



POOLCON B

STANDARD AGENCY BASED POOLING AGREEMENT
FOR DRY AND LIQUID BULK CARGOES
CARRIED ON A TRAMP BASIS

PART I

1. Place and date of Agreement (Cl.2)	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)	
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))	7. Voyages Performing Period (state number of months, if left blank, twelve (12) months will apply) (Cl.9(a))
8. Pool Committee representatives and alternates (state number) (Cl.10)	9. Percentage required to call an extraordinary Participants' Meeting (state percentage, if left blank, twenty-five per cent (25%) will apply) (Cl.12(b))
10. Vessel Charter-out Commitments Period (Cl.12(e)(ii))	11. Annual Value for Buying Services or Supplies (state amount) (Cl. 12(e)(vi))
12. Pool Managers' Remuneration (state amount) (Cl.13(b)(viii))	13. Interest (state rate of interest, if left blank, three (3%) per cent per annum over LIBOR will apply) (Cl.15(d)(iv))
14. Optional Insurance (state type of cover) (Cl.19(a)(i)(4))	15. Dispute Resolution (state alternative Cl.28(a), 28(b), 28(c) or 28(d); if 28(d) agreed, place of arbitration <u>must</u> be stated) (Cl.28)
16. Notices (state full style contact details for serving notice and communication <u>to the Owners</u>) (Cl.27(a))	17. Notices (state full style contact details for serving notice and communication <u>to the Pool Managers</u>) (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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Part II

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

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.

Sample copy

Part II

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

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).

Part II

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

“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 Pool Points) and the Pool Managers agree to operate the Pool on the terms and conditions set out below.
- (b) All Pool Vessels shall, pursuant to this Pool Agreement, be under the management of the Pool Managers. Subject to any contrary provisions herein, time and place for delivery and place of redelivery of the Pool Vessels shall be effected in accordance with the Reference Charter. The Reference Charter shall not represent a charter party between the Pool Managers and the Participant, but shall only be used to reflect the costs and obligations of the Participant and those of the Pool Managers, for accounting and operational purposes. Further, the Reference Charter shall be the basis for determining when the Vessel is deemed to be on hire and at the disposal of the Pool Managers in relation to Clause 15 (Distributions).
- (c) All contracts entered into with third parties in respect of employment and operation of the Pool Vessels shall be in the Pool Managers' name on behalf of and acting as agents for the individual Participants subject to the terms of this Pool Agreement.
- (d) Any and all income earned in respect of Transportation Contracts concluded by the Pool Managers on behalf of the Participants shall be paid to the Pool Managers for the benefit of the Pool.
- (e) Any expenses and liabilities that would have been for the account of a Participant as owner under the Reference Charter shall be for the relevant Participant's account.
- (f) Any Transportation Contract related expenses and any other costs, losses or liabilities that would not have been incurred by a Participant as owner under the Reference Charter shall be for the account of the Pool.

3. No Partnership

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

Part II

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

4. Indemnity, Liability and Security

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

- (a) indemnify and hold harmless the Indemnified Party and its affiliate against the claim and the Arrest, and all costs, losses, liabilities and expenses (including legal expenses) arising therefrom;
- (b) without limitation to the foregoing, provide security to ensure that any Arrest is lifted or discharged as soon as possible.

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

5. Objective of the Pool Agreement

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

6. Contracting on behalf of the Pool

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

7. Pool Vessels

- (a) Each Participant shall in relation to each Pool Vessel be solely responsible and liable for the procurement, financing, insurance, manning and technical management of its Pool Vessel(s) in accordance with the Reference Charter.
- (b) The Pool Managers may charter in Additional Tonnage if required to meet their commitments or for more efficient operation of the Pool.

8. Pool Management

- (a) The Pool Managers shall at all times have adequate, sufficient and competent personnel to carry out Pool related activities including but not limited to:
 - (i) performance of commercial management and operations;

Part II

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

- (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

The Pool Managers shall have 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; and

Part II

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

- (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.

