



POOLCON B STANDARD AGENCY BASED POOLING AGREEMENT FOR DRY AND LIQUID BULK CARGOES CARRIED ON A TRAMP BASIS <b>PART I</b>	
1. Place and date of Agreement (Cl.2) <b>Geneva .....</b>	2. Commencement Date (Cl.1) .....
3. Owners (Cl.1, Annex A)  (i) Name: ..... (ii) Place of registered office: ..... (iii) Law of registry: .....	4. Pool Managers (Cl.1)  (i) Name: ..... (ii) Place of registered office: ..... (iii) Law of registry: .....
5. Reference Charter (Cl.1, Annex B) .....	7. Voyages Performing Period (state number of months, if left blank, twelve (12) months will apply) (Cl.9(a)) .....
6. Duration of Transportation Contract/Additional Tonnage (state number of months, if left blank, six (6) months will apply) (Cl.9(a),(b), Cl.17(a)(ii)(2)) .....	9. Percentage required to call an extraordinary Participants' Meeting (state percentage, if left blank, twenty-five per cent (25%) will apply) (Cl.12(b)) .....
8. Pool Committee representatives and alternates (state number) (Cl.10) .....	11. Annual Value for Buying Services or Supplies (state amount) (Cl.12(e)(vi)) .....
10. Vessel Charter-out Commitments Period (Cl.12(e)(ii)) .....	13. Interest (state rate of interest, if left blank, three (3%) per cent per annum over LIBOR will apply) (Cl.15(d)(iv)) .....
12. Pool Managers' Remuneration (state amount) (Cl.13(b)(viii)) .....	15. Dispute Resolution (state alternative Cl.28(a), 28(b), 28(c) or 28(d); if 28(d) agreed, place of arbitration must be stated) (Cl.28) .....
14. Optional Insurance (state type of cover) (Cl.19(a)(i)(4)) .....	17. Notices (state full style contact details for serving notice and communication to the Owners) (Cl.27(a)) .....
16. Notices (state full style contact details for serving notice and communication to the Pool Managers) (Cl.27(a)) .....	17. Notices (state full style contact details for serving notice and communication to the Pool Managers) (Cl.27(a)) .....

It is mutually agreed between the party stated in Box 3 and the party stated in Box 4 that this Agreement consisting of PART I and PART II as well as Annexes "A" (Pool Participants), "B" (Reference Charter), "C" (Pool Vessels and Pool Points), "D" (Pool Points Formula) and Annex "E" (Accession Agreement) attached hereto, shall be performed subject to the conditions contained herein. In the event of a conflict of conditions, the provisions of PART I and Annexes "A", "B", "C", "D" and "E" shall prevail over those of PART II to the extent of such conflict but no further.

Signature(s) (Owners)	Signature(s) (Pool Managers)
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**ANNEX "A" (POOL PARTICIPANTS)  
TO THE BIMCO STANDARD AGENCY BASED POOLING AGREEMENT  
CODE NAME: POOLCON B**

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[See Clause 1]

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**ANNEX "B" (REFERENCE CHARTER)  
TO THE BIMCO STANDARD AGENCY BASED POOLING AGREEMENT  
CODE NAME: POOLCON B**

**NOTE:**

*Normally a standard form of time charter party will be used. In this charter party the provisions regarding payment of hire and the possible right of withdrawal due to non-payment should be deleted and substituted by reference to the Pool Agreement. The period of the charter party, delivery and redelivery, the payment of bunkers as well as the trading range for the Vessel shall also be in accordance with the Pool Agreement.*

*The standard charter party could include rider clauses which are common in the trades where the Pool Vessels will be engaged.*

*A copy of the Reference Charter as defined in Clause 1 (Definitions) of POOLCON B should be attached to this Annex B.*

[See Clauses 1, 2, 7, 13 and 15 ]

**ANNEX "C" (POOL VESSELS AND POOL POINTS)  
TO THE BIMCO STANDARD AGENCY BASED POOLING AGREEMENT  
CODE NAME: POOLCON B**

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[See Clauses 1, 2 and 16]

**ANNEX "D" (POOL POINTS FORMULA)  
TO THE BIMCO STANDARD AGENCY BASED POOLING AGREEMENT  
CODE NAME: POOLCON B**

**NOTE:** The aim is that each Vessel shall be given points which reflect each Vessel's relative trading value (earning capacity). There will be a number of factors to be taken into account, such as the Vessel's age, GT, draft, speed and bunker consumption, gear and equipment on board and other specific features. The configuration of certain vessels may make them particularly competitive on certain trades and, if these are trades which the Pool wishes to be engaged in, may increase the value for such Vessels in the Pool. Often, the average Pool Vessel on which the points system is based is given 100 points, and then each Vessel in or joining the Pool will be assessed on the basis of the various relevant factors with the Vessel in question being awarded more or less points depending on the positive or negative effect of each relevant factor by comparison to the average Pool Vessel.

Reference is made to the Pool Agreement Clause 1 (Definitions) and 16 (Pool Points).

**ANNEX "E" (ACCESSION AGREEMENT)  
TO THE BIMCO STANDARD AGENCY BASED POOLING AGREEMENT  
CODE NAME: POOLCON B**

**THIS ACCESSION AGREEMENT** is made on ..... (*state date*)

**BETWEEN:**

- (1) The Pool Managers;
- (2) The Participants (each an "Existing Participant" and together the "Existing Participants"); and
- (3) ..... , a company organised and existing under the laws of ..... (the "New Participant").

**PREAMBLE**

Each Existing Participant, in its capacity as the owner of the vessel(s) listed against its name in Annex C (Pool Vessels and Pool Points) hereto (such vessels, together, the "Existing Vessels"), together with the Pool Managers, wishes to amend the Pool Agreement dated ..... ('The Pool Agreement') to provide for the New Participant, in its capacity as owner of the vessel(s) ..... (the "New Vessel(s)"), to become an additional party to the Pool Agreement.

**NOW IT IS AGREED** as follows:

**1. Accession to the Pool Agreement:**

1.1. The New Participant hereby covenants with each of the Existing Participants and the Pool Managers with effect from the date hereof to observe, perform and be bound by all the terms and conditions of the Pool Agreement.

1.2. Each of the Existing Participants and the Pool Managers covenant with the New Participant that with effect from the date hereof the New Participant shall be entitled to the benefit of the terms of the Pool Agreement.

**2. Miscellaneous**

2.1. This Agreement is supplemental to, and shall be read and construed together with, the Pool Agreement.

2.2. Clauses of the Pool Agreement, as amended and restated, shall apply, mutatis mutandis, to this Agreement as if set out in full herein.

