

Fixed Premium
Insurance from North

Sunderland
Marine

Owners' Fixed Premium Terms and Conditions 2021

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The North of England Protecting and Indemnity Association Limited and North of England P&I Designated Activity Company
trading as Sunderland Marine



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Part I: Introduction

1. Scope of Cover

- 1.1 In consideration of the Premium payable or paid in respect of the Contract of Insurance, the Insurer agrees to indemnify the Insured for all liabilities, losses, costs and expenses which the Insured is liable to pay, arising out of an event which first commences during the period of insurance specified in the Certificate of Insurance in respect of the Ship(s) named in the Certificate of Insurance, in regard to the risks and losses set out, where agreed, in Parts II to IV, subject always to the provisions of these Terms and Conditions including any warranties, conditions, exceptions, limitations or other terms prescribed in the Certificate of Insurance.
- 1.2 The provisions of these Terms and Conditions may only be varied by special terms agreed in writing between an Insured and the Insurer.

2. Classes of Risks Covered

- 2.1 The following risks are covered under these Terms and Conditions:
- (a) Protecting and Indemnity;
 - (b) Freight, Demurrage and Defence; and
 - (c) War Risks.
- 2.2 Notwithstanding the generality of these Terms and Conditions, cover for Freight, Demurrage and Defence risks set out in Part III and cover for War Risks set out in Part IV is excluded unless otherwise specifically included in the Certificate of Insurance.

Part II: Protecting and Indemnity Cover

3. Protecting and Indemnity Risks Covered

- 3.1 Unless otherwise agreed in writing between the Insured and the Insurer, the Insured shall be indemnified by the Insurer against the liabilities, costs and expenses set out in Part II which the Insured is liable to pay and which arise:
- (a) in respect of the Insured's interest in an Insured Ship;
 - (b) out of events occurring during the period of insurance of the Ship with the Insurer; and
 - (c) in connection with the operation of the Ship;
- PROVIDED ALWAYS THAT in Part II:
- (d) there shall be no recovery in respect of liabilities, costs and expenses incurred as a result of any escape or discharge or threatened escape or discharge of oil or of any other substance other than in accordance with section 16 and for the avoidance of doubt all such recoveries shall be limited in accordance with the provisions of section 49;
 - (e) unless elsewhere in these Terms and Conditions expressly provided to the contrary, there shall be no recovery other than under section 19 in respect of liabilities, costs and expenses which would not have arisen but for the particular terms of contract, indemnity or guarantee;
 - (f) there shall be no recovery in respect of any liabilities, costs or expenses where the provision of cover, the payment of any claim or the provision of any benefit in respect of those liabilities, costs and expenses would expose the Insurer to the risk of being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by any state or international organisation; and
 - (g) the Insurer shall be at liberty to reinsure in whole or in part the risk or risks insured by him. The Insured will in no circumstances be entitled to recover from the Insurer that part of any liabilities, costs or expenses which are not recovered by the Insurer from any reinsurer because of a shortfall in recovery from such reinsurer by any reason whatsoever.

4. Liabilities in respect of Seamen

- 4.1 The Insurer will cover:
- (a) liabilities to pay damages or compensation for death, personal injury or illness of any Seaman of an Insured Ship and hospital, medical, funeral and other expenses necessarily incurred in relation to such death, personal injury or illness;
 - (b) liabilities to pay damages or compensation for loss of or damage to the Personal Effects of any Seaman of an Insured Ship;
 - (c) liabilities to pay compensation to any Seaman of an Insured Ship caused in consequence of the actual or constructive total loss of the Ship; and
 - (d) repatriation and substitution expenses necessarily incurred as a consequence of the death, personal injury, illness or desertion of any Seaman of an Insured Ship. If such expenses are incurred for any other reason the Insurer may in its absolute discretion allow the whole or any part thereof as it deems equitable save that cover under this section 4.1(d) shall not extend to expenses arising as a result of:
 - (i) the expiry of a Seaman's period of service on the Insured Ship either in accordance with the terms of a crew agreement or other contract of service or employment or by mutual consent of the parties to it; or
 - (ii) the sale of an Insured Ship.
- 4.2 Where liabilities, costs and expenses of the type covered under Part II are incurred under the terms of a crew agreement or other contract of service or employment and would not have been incurred but for those terms such liabilities, costs or expenses shall be covered by the Insurer but only to the extent that those terms shall have been previously approved by the Insurer in writing.

5. Liabilities in respect of Supernumeraries

- 5.1 The Insurer will cover liabilities to pay damages or compensation for death, personal injury or illness and loss of or damage to the Personal Effects of any Supernumerary carried on board an Insured Ship.

6. Liabilities in respect of Passengers

6.1 The Insurer will cover:

- (a) liabilities to pay damages or compensation for death, personal injury or illness of any Passenger on an Insured Ship;
- (b) liabilities to pay damages or compensation for loss of or damage to the luggage or accompanied vehicles of any Passenger on an Insured Ship save that there shall be no cover in respect of specie, bullion, precious or rare metals or stones, plate, jewellery, works of art or other objects of a rare or precious nature, bank notes or other forms of currency, bonds or other negotiable instruments;
- (c) liabilities to pay damages or compensation in respect of any Passenger on board the Insured Ship arising as a consequence of a casualty to that Ship, including the cost of forwarding such Passenger to destination or return to port of embarkation and of maintenance of such Passenger ashore. For the purposes of this section 6.1(c) a casualty shall mean an incident involving either:
 - (i) collision, stranding, explosion, fire or any other cause affecting the physical condition of the vessel so as to render it incapable of safe navigation to its intended destination; or
 - (ii) a threat to the life, health or safety of passengers;

PROVIDED ALWAYS THAT in section 6:

- (d) the Insurer shall assume no liability in any case in respect of death, personal injury, loss of or damage to property, delay or any other consequential loss sustained by any person by reason of carriage by air except where such liability occurs:
 - (i) during the repatriation by air of injured and sick Passengers or of Passengers following a casualty to the Insured Ship as defined in section 6.1(c) above; or
 - (ii) during shore excursions from the Insured Ship but always subject to the provisions of section 6.1(e) below;
- (e) the Insurer shall assume no liability in any case in respect of the contractual liability of an Insured for death or injury to a Passenger whilst ashore on an excursion from the Insured Ship in circumstances where either:
 - (i) a separate contract has been entered into by the Passenger for the excursion, whether or not with the Insured; or
 - (ii) the Insured has waived any or all of his rights of recourse against any sub-contractor or other third party in respect of the excursion;
- (f) the ticket of passage shall relieve the Insured of liability, costs and expenses to the maximum extent permitted under the appropriate law¹. Where liabilities, costs and expenses of the type covered under section 6 are incurred under the terms of a contract of carriage of passengers by sea and would not have been incurred but for those terms such liabilities, costs or expenses shall be covered by the Insurer but only to the extent that those terms shall have been previously approved by the Insurer in writing.

7. Liabilities in respect of Third Parties

7.1 The Insurer will cover liabilities to pay damages or compensation for death, personal injury or illness of any person (other than those specified in section 4, 5 and 6); PROVIDED ALWAYS THAT in section 7:

- (a) cover is limited to liabilities arising out of a negligent act or omission on board, or in relation to, an Insured Ship or in relation to the handling of her cargo from the time of receipt of that cargo from the shipper or precarrier at the port of shipment until delivery of that cargo to consignee or onward carrier at the port of discharge;
- (b) where the liability arises under the terms of any contract, indemnity or guarantee and would not have arisen but for those terms, that liability is not covered under section 7 but may be covered under and in accordance with section 19; and
- (c) where the liability is in respect of a person on another ship and arises out of a collision between that ship and the Insured Ship, that liability is not covered under section 7 but may be recoverable under and in accordance with section 13.1(b).

8. Liabilities in respect of Stowaways

8.1 The Insurer will cover expenses other than those covered under section 9 incurred by the Insured as a consequence of stowaways being or having been on board an Insured Ship. Cover under section 8 is limited to the costs or expenses associated with the food, lodging, repatriation and any escorts hired for the purposes of repatriation of the stowaways but only to the extent that the Insured is legally liable for these costs and expenses or they have been incurred with the approval of the Insurer. Cover under this section 8 does not extend to consequential loss of profit or depreciation; PROVIDED ALWAYS THAT in section 8 the Insurer may in its absolute discretion reject or reduce any claim if it is considered that adequate steps have not been taken to guard against the Ship being boarded by stowaways.

