

## TRUNK SHOW CONSIGNMENT AGREEMENT

This Trunk Show Consignment Agreement (this “Agreement”) is dated \_\_\_\_\_ by and between \_\_\_\_\_ (“Consignor”), with its address at \_\_\_\_\_ and Starboard Holdings, Ltd. Inc. (“Starboard”), with its address at 8400 NW 36<sup>th</sup> Street, Suite 600, Miami, Florida 33166.

This Agreement is made with reference to the following facts:

- A. Starboard operates duty free shops aboard cruise ships.
- B. Consignor is a “Trunk Show” vendor who desires to have Starboard sell certain merchandise items supplied by Consignor to Starboard (the “Consigned Merchandise”) on a consignment basis on the terms and conditions set forth herein.

The parties agree as follows:

### I. CONSIGNED MERCHANDISE

- A. Each order by Starboard for the Consigned Merchandise shall be evidenced by an “E-Inventory” prepared by Consignor and checked for accuracy by Starboard. All orders for Consigned Merchandise shall be governed by and subject to the terms and conditions (“T&C”) posted as part of the Starboard Consignor Manual at [http://logistics.starboardcruise.com/supplier\\_manual/default.htm](http://logistics.starboardcruise.com/supplier_manual/default.htm) , or successor URL, as of the date of the E-Inventory on the Starboard Logistics Program & Consignor Compliance Web Site. The T&C shall be deemed to be incorporated by reference into and made a part of each order.
- B. The particular items in an order of Consigned Merchandise (the “Lot”) covered by the E-Inventory will be transported by a duly authorized employee or agent of Consignor (“Consignor’s Representative”) at Consignor’s sole expense to Starboard’s shop or other delivery point designated by Starboard aboard the relevant cruise ship.
- C. Consignor shall deliver custody of the Lot to Starboard’s manager aboard the cruise ship, who shall issue to Consignor a receipt [in the form attached as Exhibit A to this Agreement] evidencing Starboard’s acceptance of custody of the Lot. With respect to any Lot, the period of time beginning (i) at the point where custody of the Lot has been delivered from Consignor to Starboard and (ii) ending when (x) all of the Consigned Merchandise in the Lot has been sold to customers, or (y) the Consigned Merchandise in the Lot remaining unsold (“Unsold Items”) are redelivered to Consignor, whichever of (x) and (y) occurs earlier, shall be referred to as “Starboard’s Custody.”

D. Title to each item of the Consigned Merchandise shall at all times remain with Consignor until the time of its sale by Starboard to customers of Starboard, whereupon the item of Consigned Merchandise shall be deemed to have been purchased from Consignor by Starboard and shall cease to be in Starboard's Custody. Sales of the Consigned Merchandise shall be rung up on Starboard's POS systems in its shops.

E. The vendor agrees to the below as the agreed upon guaranteed Gross Margin percentage for Starboard:

\_\_\_\_\_ % \_\_\_\_\_

\_\_\_\_\_ % \_\_\_\_\_

\_\_\_\_\_ % \_\_\_\_\_

\_\_\_\_\_ % \_\_\_\_\_

F. At the end of the cruise, the Starboard shop manager and Consignor's Representative shall adjust the E-Inventory to reflect all sales of the Consigned Merchandise. The adjusted E-Inventory shall consist of a list of the Unsold Items, and shall be signed by the Starboard Shop manager and Consignor's Representative to show their agreement on the Unsold Items. The Starboard shop manager shall then redeliver the Unsold Items to Consignor's Representative. Upon such redelivery, the Unsold Items shall cease to be in Starboard's Custody. Signature of the adjusted E-Inventory by Consignor's Representative shall be conclusive evidence that Consignor has received the Unsold Items thereon in the quantity and condition stated on the adjusted E-Inventory.

G. If Consignor's Representative does not take possession of the Unsold Items before departing the cruise for any reason, Starboard may, as an accommodation to Consignor, agree to keep the Unsold Items, as shown on the adjusted and signed E-Inventory, in Starboard's Custody at the request of Consignor's Representative. In that case, the Starboard Manager shall also note on the E-Inventory the approximate date that Starboard then estimates being able to offload and redeliver the Unsold Items to Consignor, and Consignor's Representative shall initial that estimated date to show Consignor's agreement.