11. Pool Committee Authority

- (a) The Pool Committee shall have authority to:
 - (i) set the agenda, time, date and venue of the Participants' Meetings;
 - (ii) approve new Pool Vessels from existing Participants, and Substitute Vessels nominated for inclusion in the Pool;
 - (iii) authorise the Pool Managers on behalf of a Participant or Participants to enter into Transportation Contracts with third parties committing a Pool Vessel for more than six (6) months but less than twelve (12) months, subject to Sub-clause 9(a) and the approval of the Owner of the Pool Vessel;
 - (iv) authorise the Pool Managers to charter-in Additional Tonnage for more than six (6) months but less than twelve (12) months;
 - (v) approve the Pool Managers' entry into forward currency exchange contracts, bunker hedging contracts, forward freight agreements (FFAs), and other hedging contracts relevant to the business of the Pool, but all such contracts shall be for periods of not more than twelve (12) months; and
 - (vi) undertake such other activities as the Participants' Meeting may authorise in connection with the Pool and its activities.
- (b) The Pool Committee shall, at all times and without discrimination between Participants, use all reasonable endeavours to protect and promote the interests of the Pool and shall conduct itself and cause the Pool Managers to act in a way which ensures fulfilment of the aims of this Pool Agreement.

Part II

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

12. Participants' Meeting

- (a) An ordinary Participants' Meeting shall take place at least once a year with not less than twenty-one (21) days' notice stating the time and place, together with an agenda for the meeting stating the business to be considered.
- (b) An extraordinary Participants' Meeting may be called by Participants representing the percentage stated in Box 9 (or if left blank, twenty-five per cent (25%)) of the total number of Pool Vessels with not less than fourteen (14) days' notice stating the time and place, together with an agenda for the meeting stating the business to be considered. A Participants' Meeting shall also be convened in the event of the Pool Managers giving notice of termination in accordance with Clause 20 (Termination by Pool Managers).
- (c) The Pool Managers shall take minutes of the Participants' Meeting and such minutes shall be distributed to all Participants as soon as possible.
- (d) The following matters shall be resolved by an ordinary majority based on the number of Pool Vessels owned or controlled by the Participants, each Pool Vessel giving one vote, present or represented, at the Participants' Meeting:
 - (i) approval of the annual accounts for the Pool operations;
 - (ii) approval of the annual budget;
 - (iii) consideration of any matter brought to the meeting by one or more Participants or by the Pool Managers which is not a matter otherwise subject to the voting provisions of Sub-clause (e) or (f); and
 - (iv) appointment of auditors.
- (e) The following matters shall be resolved by a two-thirds majority based on the number of Pool Vessels owned or controlled by the Participants, each Pool Vessel giving one vote, present or represented, at the Participants' Meeting:
 - (i) approval of Pool Points and changes to the Pool Points Formula;
 - (ii) charter-out commitments for periods in excess of twelve (12) months unless otherwise stated in Box 10, subject to the approval of the Owner of the Pool Vessel;
 - (iii) charter-in Additional Tonnage for periods in excess of twelve (12) months;
 - (iv) approval of contracts outside the normal course of business;
 - (v) approval of use of Participants' main or branch offices or subsidiaries for concluding contracts for the provision or sub-contracting of services;
 - (vi) approval of contracts for bulk buying of services or supplies with an annual value of more than the amount stated in Box 11;
 - (vii) approval of framework contracts for bunkers, agency and brokerage;
 - (viii) winding up of the Pool in accordance with Clause 21 (Winding up of Pool); and

Part II

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

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

13. Calculation of Pool Gross Revenue, Pool Net Revenue and Pool Expenses

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

- (a) Pool Gross Revenue is comprised of:
 - (i) each Pool Vessel's total voyage income (whether a voyage has been completed or not and including without limitation freight and demurrage) based on voyage estimates and/or provisional voyage accounts and pro rated for the number of voyage days in the applicable month;
 - (ii) hire receivable for Pool Vessels fixed on time charters;
 - (iii) any currency exchange gains;
 - (iv) interest earned;
 - (v) bunker hedging receipts;
 - (vi) insurance money received under policies taken out by the Pool Managers;
 - (vii) all income of any nature due to the Pool arising out of the operation of, or in any way connected with, the Pool Vessels and from Additional Tonnage and operations under this Pool Agreement; and
 - (viii) any indemnities and/or damages received by the Pool Managers arising out of the operation of, or in any way connected with, the Pool Vessels and the Pool.
- (b) Pool Expenses are comprised of:
 - (i) each Pool Vessel's total voyage expenses payable under the applicable Transportation Contract including without limitation, agents, tugs, trade related insurance premia, port expenses, wharfage, brokerage commission, bunkers, canal fees and additional War Risk premia and any other Charterers' expenses under the Reference Charter relevant to that Pool Vessel;