¹ Insureds who may be uncertain as to whether their passage ticket complies with section 6.1(f) above should consult the Insurer.

9. Diversion Expenses

- 9.1 The Insurer will cover expenses of diversion of an Insured Ship where and to the extent that those expenses:
- (a) represent the net loss to the Insured (over and above such expenses as would have been incurred but for the diversion) in respect of the cost of additional fuel, additional insurance, additional Seamen's wages, additional stores, additional provisions and additional port charges; and
 - (b) are incurred solely for the purpose of securing treatment for an injured or sick person or while awaiting a substitute for such person or for the purpose of landing stowaways or refugees (subject always to the proviso to section 8 in respect of landing stowaways).

10. Life Salvage

- 10.1 The Insurer will cover sums legally due to third parties by reason of the fact that they have saved or attempted to save the life of any person on or from an Insured Ship but only if and to the extent that such payments are not recoverable under the Hull Policies of the Insured Ship or from cargo owners or underwriters.

11. Persons in Distress

- 11.1 The Insurer will cover additional expenses incurred by the Insured in respect of an Insured Ship in proceeding to the assistance of, or searching for, persons in distress and taking such steps as are reasonable in succouring and landing such persons to the extent that such expenses cannot be recovered from underwriters or other third parties and represent the net loss to the Insured (over and above such expenses as would otherwise have been incurred) in respect of the cost of additional fuel, additional insurance, additional Seamen's wages, additional stores, additional provisions and additional port charges.

12. Quarantine

- 12.1 The Insurer will cover additional expenses unavoidably incurred by an Insured as a direct consequence of an outbreak of infectious disease on an Insured Ship for disinfection of such Ship or the cargo or persons on board such Ship or in respect of quarantine and the net loss to the Insured (over and above such expenses as would have been incurred but for the outbreak) in respect of additional fuel, additional insurance, additional Seamen's wages, additional stores, additional provisions and additional port charges; PROVIDED ALWAYS THAT in section 12, in the case of an Insured Ship which is not already under contract being ordered or chartered to proceed to a port where it is known or should be reasonably anticipated that such Insured Ship will, as a result, be subject to quarantine there or elsewhere, unless and to the extent that the Insurer in its discretion otherwise decides, there shall be no recovery of expenses arising at or consequent upon the Insured Ship having been at such port.

13. Liabilities arising from Collisions

- 13.1 The Insurer will cover liabilities and costs incurred as a result of a collision between an Insured Ship and any other ship:
- (a) to the extent of one-fourth (or such other proportion as may be applicable and agreed by the Insurer as set out in the Certificate of Insurance) of the Insured's liabilities costs and expenses not recoverable under Lloyd's Marine Policy with Institute Time Clauses (Hulls) 1.10.83, including collision liability clause, or under other forms of Hull Policies on the Insured Ship approved in writing by the Insurer;
 - (b) to the extent of four-fourths of the Insured's liabilities, costs and expenses relating to:
 - (i) removal or disposal of obstructions, wrecks, cargoes or any other thing whatsoever insofar as such liability may be covered under section 17;
 - (ii) any real or personal property or anything whatsoever except other ships or property on other ships;
 - (iii) the cargo or other property on the Insured Ship insofar as such liability may be covered under section 20 and 21;
 - (iv) loss of life, personal injury or illness insofar as such liability would be covered under the terms of sections 4, 5 and 6 and loss of life, personal injury or illness of any person on the other ship; and
 - (v) pollution or contamination of any real or personal property or thing whatsoever (except other ships with which the Insured Ship is in collision or property on such other ship) insofar as such liability may be covered under section 16;
 - (c) to the extent that they exceed the amount recoverable under the Hull Policies of the Insured Ship solely by reason of such liabilities costs and expenses exceeding the valuation under the said policies;

PROVIDED ALWAYS THAT in section 13:

- (d) HULL POLICIES: an Insured shall not be entitled to recover any amounts which would be recoverable under the Hull Policies on the Insured Ship or which would have been recoverable had there been no franchise or deductible applicable to those policies;

- (e) **PROPER VALUE:** for the purposes of section 13.1(c) the Insurer shall determine whether the Insured Ship was insured for a proper value under the Hull Policies on that Ship. If the Insurer determines the amount actually insured to be less than the proper value the Insured shall only be entitled to recover the excess of such proper value²;
- (f) **BOTH TO BLAME:** unless otherwise agreed in writing between the Insured and Insurer as a term of the Insurance if both ships are to blame then, when the liability of either or both of the ships in collision becomes limited by law, claims under this section 13 shall be settled on the principle of single liability. Otherwise claims under this section 13 shall be settled on the principle of cross-liabilities, as if the owners of each ship had been compelled to pay the owner of the other ship such proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Insured in consequence of the collision;
- (g) **INSURED'S OWN SHIP:** if a collision occurs involving two or more ships belonging to the same Insured or where a claim arises in respect of cargo belonging to an Insured, the Insured shall be entitled to recover from the Insurer and the Insurer shall have the same rights as if the ships had belonged to different owners or as if the cargo had belonged to a third party; and
- (h) **OTHER LOSSES:** coverage under this section 13 shall not extend to any liability, whether direct or indirect, in respect to engagements of, or the detention or loss of time of, the Insured Ship.

14. Non-Contact Damage to other Ships

14.1 The Insurer will cover liabilities, costs and expenses incurred as a result of damage caused to any other ship otherwise than by collision between that other ship and the Insured Ship:

- (a) relating to such other ship or to cargo or other property therein; and
- (b) relating to:
 - (i) the raising, removal, destruction or marking of obstructions, wrecks, cargoes, or any other thing in accordance with the provisions of section 17;
 - (ii) real or personal property or any other thing except other ships or property on other ships;
 - (iii) pollution or contamination of any real or personal property in accordance with the provisions of section 16;
 - (iv) the cargo or other property on the Insured Ship, or general average contributions, special charges or salvage paid by the owners of that cargo or in property in accordance with the provisions of sections 20 and 21;
 - (v) loss of life, personal injury or illness in accordance with the provisions of sections 4, 5, 6 and 7;

PROVIDED ALWAYS THAT in section 14 if the loss or damage relates to any ship, or cargo or other property therein, belonging to the Insured such Insured shall be entitled to recover from the Insurer, and the Insurer shall have the same rights, as if such ship or cargo or other property belonged to a third party.

15. Damage to Property

15.1 The Insurer will cover liabilities, costs and expenses incurred as a result of damage to, or infringement of rights in connection with property to the extent of:

- (a) loss of or damage to any harbour, dock, pier, quay, jetty, land or anything whatsoever fixed or movable (not being another ship or cargo or other property therein or cargo or other property carried in the Insured Ship) by reason of contact between the Insured Ship and such harbour, dock, pier, quay, jetty, land or fixed or movable object;
- (b) that part of the Insured's liability which exceeds the amount recoverable under the Hull Policies on the Insured Ship in respect of the liabilities set out in section 15.1(a) above, subject always to the provisos in sections 13.1(d) and (e); and
- (c) loss of or damage to or infringement of rights in connection with the property of any person;

PROVIDED ALWAYS THAT in section 15:

- (d) there shall be no recovery in respect of expenditure arising out of a Insured's liability under a contract, indemnity or guarantee between an Insured and a third party (subject to section 19);
- (e) there shall be no recovery in respect of any liabilities which an Insured may incur to persons interested in another ship, or cargo or other property therein, by reason of a collision between the Insured Ship and that other ship (see section 13) or to persons interested in cargo carried in the Insured Ship (see section 20) or in respect of liabilities for pollution (see section 16); and
- (f) if the loss, damage or expense relates to any property belonging to the Insured (other than that carried on board the Insured Ship (see section 55.1(b)) such Insured shall be entitled to recover from the Insurer and the Insurer shall have the same rights, as if such property belonged to a third party.

² In determining whether the Insured Ship was insured for a proper value the Insurer will need to be satisfied that the said Hull Policies have been the subject of periodic review in the light of proper advice on market conditions. A proper value will be a figure which is reasonably close to the equivalent of the free uncommitted market value of the Ship at the time of the collision.

