

Standard Terms and Conditions for the Provision of Agency Services

1 DEFINITIONS AND INTERPRETATION

1.1 The following expressions shall have the following meaning:

“**Affiliate**” means:

- (a) For the purposes of the ‘Agent’ definition and in the case of the Agent:
 - (i) any company owned, controlled or managed pursuant to a management agreement (irrespective of whether such company is owned or controlled and irrespective of whether the management agreement has been entered into directly or by a subsidiary) by Wilhelmsen Ships Service AS (a company registered in Norway, with Norwegian registration number 917 019 215 and with registered address at Strandveien 20, 1366 Lysaker, Norway) and where any such company offers ships agency services; and
 - (ii) any company owned, controlled or managed pursuant to a management agreement (irrespective of whether such company is owned or controlled and irrespective of whether the management agreement has been entered into directly or by a subsidiary) by Wilhelmsen Port Services AS (a company registered in Norway, with Norwegian registration number 917 042 276 and with registered address at Strandveien 20, 1366 Lysaker, Norway) and where any such company offers ships agency services.
- (b) in the case of the Company:
 - (i) any company owned or controlled by the Company or its ultimate parent.

where control means direct or indirect ownership of at least 50% of the voting stock or interest in the company or control of the composition of the board of directors. “Affiliates” shall be construed accordingly.

“**Agency Appointment**” means (a) a request for Services or acceptance by the Company following the issue of an Enquiry/Estimate, Pro-Forma Disbursement Account, a revised disbursement account by the Agent or Appointment Summary; or (b) a formal agency appointment by the Company, (whichever occurs first).

“**Agent**” means the applicable Wilhelmsen Port Services AS Affiliate that has entered into a Port Call Appointment with a Company for the provision of the Services.

“**Company**” means any relevant legal or natural

person entering into any Port Call Appointment with the Agent for the provision of any Services.

“**Confidential Information**” means each item of confidential and proprietary information, and the intellectual property rights therein, disclosed by one party to another, including without limitation any financial information, procurement and purchasing requirements, business forecasts, sales and marketing plans and information and customer lists relating to that party or any of its Affiliates. Specifically in relation to the Agent, the term ‘Confidential Information’ shall also include all data and database rights within those operational systems which the Agent utilizes. The term ‘Confidential Information’ shall also include these Standard Terms and Conditions as well as the pricing and payment terms associated with any Port Call Appointment.

“**Company’s IT System(s)**” means, in connection with a Port Call Appointment any operational, financial or other IT system owned, leased or licensed to Company or any Company Affiliate as well as any systems which Company or any Company Affiliate requests Agent or any Agent Affiliate to utilize, including without limitation, any electronic bill of lading system or disbursement accounting system.

“**Controller**” has the same meaning as in the Data Protection Laws.

“**Data Protection Laws**” means the General Data Protection Regulation ((EU) 2016/679) (“**GDPR**”) and any applicable national implementing laws, regulations and secondary legislation, all as amended, updated or replaced from time to time.

“**Data Subject**” has the same meaning as in the Data Protection Laws.

“**Disbursements**” means any and all amounts which the Agent (or a sub-agent appointed pursuant to condition 4) pays out or is likely to pay out, to a third party on behalf of the Company in relation to the Services, including, but not limited to any VAT, sales taxes and other applicable taxes, bank charges and any other applicable charges.

“**Final Disbursement Account**” means an account produced by the Agent which describes the Disbursements which have been incurred by the Agent in providing of the Services and the related commissions and fees for the Services and other sums owed by the Company to the Agent in relation to the Services.

“**Force Majeure**” shall have the meaning given to it in condition 14.

“**Personal Data**” has the same meaning as in the

Data Protection Laws.

"**Personal Data Breach**" has the same meaning as in the Data Protection Laws.

"**Pre-funding**" shall have the meaning given to it in condition 7.

"**Pro-forma Disbursement Account**" means an estimated account produced by the Agent based upon the Services initially requested by the Company and which set out the estimated Disbursements which will be incurred by the Agent in providing of the Services and the related estimated commissions and fees that will be charged by the Agent for the provision of the Services.

"**Port Call Appointment**" means the acceptance by the Agent of an Agency Appointment, acceptance shall include performance of Services by the Agent.

"**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.

"**Processor**" has the same meaning as in the Data Protection Laws and for the purposes of the Chinese Personal Information Protection Law (where applicable), 'entrusted party'.

"**Sanctions Regulations**" means the United Nations', United States', European Union's or United Kingdom's laws, regulations, rules, orders relating to anti-terrorist financing, sanctions, asset control, embargoes, sectoral and activity restrictions.

"**Services**" means all or some of the services listed in the Ships Agency Services Catalogue currently located at <https://www.wilhelmsen.com/globalassets/ships-agency/documents/wps-ships-agency-service-catalogue.pdf> and any services reasonably incidental or ancillary to those listed in the Ships Agency Services Catalogue.

"**Special Categories**" of Personal Data include the types of Personal Data defined as such in the Data Protection Laws.

"**Standard Terms and Conditions**" means these Standard Terms and Conditions for the provision of Agency Services.