2.3. This Agreement shall be governed by and construed, and any legal action or proceedings arising out of or in connection with this Agreement brought, in accordance with the provisions in Box 15 of Part 1 of the Pool Agreement.

2.4. This Agreement may be executed in any number of counterparts each of which when executed shall be considered an original and all of which when taken together shall constitute one and the same instrument.

2.5. No third parties may enforce any term of this Agreement.

**IN WITNESS** whereof this Agreement has been duly executed and delivered on the day and year first above written.

Executed and delivered by:

**The Pool Managers (for themselves and for and on behalf of the Existing Participants) .....**

**The New Participant .....**  
[See Sub-clause 9(c)]

## IMPORTANT NOTE TO USERS

Use of this Standard Pooling Agreement does not guarantee compliance with competition rules. There are over 100 jurisdictions with competition rules; parties should take competition advice.

Market share, level of concentration and structure of the market, as well as limitations as to turnover and number of vessels owned can affect whether the pool is legal under various jurisdictions.

Generally, calling at a port will mean that the laws in that country of that port will apply, but the country of origin and destination of the cargo may also be relevant to jurisdiction

## Contract Clauses

### 1. Definitions

“**Additional Tonnage**” means vessels owned and operated by non-Participants, and chartered in by the Pool Managers on time or voyage basis.

“**Commencement Date**” means the date agreed as the commencement date by all the Participants and stated in Box 2.

“**Distributions**” means the payments made to Participants in accordance with Clause 15 (Distributions).

“**Owners**” means the owners or disponent owners of a Pool Vessel, stated in Box 3 and Annex A (Pool Participants).

“**Participants**” means the Owners listed in Annex A (Pool Participants) who have effective operational control of the Pool Vessels listed against their names in Annex C (Pool Vessels and Pool Points) hereto and have agreed to participate in the Pool on the terms and conditions as set out below.

“**Participants’ Meeting**” means the meeting of the representatives of all the Participants, which is the highest authority of the Pool having power and organised in accordance with Clause 12 (Participants’ Meeting) and otherwise as provided in this Pool Agreement.

“**Pool**” means the pooling of time charter hire, voyage receipts earned by and expenses incurred by the Pool Vessels and the activities performed by the Pool Managers pursuant to this Pool Agreement.

“**Pool Accounts**” means the accounting records in relation to Pool Gross Revenue, Pool Expenses and Pool Net Revenue in respect of all Pool Vessels for the period reviewed including all Distributions to Participants.

“**Pool Agreement**” means Parts I and II and Annexes A (Pool Participants), B (Reference Charter), C (Pool Vessels and Pool Points), D (Pool Points Formula) and E (Accession Agreement) of this Agreement.

“**Pool Committee**” means the body established to assist, monitor and supervise the Pool Managers in conjunction with the Participants’ Meeting as more fully described in Clause 12 (Participants’ Meeting).

“**Pool Expenses**” means the expenses referred to in Clause 13 (Calculation of Pool Gross Revenue, Pool Net Revenue and Pool Expenses).

“**Pool Gross Revenue**” means the gross revenue referred to in Clause 13 (Calculation of Pool Gross Revenue, Pool Net Revenue and Pool Expenses).

“**Pool Managers**” means the party stated in Box 4.

“**Pool Net Revenue**” means the net revenue referred to in Clause 13 (Calculation of Pool Gross Revenue, Pool Net Revenue and Pool Expenses).

“**Pool Points**” means each Pool Vessel’s relative earning capacity as determined in accordance with Clause 16 (Pool Points) and set out in Annex C (Pool Vessels and Pool Points) or determined by the Participants’ Meeting.

“**Pool Points Formula**” means the formula used for division of the Pool Net Revenue as described in Clause 13 (Calculation of Pool Gross Revenue, Pool Net Revenue and Pool Expenses) and Annex D (Pool Points Formula) hereto, and as determined from time to time under Clause 16 (Pool Points).

“**Pool Points Share**” means the entitlement of Participants to share in Pool Net Revenue.

“**Pool Vessel**” means a Qualifying Vessel that has entered into service under this Pool Agreement.

“**Pool Year**” means each calendar year during the term of this Pool Agreement.

“**Qualifying Vessel**” means a vessel of a similar size and type under various ownerships.

“**Reference Charter**” means the standard form of time charter party stated in Box 5, as amended in the form of Annex B (Reference Charter) attached.

“**Substitute Vessel**” means a Qualifying Vessel provided to the Pool Managers in place of a Pool Vessel.

“**Transportation Contract**” means any contract for the use of a vessel or the carriage of goods.

### 2. Pool Agreement

(a) This agreement is made between each of the Participants, and the Participants and the Pool Managers on the date stated in Box 1. The Participants have agreed to establish and operate a Pool of vessels as described in Annex C (Pool Vessels) and the Pool Managers agree to operate the Pool on the terms and conditions set out below.

50 (b) All Pool Vessels shall, pursuant to this Pool Agreement, be under the management of the Pool  
51 Managers. Subject to any contrary provisions herein, time and place for delivery and place of redelivery of  
52 the Pool Vessels shall be effected in accordance with the Reference Charter. The Reference Charter shall  
53 not represent a charter party between the Pool Managers and the Participant, but shall only be used to  
54 reflect the costs and obligations of the Participant and those of the Pool Managers, for accounting and  
55 operational purposes. Further, the Reference Charter shall be the basis for determining when the Vessel is  
56 deemed to be on hire and at the disposal of the Pool Managers in relation to Clause 15 (Distributions).

57 (c) All contracts entered into with third parties in respect of employment and operation of the Pool Vessels  
58 shall be in the Pool Managers' name on behalf of and acting as agents for the individual Participants  
59 subject to the terms of this Pool Agreement.

60 (d) Any and all income earned in respect of Transportation Contracts concluded by the Pool Managers on  
61 behalf of the Participants shall be paid to the Pool Managers for the benefit of the Pool.

62 (e) Any expenses and liabilities that would have been for the account of a Participant as owner under the  
63 Reference Charter shall be for the relevant Participant's account.

64 (f) Any Transportation Contract related expenses and any other costs, losses or liabilities that would not  
65 have been incurred by a Participant as owner under the Reference Charter shall be for the account of the  
66 Pool.

### 67 3. **No Partnership**

68 Nothing contained in the Pool Agreement, or in any other document relating to the Pool, shall be construed  
69 as constituting a partnership between the Participants and the Pool Managers or any of them. The  
70 obligations of each Participant under this Pool Agreement shall be owed to the Pool Managers alone and  
71 not to the other Participants save in the case of obligations under Clauses 4 (Indemnity, Liability and  
72 Security), 25 (Confidentiality) and 28 (Dispute Resolution).