Part II

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

(ii) any liabilities, costs or damages, including liabilities, costs or damages which would arise under the Reference Charter and which would not be for account of the Participant thereunder, payable by the Pool Managers to any contractual party, including payment to a Participant;

(iii) all other expenses or amounts properly payable by the Pool Managers in connection with the operation of the Pool Vessels and in connection with performing the business of the Pool;

(iv) any currency exchange losses;

(v) legal fees and any reasonable third party consulting fees incurred directly with respect to the business of the Pool, including auditing fees;

(vi) all costs of Additional Tonnage;

(vii) bunker hedging expenses;

(viii) the Pool Managers' entitlement to remuneration as per Box 12;

(ix) any costs, liabilities or damages incurred by the Pool Managers other than as a result of their negligence, gross negligence or wilful misconduct; and

(x) Pool Managers' Insurance premia as per Sub-clause 19(b) and (c), net of any refunds, rebates and commissions received.

Any shortfall to cover anticipated Pool Expenses shall be made good by the Participants in accordance with the allocation of Pool Points at the Pool Managers' request and such payments shall be treated as a contribution to the Pool's Working Capital (see Sub-clause 15(d)).

- (c) Any costs, liabilities or damages arising solely from the Pool Managers' negligence, gross negligence or wilful misconduct in performance of, or breach of, their duties and obligations pursuant to this Pool Agreement, shall be compensated to the Pool by the Pool Managers.

14. Pool Managers' Accounts

- (a) The Pool Managers shall at all times maintain and keep true and correct accounts in respect of the operation of the Pool in accordance with the relevant International Financial Reporting Standards (IFRS) or such other standard as the parties may agree, including records of all costs and expenditure incurred, and produce a comparison between budgeted and actual income and expenditure of each Pool Vessel in such form and at such intervals as shall be mutually agreed. All accounts shall be kept in U.S. Dollars. The Pool Managers shall maintain systems of internal controls designed to provide reasonable assurance that transactions are properly executed sufficient to meet the requirements of an independent audit performed in accordance with IFRS or such other standard as the parties may agree.
- (b) A Participant may present claims for reimbursement of Pool Expenses paid by it no more often than weekly, and the Pool Managers shall pay valid (and properly documented in accordance with this Clause) claims within five working days after receipt. The Pool Managers shall have the right to audit Pool Expenses claimed by any Participant and to require original invoices and vouchers for all amounts claimed.

Part II

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

(c) Financial Statements

The Pool Managers shall prepare and submit financial statements to the Participants. Monthly and quarterly statements (or other such interval as may be mutually agreed in accordance with Sub-clause 14(a)) shall be unaudited and one annual statement shall be audited.

15. Distributions

(a) Calculation of Payment

In respect of each Pool Vessel for which it is the responsible Participant, a Participant shall be entitled to receive payment calculated as follows:

$$\text{Payment} = \text{PNR} \times \frac{Y}{Z}$$

Where:

PNR = Pool Net Revenue

Y = the individual Pool Points (PP) for each Pool Vessel multiplied by the time the Vessel would have been deemed to be on hire (H) pursuant to the principles of the Reference Charter within the calendar month in respect of which the calculation is made.

Z = the total Pool Points (PP) for all Pool Vessels multiplied by the total time the Vessel would have been deemed to be on hire pursuant to the principles of the Reference Charter during the same period stated above.

i.e. $\sum = ((PP_1 \times H_1), (PP_2 \times H_2) \dots (PP_n \times H_n))$

(b) Distribution of Payment

(i) Payment shall be calculated in accordance with Sub-clause (a) to the end of each calendar month in respect of Pool Net Revenue, and shall be paid within fifteen (15) days after the end of each calendar month.