- 1.2 All documentation related to these Standard Terms and Conditions shall be made in the English language.
- 1.3 A reference to "**party**" shall mean either Agent or Company. A reference to the "**parties**" shall mean Agent and the Company.
- 1.4 The titles, headings, and numbering are included for convenience only and will have no effect on the construction or interpretation of these Standard Terms and Conditions.
- 1.5 Unless otherwise indicated, references to any statute, regulation or other law will be deemed to refer to such statute, regulation or other law as amended or modified, or any successor law.

2 APPOINTMENT AND SCOPE OF WORK

2.1 These Standard Terms and Conditions shall apply as the sole and exclusive terms and conditions governing a Port Call Appointment and apply to the exclusion of all other terms and conditions proposed by the Company. After the formation of a Port Call Appointment, the Agent shall provide the Services agreed to be provided by the Agent to the Company, in consideration of payment by the Company of the applicable commissions and fees. The Company may request changes to the initially requested Services following the formation of a Port Call Appointment provided such changes are within the scope of the Services.

2.2 For the avoidance of doubt, each Port Call Appointment forms a separate contract between the Agent and the Company (subject to terms of these Standard Terms and Conditions), and no Agent Affiliate or Company Affiliate shall in any event be jointly and severally liable for any obligations under any Port Call Appointment, unless otherwise is explicitly stated in these Standard Terms and Conditions.

2.3 The Agent shall be a Processor of any Personal Data it processes to carry out the Services, and also of any Personal Data it processes in order to carry out any additional instructions which are outside the scope of the Services, as required by the Company from time to time.

2.4 If a request for Services is placed by an agent on behalf of the Company, then such agent shall be deemed to be a party to these Standard Terms and Conditions and shall be jointly and severally liable with the Company for the payment of all amounts due and the performance of all obligations of the Company under these Standard Terms and Conditions. All limitations and exclusions in favour of Agent or any Agent Affiliate shall apply in

connection with any claim, demand, action, proceeding, suit or similar by any such company acting in the capacity as agent in connection with this condition 2.4.

2.5 In the event the Company requests Services through a third-party port call and disbursement account management solution, (“DA Platform”), the Company shall ensure that DA Platform utilizes these Standard Terms and Conditions as the sole governing terms and conditions for the Services and shall prevent DA Platform from proposing or utilizing any other terms or conditions whether conflicting with these Standard Terms and Conditions or not.

2.6 In the event Agent or any Affiliate accepts any terms and conditions in connection with the DA Platform, the Company shall be fully responsible and shall indemnify and hold harmless Agent and its Affiliates against Losses suffered or incurred in connection with (i) Agent’s or Affiliate’s acceptance of any such terms and conditions; (ii) Agent’s or Affiliate’s use or access to the DA Platform; or (iii) Company’s contravention of condition 2.5.

3 AGENT’S OBLIGATIONS

3.1 In relation to the Services to be provided by the Agent, the Agent undertakes:

- (a) to exercise reasonable skill and care in the performance of its responsibilities;
- (b) to use reasonable endeavours to comply with the Company’s reasonable requirements in relation to the performance of the Services; and
- (c) in consultation with the Company, to recommend and/or appoint on the Company’s behalf stevedores, watchmen, tallymen, hauliers and other third party suppliers (each a “**Service Provider**” and the services to be provided by the Service Provider to Company to be known as “**Service Provider Services**”). For the avoidance of doubt, Agent shall be entitled to sign in the name of and for and on behalf of the customer in connection with the foregoing.

3.1.1 The Agent may, in its sole discretion and without consultation, take any action on behalf of the Company, whether in accordance with Company’s instructions or not (a) in connection with any requirement (including any action which is required in Agent’s reasonable opinion) stipulated by a governmental authority or port authority, in connection with any epidemic or pandemic ; and (b) in connection with an emergency. Company acknowledges that any Disbursements in connection with any such actions are wholly for Company’s account.

3.2 For the avoidance of doubt, where the Agent or sub-agent (if applicable) appoints a Service Provider on the Company’s behalf, it will do so in the capacity as the Company’s agent and the Agent and sub-agent (if applicable) will not have any responsibility for the performance of or negligent acts or defaults of any such Service Provider. The Agent will provide the Company with reasonable co-operation in relation to any dispute between the Company and the Service Provider.

3.3 In respect of the Personal Data processed in order to provide the Services, the Agent shall:

- (a) comply with all applicable requirements of the Data Protection Laws;
- (b) process the Personal Data only for the purpose of providing the Services to the Company;
- (c) put in place appropriate technical and organisational measures (as provided for in the GDPR) to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data;
- (d) ensure that all of its personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- (e) only transfer Personal Data from within the European Economic Area to a third party in a location outside of the European Economic Area if the provision of the Services require it to do so;
- (f) ensure that Personal Data transferred between companies in the Agent’s corporate group are supported by appropriate safeguards;
- (g) assist the Company, at the Company’s cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (h) notify the Company without undue delay on becoming aware of a Personal Data Breach;
- (i) at the written direction of the Company, delete (as far as possible) or return Personal Data and copies thereof to the Company on termination or expiry of the Port Call Appointment and/or these Standard Terms and Conditions unless otherwise required by law, by any court of competent jurisdiction or by any regulatory or administrative body to retain the Personal Data;
- (j) maintain complete and accurate records and information to demonstrate its compliance with this condition 3.3 and allow for audits on reasonable written notice to be conducted by the Company (and at the cost of the Company) or the Company’s

designated independent auditor; and

- (k) Inform the Company immediately if it becomes aware that instructions from the Company would cause the Agent to breach the Data Protection Laws.