H. After the end of the cruise or at other intervals if agreed by the parties, Starboard shall email to Consignor a "Sales and Inventory Adjustment Report" listing the piece(s) of the Lot sold or adjusted via a physical inventory during Starboard's Custody or otherwise no longer in Starboard's Custody. Consignor will thereafter submit to Starboard an invoice matching the "Sales and Inventory Adjustment Report". Starboard will remit payment to Consignor for the Consigned Merchandise covered period of (30) thirty days from the later of (i) the date of invoice and (ii) Starboard's receipt of invoice.

## II. OBLIGATIONS, REPRESENTATIONS AND WARRANTIES OF CONSIGNOR

- A. Consignor shall be knowledgeable of and adhere to the terms in the Starboard Vendor Compliance web site and the Ethics and Compliance Policy located at: <http://logistics.starboardcruise.com>.
- B. Consignor shall notify Starboard at least [30] days in advance of the scheduled cruise date so that Starboard may request a cabin for Consignor's Representative for the cruise, provided that Consignor acknowledges that assignment of cabins to Consignor's Representative shall be at the sole discretion of the cruise line, and that Starboard shall have no responsibility or liability with respect to the accommodations and services that cruise line provides to Consignor's Representative, all of which shall be governed by the passenger ticket contract between Consignor's Representative and the cruise line.
- C. Consignor shall cause Consignor's Representative to (i) sign the ship's manifest if required by the cruise line, and (ii) comply with the cruise line's policies and procedures and safety and security rules and regulations as those policies, rules and regulations may be changed from time to time at the cruise line's sole discretion.
- D. Consignor shall be solely responsible for the expenses of Consignor's Representative to travel to the port of embarkation to board the cruise ship and for the return or repatriation from the port of disembarkation, and any Customs duties, taxes and charges and port agent fees and any other charges imposed on the Consigned Merchandise prior to its delivery into Starboard's Custody and on any Unsold Items after they are no longer in Starboard's Custody.
- E. Consignor's Representative shall remain subject to the supervision and control of Consignor, notwithstanding the fact that Consignor's Representative may assist Starboard with the promotion and sale of the Consigned Merchandise. To the maximum extent permitted by law, Consignor's Representative shall be deemed an employee or agent of Consignor and not of Starboard.
- F. Consignor represents and warrants that the Consigned Merchandise shall be free from defects in design, workmanship and materials, including but not limited to defects potentially hazardous to life or health. Consignor shall maintain adequate products liability insurance and shall provide Starboard with evidence of such insurance coverage on request. Consignor shall defend, indemnify and hold harmless Starboard against any and all product liability claims, and such indemnity shall include attorneys' fees and costs incurred in defending such claims.

Consignor shall defend, indemnify and hold Starboard, its parents, subsidiaries and affiliates and all of their respective officers, directors, employees, attorneys and agents, harmless from and against all costs, loss, liabilities, or expenses (including attorneys' fees and costs in all courts including the appellate courts) arising from or in any way relating to any suit, claim or proceeding, including any threatened suit, claim or proceeding ,

made or brought by a third party against Starboard arising from or in any way relating to Starboard's sale or marketing of the Consigned Merchandise now or previously delivered to Starboard by Consignor. Starboard shall have the sole right to control and defend any such claim, suit or proceeding by any third party, including, the sole right to select counsel, at the sole cost and expense of Consignor. The parties agree to cooperate fully in the defense of any indemnified claim, at Consignor's cost. The parties also agree to execute, acknowledge and deliver any reasonable document necessary with regard to the defense or settlement of any claim or litigation covered hereby.

- G. Consignor represents and warrants that Consignor's Representative is duly authorized by Consignor to sign documents for and on behalf of Consignor and to represent Consignor with respect to all matters under this Agreement.
- H. Consignor waives any claim against Starboard for bodily injury, death and property damage resulting or arising from the performance of its obligations under this Agreement, and further agrees to defend, indemnify and hold Starboard harmless from and against any and all claims (including, but not limited to, claims against Starboard by Consignor's Representative) for bodily injury, death, or property damage resulting or arising from this Agreement, provided that the foregoing waiver and indemnity shall not apply to the extent that the injury, death or damage is caused by the gross negligence or willful act or omission of Starboard.
- I. If Starboard pays or advances any expenses for or with respect to Consignor's Representative for which Consignor is responsible under this Agreement, Consignor shall reimburse Starboard for such expenses promptly after receipt of an invoice from Starboard therefor. Starboard shall be entitled to set off the amounts owing by Consignor to Starboard against any amounts owed by Starboard to Consignor.
- J. Consignor agrees to provide Starboard with sizing and repair services for jewelry purchased on board. Starboard's Customer service will return the items to Consignor for these repairs.
- K. Consignor agrees to provide Starboard with not less than two weeks' prior written notice (email to an authorized representative of Starboard shall be considered sufficient) of a cancellation of a trunk show by Consignor. In the event Consignor fails to timely give notice of a cancellation in accordance with the terms of this subsection, Consignor shall be responsible to pay any charges resulting from the cancellation including, but not limited to, cancellation fees for cabin charges. In addition, Consignor agrees to pay Starboard the cost of the cabin plus a cancellation fee of \$1,000.00. In addition, any name change request after a booking or confirmation number is provided, will incur a process fee of \$100.00. These cancellation and name change fees will be invoiced to Consignor by Starboard and shall be due and payable by Consignor within ten days of invoice.