### 73 4. **Indemnity, Liability and Security**

74 If a claim is made against a Participant ("Indemnified Party") or its affiliate, or any seizure, restraint, arrest,  
75 detention, attachment or the like ("Arrest") effected in respect of property owned, controlled or possessed  
76 by the Indemnified Party or its affiliate by reason of a claim against another Participant or its affiliate or the  
77 Pool Managers ("the Indemnifying Party") or in respect of any property owned, controlled or possessed by  
78 the Indemnifying Party then the Indemnifying Party shall:

79 (a) indemnify and hold harmless the Indemnified Party and its affiliate against the claim and the Arrest, and  
80 all costs, losses, liabilities and expenses (including legal expenses) arising therefrom;

81 (b) without limitation to the foregoing, provide security to ensure that any Arrest is lifted or discharged as  
82 soon as possible.

83 Each Participant shall be liable for its own performance under this Agreement but (for the avoidance of  
84 doubt) shall not be jointly or severally liable with any other Participant or for the obligations of any other  
85 Participant.

### 86 5. **Objective of the Pool Agreement**

87 The purpose of the Pool Agreement is to provide the expertise and supportive activities required to develop  
88 and manage services to facilitate the commercial operation, employment, efficiencies and common  
89 marketing of the Pool Vessels. This shall be achieved through the optimal use of the Pool Vessels by  
90 improved scheduling to reduce ballast legs, bulk buying of goods and services related to voyage expenses,  
91 creating economies of scale and critical mass, and maximising flexibility, reliability and competitiveness so  
92 as to provide the best possible services to the market and in the end to the benefit of consumers.

### 93 6. **Contracting on behalf of the Pool**

94 The Pool Managers shall on behalf of the Participants enter into various Transportation Contracts as  
95 deemed fit by the Pool Managers and otherwise as set out in Clause 8 (Pool Management) save that the  
96 Pool Managers may enter into Contracts of Affreightment in their own name but always as agents for the  
97 performance by Participants as named principals of Transportation Contracts concluded pursuant to a  
98 Contract of Affreightment; and may charter in and charter out Additional Tonnage in their own name.

### 99 7. **Pool Vessels**

100 (a) Each Participant shall in relation to each Pool Vessel be solely responsible and liable for the  
101 procurement, financing, insurance, manning and technical management of its Pool Vessel(s) in accordance  
102 with the Reference Charter.

103 (b) The Pool Managers may charter in Additional Tonnage if required to meet their commitments or for  
104 more efficient operation of the Pool.

### 105 8. **Pool Management**

106 (a) The Pool Managers shall at all times have adequate, sufficient and competent personnel to carry out  
107 Pool related activities including but not limited to:

108 (i) performance of commercial management and operations;

- (ii) provision of backup services for marketing activities, the marketing of the services of the Pool Vessels including market research, trade forecasting and market planning;
  - (iii) performance of accounting services and the preparation of financial statements;
  - (iv) calculation and distribution of the Pool Net Revenue;
  - (v) issuing instructions to Masters, scheduling of the Pool Vessels, arrangement of agencies, tugs, lighterage, bunkers and all other matters in support of the commercial operation of the Pool Vessels;
  - (vi) voyage estimating, accounting, and calculation of hire, freights, demurrage and/or despatch monies due from or due to the charterers of Pool Vessels;
  - (vii) payment and collection of the expenses, revenues and all other amounts due relating to the commercial operation of the Pool Vessels;
  - (viii) budgeting, accounting and reporting relating to the Pool;
  - (ix) setting up and maintaining bank accounts appropriate to the operation of the Pool;
  - (x) entering into insurance contracts in accordance with Clause 19 (Insurance Policies); and
  - (xi) reviewing the Pool Points Formula and advising the Participants of any revisions which the Pool Managers shall propose to ensure the Pool Points Formula is fair and equitable (see Sub-clause 12(e)(i)).

(b) The Pool Managers may enter into any contracts required for the commercial operation, promotion and marketing of the Pool Vessels.

(c) The Pool Managers shall implement all decisions made in accordance with this Agreement and can sue and be sued in respect of any dispute under this Agreement.

(d) The Pool Managers shall, at all times and without discrimination between Participants, use all reasonable endeavours to protect and promote the interests of the Participants and the Pool and shall conduct themselves in a way which ensures fulfilment of the aims of this Pool Agreement.

(e) The Pool Managers shall be under no liability whatsoever to the Pool Participants for any loss, damage, delay or expense of whatsoever nature, whether direct or indirect, and howsoever arising in the course of performance of their obligations hereunder unless same is proved to have resulted solely from the negligence, gross negligence or wilful default of the Pool Managers.

## 9. Pool Managers' Authority

## **Pool Managers Authority**

- (a) subject to the terms of this Agreement to enter into, draw up and handle the performance of Transportation Contracts for periods not exceeding the number of months stated in Box 6 or, if left blank, six (6) months or the equivalent number of voyages provided such voyages are scheduled to be performed within the number of months stated in Box 7 or, if left blank, twelve (12) months; and
  - (b) to charter in Additional Tonnage for periods not exceeding the number of months stated in Box 6 or, if left blank, six (6) months.
  - (c) to sign Accession Agreements as set out in Annex E (Accession Agreement) on behalf of themselves and the Participants to bring in new participants to the Pool by resolution of the Participants' Meeting in accordance with Clause 12(f)(iii).

## 10. Pool Committee

The Pool Committee shall consist of the number of representatives and alternates stated in Box 8 and shall be nominated by the Participants' Meeting.

- (a) The Pool Committee shall meet regularly and as frequently as necessary for the proper discharge of its functions.
  - (b) The decisions of the Pool Committee shall be made by ordinary majority of those present.
  - (c) The Pool Committee shall elect its own chairman.
  - (d) The primary task of the Pool Committee shall be to supervise and monitor the Pool Managers and to protect the interests of the Pool.
  - (e) The Pool Committee shall be convened at not less than seven (7) days' notice. The notice convening the meeting shall state the agenda. Resolutions may not be adopted in a matter not included in the agenda unless all Pool Committee members are represented and consent thereto.
  - (f) A Pool Committee member may be represented by proxy who shall have full voting rights.