16. Pollution

- 16.1 The Insurer will cover liabilities, costs and expenses incurred as a result of any escape or discharge or threatened escape or discharge of oil or of any other substance, from an Insured Ship, to the extent of:
- (a) DAMAGES: liability for damages or compensation payable to any person arising from or in respect of pollution;
 - (b) CLEAN-UP: the costs of measures (not being measures taken in the ordinary course of business) reasonably taken for the purpose of preventing, minimising or cleaning up any pollution together with any liability for losses or damages arising from any measure so taken; PROVIDED ALWAYS THAT in section 16.1(b) unless otherwise agreed in writing between the Insured and Insurer there shall be no recovery from the Insurer in respect of any liabilities, costs or expenses which would have fallen into general average if the contract of carriage under which any cargo is carried had been subject to unamended York-Antwerp Rules;
 - (c) AGREEMENTS AND CONTRACTS: liability which an Insured may incur, together with costs and expenses incidental thereto, as party to any agreement relating to oil pollution, for loss, damage or expenses, including expenditure reasonably incurred in accordance with the Insured's obligations under such agreement; PROVIDED ALWAYS THAT in section 16.1(c) such agreement has been approved in writing by the Insurer and the Insured had paid or agreed to pay such additional premium as may be required by the Insured;
 - (d) GOVERNMENT ORDER: the costs or liabilities incurred as a result of compliance with any order or direction given by any government or authority for the purpose of preventing or reducing pollution or the risk of pollution; PROVIDED ALWAYS THAT in section 16.1(d) such costs or liabilities are not recoverable under the Hull Policies of the Insured Ship;
 - (e) SALVOR'S EXPENSES OR SPECIAL COMPENSATION: liability of the Insured to reimburse a salvor of an Insured Ship for:
 - (i) his reasonably incurred expenses (together with any increment awarded thereon) under Clause 1(a) of the Lloyd's Standard Form of Salvage Agreement (1980);
 - (ii) special compensation in respect of work done or measures taken to prevent or minimise damage to the environment under the provisions of Article 14 of the International Convention on Salvage 1989 or the terms of a standard form of salvage agreement equivalent thereto approved by the Insurer in writing; and
 - (iii) sums recoverable under the Special Compensation P&I Clubs clause (SCOPIC) as incorporated into Lloyd's Open Form of Salvage Agreement or any other "No Cure – No Pay" salvage contract approved by the Insurer in writing; and
 - (f) FINES: liability which an Insured may incur for fines in respect of pollution insofar as such liability may be covered under section 22;
- PROVIDED ALWAYS THAT in section 16:
- (g) there shall be no recovery in respect of any liability, loss, damage, cost or expense including, without limitation, liability for the cost of any remedial works or clean-up operations, arising as a result of the presence in, or the escape or discharge or threat of escape or discharge from any land-based dump, site, storage or disposal facility, of any substance previously carried on the Insured Ship, whether as cargo, fuel, stores or waste and whether at any time mixed in whole or in part with any other substance whatsoever;
 - (h) in respect of liability of the Insured for oil pollution which arises out of any incident to which the United States Oil Pollution Act of 1990 (OPA 1990) is applicable and which involves an Insured Ship which is a "tank vessel" (as defined in OPA 1990):
 - (i) cover is subject to the following terms and conditions:
 - (A) the Insured shall have made accurate quarterly declarations in arrears to the Insurer, not later than two months after the end of each quarter ending 20 May, 20 August, 20 November and 20 February, of all cargo voyages to or from ports or places to which OPA 1990 applies, giving the dates of such voyages, the nature of the cargoes carried and the names of such United States ports or places at which the cargoes were first loaded or discharged; and
 - (B) if a voyage declared under section 16.1(h)(i)(A) above involved the carriage of persistent oil (as defined in the declaration form issued to the Insured) as cargo (hereinafter referred to as a "relevant voyage"), the Insured shall pay, on or before the date shown on the debit note issued by the Insurer, an additional premium as specified in the Certificate of Insurance; and
 - (ii) in the event that an Insured fails for any reason to make a declaration (whether or not any relevant voyage has been performed) within two months of the quarter dates specified in section 16.1(h)(i)(A) above:
 - (A) the terms of cover of such Insured Ship will be amended with effect from the expiry of the said period of two months to exclude any and all claims in respect of oil pollution arising out of any incident to which OPA 1990 is applicable; and

(B) he shall remain liable to pay any additional premium in respect of any relevant voyage performed prior to the amendment of the terms of cover under section 16.1(h)(ii)(A) above; and

- (iii) in the event that any declaration made by the Insured or on his behalf pursuant to the procedure laid down in section 16.1(h)(i)(A) above is in any material respect inaccurate, the Insured shall cease to be insured by the Insurer in respect of the Insured Ship relating to which the inaccurate declaration was made with effect from the date of the inaccurate declaration.

17. Wreck Removal

17.1 The Insurer will cover liabilities, costs and expenses incurred in respect of the raising, removal, destruction, lighting or marking of:

- (a) an Insured Ship and of any cargo or other property which is or was carried on board an Insured Ship; and
- (b) the wreck of any other ship and of any cargo or other property which is or was on board any other ship in accordance with the provisions of section 14.1(b)(i);

PROVIDED ALWAYS THAT in section 17:

- (c) where the liability arises or the costs or expenses are incurred under the terms of a contract and would not have arisen but for those terms, that liability is not covered by the Insurer unless and to the extent that those terms shall have been previously approved by the Insurer in writing; and
- (d) the Insurer shall not be liable for any costs or expenses of a type, character or kind which would be covered by the hull insurance of the Insured Ship,
- (e) the costs of raising, removal, destruction, lighting or marking were compulsory by law;
- (f) the value of the wreck itself and of the stores and materials or cargo or other property saved, shall either be credited to the Insurer or deducted from any recovery due from the Insurer; and
- (g) there shall be no recovery if the Insured shall, without the consent of the Insurer in writing, transfer his interest in the wreck, cargo or other property (otherwise than by abandonment) prior to the said raising, removal, destruction, lighting or marking.

18. Towage

18.1 The Insurer will cover:

- (a) liabilities, costs and expenses incurred arising out of the towage of an Insured Ship:
 - (i) under the terms of a contract entered into for the purpose of entering or leaving port or manoeuvring within the port during the ordinary course of trading;
 - (ii) in the ordinary course of trading of an Insured Ship which is habitually towed from port to port or from place to place and which has been declared to the Insurer to be so trading but only to the extent that the Insured is not insured against such liabilities under the Hull Policies of the Insured Ship; and
 - (iii) under the terms of any contract other than for customary towage as covered under section 18.1(a)(i) but only if the towage contract has been approved in writing by the Insurer and the Insured has paid, or agreed to pay, such additional premium as may be required by the Insurer; and
- (b) liabilities, costs and expenses arising out of towage by an Insured Ship of any ship or object; PROVIDED ALWAYS THAT in section 18.1(b) unless the towage is for the purpose of saving or attempting to save life or property at sea, the towage contract has been approved in writing by the Insurer and the Insured has paid or agreed to pay such additional premium as may be required by the Insurer³; and
- (c) there shall be no recovery in respect of any liabilities, costs or expenses arising out of towage of or by an Insured Ship except insofar as such liabilities, costs and expenses relate to risks set out under Part II, and also fulfil the requirements of this section 18.

19. Contracts, Indemnities and Guarantees

19.1 The Insurer will cover liabilities, costs and expenses relating to risks set out under Part II which would not have arisen but for the terms of a contract, indemnity or guarantee made by or on behalf of an Insured relating to facilities or services provided or to be provided by or to an Insured Ship; PROVIDED ALWAYS THAT in section 19 that contract, indemnity or guarantee has been approved by the Insurer in writing and the Insured has paid, or agreed to pay, such additional premium as may be required by the Insurer and (unless the Insurer has otherwise agreed in writing) that the provisions of any other applicable sections within these Terms and Conditions have been satisfied.