(ii) Subject to the Pool Managers' right to limit distributions under Sub-clause (d)(i)(2), if funds do not permit the distribution of an outstanding balance due to Participants of Pool Net Revenue received subsequent to the end of any calendar month in which it was earned, such balance shall be distributed to Participants together with the next, or if not available with a subsequent, month's payment.

(iii) A final distribution shall be calculated in respect of each Pool Year on the basis of the Pool Accounts. The entitlement of a Participant to receive a final distribution shall be adjusted to take account of payments made under this Sub-clause (b) in respect of the same Pool Year, and the balance settled in cash not later than six (6) months after final accounts at the end of the Pool Year.

(iv) If any calculation under this Sub-clause (b) results in a negative amount, such amount shall be payable by the Participant and shall be paid by the Participant to the Pool Managers within five (5) days after demand, or the Pool Managers may set off such amount against current entitlement to distribution.

(v) All payments by the Pool Managers or demands under Sub-clause (b)(iv) shall be accompanied by a detailed calculation of such payment or demand.

Part II

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

(c) Statements of Account

After the end of each Pool Year, the Pool Managers shall within thirty (30) days submit final accounts for the Pool Year duly certified by the Auditors appointed by the Participants.

(d) Working Capital / Contribution to Operational Losses

(i) Working Capital shall be paid in by each Participant as follows:

- (1) in respect of each Pool Vessel on the date it becomes a Pool Vessel in an amount determined by the Participants' Meeting; and
- (2) as required by the Pool Managers and approved by the Participants' Meeting from time to time and shall be provided by the Participants based on their allocated Pool Points. During each Pool Year the Pool Managers shall limit distributions to ensure that Working Capital is maintained.

(ii) If the aggregate of Working Capital supplied by a Participant in respect of Pool Vessels exceeds the aggregate it is required to contribute, taking into account any credit to which it is entitled, it shall be entitled to repayment of the excess.

(iii) If operating losses occur (i.e. Pool Expenses exceeding Pool Gross Revenue), the Pool Managers shall allocate such operating losses between Participants in accordance with their number of allocated Pool Points.

(iv) Participants shall contribute to operating losses or Working Capital within five (5) days from receipt of demand and delayed payment shall be subject to interest calculated on a one month LIBOR rate plus the percentage stated in Box 13. If Box 13 is not filled in then three per cent (3%) shall apply.

16. Pool Points

- (a) The formula for calculating Pool Points is described in Annex D (Pool Points Formula). Its objective is to produce a distribution key which reflects the relative earning capacity of the Pool Vessels.
- (b) The Pool Points for a new Pool Vessel shall be determined by the Participants' Meeting, taking into account any proposal presented by the Pool Managers, using the formula referred to in Sub-clause (a) above and also taking into account any special factors relating to the new Pool Vessel.
- (c) In addition to the on-going review conducted by the Pool Managers under Clause 8 (Pool Management), the voyage results and performance of all Pool Vessels shall be reviewed every six (6) months, except for the first period if less than six (6) months, on respectively 1 January and 1 July by the Pool Managers. The Pool Managers shall review the results and performance with the purpose of ensuring that the Pool Points are fair and equitable taking into account factors affecting the relative earning capacity of the Pool Vessels, including but not limited to:
 - (i) changes in the projected or actual trading pattern of the Pool Vessels which will affect their relative trading value;
 - (ii) changes in the price and other costs relating to bunkers;
 - (iii) introduction of new rules and regulations, including imposition of trading restrictions affecting the employment or employment potential of the Pool Vessels;

Part II

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

(iv) changes or modifications to the Pool Vessels' capacity, size and/or technical conditions since the Pool Points were last determined.

Any recommendations of the Pool Managers for changing either the Pool Points or the Pool Points Formula shall be put before the next Participants' Meeting (see Sub-clause 12(e)(i)). All revisions are effective for future Pool Points only, but with effect from the reference date in respect of which they were made.

- (d) The Pool Points for each Pool Vessel may be revised at shorter intervals if, in the reasonable opinion of the Pool Managers, changed circumstances require an adjustment of Pool Points.

17. Withdrawal

(a) Withdrawal of a Vessel

(i) A Participant may withdraw a Pool Vessel from the Pool only in accordance with this Clause.