- 161        11. **Pool Committee Authority**  
162        (a) The Pool Committee shall have authority to:  
163            (i) set the agenda, time, date and venue of the Participants' Meetings;  
164            (ii) approve new Pool Vessels from existing Participants, and Substitute Vessels nominated for  
165            inclusion in the Pool;  
166            (iii) authorise the Pool Managers on behalf of a Participant or Participants to enter into Transportation  
167            Contracts with third parties committing a Pool Vessel for more than six (6) months but less than  
168            twelve (12) months, subject to Sub-clause 9(a) and the approval of the Owner of the Pool Vessel;  
169            (iv) authorise the Pool Managers to charter-in Additional Tonnage for more than six (6) months but less  
170            than twelve (12) months;  
171            (v) approve the Pool Managers' entry into forward currency exchange contracts, bunker hedging  
172            contracts, forward freight agreements (FFAs), and other hedging contracts relevant to the business  
173            of the Pool, but all such contracts shall be for periods of not more than twelve (12) months; and  
174            (vi) undertake such other activities as the Participants' Meeting may authorise in connection with the  
175            Pool and its activities.  
176        (b) The Pool Committee shall, at all times and without discrimination between Participants, use all  
177            reasonable endeavours to protect and promote the interests of the Pool and shall conduct itself and cause  
178            the Pool Managers to act in a way which ensures fulfilment of the aims of this Pool Agreement.
- 179        12. **Participants' Meeting**  
180        (a) An ordinary Participants' Meeting shall take place at least once a year with not less than twenty-one  
181            (21) days' notice stating the time and place, together with an agenda for the meeting stating the business to  
182            be considered.  
183        (b) An extraordinary Participants' Meeting may be called by Participants representing the percentage stated  
184            in Box 9 (or if left blank, twenty-five per cent (25%)) of the total number of Pool Vessels with not less than  
185            fourteen (14) days' notice stating the time and place, together with an agenda for the meeting stating the  
186            business to be considered. A Participants' Meeting shall also be convened in the event of the Pool  
187            Managers giving notice of termination in accordance with Clause 20 (Termination by Pool Managers).  
188        (c) The Pool Managers shall take minutes of the Participants' Meeting and such minutes shall be distributed  
189            to all Participants as soon as possible.  
190        (d) The following matters shall be resolved by an ordinary majority based on the number of Pool Vessels  
191            owned or controlled by the Participants, each Pool Vessel giving one vote, present or represented, at the  
192            Participants' Meeting:  
193            (i) approval of the annual accounts for the Pool operations;  
194            (ii) approval of the annual budget;  
195            (iii) consideration of any matter brought to the meeting by one or more Participants or by the Pool  
196            Managers which is not a matter otherwise subject to the voting provisions of Sub-clause (e) or (f);  
197            and  
198            (iv) appointment of auditors;  
199        (e) The following matters shall be resolved by a two-thirds majority based on the number of Pool Vessels  
200            owned or controlled by the Participants, each Pool Vessel giving one vote, present or represented, at the  
201            Participants' Meeting:  
202            (i) approval of Pool Points and changes to the Pool Points Formula;  
203            (ii) charter-out commitments for periods in excess of twelve (12) months unless otherwise stated in  
204            Box 10, subject to the approval of the Owner of the Pool Vessel;  
205            (iii) charter-in Additional Tonnage for periods in excess of twelve (12) months;  
206            (iv) approval of contracts outside the normal course of business;  
207            (v) approval of use of Participants' main or branch offices or subsidiaries for concluding contracts for  
208            the provision or sub-contracting of services;  
209            (vi) approval of contracts for bulk buying of services or supplies with an annual value of more than the  
210            amount stated in Box 11;  
211            (vii) approval of framework contracts for bunkers, agency and brokerage;  
212            (viii) winding up of the Pool in accordance with Clause 21 (Winding up of Pool); and

- 213 (ix) approval of the appointment of new Pool Managers following notice of termination given by the  
214 Pool Managers in accordance with Clause 20 (Termination by Pool Managers).
- 215 (f) The following matters shall be resolved by a unanimous decision of those present or represented at the  
216 Participants' Meeting with the exception of (ii) below which shall require unanimity of all Participants (other  
217 than the Participant(s) who may be expelled):
- 218 (i) approval of co-operation or joint venture agreements;
- 219 (ii) expulsion of Participant(s); and
- 220 (iii) approval of new Participants.
- 221 (g) Approval of proposed changes to the Pool Agreement shall require unanimity of all Participants and the  
222 consent of the Pool Managers.
- 223 (h) Participants may be represented by proxy, who shall have full voting rights.

224 13. **Calculation of Pool Gross Revenue, Pool Net Revenue and Pool Expenses**  
225 Pool Net Revenue in respect of all Pool Vessels in any one month shall equal Pool Gross Revenue less  
226 Pool Expenses as described in Sub-clauses 13(a) and 13(b) below:

- 227 (a) Pool Gross Revenue is comprised of:
- 228 (i) each Pool Vessel's total voyage income (whether a voyage has been completed or not and  
229 including without limitation freight and demurrage) based on voyage estimates and/or provisional  
230 voyage accounts and pro rated for the number of voyage days in the applicable month;
- 231 (ii) hire receivable for Pool Vessels fixed on time charters;
- 232 (iii) any currency exchange gains;
- 233 (iv) interest earned;
- 234 (v) bunker hedging receipts;
- 235 (vi) insurance money received under policies taken out by the Pool Managers;
- 236 (vii) all income of any nature due to the Pool arising out of the operation of, or in any way connected  
237 with, the Pool Vessels and from Additional Tonnage and operations under this Pool Agreement;  
238 and
- 239 (viii) any indemnities and/or damages received by the Pool Managers arising out of the operation of, or  
240 in any way connected with, the Pool Vessels and the Pool.
- 241 (b) Pool Expenses are comprised of:
- 242 (i) each Pool Vessel's total voyage expenses payable under the applicable Transportation Contract  
243 including without limitation, agents, tugs, trade related insurance premia, port expenses, wharfage,  
244 brokerage commission, bunkers, canal fees and additional War Risk premia and any other  
245 Charterers' expenses under the Reference Charter relevant to that Pool Vessel;
- 246 (ii) any liabilities, costs or damages, including liabilities, costs or damages which would arise under the  
247 Reference Charter and which would not be for account of the Participant thereunder, payable by  
248 the Pool Managers to any contractual party, including payment to a Participant;
- 249 (iii) all other expenses or amounts properly payable by the Pool Managers in connection with the  
250 operation of the Pool Vessels and in connection with performing the business of the Pool;
- 251 (iv) any currency exchange losses;
- 252 (v) legal fees and any reasonable third party consulting fees incurred directly with respect to the  
253 business of the Pool, including auditing fees;
- 254 (vi) all costs of Additional Tonnage;
- 255 (vii) bunker hedging expenses;
- 256 (viii) the Pool Managers' entitlement to remuneration as per Box 12;
- 257 (ix) any costs, liabilities or damages incurred by the Pool Managers other than as a result of their  
258 negligence, gross negligence or wilful misconduct; and
- 259 (x) Pool Managers' Insurance premia as per Sub-clause 19 (b) and (c), net of any refunds, rebates  
260 and commissions received.