3.4 Agent shall not be obliged to utilize any Company IT System, however, in the event Agent accepts to do so and notwithstanding anything to the contrary (including whether Agent has entered into any terms or conditions with any Company IT System vendor) and to the maximum extent permitted by law, the Company shall indemnify and hold Agent and Agent's Affiliates, officers, directors and employees harmless for any losses, claims, fines, penalties, damage, damages, expenses, costs, charges, fees and expenditure suffered or incurred by Agent or Agent's Affiliates arising in connection with access to, use of or connection with (directly or indirectly) the Company's IT system(s) regardless of the fault of Agent, Agent's Affiliates, officers, directors or employees.

4 SUB-AGENTS

4.1 The Agent shall be entitled, following prior notification to Company, to appoint sub-agents to perform any part of the Services and such sub-agents may enter contracts with Service Providers on behalf of the Company as if they were the Agent. The Agent shall remain responsible for the actions of its sub-agents in relation to the Services, including for its performance of its obligations on processing Personal Data. The sub-agents shall be subject to the same or equivalent obligations on processing Personal Data as the Agent is subject to under these Standard Terms and Conditions.

4.2 In ports or terminals where the choice of port/terminal agent is restricted by that port or terminal or other applicable governing body, the Agent accepts no responsibility for the actions of said port/terminal agents nor can Agent accept responsibility for their commission, fees or expenses. In such circumstances the port/terminal agent will be appointed by the Agent on behalf of, and for the account of, the Company. The port/terminal agent will not be the sub-agent to the Agent.

5 COMPANY'S OBLIGATIONS

5.1 The Company undertakes to (in addition to its other obligations set out herein):

- (a) well in advance of the time at which the Services are to be provided, provide in writing all necessary information and documentation (including as to cargo) to the Agent in order for it to provide the Services on a timely basis;

- (b) pay the Pre-Funding prior to the commencement of the Services and in any case provide the Agent on its request with all necessary funds to cover any fees and Disbursements;

- (c) where a sub-agent is utilized for the Services, only provide instructions to such sub-agent in line with the Port Call Appointment;

- (d) comply with all of the obligations and requirements imposed on it as a Controller under the Data Protection Laws, including in particular (but not limited to):

- (i) ensuring that it has appropriate lawful grounds under the Data Protection Laws to process and share the Personal Data processed in relation to the Services, especially any Special Categories of Personal Data such as health data;

- (ii) ensuring that relevant Data Subjects are informed about how and why their Personal Data are being processed, in compliance with the Data Protection Laws;

- (iii) ensure that if any Personal Data is to be transferred from within the European Economic Area to a location outside of the European Economic Area that the requirements of the Data Protection Laws are met, and that the Company has given, and documented, instructions to the Agent about the transfer.

- (e) comply with all applicable laws, rules and regulations;

- (f) provide the Agent with any required document (including but not limited to a power of attorney) or statement confirming the rights afforded to the Agent pursuant to these Standard Terms and Conditions; and

- (g) provide the Agent with required records, information and documentation regarding the cargo (including as to costs for ancillary costs in connection with the cargo), if reasonably required by the Agent in connection with Sanctions Regulations.

6 DETAILS OF PERSONAL DATA PROCESSING

6.1 The parties acknowledge that from time to time Personal Data will be transferred between them for the purposes of carrying out the Services, and that the Agent will process such Personal Data as a Processor on behalf of the Company. Instructions from the Company to carry out specific Services, which by their nature will require Personal Data to be processed

in certain ways, will be understood by the parties to constitute "documented instructions" to process the Personal Data concerned, in accordance with the Data Protection Laws.

6.2 The Agent will process Personal Data on behalf of the Company in connection with the Services for as long as it provides the Services in question.

6.3 In order to provide the Services, the Agent may process the Personal Data of crew, masters and officers, visitors, passengers, port and airport staff, aircraft carrier staff, surveyors, customs and immigration officials, transport or logistics providers, and medical professionals in the manner required by the Services provided, on behalf of the Company.

6.4 The Personal Data involved will depend on the Services being provided, but could include:

- (a) Name
- (b) Contact details (telephone number/address/e-mail)
- (c) Passport and immigration details
- (d) Information about the Data Subjects' movements
- (e) Social security number
- (f) Employment status/history
- (g) Qualifications
- (h) Health information (special category)
- (i) Biometric information
- (j) Financial details (salary information/bank account)
- (k) Financial information of companies/persons
- (l) Information regarding possible criminal conduct (including whether a person has been suspected of, charged with, indicted for or convicted of a criminal act) (sensitive)
- (m) Emails and personal files from Agent's, Agent Affiliate's or the Company's network
- (n) Motor Vehicle License Plate Information

6.5 In addition to condition 4.1, the Company authorises the Agent to engage its Affiliates as sub-processors. In addition, the Company authorises the Agent and Agent's Affiliates to engage the following sub-processors <https://www.wilhelmsen.com/globalassets/terms-->

[conditions/wps_it_and_affiliate_subprocessors_website-list.pdf](#)

For the avoidance of doubt, Service Providers do not fall within the term 'sub-processor' as used in these Standard Terms and Conditions. The Agent or its Affiliate shall have in place contractual terms and conditions with each sub-processor, at a minimum ensuring sufficient guarantees to implement appropriate technical and organisational measures. The Agent (or Agent's Affiliate) shall remain responsible for the actions of its sub-processors with respect to their performance of processing Company's Personal Data.