³The Insurer will normally approve contracts which have been made or incorporate the following terms and conditions and have not been materially amended:

- 1. United Kingdom, Netherlands or Scandinavian standard towage conditions
- 2. Towcon and Towhire
- 3. Any Lloyd's standard form of salvage agreement

20. Liabilities in respect of Cargo

- 20.1 The Insurer will cover the liabilities, costs and expenses set out in sections 20.1(a) to (d) below in respect of cargo intended to be, or being, or having been carried in an Insured Ship:
- (a) liabilities for loss, shortage, damage or other responsibility arising out of any breach by the Insured or by any person for whose acts, neglect or default he may be legally liable, of his obligation properly to load, handle, stow, carry, keep, care for, discharge or deliver the cargo or out of unseaworthiness or unfitness of the Insured Ship;
 - (b) additional costs (in excess of the costs which would normally have been incurred under the contract of carriage) incurred in discharging or disposing of damaged or worthless cargo provided that the Insured is liable for such costs and is not entitled to recover them from any other party; PROVIDED ALWAYS THAT in section 20.1(b) the value of any cargo retained by the Insured or any sums recovered by or due to the Insured in respect of the sale of such cargo shall either be credited to the Insurer or deducted from any recovery due from the Insurer;
 - (c) additional costs of discharging and disposing of, or of restowing, cargo which are necessarily incurred in order to continue the safe prosecution of the voyage following a casualty, provided that the Insured is liable for such costs and is not entitled to recover them from any other party; and
 - (d) liabilities for loss, shortage, damage or other responsibility for cargo carried by means of transport other than the Insured Ship when the liabilities, costs and expenses arise under a through or transshipment bill of lading or other form of contract providing for carriage partly to be performed by the Insured Ship; PROVIDED ALWAYS THAT in section 20.1(d):
 - (i) there shall be no recovery unless cover has been specifically extended in writing by the Insurer and the Insured has paid, or agreed to pay, such additional premium as may be required by the Insurer; and
 - (ii) such bill of lading or contract has been approved in writing by the Insurer;

PROVIDED ALWAYS THAT in section 20:

- (e) HAGUE RULES EXCEPTIONS: where the cargo is carried by sea other than under a contract of carriage which is subject to the provisions of the Hague Rules or the Hague-Visby Rules or to exemptions which in the event confer as wide a measure of protection on the carrier as either the Hague Rules or Hague-Visby Rules, (save where the contract of carriage is on such terms solely by reason of the incorporation by operation of law of the Hamburg Rules) there shall be no recovery in respect of any claim to the extent that the Insurer considers it would have been reduced if the cargo had been carried under a contract of carriage which was subject to the Hague-Visby Rules, unless special cover has been agreed in writing by the Insurer;
- (f) DEVIATION: unless and to the extent that the Insurer in its absolute discretion otherwise decides, or cover has been confirmed in writing by the Insurer prior to the deviation, there shall be no recovery in respect of liabilities, costs or expenses which arise out of or which are incurred as a consequence of a deviation, in the sense of a departure from the contractually agreed voyage or adventure which deprives the Insured of the right to rely on defences or rights of limitation of liability which would otherwise have been available to it on the basis of the standard terms of carriage referred to in section 20.1(e) above to reduce or eliminate its liability;
- (g) DECK CARGO: unless and to the extent that the Insurer in its discretion otherwise decides or special cover has been agreed in writing by the Insurer, there shall be no recovery where cargo is carried on deck unless:
 - (i) the cargo is suitable for carriage on deck of the Insured Ship; and
 - (ii) the contract of carriage contains an appropriate liberty to carry cargo on deck; and
 - (iii) the contract of carriage is specially claused to the effect that the cargo is carried on deck and that either the carrier is exempted from all liability for loss or damage to such cargo howsoever caused, or that the Hague Rules or the Hague-Visby Rules apply to carriage on deck notwithstanding Article 1(c) of the said Rules;
- (h) DISCHARGE AT WRONG PORT: unless the Insurer in the exercise of its discretion shall otherwise determine no claim on the Insurer shall be allowed in respect of an Insured's liability arising out of:
 - (i) discharge of cargo at a port or place other than that provided in the contract of carriage;
 - (ii) the failure to arrive or late arrival of an Insured Ship at a port of loading, or any delay in loading or failure to load any particular cargo or cargoes in an Insured Ship other than any such liabilities, costs and expenses arising under a bill of lading already issued;
 - (iii) delivery of cargo carried under a negotiable bill of lading or similar document of title (including an electronic bill of lading) without production (or the equivalent thereof in the case of an electronic bill of lading) of that bill of lading or document by the person to whom delivery is made (unless in the case of an electronic bill of lading there has been proper delivery to the person so entitled in accordance with the terms of an electronic trading system approved pursuant to section 20.1(m) below);
 - (iv) delivery of cargo carried under a non-negotiable bill of lading or waybill or similar document to a person other than the party named in such bill of lading, waybill or document as the person to whom delivery should be made, or where there has been no proper delivery as required by that document by its express terms and/or by operation of law;

- (v) the issue of an antedated or post-dated bill of lading, waybill or other document containing or evidencing the contract of carriage; and
- (vi) a bill of lading, waybill or other document containing or evidencing the contract of carriage issued with the knowledge of the Insured or the Master with an incorrect description of the cargo or its quantity or its condition;
- (i) AD VALOREM BILLS OF LADING: where cargo or other property is carried under an ad valorem bill of lading or other document of title, contract of carriage or waybill and the value per unit piece or package has been stated to be in excess of US\$2,500 (or the equivalent in any other currency) there shall be no recovery of more than US\$2,500 per unit piece or package or the limitation per unit, piece or package specified in the Hague-Visby Rules whichever be the higher;
- (j) REFRIGERATED CARGO: the Insurer may at any time require to be satisfied as to the spaces, plant and apparatus used and the instructions given for the carriage of cargo in insulated or refrigerated chambers or Containers and the terms of contract of carriage under which such cargo is to be carried and the Insured shall upon request supply the relevant information to the Insurer. If the Insurer is not so satisfied and therefore withholds its approval and so notify the Insured, such Insured shall not be entitled to recover from the Insurer in respect of any loss of or damage to such cargo the carriage of which began after the serving of the notice;
- (k) RARE AND VALUABLE CARGO: there shall be no recovery in respect of loss of or damage to specie, bullion, precious or rare metals or stones, plate, jewellery, works of art or other objects of a rare or precious nature, bank notes or other forms of currency, bonds or other negotiable instruments whether the value is declared or not unless the contract of carriage and the spaces, apparatus and means used for the carriage and the instructions given for the safe custody thereof have been approved in writing by the Insurer;
- (l) PROPERTY OF THE INSURED: in the event that any cargo lost or damaged on board the Insured Ship shall be the property of the Insured, such Insured shall be entitled to recover from the Insurer the same amount as would have been recoverable from him if the cargo had belonged to a third party and that third party had concluded a contract of carriage of the cargo with the Insured on the terms of the Insurer's recommended standard terms of carriage referred to in section 20.1(e) above;
- (m) PAPERLESS TRADING: there shall be no recovery from the Insurer for any liability, cost or expense arising from the use of any electronic trading system, other than an electronic trading system approved in writing by the Insurer, to the extent that such liability, cost or expense would not have arisen under a paper trading system. For the purposes of this section 20.1(m):
 - (i) an electronic trading system is any system which replaces or is intended to replace paper documents used for the sale of goods and/or their carriage by sea or partly by sea and other means of transport and which:
 - (A) are documents of title; or
 - (B) entitle the holder to delivery or possession of the goods referred to in such documents; or
 - (C) evidence a contract of carriage under which the rights and obligations of either of the contracting parties may be transferred to a third party; and
 - (ii) a "document" shall mean anything in which information of any description is recorded including, but not limited to, computer or other electronically generated information.

21. General Average

- 21.1 If the Insurer in its discretion so authorises, the Insurer shall cover the Insured Ship's proportion of general average, special charges or salvage not recoverable under the Hull Policies by reason of the value of the Insured Ship being assessed for contribution to general average or salvage at a sound value in excess of the insured value under the Hull Policies; PROVIDED ALWAYS THAT in section 21.1 there shall be excluded from the claim any loss which arises from the insured value in those policies being, in the opinion of the Insurer, less than the proper value of the Ship⁴.
- 21.2 The Insurer shall cover the proportion of general average, special charges or salvage which may be chargeable to cargo or some other party to the marine adventure and which is not legally recoverable, or for which the Insured may become liable, solely by reason of a breach of the contract of carriage; PROVIDED ALWAYS THAT in section 21.2:
- (a) sections 20.1(e), 20.1(f) and 20.1(h) shall apply to a claim under section 21.2 unless the Insurer in its discretion shall otherwise determine or unless a special agreement has been made with the Insurer in accordance with the terms of section 20;
 - (b) the Insured shall have notified the Insurer in writing within twelve months both of the casualty out of which a claim under this section 21.2 might arise, and of the reference of the matter to adjusters; and
 - (c) the Insured shall have obtained adequate general average security in the absence of which recovery from the Insurer will be available if, and only to the extent that, the Insured can establish that, at the time of delivery of the cargo, it neither knew nor ought to have known that there had been an occurrence of a general average nature during the voyage, or if, and only to the extent that, the Insurer, in its absolute discretion, shall otherwise determine.