261 Any shortfall to cover anticipated Pool Expenses shall be made good by the Participants in accordance with  
262 the allocation of Pool Points at the Pool Managers' request and such payments shall be treated as a

- 263 contribution to the Pool's Working Capital (see Sub-clause 15(d)).
- 264 (c) Any costs, liabilities or damages arising solely from the Pool Managers' negligence, gross negligence or  
265 wilful misconduct in performance of, or breach of, their duties and obligations pursuant to this Pool  
266 Agreement, shall be compensated to the Pool by the Pool Managers.
- 267 **14. Pool Managers' Accounts**
- 268 (a) The Pool Managers shall at all times maintain and keep true and correct accounts in respect of the  
269 operation of the Pool in accordance with the relevant International Financial Reporting Standards (IFRS) or  
270 such other standard as the parties may agree, including records of all costs and expenditure incurred, and  
271 produce a comparison between budgeted and actual income and expenditure of each Pool Vessel in such  
272 form and at such intervals as shall be mutually agreed. All accounts shall be kept in U.S. Dollars. The Pool  
273 Managers shall maintain systems of internal controls designed to provide reasonable assurance that  
274 transactions are properly executed sufficient to meet the requirements of an independent audit performed  
275 in accordance with IFRS or such other standard as the parties may agree.
- 276 (b) A Participant may present claims for reimbursement of Pool Expenses paid by it no more often than  
277 weekly, and the Pool Managers shall pay valid (and properly documented in accordance with this Clause)  
278 claims within five working days after receipt. The Pool Managers shall have the right to audit Pool  
279 Expenses claimed by any Participant and to require original invoices and vouchers for all amounts claimed.
- 280 (c) Financial Statements
- 281 The Pool Managers shall prepare and submit financial statements to the Participants. Monthly and quarterly  
282 statements (or other such interval as may be mutually agreed in accordance with Sub-clause 14(a)) shall  
283 be unaudited and one annual statement shall be audited.
- 284 **15. Distributions**
- 285 (a) Calculation of Payment
- 286 In respect of each Pool Vessel for which it is the responsible Participant, a Participant shall be entitled to  
287 receive payment calculated as follows:
- 288 Payment=PNR x Y/Z
- 289 Where:
- 290 PNR = Pool Net Revenue
- 291 Y = the individual Pool Points (PP) for each Pool Vessel multiplied by the time the Vessel would have been  
292 deemed to be on hire (H) pursuant to the principles of the Reference Charter within the calendar month in  
293 respect of which the calculation is made.
- 294 Z = the total Pool Points (PP) for all Pool Vessels multiplied by the total time the Vessel would have been  
295 deemed to be on hire pursuant to the principles of the Reference Charter during the same period stated  
296 above.
- 297 i.e.  $\sum=((PP_1 \times H_1),(PP_2 \times H_2)\dots(PP_n \times H_n))$
- 298 (b) Distribution of Payment
- 299 (i) Payment shall be calculated in accordance with Sub-clause (a) to the end of each calendar month  
300 in respect of Pool Net Revenue, and shall be paid within fifteen (15) days after the end of each  
301 calendar month.
- 302 (ii) Subject to the Pool Managers' right to limit distributions under Sub-clause (d)(i)(2), if funds do not  
303 permit the distribution of an outstanding balance due to Participants of Pool Net Revenue received  
304 subsequent to the end of any calendar month in which it was earned, such balance shall be  
305 distributed to Participants together with the next, or if not available with a subsequent, month's  
306 payment.
- 307 (iii) A final distribution shall be calculated in respect of each Pool Year on the basis of the Pool  
308 Accounts. The entitlement of a Participant to receive a final distribution shall be adjusted to take  
309 account of payments made under this Sub-clause (b) in respect of the same Pool Year, and the  
310 balance settled in cash not later than six (6) months after final accounts at the end of the Pool  
311 Year.
- 312 (iv) If any calculation under this Sub-clause (b) results in a negative amount, such amount shall be  
313 payable by the Participant and shall be paid by the Participant to the Pool Managers within five (5)  
314 days after demand, or the Pool Managers may set off such amount against current entitlement to  
315 distribution.
- 316 (v) All payments by the Pool Managers or demands under Sub-clause (b)(iv) shall be accompanied by  
317 a detailed calculation of such payment or demand.
- 318 (c) Statements of Account

