been rendered impossible to the highest standard reasonably practicable in the circumstances; and (iv) the Affected Party resumes normal performance of all affected obligations as soon as the impact of the Force Majeure Event ceases, and notifies the Other Party in writing of such resumption.

15.2 If the impact of the Force Majeure Event upon the Agent prevents it from performing a substantial part of its obligations under this Agreement WSS may, by written notice to Agent, terminate this Agreement either in whole or in part with immediate effect and without liability.

## **16 ETHICAL STANDARDS**

16.1 The parties agree that neither party shall:

- (i) offer or agree to give any person working for or engaged by the other party any gift or other consideration, which could act as an inducement or a reward for any act or omission to act in connection with this Agreement or any other agreement between the parties;
- (ii) enter into this Agreement or any other agreement with the other party if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the other party or that an agreement has been reached to that effect unless: (i) details of any such arrangement have been disclosed in writing to the other party prior to the execution of the relevant agreement and; (ii) approval of such arrangement by an authorised representative of the other party has been obtained;

(iii) offer, pay or promise to pay either directly or indirectly, anything of value to a Public Official in connection with this Agreement. The parties further agree that in the performance of their respective obligations under this Agreement, the parties and their respective agents, sub-contractors and employees shall comply with all applicable laws, rules, regulations and orders of any applicable jurisdiction, including the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The one party shall notify the other party immediately in writing with full particulars in the event that the first party receives a request from any Public Official requesting illicit payments; or

(iv) take any other action which results in a breach by either party of any applicable anti-corruption legislation.

16.2 If either party (including its sub-contractors or employees) breaches condition 16.1, the other party may terminate the Agreement by written notice with immediate effect. Any termination pursuant to this condition 16.2 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to either party.

## **17 NON-SOLICITATION**

17.1 The Agent agrees that it shall not without the prior written consent of WSS:

(i) during the Services and for a period of twelve (12) months after the expiration or any termination of the Agreement offer any services in the Territory to any client or customer for whom WSS and/or any WSS Affiliate is or has been appointed as agent in the Territory either within the previous twelve (12) months starting from the commencement of the Services or during the term of the Agreement;

(ii) during the Services and for a period of two (2) years after the expiration or any termination of the Agreement attempt to directly or indirectly solicit or seek to entice away from WSS and/or any WSS Affiliate the business or custom of any client or customer for whom WSS and/or any WSS Affiliate has been appointed as agent in the Territory within the previous twelve (12) months of the date listed in the Particulars or during the term of the Agreement with a view to providing goods or services to that client or customer in competition with WSS and/or any WSS Affiliate;



17.2 The Agent acknowledges and agrees that the covenants in this condition 17 are considered fair and reasonable by the Agent. If any restriction shall be found to be unenforceable but would be valid if any part of it were deleted or the period or area of application reduced, the restriction shall apply with such modifications as may be necessary to make it valid and effective.

## **18 INTELLECTUAL PROPERTY RIGHTS**

18.1 The Agent acknowledges and agrees that the Intellectual Property Rights of WSS and/or WSS Affiliates and/or Principal and Principal Affiliates used on or in relation to services performed by the Agent under this Agreement and WSS and WSS Affiliates' business and the goodwill connected with that are the sole and exclusive property of WSS and/or WSS Affiliates and/or Principal and Principal Affiliates.

18.2 The Agent acknowledges and agrees that:

- (i) it is only permitted to use the Intellectual Property for the purposes of and during the term of this Agreement and only as authorised by WSS hereunder;
- (ii) other than to that extent, it has and shall have no right to use or to allow others to use the Intellectual Property Rights or any part of it. It shall not seek to register any Intellectual Property Rights on behalf of the WSS without WSS' express consent;
- (iii) it shall not use any trademarks, trade names or get-up which resemble WSS and/or WSS Affiliates' and/or Principal and Principal Affiliates trademarks, trade names or get-up and which would therefore be likely to confuse or mislead the public or any section of the public;
- (iv) it shall not remove, alter or otherwise tamper with any of WSS and/or WSS Affiliates' and/or Principal and Principal Affiliates trademarks, trade names, logos, numbers or other means of identification on any products or the packaging therefor which come into the Agent's possession, custody or control, and shall not place any trade mark or trade name of its own on any products or any packaging or other materials used in connection therewith;
- (v) it shall not do or omit to do, or authorise any third party to do or to omit to do, anything which could invalidate or be inconsistent with the Intellectual Property Rights; and

(vi) it shall not make a statement in any advertising material and promotional literature produced by or for it in connection with the services to be performed under this Agreement as to the ownership of any relevant Intellectual Property Rights used or referred to therein; and

(vii) not make any statement public or otherwise regarding this Agreement, the Services, the Particulars or Principal.

## **19 SEVERABILITY**

If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

## **20 THIRD PARTY RIGHTS**

20.1 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement save that, any rights in the Agreement that are stated to be for the benefit of any of the WSS Affiliates can be enforced by the relevant WSS Affiliates.

20.2 The consent of any WSS Affiliate or any other third party is not necessary for any variation (including any release or compromise in whole or in part of any liability) or termination.

## **21 NO WAIVER**

The failure to exercise, or delay in exercising, a right, power or remedy provided by this Agreement or by Applicable Laws shall not constitute a waiver of that right, power or remedy. If either party waives a breach of any provision of this Agreement this shall not operate as a waiver of a subsequent breach of that provision, or as a waiver of a breach of any other provision. Any waiver given by a party must be given in writing and signed by an authorised representative of that party.

## **22 GOVERNING LAW**

This Agreement and any dispute or claim arising out of or in connection with it (including any dispute or claim relating to non-contractual obligations) shall be governed by and construed in accordance with the laws of England and Wales.

**23 ARBITRATION**

- 23.1 Any dispute or claim arising out of or in connection with this Agreement (including any dispute or claim relating to non-contractual obligations) shall be negotiated between the parties in good faith, should a final settlement to the dispute not be reached within thirty (30) days from the commencement of such negotiations such dispute shall be referred to arbitration and shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.
- 23.2 The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within fourteen (14) calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) calendar days specified. If the other party does not appoint its own arbitrator and gives notice that it has done so within the fourteen (14) calendar days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.
- 23.3 Nothing in this condition 23 shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.
- 23.4 In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

**24 AMENDMENT**

In order to be effective, any amendment to this Agreement shall be documented in the form of a legal instrument in writing and signed by both parties.