⁴ In determining whether the Ship was insured for a proper value the Insurer will need to be satisfied that the said policies have been the subject of periodic review in the light of proper advice on market conditions. A proper value will be a figure which is reasonably close to the equivalent of the free uncommitted market value of the Ship at the time of the General Average Act.

22. Fines

- 22.1 Subject to section 22.2, the Insurer will cover fines or other penalties, together with costs and expenses incidental thereto, imposed in respect of an Insured Ship by any court, tribunal, or authority of competent jurisdiction, upon an Insured or upon any person whom the Insured may be legally liable to reimburse or reasonably reimburses with the approval of the Insurer:
- (a) for breach of administrative, governmental or customs requirements concerning the regulation of cargo documents or for short delivery or over-delivery of cargo, including any sum for which the Insured is liable to any charterer of the Insured Ship in respect of such fine or monetary penalty levied against such a charterer, under the terms of a charterparty to which the Insured is party; but subject always to the Insured having cover for his liabilities in respect of the cargo under section 20;
 - (b) for the accidental release or escape of oil or any other polluting substance from the Insured Ship; but subject always to the Insured having cover for his liabilities in respect to pollution under section 16;
 - (c) for breach of any laws, regulations or requirements in respect of immigration; and
 - (d) always subject to section 54, for any fine or monetary penalty incurred by a Seaman in respect of liabilities covered under sections 22.1(a), (b) and (c) and in respect of the Insured Ship.
- 22.2 There shall however be no cover under these Terms and Conditions for a fine or monetary penalty levied in respect of:
- (a) any overloading of the Insured Ship, or the presence on board the Insured Ship of a greater number of passengers than is legally permitted;
 - (b) contravention of any law, regulation or requirements in respect of fishing;
 - (c) criminal activity embarked on with the knowledge, connivance, complicity or reckless disregard of the Insured;
 - (d) any breach or infringement of the requirements and provisions relating either to the configuration and equipping of the Insured Ship or the maintaining of proper records or documents under or in connection with the International Convention for the Prevention of Pollution from Ships 1973, as amended or any statutory re-enactment of such requirements and provisions; or
 - (e) failure, neglect or default of the Insured in the exercise of due diligence to prevent a loss or to ensure compliance with such regulations as may be applicable in respect of the seaworthiness of vessels, or the safety of life, property or the environment.

23. Legal Costs, Sue and Labour

- 23.1 The Insurer will cover:
- (a) costs and expenses which an Insured may incur in respect of any liability or expenditure against which the Insured is insured under these Terms and Conditions;
 - (b) losses, costs and expenses necessarily incurred by an Insured after an incident in order to avoid or reduce a liability or expenditure against which the Insured is insured by the Insurer even if such losses, costs and expenses would otherwise be excluded by these Terms and Conditions; and
 - (c) expenses which the Insured may incur under special written authorisation of the Insurer in cases in which the Insurer decides that it is in the interests of the Insurer that the direction be given; PROVIDED ALWAYS THAT in section 23(c) no such losses, costs or expenses shall be recoverable unless they have been incurred with the prior agreement of the Insurer.

24. Special Cover

- 24.1 Subject always to specific agreement in writing between the Insured and Insurer, and save insofar as expressly prohibited by these Terms and Conditions, the Insurer may insure an Insured against the risks specified in these Terms and Conditions whether or not such risks arise in connection with an Insured Ship (notwithstanding the provisions of section 2).

25. Special Cover for Salvors

- 25.1 Without prejudice to section 24 an Insured may be insured, but only by special agreement in writing with the Insurer and upon such terms as may be required by the Insurer, against any of the liabilities, fines, losses, costs or expenses which arise as a result of any salvage service or attempted salvage service performed or to be performed by the Insured and which arise out of the operation of and in respect of that Insured's interest in an Insured Ship.
- 25.2 The cover referred to in section 25.1 may be given on terms that the liabilities, fines, losses, costs or expenses need not arise in respect of any Insured Ship or out of the operation of any Insured Ship; PROVIDED ALWAYS THAT in sections 25.1 and 25.2 they arise in connection with the Insured's business as a salvor.

25.3 It shall be a condition precedent of every insurance on the terms referred to in sections 25.1 and 25.2 that the Insured and any company which is a subsidiary or holding company of the Insured or a subsidiary of the Insured's holding company shall, at the time when the insurance is given and thereafter within thirty days before the beginning of each Contract of Insurance, apply to enter for insurance with the Insurer every ship intended to be used in connection with salvage operations of which it is then in possession or control on terms that every such application may be accepted in respect of such one or more Ships as the Insurer in its discretion may determine; PROVIDED ALWAYS THAT in section 25 the cover given shall be in all respects the same as that given under sections 4 to 24 inclusive, save that nothing in this proviso shall derogate from or prejudice the provisions of section 25.2.

Part III: Freight, Demurrage and Defence Cover

26. Nature of FD&D Cover

- 26.1 The Insurer will cover the legal costs and expenses reasonably and necessarily incurred by the Insured including the costs of an opposing party where such costs are ordered to be paid by a court or tribunal, or are to be paid pursuant to the terms of any settlement concluded with the approval in writing of the Insurer and always subject to the provisions contained in Part VII in pursuing or defending claims, or in seeking to resolve disputes, on such terms as the Insurer may agree in writing, arising in respect of the following:
- (a) any contract for the building of an Insured Ship, which has the prior approval in writing of the Insurer;
 - (b) any contract for the purchase or sale of an Insured Ship, which has the prior approval in writing of the Insurer;
 - (c) any contract for the conversion, alteration, repair, refit, drydocking or maintenance of an Insured Ship;
 - (d) any charterparty, contract of carriage, bill of lading or contract of affreightment, to which the Insured is party in respect of an Insured Ship and disputes as to the conclusion or legal effect of any such charterparty, contract of carriage, bill of lading or contract of affreightment;
 - (e) any contract for operational services provided to or in respect of an Insured Ship, including but not limited to agency, stevedoring, towage or salvage, or harbour authority services;
 - (f) any contract for administrative services provided to or in respect of an Insured Ship for insurance broking or ship broking services, management services or the provision of technical advice on normal maritime issues;
 - (g) any contract in respect of goods or materials, necessities and stores including bunkers and lubricating oil provided to an Insured Ship;
 - (h) the employment of crew;
 - (i) any damage to an Insured Ship, detention of an Insured Ship, or the impairment of any right of the Insured in respect of an Insured Ship, caused by any third party and which is not covered by any hull or other insurance;
 - (j) general average contributions;
 - (k) the presence on board an insured vessel of stowaways, refugees or persons rescued at sea; and
 - (l) the handling, loading, stowing, lashing and discharge of cargo which is to be carried, which is carried or which has been carried on board an Insured Ship.

27. Special Conditions

- 27.1 Cover hereunder will be granted only to the extent in the opinion of the Insurer the Insured has reasonable prospects of successfully pursuing or defending any such claim, or resolving any such dispute, through the incurring of legal costs and expenses; and PROVIDED ALWAYS THAT such costs and expenses are incurred with the prior written approval of the Insurer.
- 27.2 Approval by the Insurer of a contract under sections 27.1 shall not connote acceptance or approval of the terms and conditions of such a contract. There shall be no cover under this Part III in respect of any claim or disputes between Insured Parties.
- 27.3 In the event that any costs incurred by the Insurer on behalf of the Insured under these terms are recovered, whether by formal award, judgment, settlement or otherwise, such monies shall be paid to and kept by the Insurer.
- 27.4 In the event a dispute is only partially covered, or the costs are shared with another insurance, the Insurer shall decide in its absolute discretion the applicable apportionment of costs.

28. Specific Considerations Regarding Support

- 28.1 The following matters, amongst others which the Insurer deems relevant, shall be taken into account in assessing the prospects of successfully pursuing or defending any such claim or resolving any such dispute:
- (a) the applicable law and jurisdiction;
 - (b) the value of the claim or sum in issue or the significance of the dispute;
 - (c) the level of the legal costs and expenses likely to be incurred;
 - (d) the legal merit of the Insured's position;
 - (e) any alternative means for pursuing or defending the claim or resolving the dispute;
 - (f) the prospect of enforcement of any claim by or against the Insured;

- (g) the conduct of the Insured including:
 - (i) the Insured's refusal to follow claims handling guidance or settlement recommendations; and
 - (ii) any failure to mitigate or prejudice caused to the claim by the Insured's actions, either prior to or after notification of the claim to the Insurer; and
- (h) the importance of any issues that arise to the shipping community generally.