- 319 After the end of each Pool Year, the Pool Managers shall within thirty (30) days submit final accounts for  
 320 the Pool Year duly certified by the Auditors appointed by the Participants.
- 321 (d) Working Capital / Contribution to Operational Losses
- 322 (i) Working Capital shall be paid in by each Participant as follows:
- 323 (1) in respect of each Pool Vessel on the date it becomes a Pool Vessel in an amount determined  
 324 by the Participants' Meeting; and
- 325 (2) as required by the Pool Managers and approved by the Participants' Meeting from time to time  
 326 and shall be provided by the Participants based on their allocated Pool Points. During each Pool  
 327 Year the Pool Managers shall limit distributions to ensure that Working Capital is maintained.
- 328 (ii) If the aggregate of Working Capital supplied by a Participant in respect of Pool Vessels exceeds  
 329 the aggregate it is required to contribute, taking into account any credit to which it is entitled, it shall  
 330 be entitled to repayment of the excess.
- 331 (iii) If operating losses occur (i.e. Pool Expenses exceeding Pool Gross Revenue), the Pool Managers  
 332 shall allocate such operating losses between Participants in accordance with their number of  
 333 allocated Pool Points.
- 334 (iv) Participants shall contribute to operating losses or Working Capital within five (5) days from receipt  
 335 of demand and delayed payment shall be subject to interest calculated on a one month LIBOR rate  
 336 plus the percentage stated in Box 13. If Box 13 is not filled in then three per cent (3%) shall apply.
- 337 16. **Pool Points**
- 338 (a) The formula for calculating Pool Points is described in Annex D (Pool Points Formula). Its objective is to  
 339 produce a distribution key which reflects the relative earning capacity of the Pool Vessels.
- 340 (b) The Pool Points for a new Pool Vessel shall be determined by the Participants' Meeting, taking into  
 341 account any proposal presented by the Pool Managers, using the formula referred to in Sub-clause (a)  
 342 above and also taking into account any special factors relating to the new Pool Vessel.
- 343 (c) In addition to the on-going review conducted by the Pool Managers under Clause 8 (Pool Management),  
 344 the voyage results and performance of all Pool Vessels shall be reviewed every six (6) months, except for  
 345 the first period if less than six (6) months, on respectively 1 January and 1 July by the Pool Managers. The  
 346 Pool Managers shall review the results and performance with the purpose of ensuring that the Pool Points  
 347 are fair and equitable taking into account factors affecting the relative earning capacity of the Pool Vessels,  
 348 including but not limited to:
- 349 (i) changes in the projected or actual trading pattern of the Pool Vessels which will affect their relative  
 350 trading value;
- 351 (ii) changes in the price and other costs relating to bunkers;
- 352 (iii) introduction of new rules and regulations, including imposition of trading restrictions affecting the  
 353 employment or employment potential of the Pool Vessels;
- 354 (iv) changes or modifications to the Pool Vessels' capacity, size and/or technical conditions since the  
 355 Pool Points were last determined.
- 356 Any recommendations of the Pool Managers for changing either the Pool Points or the Pool Points Formula  
 357 shall be put before the next Participants' Meeting (see Sub-clause 12(e)(i)). All revisions are effective for  
 358 future Pool Points only, but with effect from the reference date in respect of which they were made.
- 359 (d) The Pool Points for each Pool Vessel may be revised at shorter intervals if, in the reasonable opinion of  
 360 the Pool Managers, changed circumstances require an adjustment of Pool Points.
- 361 17. **Withdrawal**
- 362 (a) Withdrawal of a Vessel
- 363 (i) A Participant may withdraw a Pool Vessel from the Pool only in accordance with this Clause.
- 364 (ii) A Participant may withdraw a Pool Vessel:
- 365 (1) in the case of a sale of the Vessel, or in the case of an affiliate which is the Owner of the Pool  
 366 Vessel ceasing to be an affiliate; or
- 367 (2) for service under a time or demise charter exceeding the period stated in Box 6.
- 368 Provided that in any such case at least thirty (30) days' prior written notice of withdrawal shall be given to  
 369 the Pool Managers and withdrawal shall take effect on the thirtieth (30th) day or, if on voyage at that time,  
 370 on completion of that voyage. If the Pool Vessel's commitments exceed one voyage at the time of giving  
 371 such notice and the Participant can provide a Substitute Vessel that is accepted by the charterer, if any, the  
 372 Participant may withdraw the Pool Vessel as soon as substitution can be made.

373 (b) Withdrawal of a Participant

374 A Participant may withdraw from the Pool upon written notice to the Pool Managers. This shall have the  
375 effect of withdrawing all the Pool Vessels for which it is the responsible Participant, with the date of  
376 withdrawal (to be determined for each Vessel individually) to be as follows:

377 (i) six (6) months after delivery of the notice; or

378 (ii) on expiry of the Vessel's current commitments.

379 whichever is later.

Upon withdrawal of a Participant, the Pool Managers shall value the existing Transportation Contracts which exceed more than the voyages then in progress and the withdrawing Participant shall make a payment to the Pool Managers in an amount equal to the amount by which the Transportation Contracts are less than the market rate pro-rated on the basis of the number of Pool Vessels in total and the number of the withdrawing Participant's Pool Vessels. If the Transportation Contracts are at a rate exceeding the market rate, no payment shall be made to the withdrawing Participant. If the parties fail to agree on such valuation the matter shall be determined by the average of the assessments of two chartering brokers, one appointed by the Pool Managers and the other by the withdrawing Participant. If either party fails to appoint a broker within fourteen (14) days of the request of the other party to do so, the appointed broker's determination shall be binding upon the parties. The foregoing payment mechanism shall, without prejudice to the Pool Managers' rights under Sub-clause (c) below, also apply to the withdrawal of a Pool Vessel or Pool Vessels in accordance with this Clause 17.

392 (c) If the Pool Managers determine that one or more Pool Vessels due to be withdrawn under Sub-clauses  
393 17(a) or 17(b) are required to enable the Pool to perform its contractual obligations under Transportation  
394 Contracts then, and in that event, the Participant must from the time of its/their withdrawal either supply one  
395 or more Substitute Vessels or if it does not provide a Substitute Vessel or Vessels, pay compensation to  
396 enable the Pool Managers to charter suitable vessels.

397 (d) In making a determination under Sub-clause 17(c), the Pool Managers shall take into account all notices  
398 served under Sub-clauses 17(a) or 17(b) and shall, to the extent possible, act reasonably to allocate the  
399 burden of Clause 17(c) between Participants who have served notices under Sub-clauses 17(a) or 17(b).

400 (e) Following service of notices under Sub-clauses 17(a) or 17(b), no further Transportation Contracts shall  
401 be entered into by the Pool Managers which would be reliant upon the service in the Pool of the  
402 withdrawing Vessels.

403 (f) Constructive / Total loss of Pool Vessel

A Pool Vessel which becomes an actual, constructive or compromised total loss is deemed to be withdrawn with effect from time of loss or, if this unknown at the time the Vessel was last heard from and the Participant which entered the Vessel in the Pool shall not be obligated to provide a Substitute Vessel or pay compensation to the Pool in such circumstances.

408 (g) Redelivery

409 In the event of withdrawal, the actual time and range of place of redelivery shall be decided and notified by  
410 the Pool Managers at their discretion as early as practicable within the notice period in this Clause 17.  
411 Redelivery shall take place at the last port of discharge from dropping last outward sea pilot.

412 (h) Working Capital contribution made shall be repaid without any interest in respect of each Pool Vessel  
413 when it ceases to be a Pool Vessel.

## 18. Non-compete

415 A Participant shall not be entitled to operate in the same trades as the Pool with Qualifying Vessels.

## **19. Insurance Policies**

417 (a) Participants' insurance cover

418 The Participants shall procure that throughout the period of the Pool Agreement:

419 (i) at the Participants' expense, the Pool Vessel is insured for not less than its sound market value or  
420 entered for its full gross tonnage, as the case may be:

(1) hull and machinery marine risks (including but not limited to crew negligence) and excess liabilities;

(2) protection and indemnity risks (including but not limited to pollution risks, diversion expenses and crew insurances);

(3) war risks (including but not limited to blocking and trapping, protection and indemnity, terrorism and crew risks); and

(4) such optional insurances as may be agreed (such as loss of hire and FD & D) (see Box 14).