(ii) A Participant may withdraw a Pool Vessel:

- (1) in the case of a sale of the Vessel, or in the case of an affiliate which is the Owner of the Pool Vessel ceasing to be an affiliate; or
- (2) for service under a time or demise charter exceeding the period stated in Box 6.

Provided that in any such case at least thirty (30) days' prior written notice of withdrawal shall be given to the Pool Managers and withdrawal shall take effect on the thirtieth (30th) day or, if on voyage at that time, on completion of that voyage. If the Pool Vessel's commitments exceed one voyage at the time of giving such notice and the Participant can provide a Substitute Vessel that is accepted by the charterer, if any, the Participant may withdraw the Pool Vessel as soon as substitution can be made.

(b) Withdrawal of a Participant

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

- (i) six (6) months after delivery of the notice; or
- (ii) on expiry of the Vessel's current commitments,

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.

Part II

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

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.

- (c) If the Pool Managers determine that one or more Pool Vessels due to be withdrawn under Sub-clauses 17(a) or 17(b) are required to enable the Pool to perform its contractual obligations under Transportation Contracts then, and in that event, the Participant must from the time of its/their withdrawal either supply one or more Substitute Vessels or if it does not provide a Substitute Vessel or Vessels, pay compensation to enable the Pool Managers to charter suitable vessels.
- (d) In making a determination under Sub-clause 17(c), the Pool Managers shall take into account all notices served under Sub-clauses 17(a) or 17(b) and shall, to the extent possible, act reasonably to allocate the burden of Clause 17(c) between Participants who have served notices under Sub-clauses 17(a) or 17(b).
- (e) Following service of notices under Sub-clauses 17(a) or 17(b), no further Transportation Contracts shall be entered into by the Pool Managers which would be reliant upon the service in the Pool of the withdrawing Vessels.
- (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.
- (g) Redelivery
In the event of withdrawal, the actual time and range of place of redelivery shall be decided and notified by the Pool Managers at their discretion as early as practicable within the notice period in this Clause 17. Redelivery shall take place at the last port of discharge from dropping last outward sea pilot.
- (h) Working Capital contribution made shall be repaid without any interest in respect of each Pool Vessel when it ceases to be a Pool Vessel.

18. Non-compete

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

19. Insurance Policies

- (a) Participants' insurance cover

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

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

- (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);

Part II

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

- (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).

Insurances under Sub-clauses 19(a)(i)(1) to 19(a)(i)(4) shall be taken out all in accordance with the best practice of prudent owners of vessels of a similar type to the Pool Vessel, with sound and reputable insurance companies, underwriters or associations (“the Participants’ Insurances”);

(ii) all premia and calls on the Participants’ Insurances are paid by their due date;

(iii) written evidence is provided, to the reasonable satisfaction of the Pool Managers, of the Participants’ compliance with their obligations under this Clause 19 within a reasonable time of the commencement of the Pool Agreement and of each renewal date and, if specifically requested, of each payment date of the Owners’ Insurances.

- (b) Participants’ insurances shall name the Pool Managers as joint assureds, with full cover. It is understood that in some cases, such as protection and indemnity, the normal terms for such cover may impose on the Pool Managers a liability in respect of premiums or calls arising in connection with the Participants’ insurances.

If obtainable at no additional cost, however, the Participants shall procure such insurances on terms such that the Pool Managers shall not be under any liability in respect of premiums or calls arising in connection with the Participants’ insurances. In any event, upon a Participant’s withdrawal from the Pool in accordance with Clause 17 (Withdrawal) or winding up of the Pool in accordance with Clause 21 (Winding up of Pool), the Participants shall procure that the Pool Managers shall cease to be joint assureds and, if reasonably achievable, that they shall be released from any and all liability for premiums and calls.

- (c) Pool Managers’ Insurance

The Pool Managers shall in their own name take out professional liability insurance (errors and omissions); charterers’ liability insurance for Additional Tonnage; and FD & D cover as appropriate to their trading activities.

20. Termination by Pool Managers

The Pool Managers may serve notice of termination of their role as Pool Managers on the Participants by giving six (6) months’ written notice to the Participants. The Participants’ Meeting convened in accordance with Clause 12 (Participants’ Meeting) shall decide on whether a new Pool Manager shall be appointed.