29. Appointment of Lawyers or Other Persons

29.1 Whenever a request has been made or may be made by an Insured for the support of the Insurer in any proceedings or for legal or other advice in connection with matters covered by this Insurance, the Insurer may at any time appoint lawyers or other persons and discontinue their appointment in accordance with the provisions of section 61.5 below.

30. Requirement for Prior Approval of Lawyers or Other Persons

30.1 Where an Insured employs, without the prior approval of the Insurer, lawyers or other persons for the purposes of giving advice in connection with matters covered by this Insurance, then the costs of such person or persons shall not be recoverable from the Insurer unless the Insurer in its absolute discretion otherwise decides.

31. Interaction with Protecting and Indemnity Cover

31.1 Any Ship insured under the terms of this Part III shall be deemed to be fully insured under the terms of Part II and an Insured shall not be entitled to recover any costs and expenses under the terms of this Part III which could have been recoverable under the terms of Part II had the Ship been so insured.

32. Non-recoverability

32.1 There shall be no recovery from the Insurer under the terms of this Part III in respect of any claims, costs, or expenses arising out of risks and losses either expressly or impliedly excluded under the terms of Part II.

Part IV: War Risks Cover

33. Nature of War Risks Cover

33.1 Notwithstanding the generality of the exclusion contained in section 52 below, and subject always to special agreement in writing with the Insurer and subject to the limits set out in the Certificate of Insurance, the Insured may be covered for liabilities, costs and expenses caused by:

- (a) war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or from any hostile act by or against a belligerent power or any act of terrorism;
- (b) capture, seizure, arrest, restraint or detainment (barratry and piracy excepted) and the consequences thereof or any attempt thereat; and
- (c) mines, torpedoes, bombs or other weapons of war;

PROVIDED ALWAYS THAT such liabilities, costs and expenses are not covered under the terms of any other insurance in respect of the Insured Ship or the Insured. Cover under this Part IV shall only cover such liabilities, costs and expenses insofar as they exceed amounts recoverable under any such other insurance including but not limited to the Insured Ship's hull and machinery insurance and insurance in respect of crew or war risks;

AND PROVIDED ALWAYS THAT cover under this Part IV shall extend solely and exclusively to those liabilities, costs and expenses as may be discharged by the Insurer on behalf of the Insured pursuant to a demand made under:

- (d) a certificate issued by the Insurer in compliance with Article VII of the International Convention on Civil Liability for Oil Pollution Damage 1969 or 1992 or any amendments thereto; or
- (e) a certificate issued by the Insurer in compliance with Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 or any amendments thereto; or
- (f) a certificate issued by the Insurer in compliance with Article 12 of the Nairobi International Convention on the Removal of Wrecks 2007,

to the extent that such liabilities, costs and expenses are not recovered by the Insured under any other policy of insurance or extension to the cover provided by the Insurer. Where any such guarantee, undertaking or certificate is provided by the Insurer on behalf of an Insured as guarantor or otherwise, the Insured agrees that any payment by the Insurer thereunder in discharge of the said liabilities, costs and expenses, shall, to the extent of any amount recovered under any other policy of insurance or extension to the cover provided by the Insurer, be deemed to be by way of loan and that there shall be assigned to the Insurer all the rights of the Insured under any such other insurance and against any third party.

33.2 In the event of any dispute as to whether or not any act constitutes an act of terrorism, the decision of the Insurer shall be final.

34. Special Conditions for War Risks

34.1 The Insurer may, on giving seven days' notice in writing to the Insured:

- (a) cancel the cover provided under this Part IV; or
- (b) vary or restrict the terms on which cover under this Part IV is provided.

34.2 Cover under this Part IV shall cease automatically without notice upon:

- (a) the outbreak of war, whether declared or not, between any of the following: The United Kingdom, the United States of America, the People's Republic of China, France or the Russian Federation and this Insurance excludes loss, damage, liability or expense arising from such outbreak of war; or
- (b) the requisitioning for any purpose of any Insured Ship covered under this Insurance; or
- (c) the hostile detonation by any party anywhere, of a weapon of war employing atomic or nuclear fission and/or fusion or other similar reaction or radioactive force or matter.

34.3 There shall be no cover under this Part IV if an event which would have given rise to cover ceasing automatically without notice by reason of section 34.2 above shall have occurred after the agreement of the Insurer has been given in writing to provide this war risks insurance, but before the date and time for attachment of cover so agreed.

Part V: Insurance, Premium and Payments

35. Insurance Acts

- 35.1 These Terms and Conditions and all Contracts of Insurance contained or evidenced by any Certificate of Insurance, endorsements or variations issued pursuant to such Policy shall be subject to and incorporate the provisions of the Marine Insurance Act 1906 and the Insurance Act 2015 and any statutory modifications thereof except insofar as such Acts or modifications may have been expressly excluded by these Terms and Conditions or by any term of such Contracts of Insurance, Certificate of Insurance, endorsement or variation thereto.
- 35.2 The following provisions of the Insurance Act 2015 ("the Act") are excluded from these Terms and Conditions, any Contract of Insurance, Certificate of Insurance and endorsement or variation as follows:
- (a) section 8 of the Act is excluded. As a result, any breach of the duty of fair presentation shall entitle the Insurer to avoid the policy, regardless of whether the breach of the duty of fair presentation is innocent, deliberate or reckless;
 - (b) section 10 of the Act is excluded. As a result, all warranties in these Terms and Conditions, any Contract of Insurance, Certificate of Insurance and endorsement or variation thereto must be strictly complied with and if the Insured or any Insured Party fails to comply with any warranty the Insurer shall be discharged from liability from the date of the breach, regardless of whether the breach is subsequently remedied;
 - (c) section 11 of the Act is excluded. As a result, these Terms and Conditions, any Contract of Insurance, Certificate of Insurance and endorsement or variation thereto between the Insurer and Insured or any Insured Party, including terms which tend to reduce the risk of loss of a particular kind, loss at a particular location and/or loss at a particular time, must be strictly complied with and if the Insured or any Insured Party fails to comply with any such term, the Insurer's liability may be excluded, limited or discharged in accordance with these Terms and Conditions notwithstanding that the breach could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred;
 - (d) section 13 of the Act is excluded. As a result, the Insurer shall be entitled to exercise its right to terminate the Contract of Insurance, Certificate of Insurance, endorsement or variation thereto in respect of the Insured and all Insured Parties in the event that a fraudulent claim is submitted by or on behalf of the Insured and/or any Insured Party and/or any affiliated or associated company of the Insured;
 - (e) section 13A of the Act is excluded. As a result, the Insurer shall not be subject to any implied obligation to pay any sums due in respect of a claim within a reasonable time save where the breach is deliberate or reckless and Section 13A of the Act is excluded to this extent; and
 - (f) section 14 of the Act is excluded. As a result, these Terms and Conditions, any Contract of Insurance, Certificate of Insurance and endorsement or variation thereto shall be treated as a contract of the utmost good faith and any breach of the duty of the utmost good faith shall entitle the Insurer to avoid the Contract of Insurance, Certificate of Insurance and endorsement or variation thereto.

36. Application for Insurance

- 36.1 Any person who wishes to insure a Ship for cover with the Insurer shall apply for such insurance in such form as may from time to time be required by the Insurer and shall furnish all material particulars and information including but not limited to any particulars and information requested by the Insurer⁵.
- 36.2 All particulars and information given in the course of applying for insurance shall, if the insurance of the relevant Ship be accepted, be deemed to form part of the contract of insurance between the Insured and Insurer and it shall be a condition precedent of such insurance that all such particulars and information were true so far as was within the applicant Insured's knowledge or could with reasonable diligence have been ascertained.
- 36.3 As soon as reasonably practicable after accepting an application for the insurance of a Ship the Insurer shall issue a Certificate of Insurance which shall state the names of the Insured and Insured Parties on whose behalf such Ship has been insured and their interests in such Ship, the time and date of the commencement of the period of insurance and the terms and conditions on which the Ship has been accepted for insurance. Any additional terms of insurance, including the type of cover, limit of cover and applicable deductibles shall be set out in a schedule to the Certificate of Insurance.
- 36.4 The Insurer may accept to insure a Ship for a tonnage other than the Full Tonnage of such Ship.