- 428 Insurances under Sub-clauses 19(a)(i)(1) to 19(a)(i)(4) shall be taken out all in accordance with the best  
429 practice of prudent owners of vessels of a similar type to the Pool Vessel, with sound and reputable  
430 insurance companies, underwriters or associations ("the Participants' Insurances");
- 431 (ii) all premia and calls on the Participants' Insurances are paid by their due date;
- 432 (iii) written evidence is provided, to the reasonable satisfaction of the Pool Managers, of the  
433 Participants' compliance with their obligations under this Clause 19 within a reasonable time of the  
434 commencement of the Pool Agreement and of each renewal date and, if specifically requested, of  
435 each payment date of the Owners' Insurances.
- 436 (b) Participants' insurances shall name the Pool Managers as joint assureds, with full cover. It is  
437 understood that in some cases, such as protection and indemnity, the normal terms for such cover may  
438 impose on the Pool Managers a liability in respect of premiums or calls arising in connection with the  
439 Participants' insurances.
- 440 If obtainable at no additional cost, however, the Participants shall procure such insurances on terms such  
441 that the Pool Managers shall not be under any liability in respect of premiums or calls arising in connection  
442 with the Participants' insurances. In any event, upon a Participant's withdrawal from the Pool in accordance  
443 with Clause 17 (Withdrawal) or winding up of the Pool in accordance with Clause 21 (Winding up of the  
444 Pool), the Participants shall procure that the Pool Managers shall cease to be joint assureds and, if  
445 reasonably achievable, that they shall be released from any and all liability for premiums and calls.
- 446 (c) **Pool Managers' Insurance**
- 447 The Pool Managers shall in their own name take out professional liability insurance (errors and omissions);  
448 charterers' liability insurance for Additional Tonnage; and FD & D cover as appropriate to their trading  
449 activities.
- 450 20. **Termination by Pool Managers**  
451 The Pool Managers may serve notice of termination of their role as Pool Managers on the Participants by  
452 giving six (6) months' written notice to the Participants. The Participants' Meeting convened in accordance  
453 with Clause 12 (Participants' Meeting) shall decide on whether a new Pool Manager shall be appointed.
- 454 21. **Winding up of Pool**  
455 (a) The Pool shall be wound up if a Participants' Meeting with a two-thirds majority votes to this effect or if  
456 the Pool Managers have terminated in accordance with Clause 20 (Termination by Pool Managers) and the  
457 Participants' Meeting cannot agree on the appointment of a new Pool Manager in accordance with Clause  
458 12 (Participants' Meeting).
- 459 (b) If the Pool is wound up:
- 460 (i) The Pool Managers shall not enter into any further Transportation Contracts;
- 461 (ii) no withdrawals of Pool Vessels by notice shall be permitted, but each Pool Vessel shall cease to  
462 be a Pool Vessel when it is no longer required to perform a Transportation Contract (as the Pool  
463 Managers shall reasonably determine);
- 464 (iii) the Participants shall be released from further performance of Clause 18 (Non-compete); and
- 465 (iv) when all Transportation Contracts have been performed, this Agreement shall terminate (without  
466 prejudice to any rights accrued before termination).
- 467 22. **Default**  
468 If a Participant:
- 469 (a) is adjudged bankrupt or insolvent, or is ordered to be wound up, or enters into voluntary winding up  
470 (otherwise than for the purpose of reconstruction or amalgamation), or has a bona fide petition presented  
471 for its winding up and not withdrawn within forty-five (45) days (or, in each case, the equivalent in any  
472 relevant jurisdiction); or
- 473 (b) suffers the appointment of a receiver, manager, administrator (or, in each case, the equivalent in any  
474 relevant jurisdiction) over all or a substantial proportion of its assets;
- 475 (c) requests or enters into any composition or arrangement with its creditors;
- 476 (d) fails to pay within twenty-eight (28) days after written demand, any sum in excess of US\$ 10,000 which  
477 may be due from it under this Agreement;
- 478 (e) commits any material breach of its obligations under this Agreement which is not rectified within twenty-  
479 eight (28) days after written notice given by any other Participant and/or the Pool Managers;
- 480 (f) is unable to or fails to withdraw a Pool Vessel in accordance with the terms of this Agreement that has  
481 been terminated under the relevant head charter party before its contractual expiry date;
- 482 then, if so resolved by the Participants' Meeting in accordance with Sub-clause 12(f)(ii), that Participant  
483 shall cease to be a Participant and the Pool Managers shall redeliver the Pool Vessel(s) as soon as

484 convenient. The consequences of such an expulsion of a Participant shall be without prejudice to the Pool  
 485 Managers' right to claim damages as per the provisions of Clause 23 (Rights on Termination and  
 486 Withdrawal).

487 **23. Rights on Termination and Withdrawal**

488 Any termination of a Participant's participation in the Pool and any withdrawal of a Pool Vessel from the  
 489 Pool, whether at the instance of the relevant Participant or the Pool Managers or the other Participants or  
 490 on total loss of that Pool Vessel, shall be without prejudice to all rights and obligations of the parties up to  
 491 the effective date of such termination or withdrawal or to any rights and obligations which survive such  
 492 termination or withdrawal in accordance with the Pool Agreement including payment of Distributions.

493 **24. Hardship and Force Majeure**

494 (a) If the continued performance of this Agreement becomes burdensome for the parties to this Agreement due to an event or events not contemplated at the time of entering into this Agreement, then the parties  
 495 agree to negotiate a solution in good faith.

496 (b) None of the parties to this Agreement shall be under any liability of any kind or nature in the event that it  
 497 should fail to perform any services or obligations hereunder if any such failure is directly or indirectly  
 498 caused by war, war-like activities, government orders, supervening illegality or any labour shortage, strike  
 499 (excluding strike by crew) or lock-out or any shortage of material or act of God or Peril of the Sea, or any  
 500 cause beyond the control of such party.

501 **25. Confidentiality**

502 Each of the Participants and the Pool Managers agree to keep confidential and not to disclose to any third  
 503 party or exploit any secret or confidential information concerning any other Participant or the Pool  
 504 Managers' business or affairs. This obligation shall continue during the Pool Agreement and after its  
 505 termination howsoever occurring, but shall cease to apply to any information which may come into the  
 506 public domain (otherwise than through the default of any of the parties hereto), or to any information which  
 507 a Participant becomes compelled by law to disclose.

508 **26. Assignment**

509 A Participant may not assign or transfer any of its rights under this Pool Agreement without the prior written  
 510 consent of all the other Participants unless such assignment is to an affiliate or in the event of an  
 511 assignment to that Participant's financiers.

512 **27. Notices**

513 (a) All notices given by either party or their agents to the other party or their agents in accordance with the  
 514 provisions of the Pool Agreement shall be in writing and shall, unless specifically provided in the Pool  
 515 Agreement to the contrary, be sent to the address for that other party as set out in Boxes 16 and 17 or as  
 516 appropriate or to such other address as the other party may designate in writing.

517 A notice may be sent by registered or recorded mail, facsimile, electronically or delivered by hand in  
 518 accordance with this Sub-clause (a).