7 REMUNERATION

7.1 The Company undertakes to pay to the Agent, as consideration for the Services provided by the Agent, the applicable commissions and fees and a sum equivalent to all Disbursements. The Company acknowledges that the Agent's commissions and fees may not be quoted on an Enquiry/Estimate in such event, the applicable amounts will be included within an invoice. All payments due hereunder shall be due and payable without any set off and Company hereby waives any set off rights, whether legal, equitable or otherwise.

7.2 Unless expressly agreed otherwise between the parties in writing, the Company must pay to the Agent one hundred percent (100%) of the value of the Pro-forma Disbursement Account prior to the Agent commencing the Services (with any sum paid in advance by the Company known as the "Pre-funding"). The parties may agree that the Pre-funding should be lower than one hundred percent (100%) of the Pro-forma Disbursement Account value. In any case, the Pre-funding must be paid into a bank account specified by the Agent in cleared funds.

7.3 Should the Company fail to pay the Pre-funding to the Agent at the agreed level in cleared funds, the Agent shall be entitled to refuse to provide some or all of the Services. Nevertheless, if the Agent does provide some or all of the Services despite the Company's failure to pay the agreed Pre-funding, the Company will remain liable to pay the Agent all fees, commissions and Disbursements in relation to the Services.

7.4 If the scope of the Services or Disbursements change following the formation of the Port Call Appointment, the Agent shall be entitled to all applicable additional amounts, recoverable by:

- (i) revising any previously issued and outstanding invoice; or
- (ii) issuing one or more invoices

the Agent may require such amounts to be paid by the

Company immediately and the Agent shall be entitled to refuse to provide some or all of the Services until payment is received in cleared funds.

- 7.5** Following the completion of the Services, the Agent may submit to the Company a Final Disbursement Account without supporting vouchers. Such Final Disbursement Account shall take into account any funds which has been received from the Company in cleared funds in connection with the Port Call Appointment.
- 7.6** Following the completion of the Services, the Agent shall submit to the Company a Final Disbursement Account with supporting vouchers. Such Final Disbursement Account shall take into account any funds which has been received from the Company in cleared funds in connection with the Port Call Appointment.
- 7.7** Any commissions, fees and Disbursements owed by the Company which become due following the issue of the Final Disbursement Account shall also be payable by the Company subject to the Agent providing reasonable and documented evidence that such sums are payable.
- 7.8** Except where otherwise permitted pursuant to these Standard Terms and Conditions or any other agreement the parties are party to, if the sums due by the Company to the Agent are lower than the level of Pre-funding obtained in clear funds by the Agent, the Agent shall reimburse such excess to the Company.
- 7.9** Unless otherwise agreed in writing by the parties and subject to any term or condition expressly to the contrary in these Standard Terms and Conditions, all invoices issued by the Agent shall be payable by the Company within seven (7) days of the date of the invoice, unless otherwise agreed by the parties.
- 7.10** Each disbursement account shall be deemed to be an invoice for the purposes of these Standard Terms and Conditions.
- 7.11** The currency of any particular invoice shall be determined by the Agent, unless otherwise agreed with the Company, notwithstanding, the Agent shall in any event, be entitled to deviate from any agreed currency in the event required by Applicable Law.
- 7.12** Except for taxes on the Agent's own income, the Company is responsible for all taxes, charges, imposts, customs duties, levies, and other fees or charges of any kind payable to any governmental, fiscal or taxing authority anywhere in relation to the provision of the Services ("Taxes"). The Company shall make all payments hereunder without any tax deduction (whether by withholding tax or otherwise), unless a tax deduction is required by law. If the Company is required to make a tax deduction by law from any payment due hereunder, the payment due from the Company shall be increased automatically and without further formality to an amount that (after making any tax deduction) leaves an amount equal to the payment that would have been due if no tax deduction had been required. The Company shall fully indemnify the Agent in respect of any claims or expenses incurred in connection with such Taxes, including, but not limited to, any sum which is paid to a relevant authority on the Company's behalf by the Agent.
- 7.13** The Agent shall be entitled to claim and recover interest of eight percent (8%) per annum above the Bank of England base rate on any overdue payment. If the base rate is negative, the base rate shall be deemed to be 0%. Such interest shall accrue on a daily basis from the due date until payment in full is received by the Agent. The Agent shall be entitled to claim and recover all costs and expenses, on a full indemnity basis, incurred in the collection of payments due.
- 7.14** In the event that:
- (a) any fees, commission, Disbursements or expenses due from the Company to the Agent under any Port Call Appointment remain outstanding following the expiry of the period for settlement of such invoices; and
 - (b) the Agent or any Affiliate of the Agent is in possession of funds belonging to the Company in any jurisdiction regardless of whether such funds were paid to the Agent or the relevant Affiliate of the Agent in connection with the relevant Port Call Appointment,
- then the Agent and such Affiliate of the Agent may, at any time, set off such funds against the due and unpaid fees, commission, or Disbursements outstanding under the Port Call Appointment.
- 7.15** In the event that:
- (a) the Agent or any Affiliate of the Agent is in possession of funds paid by the Company to the Agent or any Affiliate of the Agent under or in connection with a Port Call Appointment; and
 - (b) any sums, fees, payments, commissions, disbursements or expenses due from the Company to the Agent or any Affiliate of the Agent under any other contractual arrangement are outstanding,
- then the Agent and/or such Affiliate of the Agent may, at any time, set off such funds against the due sums, fees, payments, commission, disbursements or expenses outstanding under the other contractual arrangement. Where the use of the funds for such set off results in insufficient cleared funds being available to the Agent to pay for actual or anticipated