⁵ Any person who wishes to insure a Ship shall be required to provide 'know your customer' information and documentation to the Insurer as more particularly detailed in the application form.

- 36.5 The terms and conditions upon which a Ship is accepted to be insured, including those relating to the nature and extent of the risks covered and the Premiums payable by the Insurer, shall be those set out in these Terms and Conditions hereinafter mentioned but subject to such variations within the scope of these Terms and Conditions as may have been agreed in writing between the Insured and the Insurer and set out in the Certificate of Insurance.
- 36.6 If at any time it is mutually agreed between the Insured and Insurer to vary the terms of any insurance, the Insurer may issue an endorsement detailing such variation and the date from which it is to be effective.
- 36.7 The Insurer may in his discretion and without giving any reason refuse an application by any person for insurance of a Ship whether or not that person is already an Insured in regards to other Ships operated by that party.

37. Insurable Interest

- 37.1 Any person who becomes an Insured warrants that he is, in relation to the Insured Ship the owner, owner in partnership, owner holding separate shares in severalty, part owner, trustee, or demise charterer of the Insured Ship, or a manager or operator having control of the operation and employment of the Insured Ship (being such control as is customarily exercised by a shipowner, or any other person in possession and control of the Insured Ship).

38. Joint Insureds

- 38.1 The Insurer may accept an application from an Insured for another person or persons to become Joint Insured(s) in respect of their insurable interest of a Ship as joint insurance. In such a case, the Insurer may agree that none, one or more of such persons may become Insureds.
- 38.2 In the event that the application is accepted by the Insurer, the Insured who has made the application (or such other person as may be agreed in writing) shall be designated the Senior Insured and shall be the person who is deemed irrevocably to have full power and authority to act in the name of and/or on behalf of all the Joint Insureds, and neither the Insurer, nor their servants or agents, shall be liable in any other manner whatsoever to any Joint Insured in the event that the Senior Insured did not, in fact, have such power and authority.
- 38.3 Unless otherwise agreed in writing with the Insurer, the Insured and all Joint Insureds shall be jointly and severally liable to pay all amounts due to the Insurer in respect of such insurance or such Fleet.
- 38.4 In relation to such application from an Insured for any person or persons to become a Joint Insured, the Senior Insured and each Joint Insured warrants that the Joint Insured is, in relation to the Insured Ship:
- (a) another person within section 37; or
 - (b) interested in the operation, management or manning of the Insured Ship; or
 - (c) the holding company or the beneficial owner of the Senior Insured or any Joint Insured falling within section 38.4(a) or (b); or
 - (d) the charterer (other than by demise) of the Insured Ship and affiliated to or associated with the Senior Insured or any Joint Insured falling within section 38.4(a) and, except where the Senior Insured or that Joint Insured is wholly owned by the charterer or where both are under common ownership, that the Senior Insured or that Joint Insured either owns at least 50% of the shares in and voting rights of the charterer or can procure that the charterer is managed and operated in accordance with the wishes of the Senior Insured or that Joint Insured; or
 - (e) a mortgagee of the Insured Ship.

39. Co-Assured

- 39.1 The Insurer may accept an application from an Insured (or, where there are Joint Insureds, the Senior Insured or any Joint Insured under section 38.4(a)) for another person or persons to become co-assured.
- 39.2 In the event that the application is accepted by the Insurer, the Insured who has made the application (or such other person as may be agreed in writing) shall be the person who is deemed irrevocably to have full power and authority to act in the name of and/or on behalf of all the co-assured, and neither the Insurer nor its servants or agents, shall be liable in any other manner whatsoever to any co-assured in the event that the Insured did not, in fact, have such power and authority.
- 39.3 The liability of the Insurer to all co-assured shall only extend insofar as they may be found liable to pay in the first instance for loss or damage which is properly the responsibility of the Insured, (or, where there are Joint Insureds, the Senior Insured or any Joint Insured under section 38.4(a)) and nothing herein contained shall be construed as extending cover in respect of any amount which would not have been recoverable from the Insurer by the Insured (or, where there are Joint Insureds, the Senior Insured or any Joint Insured under section 38.4(a)) had the claim in respect of such loss or damage been made or enforced against him. Once the Insurer has made indemnification to such co-assured it shall not be under any further liability and shall not make any further payment to any person whatsoever, including the Insured, or Senior Insured, in respect of that loss or damage;

PROVIDED ALWAYS THAT in section 39:

- (a) where the co-assured is a charterer (other than by demise) of the Insured Ship, the Senior Insured and any Joint Insured under section 39(a), and such charterer, warrants that the co-assured is a person who has entered into a contract with the Senior Insured or any Joint Insured falling within section 38.4(a) for the provision of services to or by the Insured Ship or, where applicable, any sub-contractor of such person; and
 - (i) such contract has been approved in writing by the Insurer; and
 - (ii) the contract includes a Knock for Knock agreement; and
 - (iii) the Insured has not, under any such contract, waived any rights of limitation otherwise available to him under applicable law;
- (b) the liability of the Insured to persons falling within section 39.3(a) above shall only be in respect of liabilities, costs and expenses which are to be borne by the Senior Insured or any Joint Insured falling within section 38.4(a) under the terms of the contract and which would, if borne by such Senior Insured or Joint Insured, be recoverable by them from the Insurer; and
- (c) the co-assured shall be named on the Certificate of Insurance.

40. Affiliated and Associated Persons

40.1 In the case of a claim which would be recoverable from the Insured being made or enforced through a person (not being a Joint Insured) affiliated to or associated with an Insured (or, where there are Joint Insureds, the Senior Insured or any Joint Insured under section 38.4(a)) the Insurer shall, if so requested by the Insured (or, where there are Joint Insureds, the Senior Insured) in writing, indemnify such person against any loss which as a consequence thereof such person shall have incurred in that capacity but only to the extent to which the Insured (or, where there are Joint Insureds, the Senior Insured or any Joint Insured under section 38.4(a)) to or with which he is affiliated or associated would have been entitled to recover if the claim had been made or enforced against him. Once the Insurer has made such indemnification it shall not be under any further liability and shall not make any further payment to any person whatsoever, including the Insured or Senior Insured, in respect of the loss or damage in respect of which the claim was brought; PROVIDED ALWAYS THAT in sections 38 to 40 the following shall apply to any Insured, Joint Insured, co-assured or affiliated or associated person (the "Insured Parties"):

- (a) SCOPE OF COVER: the Insurer shall only insure an Insured Party against liabilities, costs or expenses which arise out of operations and/or activities customarily carried on by or at the risk and responsibility of a shipowner and which are within the scope of the cover afforded by these Terms and Conditions and any special terms set out in the Certificate of Insurance;
- (b) LIMIT OF COVER: except where expressly provided to the contrary, any limits on the cover provided by the Insurer and set out in the Certificate of Insurance, or these Terms and Conditions, shall apply to Insured Parties in the aggregate;
- (c) PAYMENTS: the receipt by any Insured Party of any payment by the Insurer shall be deemed to be the receipt by all Insured Parties jointly and shall fully discharge the obligations of the Insurer in respect of such payment;
- (d) DISCLOSURE: failure by any Insured Party to disclose any material information within his knowledge shall be deemed to have been a failure of all of the Insured Parties;
- (e) APPLICATION OF THESE TERMS AND CONDITIONS: these Terms and Conditions and any special terms set out in the Certificate of Insurance shall apply to all Insured Parties as if they were all Insureds. Conduct of any Insured Party which would have entitled the Insurer to decline to indemnify him shall be deemed the conduct of all Insured Parties;
- (f) COMMUNICATIONS: unless the Insurer has otherwise agreed in writing, the contents of any communication from or on behalf of the Insurer to any Insured Party shall be deemed to be within the knowledge of all Insured Parties, and any communication from any Insured Party to the Insurer or their agents shall be deemed to have been made with the full approval and authority of all Insured Parties; and
- (g) DISPUTES: disputes between Insured Parties are excluded from cover under these Terms and Conditions.

41. Fleet

41.1 Where one or more Ships have been insured as a Fleet then the debts of any one Insured or Joint Insureds in respect of any such Insured Ship shall be treated as the debt of all the other Insureds and Joint Insureds whose Ships are or were insureds as part of the same Fleet and the Insurer shall be entitled to act as if all the Ships forming the Fleet were insured by the same Insured.