519 (b) Any notice given under this Agreement shall take effect on receipt by the other party and shall be  
 520 deemed to have been received:

- 521 (i) if posted, on the seventh (7th) day after posting;
- 522 (ii) if sent by facsimile or electronically, on the day of transmission; and
- 523 (iii) if delivered by hand, on the day of delivery.

524 And in each case proof of posting, handing in or transmission shall be proof that notice has been given,  
 525 unless proven to the contrary.

526 **28. Dispute Resolution Clause**

527 (a)\* This Pool Agreement shall be governed by and construed in accordance with English law and any  
 528 dispute arising out of or in connection with this Pool Agreement shall be referred to arbitration in London in  
 529 accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the  
 530 extent necessary to give effect to the provisions of this Clause.

531 The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA)  
 532 Terms current at the time when the arbitration proceedings are commenced. The reference shall be to  
 533 three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice  
 534 of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within  
 535 fourteen (14) calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator  
 536 unless the other party appoints its own arbitrator and gives notice that it has done so within the fourteen  
 537 (14) days specified. If the other party does not appoint its own arbitrator and give notice that it has done so  
 538 within the fourteen (14) days specified, the party referring a dispute to arbitration may, without the  
 539 requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall  
 540 advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he  
 541 had been appointed by agreement. In the event that there are more than two parties to the arbitration then  
 542 all three arbitrators shall be appointed by agreement between the parties. In the event that the parties  
 543 cannot agree on the three arbitrators within fourteen (14) days of one party giving notice to the other parties  
 544 calling for arbitration, any party to the dispute shall be entitled to apply to the President of the LMAA who  
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shall then appoint all three arbitrators.

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Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

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In cases where neither the claim nor any counterclaim exceeds the sum of US\$100,000 (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.

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In cases where the claim or any counterclaim exceeds the sum agreed for the LMAA Small Claims Procedure and neither the claim nor any counterclaim exceeds the sum of US\$400,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Intermediate Claims Procedure current at the time when the arbitration proceedings are commenced.

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(b)\* This Pool Agreement shall be governed by and construed in accordance with Title 9 of the United States Code and the Maritime Law of the United States and any dispute arising out of or in connection with this Pool Agreement shall be referred to three (3) persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgment may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc. In the event that there are more than two parties to the arbitration then all three arbitrators shall be appointed by agreement between the parties. In the event that the parties cannot agree on the three arbitrators within 14 (fourteen) days of one party giving notice to the other parties calling for arbitration, any party to the dispute shall be entitled to apply to the President of the SMA who shall then appoint all three arbitrators.

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In cases where neither the claim nor any counterclaim exceeds the sum of US\$100,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc.

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(c)\* This Pool Agreement shall be governed by and construed in accordance with \*\*Singapore/English law.

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Any dispute arising out of or in connection with this Pool Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Singapore International Arbitration Act (Chapter 143A) and any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

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The arbitration shall be conducted in accordance with the Arbitration Rules of the Singapore Chamber of Maritime Arbitration (SCMA) current at the time when the arbitration proceedings are commenced.

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The reference to arbitration of disputes under this Clause 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 and give notice that it has done so within fourteen (14) calendar days of that notice and stating that it will appoint its own arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) days specified. If the other party does not give notice that it has done so within the fourteen (14) 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. In the event that there are more than two parties to the arbitration then all three arbitrators shall be appointed by agreement between the parties but if the parties are unable to agree within twenty-one (21) days of the date of service of the Notice of Arbitration, the Tribunal shall be appointed by the Chairman of the SCMA.

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Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

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In cases where neither the claim nor any counterclaim exceeds the sum of US\$ 75,000 (or such other sum as the parties may agree), the arbitration shall be conducted before a single arbitrator in accordance with the SCMA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

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\*\*Delete whichever does not apply. If neither or both are deleted, then English law shall apply by default.

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(d)\* This Pool Agreement shall be governed by and construed in accordance with the laws of the place mutually agreed by the parties and any dispute arising out of or in connection with this Pool Agreement shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there.

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Notwithstanding Sub-clauses (a), (b), (c) or (d) above, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Pool Agreement.

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(e) In the case of a dispute in respect of which arbitration has been commenced under Sub-clauses (a), (b) (c) or (d) above, the following shall apply:

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(i) A party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party (or parties) of a written notice (the "Mediation Notice") calling on the other party (or parties) to agree to mediation.

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(ii) The other party (or parties) shall thereupon within fourteen (14) calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter

## Part II

POOLCON B – Standard Agency Based Pooling Agreement for dry and liquid bulk cargoes carried on a tramp basis

607 agree a mediator within a further 14 calendar days, failing which on the application of either party  
608 (or parties) a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such  
609 person as the Tribunal may designate for that purpose. The mediation shall be conducted in such  
610 place and in accordance with such procedure and on such terms as the parties may agree or, in  
611 the event of disagreement, as may be set by the mediator.

612 (iii) If the other party (or parties) does (do) not agree to mediate, that fact may be brought to the  
613 attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of  
614 the arbitration as between the parties.

615 (iv) The mediation shall not affect the right of either party (or parties) to seek such relief or take such  
616 steps as it (they) considers (consider) necessary to protect its (their) interests.

617 (v) A party (or parties) may advise the Tribunal that they have agreed to mediation. The arbitration  
618 procedure shall continue during the conduct of the mediation but the Tribunal may take the  
619 mediation timetable into account when setting the timetable for steps in the arbitration.

620 (vi) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs  
621 incurred in the mediation and the parties shall share equally the mediator's costs and expenses.

622 (vii) The mediation process shall be without prejudice and confidential and no information or documents  
623 disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable  
624 under the law and procedure governing the arbitration.

625 *(Note: The parties should be aware that the mediation process may not necessarily interrupt time limits.)*

626 \*Sub-clauses (a), (b), (c) and (d) are alternatives; indicate alternative agreed in Box 15. Sub-clause (e)  
627 shall apply in all cases.

628 *If Box 15 is not filled in, Sub-clause (a) of this Clause shall apply.*

629 29. **Severability**

630 If any provision of this Pool Agreement is or becomes or is held by any arbitrator or other competent body  
631 to be illegal, invalid or unenforceable in any respect under any law or jurisdiction, the provision shall be  
632 deemed to be amended to the extent necessary to avoid such illegality, invalidity or unenforceability, or, if  
633 such amendment is not possible, the provision shall be deemed to be deleted from this Pool Agreement to  
634 the extent of such illegality, invalidity or unenforceability, and the remaining provisions shall continue in full  
635 force and effect and shall not in any way be affected or impaired thereby.