Disbursements, the Agent shall be entitled to refuse to provide some or all of the Services until such shortfall is made good by the Company (by additional Pre-funding or otherwise).

7.16 In the event the Agent (or sub-agent) settles Service Provider Disbursements on behalf of the Company prior to the receipt of such amounts by the Company in full cleared funds, and where the Agent (or sub-agent) assumes the Service Provider's rights and securities towards the Company (including, without limitation, maritime liens and maritime claims) ("Transferred Third Party Claim"), the Company consents to the assignment, novation and transfer of any Transferred Third Party Claim to the Agent and undertakes not to dispute such assignment, novation and transfer. The Company acknowledges and agrees that the Agent shall have the same rights to a Transferred Third Party Claim as the Service Provider or sub-agent, including without limitation any maritime liens and maritime claims capable of forming basis for arrest and/or other security rights pertaining to such Transferred Third Party Claim.

7.17 Agent shall, when requested in writing by the Company, use reasonable endeavours to direct certain Disbursements toward entities other than the Company, notwithstanding the foregoing, Company remains responsible for the payment of such Disbursements and any breach by the third party entity of the payment terms shall be considered a breach by the Company. Agent reserves the right to amend any issued disbursement account and list the Company as the paying party.

8 LIMITATION OF LIABILITY

8.1 Subject to condition 8.2, under no circumstances shall either party or any of their Affiliates be liable to the other for any of the following types of loss or damage arising under or in relation to these Standard Terms and Conditions for the Provision of Agency Services or any Port Call Appointment (whether arising from breach of contract, misrepresentation (whether tortious or statutory), tort (including but not limited to negligence), breach of statutory duty, or otherwise):

- (a) any loss of profits, business, contracts, anticipated savings, goodwill, or revenue, any wasted expenditure, any loss of market or any loss or corruption of data (regardless of whether any of these types of loss or damage are direct, indirect or consequential); or
- (b) any indirect or consequential loss or damage whatsoever, even if the parties were aware of the possibility that such loss or damage might be incurred.

8.1.1 Subject to condition 8.2, the Agent nor any

Affiliate shall, under any circumstance, be liable to Company for any loss or expense arising from detention or delay of a vessel (whether arising from breach of contract, misrepresentation (whether tortious or statutory), tort (including but not limited to negligence), breach of statutory duty, or otherwise).

8.2 Nothing in any Port Call Appointment or in these Standard Terms and Conditions excludes or limits the liability of either party:

- (a) for death or personal injury caused by negligence;
- (b) for fraud or fraudulent misrepresentation; or
- (c) for any liability which cannot be limited or excluded by applicable law.

8.3 Subject to condition 8.2, the Agent's and all of its Affiliate's total liability and debt 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 any Port Call Appointment whether before or after termination or expiry, shall not in any circumstances exceed, the lower of (i) ten (10) times the agency fees paid and payable; or (ii) five hundred thousand US dollars (\$500,000).

8.4 In addition, the Agent and its Affiliates shall not be liable for any loss or damage (however caused) to cargo, vessels or other items which are placed in the Agent's or a sub-agents possession or control, except where such loss or damage is caused by the negligence or default of the Agent or that Affiliate (as applicable).

8.5 Any claims against the Agent by the Company must be notified to the Agent as soon as reasonably practicable following the Company becoming aware of such claims. In any case, any claim by the Company shall be deemed to be waived and absolutely time barred upon the expiry of one (1) year from the event giving rise to such claims.

8.6 Subject to condition 8.2, where loss, damage, cost or expense is suffered or incurred by the Company due to the act or omission of the Agent and another party or parties, the Agent's liability is further limited to its proportionate share of responsibility for loss, damage, costs and expenses suffered or incurred by the Company, having regard to the extent that any other party or parties has contributed to or is culpable for such loss, damage, costs and expenses with no account taken of any exclusion agreed between the Company and any other person or the ability of such other person to satisfy its liability to the Company.