- L. Consignor agrees not to solicit or employ, directly or indirectly, at any time during the period it has an ongoing business relationship with Starboard and for a period of 6 months following the termination or expiration of that relationship, regardless of the reason for expiration or termination, any employees of Starboard who were employed by Starboard on the effective date of expiration or termination of the relationship or at any time during the immediately preceding six month period, without the expressed written permission from Starboard which it may give or withhold in its discretion. Consignor agrees to contact Starboard's HR department via e-mail at [verifications@starboardcruise.com](mailto:verifications@starboardcruise.com) to confirm eligibility of all former Starboard employees for hire by Consignor.
- M. Consignor, at its sole cost, shall insure and assumes all risk of loss and damage for the Consigned Merchandise for its full value at all times while such Consigned Merchandise is on a cruise ship (including but not limited to, at all times during transit to and from such cruise ship and while such goods are in the custody of Consignee) pursuant to this Agreement. Consignor warrants that it will promptly pursue all remedies and payments in the event of a loss or damage that occurs while the Consigned Merchandise is on a cruise ship (or in transit to or from such a cruise ship) pursuant to this Agreement and will promptly notify Starboard of any loss or damage. Upon request, Consignor will provide Starboard with a certificate of insurance evidencing Consignor's insurance coverage.

### **III. STARBOARD'S OBLIGATIONS**

- A. Starboard shall maintain accurate books and records relating to the Lot while it is in Starboard's Custody. Starboard will reconcile its sales of items in the Lot with Consignor and permit Consignor and/or representatives of Consignor, during regular business hours and upon prior notice, to inspect and inventory the items in the Lot while it is in Starboard's Custody and Starboard's books and records relating to the Consigned Merchandise.
- B. Starboard shall not grant any lien or security interest in the Consigned Merchandise to any third party and shall take such action as is required to remove promptly any lien, claim, security interest or encumbrance on the Consigned Merchandise, other than the lien and security interest granted to Consignor pursuant to this Agreement.
- C. Starboard hereby grants to Consignor a continuing lien on and security interest in the Consigned Merchandise and all additions, replacements, proceeds, accounts receivable, and any insurance proceeds thereof. Starboard shall sign and deliver to Consignor documents as Consignor may reasonably request from time to time to perfect or continue its interest as a secured party in accordance with the Uniform Commercial Code. Starboard hereby authorizes Consignor to file any UCC-1 financing statements, continuation statements or other documents without Starboard's signature to the extent permitted by applicable law.

#### **IV. TERM AND TERMINATION**

Unless otherwise terminated in accordance with the terms hereof, including, but not limited to, those contained in the vendor compliance website and in the Ethics and Compliance Policy, this Agreement shall continue in effect until either Consignor or Starboard elects to terminate this Agreement by not less than ninety (90) days prior written notice to the other party, provided that this Agreement shall continue to apply to the Unsold Items until (a) they are no longer in Starboard's Custody and (b) the final Sales and Inventory Adjustment Report has been delivered to Consignor. In addition, Consignor shall agree to continue providing the sizing and repair services referenced in Section II(J) above following termination of the Agreement. Upon termination, all outstanding amounts owing by either party to the other under this Agreement shall be settled promptly.