21. Winding up of Pool

- (a) The Pool shall be wound up if a Participants’ Meeting with a two-thirds majority votes to this effect or if the Pool Managers have terminated in accordance with Clause 20 (Termination by Pool Managers) and the Participants’ Meeting cannot agree on the appointment of a new Pool Manager in accordance with Clause 12 (Participants’ Meeting).
- (b) If the Pool is wound up:
 - (i) the Pool Managers shall not enter into any further Transportation Contracts;

Part II

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

(ii) no withdrawals of Pool Vessels by notice shall be permitted, but each Pool Vessel shall cease to be a Pool Vessel when it is no longer required to perform a Transportation Contract (as the Pool Managers shall reasonably determine);

(iii) the Participants shall be released from further performance of Clause 18 (Non-compete); and

(iv) when all Transportation Contracts have been performed, this Agreement shall terminate (without prejudice to any rights accrued before termination).

22. Default

If a Participant:

- (a) is adjudged bankrupt or insolvent, or is ordered to be wound up, or enters into voluntary winding up (otherwise than for the purpose of reconstruction or amalgamation), or has a bona fide petition presented for its winding up and not withdrawn within forty-five (45) days (or, in each case, the equivalent in any relevant jurisdiction); or
- (b) suffers the appointment of a receiver, manager, administrator (or, in each case, the equivalent in any relevant jurisdiction) over all or a substantial proportion of its assets;
- (c) requests or enters into any composition or arrangement with its creditors;
- (d) fails to pay within twenty-eight (28) days after written demand, any sum in excess of US\$ 10,000 which may be due from it under this Agreement;
- (e) commits any material breach of its obligations under this Agreement which is not rectified within twenty-eight (28) days after written notice given by any other Participant and/or the Pool Managers;
- (f) is unable to or fails to withdraw a Pool Vessel in accordance with the terms of this Agreement that has been terminated under the relevant head charter party before its contractual expiry date;

then, if so resolved by the Participants' Meeting in accordance with Sub-clause 12(f)(ii), that Participant shall cease to be a Participant and the Pool Managers shall redeliver the Pool Vessel(s) as soon as convenient. The consequences of such an expulsion of a Participant shall be without prejudice to the Pool Managers' right to claim damages as per the provisions of Clause 23 (Rights on Termination and Withdrawal).

23. Rights on Termination and Withdrawal

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

24. Hardship and Force Majeure

- (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 agree to negotiate a solution in good faith.
- (b) None of the parties to this Agreement shall be under any liability of any kind or nature in the event that it should

Part II

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

fail to perform any services or obligations hereunder if any such failure is directly or indirectly caused by war, war-like activities, government orders, supervening illegality or any labour shortage, strike (excluding strike by crew) or lock-out or any shortage of material or act of God or Peril of the Sea, or any cause beyond the control of such party.

25. Confidentiality

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

26. Assignment

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

27. Notices

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

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

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

(i) if posted, on the seventh (7th) day after posting;

(ii) if sent by facsimile or electronically, on the day of transmission; and

(iii) if delivered by hand, on the day of delivery.

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

28. Dispute Resolution Clause

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

The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced. The reference shall be to three

Part II

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

arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within fourteen (14) calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) days specified. If the other party does not appoint its own arbitrator and 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. In the event that the parties cannot agree on the three arbitrators within fourteen (14) 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 LMAA who shall then appoint all three arbitrators.

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

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.

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.

- (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.

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.

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

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.

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.

Part II

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

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.

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

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.

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

- (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.

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.

- (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:

(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.

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

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

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

Part II

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

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

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

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

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

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

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

29. Severability

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

**ANNEX “A” (POOL PARTICIPANTS)
 TO THE BIMCO STANDARD AGENCY BASED POOLING AGREEMENT
 CODE NAME: POOLCON B**

Name of Participant	Address and Contact Details

Sample copy

[See Clause 1]

**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]

Sample copy

Part II

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

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

Pool Participant	Pool Vessel	Allocated Pool Points

[See Clauses 1, 2 and 16]

Part II

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

**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).

Sample copy

Part II

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

**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)]