9 INDEMNITIES

9.1 Each party shall indemnify the other party against all liabilities, costs, expenses, damages and losses suffered or incurred by the other party arising out of

or in connection with any death, personal injury or damage to property arising out of, or in connection with the acts or omissions of the first party, its employees, agents or subcontractors.

9.2 The Company shall at all times indemnify the Agent and Affiliates and hold them harmless against all claims, liabilities, charges, losses, damages and expenses whether direct, indirect or consequential (“Losses”) which it may incur in connection with:

- (i) the Service Provider Services (including but not limited to any claim made by a Service Provider);
- (ii) the performance by the Agent or sub-agent of the Services; or
- (iii) Company and/or its Affiliates contravention of any law, rule, regulation, directive, or contravention of any circular, policy, procedure, recommendation, instruction, or guidance issued by any port authority or government,

unless any such Losses arise directly by reason of the misconduct, negligence or default of the Agent, sub-agent or the relevant Affiliate. If requested to do so by the Agent, the Company shall take over the conduct of any claim or dispute which may arise between the Agent (or an Affiliate of the Agent) or sub-agent and any third party which is subject to the indemnity in this condition 9.2. For the avoidance of doubt and without prejudice, “Losses” for the purposes of its application to condition 9.2(iii) shall be deemed to include fines.

9.3 If the Agent (or a sub-agent appointed pursuant to condition 4) at any time provides or has provided any bond, guarantee or other form of security to any customs or other local authorities in any country in connection with the Services, the Company shall indemnify the Agent and hold it harmless from Losses in relation to such bond, guarantee or other form of security, unless any such claim arises directly by reason of the misconduct, negligence or default of the Agent.

9.4 Without limiting the foregoing terms, if the Agent (or a sub-agent appointed pursuant to condition 4) finds itself, whether by law or otherwise in any country, jointly or severally liable for any liabilities of the Company or any other party seeks to hold it liable for any liabilities of the Company, then the Company shall indemnify the Agent and hold it harmless for any Losses in respect thereof and shall not in any way assert any claim for a contribution from the Agent.

10 INSURANCES

10.1 The liabilities assumed by the Agent on the provision of the Services shall be covered by a

liability insurance policy on such terms with such insurers and in such amount as may reasonably be regarded as customary in the industry by a prudent provider of such services.

10.2 Without limitation to its general obligation to maintain insurances, the Company shall ensure that each of its ships, vessels and cargo and other items which are placed in the Agent’s or any Service Provider’s possession or control in relation to the Services, are fully insured on an indemnity basis against loss, damage and destruction. The Company will provide the Agent with details of the relevant insurance policies upon request.

11 CONFIDENTIALITY

11.1 The parties agree to keep any Confidential Information confidential, not to use it for any purpose (other than in the context of the Services to be provided) and not to disclose it without the prior written consent of the other party to any third party, unless:

- (a) the information was public knowledge at the time of the disclosure;
- (b) the information becomes public knowledge other than by breach of the confidentiality undertaking contained in this condition 11.1;
- (c) the information subsequently comes lawfully into its possession from a third party; or
- (d) required to do so by any laws or regulations to which the disclosing party is subject.

11.2 Notwithstanding condition 11.1, each party shall be entitled to disclose Confidential Information to its directors, shareholders, officers, employees, advisers and consultants having a need to know the same. The Agent may also disclose Confidential Information to potential assignees or transferees and may disclose Confidential Information for the purposes of performing its obligations under the Port Call Appointment (such as disclosing information to any sub-agents, Service Providers, Affiliates or representatives of the Agent).

11.3 Notwithstanding the foregoing, so that Agent and its Affiliates may improve and promote its service offerings, Agent and its Affiliates may aggregate Company’s and its Affiliates data with other data, so that it is not directly identifiable with respect to Company and its Affiliates. Such data is known as “Anonymous Data”. Company agrees that Agent and/or its Affiliates may create Anonymous Data, and may use, execute, display and exploit the Anonymous Data. Agent or its Affiliates may disclose Anonymous Data to third parties, and may transfer or sublicense its rights with respect to Anonymous Data.

Notwithstanding anything else to the contrary, on the basis that Agent and/or Affiliates do not disclose the terms of these Standard Terms and Conditions, Agent and its Affiliates shall be entitled to disclose the fact that these Standard Terms and Conditions have been entered into between the parties to any third party without any prior notification or consent of Company.

11.4 Notwithstanding anything to the contrary herein, the Company acknowledges and agrees that:

- (a) all data points and files (including without limitation disbursement accounts and supporting invoices) within operational systems which the Agent utilizes are, or shall be, owned by the Agent;
- (b) Agent shall be at liberty to do as it so pleases with such data points, including disclosure of such to any third party; and
- (c) in the event that it is determined that the ownership of such data is with the Company, the Company hereby transfers ownership of such data to the Agent.

12 ASSIGNMENT

Neither party may assign or transfer any of its rights and obligations under any Port Call Appointment without the prior written consent of the other party, except that the Agent shall be entitled to assign or factor any debt owed to it from the Company under any Port Call Appointment without further formality.