#### **V. GOVERNING LAW AND JURISDICTION; WAIVER OF JURY TRIAL**

- A. This Agreement shall be governed by and construed under the internal laws of the State of Florida, without reference to its rules as to conflicts of laws. The United Nations Convention on Contracts for the International Sale of Goods shall not govern or apply to this Agreement.
- B. Consignor agrees that any legal action, suit or proceeding by Consignor against Starboard, its officers, directors, employees, agents, subsidiaries, parents, predecessors, successors, assigns, or related entities arising in any way out of this Agreement must be brought solely and exclusively in the federal or State courts in Miami, Florida.
- C. Consignor submits to the jurisdiction of federal and State courts in Miami, Florida, and consents to service of process out of any of such courts by certified mail in addition to any other method of service permitted by applicable law.
- D. Consignor irrevocably waives any objection to forum non conveniens or venue in Miami, Florida. The foregoing sentence shall not limit Starboard's right to commence an action against Consignor in any other jurisdiction.
- E. EACH PARTY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM OR ACTION UNDER OR IN CONNECTION WITH THIS AGREEMENT, AND REGARDLESS OF THE LEGAL THEORY, AND AGREE INSTEAD THAT THOSE CLAIMS OR ACTIONS SHALL BE DECIDED BY A COURT SITTING WITHOUT A JURY.
- F. If either party brings suit against the other to enforce any right hereunder or arising out of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs on a full indemnity basis in addition to all other relief to which such party may be entitled.

## VI. MISCELLANEOUS PROVISIONS

- A. Starboard will be responsible for, and promptly pay, any and all taxes, assessments and governmental charges on the Lot while it is in Starboard's Custody, and Consignor shall be responsible for all taxes, assessments and governmental charges on or relating to the Consigned Merchandise at all times when it is not in Starboard's Custody.
- B. This Agreement is not assignable by either party without the prior written consent of the other party, provided that Starboard without the prior written approval of Consignor may assign this Agreement to an entity controlling, controlled by or under common control with Starboard, or an entity into or with which Starboard merges or to which Starboard sells all or substantially all of its assets. This Agreement shall inure to the benefit of the parties and their respective successors and permitted assigns.
- C. This Agreement sets forth the parties' final and entire understanding with respect to its subject matter, and shall not be modified, waived or amended except in writing signed by both parties hereto. This Agreement may not be terminated orally. If any provision of this Agreement shall be held invalid or unenforceable, such invalidity or unenforceability shall attach only to such provision and shall not effect or render invalid or unenforceable any other provision of this Agreement and this Agreement shall be construed as if such provision were drafted so as not to be invalid or unenforceable.
- D. This Agreement may be executed in counterparts, each of which when so executed and delivered shall be deemed to be an original, but all of which taken together shall constitute one and the same instrument.
- E. All notices hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, or sent by recognized courier service, such as FedEx UPS, or DHL, or mailed by certified mail, return receipt requested, postage prepaid, addressed to the parties at the addresses set forth hereinabove. Any such notice shall be deemed to have been given as of the date delivered in person or the date of receipt, provided that if delivery of certified mail or courier delivery is refused the date of notice shall be deemed to be the date of refusal.
- F. This Agreement does not constitute either party as the agent or legal representative of the other for any purpose whatsoever. No express or implied right of authority is granted to assume or to create any obligation or to conclude any contract in behalf of or in the name of the other or to bind the other in any manner whatsoever.
- G. Starboard offers their customers a "Two Year Guarantee" on any Fine Jewelry Purchase. Because a sale to a Customer is recorded as a purchase of the item of Consigned Merchandise by Starboard, Starboard cannot return a customer returned piece to the selling floor because if the same piece is sold a second time it would create a payable to Consignor. Therefore, all Consigned Merchandise sold to customers and subsequently returned to Starboard by the customer will be sent back to the Consignor on a "Consignor Debit." Consignor consents that Consignor Debits may be deducted from any payable to Consignor from Starboard.

Repair charges due to manufacturing defects shall be for the account of Consignor for the full duration of the Two-Year Guaranteed period provided to clients by Consignee. This Consignor obligation shall survive the termination or expiration of this Agreement, regardless of the reason therefor. Product servicing not due to manufacturing defects (for example) sizing shall be for the account of Starboard and should be billed directly to Customer Service Department and sent to [Customerservice Repairs@starboardcruise.com](mailto:Customerservice Repairs@starboardcruise.com) for payment.

H. Consignor agrees that it shall at all times comply with the Starboard and On-Board Supplier Code of Conduct.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CONSIGNOR:

\_\_\_\_\_

CONSIGNEE:

STARBOARD HOLDINGS, LTD. INC.

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By \_\_\_\_\_

Name: Perla Fernandez

Title: Chief Financial Officer