13 TERMINATION

13.1 Either party may terminate any Port Call Appointment with immediate effect if the other party to such Port Call Appointment has committed a material breach of its obligations under such Port Call Appointment. If such breach can be remedied, termination may only take place if the party in breach has been given thirty (30) days' written notice of the breach and the breach remains unremedied. For the avoidance of doubt, non-payment of fees, commission or Disbursements due from the Company to the Agent shall amount to a material breach of a Port Call Appointment.

13.2 Any Port Call Appointment may be terminated with immediate effect by either party if the other party to such Port Call Appointment is declared bankrupt, becomes insolvent or is unable to pay debts (within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986) or, where the terminating party is the Agent, where the Agent reasonably believes that the Company will be declared bankrupt, become insolvent or be unable to pay debts as they fall due.

13.3 Notwithstanding the foregoing, the Agent shall be

entitled to suspend its performance under all outstanding Port Call Appointments placed pursuant to these Standard Terms and Conditions if any sum due by the Company under any Port Call Appointment is outstanding beyond the relevant due date.

13.4 Upon early termination of any Port Call Appointment, all Disbursements and commissions accrued to that date shall become payable. If the sums due by the Company to the Agent are lower than the level of Pre-funding obtained in clear funds by the Agent, the Agent shall reimburse such excess to the Company.

13.5 Termination or expiry of these Standard Terms and Conditions and/or any Port Call Appointment 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 which are intended to continue beyond the termination or expiry of these Standard Terms and Conditions and/or any Port Call Appointment shall survive such termination or expiry.

14 FORCE MAJEURE

14.1 In relation to the provision of the Services, the obligations of the parties (except Company's payment obligations) shall be suspended during the period and to the extent that the affected party is prevented or hindered from complying with them by any cause beyond its reasonable control including (but not limited to) strikes, lock-outs, labour disputes, (except where such strikes, lockouts and labour disputes relate to that party's own personnel), cyber attacks, act of God, war, epidemic, pandemic, riot, civil commotion, malicious damage, compliance with any law or government order, rule, regulation or direction, port security, port authorities and security restrictions in ports, accident, breakdown of plant or machinery, fire, flood, storm, difficulty or increased expense in obtaining workmen (except where such failure to obtain workmen relates to that party's own personnel), materials, goods or raw materials in connection with the provision of the Services.

14.2 In the event of any such party being so hindered or prevented, the party concerned shall give notice of suspension as soon as reasonably possible to the other party stating the date and extent of the suspension and its cause and the omission to give such notice shall forfeit the right of that party to claim suspension. Any party whose obligations have been suspended as aforesaid shall resume the performance of those obligations as soon as reasonably possible after the removal of the cause and shall so notify the other party.

15 THIRD PARTY RIGHTS

With the exception of any Affiliate of the Agent, who shall take the benefit of any right expressly

stated to be for the benefit of an Affiliate of the Agent together with any protection and limitation afforded to the Agent pursuant to a Port Call Appointment (including, but not limited to, those set out in these Standard Terms and Conditions), a person who is not a party to a Port Call Appointment has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of such Port Call Appointment. However, the terms of the Port Call Appointment (including, but not limited to, these Standard Terms and Conditions) may be varied, amended or modified without the consent of any such third party.

16 NOTICES

16.1 Notices, as well as those communications required in these Standard Terms and Conditions to be 'written' or 'in writing', can be delivered by hand, post (proof of delivery service or recorded delivery service) or electronically. However, this condition 16.1 does not apply to the service of any proceedings or any documents in any legal action, any arbitration or other method of dispute resolution.

16.2 Unless the contrary is proved, each such notice or communication shall be deemed to have been received, if (i) delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; (ii) if sent by post, at the time recorded by the delivery service provider; (iii) if sent electronically, at the time of transmission. If deemed receipt or delivery under condition 16.2 (i) or (ii), and such receipt or delivery would occur outside business hours in the place of such receipt or delivery, receipt or delivery shall be deemed deferred until business hours resume.

17 MISCELLANEOUS

17.1 No amendment or variation of these Standard Terms and Conditions or any Port Call Appointment shall be effective unless such amendment or variation is captured in the form of a duly executed legal instrument signed by an authorised representative of each of the parties.

17.2 Any consent given by a party shall operate as a consent only for the particular matter to which it relates and in no way shall be construed as a permanent release or waiver nor shall it be construed as a release or waiver of any provision of these Standard Terms and Conditions nor shall it be construed as dispensing with the necessity of obtaining the specific written consent of the relevant party in the future unless expressly so provided.

17.3 The failure of a party to exercise or enforce any right under any Port Call Appointment shall not be deemed to be a waiver of that right or any other nor

will it operate to bar the exercise or enforcement of it or any other at any time thereafter.

17.4 If any part of these Standard Terms and Conditions becomes invalid, illegal or unenforceable it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Standard Terms and Conditions. If any provision is deemed deleted pursuant to the above, the parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the deleted provision which as far as possible gives effect to their intentions.

18 ETHICAL STANDARDS

18.1 Each party, in the performance of the Port Call Appointment and the business resulting therefrom, shall comply with all laws and regulations applicable to such party.

18.2 The parties agree that neither party shall:

(a) Offer, agree or enter into this Port Call Appointment, or any other agreement with the other party if any money, gift or other consideration has been, will be, or has agreed to be paid to any person which could act as an inducement or a reward for any act or omission to act by that person or any other in connection with this Port Call Appointment, or any other agreement between the parties;

(b) offer, pay or promise to pay either directly or indirectly, anything of value to a Public Official in connection with any Port Call Appointment. The parties further agree that in the performance of their respective obligations under the Port Call Appointment, the parties and their respective Affiliates, subcontractors and employees shall comply with all applicable anti-corruption laws, rules, regulations and orders of any applicable jurisdiction including, but not limited to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (or any subsequent replacement or amendment of such convention), the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act of 1977. Each party shall notify the other immediately in writing with full particulars in the event of that party receives a request from any Public Official requesting illicit payments in connection with a Port Call Appointment; or

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

18.3 Breach of Ethical Standards

(a) If either party breaches condition 18.1 or condition

18.2, the other party may terminate the Port Call Appointment by written notice with immediate effect. Any termination pursuant to this condition 18.3 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues to the terminating party.

- (b) Notwithstanding anything to the contrary in these Standard Terms and Conditions or any Port Call Appointment, under no circumstances shall either party or any of their Affiliates be liable to the other for any delay or failure to perform its obligations under these Standard Terms and Conditions or any Port Call Appointment to the extent that such failure or delay arises out of or in connection with that party complying with its obligations under condition 18.1 or condition 18.2.

19 COMPLIANCE WITH ASSET CONTROL LAWS AND FINANCIAL SANCTIONS

- 19.1** The parties will comply with any applicable anti-terrorist financing, sanction, and asset control laws, regulations, rules and orders, including but not limited to those imposed by the United Nations, the United States (including U.S. Department of Treasury, Office of Foreign Assets Control and the Bureau of Industry and Security) and the European Union sanctions or restrictive measures. The parties further warrant that as of the date of acceptance of these Standard Terms and Conditions, they are not subject to any sanctions listing.
- 19.2** Either party may be required to request information from the other which supports a verification statement which banks, building societies or other authorities may require according to the Sanctions Regulations, including whether a person is a “specially designated national” or a “national” of a country to which Sanctions Regulations apply. Both parties shall provide timely and truthful responses to any such reasonable enquiries either party may make to the other to support any required verification statements.
- 19.3** Under no circumstances shall Agent be liable to the Company for any delay or failure to perform its obligations under these Standard Terms and Conditions or any Port Call Appointment to the extent that such failure or delay arises out of or in connection with Agent’s compliance with:
- (i) applicable anti-terrorist financing, sanction, and asset control laws, regulations, rules and orders;
 - (ii) Sanctions Regulations; or
 - (iii) terms, conditions, representations, statements, understandings, undertakings

or warranties provided by Agent or any Agent affiliate to insurance providers, brokers, underwriters or financing providers.

Subsections (i) to (iii) above, herein referred to as (“**Compliance Obligations**”).

In addition to the foregoing, Agent shall not be liable to the Company for any delay or failure to perform if, Agent believes that, should the Agent perform, doing so may give rise to a risk of civil or criminal liability in connection with the Compliance Obligations.

20 GOVERNING LAW AND DISPUTES

- 20.1** These Standard Terms and Conditions, each Port Call Appointment and any dispute or claim arising out of or in connection with them or their subject matter or formation shall be governed by and construed in accordance with English law.
- 20.2** The parties shall first attempt to resolve any dispute arising out of or in connection with a Port Call Appointment to which these Standard Terms and Conditions apply by negotiation.

If the parties are unable to resolve such dispute within thirty (30) days of commencing negotiations, subject always to conditions 20.3 and 20.4, any dispute arising out of or in connection with these Standard Terms and Conditions and/or any Port Call Appointment, including any question regarding their existence, validity or termination shall, upon the application of either party, be referred to and finally resolved by arbitration under the London Maritime Arbitrators Association (“LMAA”) Terms current at the time when the arbitration proceedings are commenced, except that where neither the claim nor any counterclaim exceeds the sum of fifty thousand US Dollars (USD50,000) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure. The number of arbitrators shall be three, except that the reference shall be to one sole arbitrator where the LMAA Small Claims Procedure applies. The seat, or legal place, of the arbitration shall be London, England. The language to be used in the arbitration shall be English.

- 20.3** Nothing in these Standard Terms and Conditions or any Port Call Appointment shall preclude either party from the right to seek in any jurisdiction security or interim orders (by means of an appropriate remedy of relief including, without limitation, *in rem* arrests, injunctions, attachments, seizures, sales, detention, exercise of any lien or otherwise howsoever) in each case in accordance with any relevant local law or regulation in respect of claims arising in any jurisdiction.
- 20.4** Nothing in these Standard Terms and Conditions or any Port Call Appointment shall preclude the Agent

or its Affiliates from claiming (including the commencement of proceedings) or seeking to enforce these Standard Terms and Conditions, including any outstanding or overdue debt or payable invoice (including, but not limited to, any Pre-funding, Pro- forma Disbursement Account, revised disbursement account and Final Disbursement Account) owed by the Company to the Agent or its Affiliates under any Port Call Appointment or under these Standard Terms and Conditions in the courts of any competent jurisdiction anywhere in the world.

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