42. Period of Insurance

- 42.1 Subject as otherwise provided in these Terms and Conditions the insurance provided by the Insurer:
- (a) shall be for a fixed period;
 - (b) shall commence at:
 - (i) noon GMT on the date specified in the Certificate of Insurance; or
 - (ii) such different time as may be agreed in writing between the Insured and the Insurer; or
 - (iii) at such time as the Insured first has an insurable interest in the Insured Ship; and
 - (c) shall cease at:
 - (i) noon GMT on the date specified in the Certificate of Insurance; or
 - (ii) such different time as may be agreed in writing between the Insured and the Insurer.

43. Payment of Premium

- 43.1 Premium payable in respect of these Terms and Conditions shall be paid on such terms as the Insurer shall specify in writing.
- 43.2 As soon as reasonably practicable after the Premium has been fixed, the Insurer shall notify the Insured concerned of the date on which such Premium is payable or, if payable by instalments, of the amounts of such instalments and the respective dates on which they are payable and the amount payable by such Insured in respect of each relevant Insured Ship.
- 43.3 No amount of any kind whatsoever due or alleged to be due by the Insurer to the Insured shall constitute any set-off against the Premiums or other sums of whatsoever nature due to the Insurer or shall entitle an Insured to withhold or delay payment of any such Premiums or sums.
- 43.4 Without prejudice to the rights and remedies of the Insurer under section 64 if any Premium or instalment or part thereof or any other sum of whatsoever nature due from any Insured is not paid by such Insured on or before the date specified for payment thereof, then the Insured shall pay interest at a rate of 6% a year above the Bank of England's base rate from time to time on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment or arbitration award.
- 43.5 Unless an Insured shall first have paid or discharged the same directly, he shall on demand pay to the Insurer or to its order the amount of any premium tax or other similar tax levied on or in connection with the insurance provided by the Insurer to the Insured for which the Insurer determines it or the Insured has or may become liable, and shall indemnify the Insurer and hold it harmless in respect of any loss, damage, liability, cost or expense which the Insurer may incur in respect of such premium tax or other similar tax.
- 43.6 The Insurer shall be entitled to, and the Insured hereby grants, a lien on the Insured Ship in respect of any amount whatsoever owed by the Insured to the Insurer.

44. Cancelling Returns Only

- 44.1 Unless otherwise agreed by the Insurer in writing, the Contract of Insurance evidenced by and/or contained in the Certificate of Insurance of an Insured Ship provides for cancelling returns only.

45. No Liability until Premium is Paid

- 45.1 It is a condition precedent to this Insurance that the Insured had paid, without any set-off or discount, the Premium as set out in the Certificate of Insurance of the Insured Ship or any other amounts whatsoever as may have become due from the Insured to the Insurer.

Part VI: Conditions, Exclusions, Limitations and Warranties

46. Application of Provisions

- 46.1 Subject to the provisions of section 68, the provisions of Part VI apply to every risk insured by the Insurer and override any part of these Terms and Conditions which may be inconsistent with their application.

47. Payment First by the Insured

- 47.1 GENERAL: Unless the Insurer in its discretion otherwise decides, it is a condition precedent of an Insured's right to recover from the funds of the Insurer in respect of any liabilities, costs or expenses that he shall first have discharged or paid the same out of funds belonging to him unconditionally and not advanced expressly or impliedly for that purpose by way of loan or otherwise.
- 47.2 SEAMEN: Notwithstanding the provisions of section 47.1, where an Insured has failed to discharge a liability to pay damages or compensation for death, personal injury or illness of a Seaman under section 4.1(a) (a "Crew Claim"), the Insurer shall pay such Crew Claim on the Insured's behalf directly to such Seaman or dependant thereof; PROVIDED ALWAYS THAT:
- (a) the Seaman or dependant has no enforceable right of recovery against any other party and would otherwise be uncompensated;
 - (b) subject to section 47.2(c) below, the amount payable by the Insurer shall under no circumstances exceed the amount which the Insured would have been able to recover from the Insurer under these Terms and Conditions and the Insured's terms of cover; and
 - (c) where the Insurer is under no liability to the Insured in respect of a Crew Claim in accordance with section 64, the Insurer shall nevertheless discharge or pay that Crew Claim to the extent only that it arises from an obligation created or an event occurring prior to the date of Cesser, but as agent only of the Insured, and the Insured shall be liable to reimburse the Insurer for the full amount of such payment.
- 47.3 PRIORITY OF CERTIFIED LIABILITIES: Where liabilities to Passengers include liabilities arising under a non-war certificate issued by the Insurer in compliance with either Article 4 bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 and the Protocol thereto of 2002 or Regulation (EC) No.392/2009 of the European Parliament and of the Council of 23rd April 2009 on the liability of carriers of passengers by sea in the event of accidents ("Certified Liabilities") and all such liabilities to Passengers exceed or may exceed in the aggregate the limit of cover specified in section 49 below:
- (a) the Insurer may in its absolute discretion defer payment of a claim in respect of other liabilities to Passengers or any part thereof until the Certified Liabilities, or such part of the Certified Liabilities as the Insurer may decide, have been discharged; and
 - (b) if and to the extent any Certified Liabilities discharged by the Insurer exceed the said limit any payment by the Insurer in respect thereof shall be by way of loan and the Insured shall indemnify the Insurer promptly and upon demand in respect of such payment.

48. Deductibles

- 48.1 The Insured's recovery from the Insurer in respect of a liability against which the Insured is insured under these Terms and Conditions shall be subject to the deductibles set out in the Certificate of Insurance. In the event that more than one type of claim as provided for by these Terms and Conditions shall arise as the result of any one accident or occurrence, only one deductible shall be applied, which deductible shall be the highest deductible of those applying to the types of claims involved.

49. Limitation of Cover

- 49.1 GENERAL: Subject to these Terms and Conditions and to any special terms and conditions upon which a Ship may be insured (see section 49.2 below), the liability of the Insured shall be covered by the Insurer in respect of his interest in an Insured Ship to the extent that such liability may ultimately be determined and fixed by law, including any laws pertaining to limitation of shipowners' liability, which an Insured shall not prejudice by contract. The Insurer shall in no circumstances be liable for any sum in excess of such legal liability. If the Ship is insured for less than her Full Tonnage the liability of the Insurer shall be limited to the proportion that the Insured Tonnage bears to the Full Tonnage. In the event that any court or tribunal permits any third party to sue the Insurer it shall be entitled to adopt each and every

denial, defence and right to limitation of liability that would have been available to the Insured in such proceedings were the Insured and not the Insurer to be the party sued.

- 49.2 **COMBINED SINGLE LIMIT:** Cover hereunder shall be limited to a maximum monetary amount which shall have been agreed between the Insurer and the Insured at the time of contracting the Insurance as set out in the Certificate of Insurance. Such amount shall be the maximum monetary amount for which the Insurer is liable in respect of any claim, claims or liabilities under the Contract of Insurance arising out of one event, accident or occurrence, or series of accidents or occurrences arising out of one event.
- 49.3 **OTHER INSURANCE:** To the extent an Insured, Joint Insured, co-assured, affiliate or associate is insured for pollution risks under any other insurance, cover hereunder shall be null, void and of no effect, up to the limits of said other insurance. Above the limits of said other insurance, cover under this Insurance shall remain in effect, subject always to the limits which are applicable to such risks, to any deductible(s), and to the limits, terms and conditions of the Contract of Insurance evidenced by the Certificate of Insurance. In the event the limits available under such other insurance are the same as or greater than the limits available for pollution losses under the Contract of Insurance evidenced by the Certificate of Insurance then the Contract of Insurance evidenced by the Certificate of Insurance shall be null, void and of no effect with regard to such claims. In the event the limits of said other insurance are less than the limits available hereunder, the Contract of Insurance evidenced by the Certificate of Insurance shall respond up to the limits set forth in the Certificate of Insurance for pollution losses, but only for the amount by which any such losses exceed the stated limits of such other insurance, and then only up to the limits set forth herein for pollution losses. The Contract of Insurance evidenced by the Certificate of Insurance shall respond only in excess of the stated limits of the other insurance, whether or not the full amount of such policy limits or any amount at all, is recoverable thereunder.

50. Exclusion of Risks Covered by Hull Policies

- 50.1 Unless otherwise agreed in writing the Insurer shall not, except only as provided by sections 13.1(a) and (c), section 15.1(b) and section 21.1, provide cover to an Insured to any extent whatsoever against any of the risks, liabilities, costs or expenses against which the Insured would be covered if the Insured Ship were fully insured under Hull Policies on terms no less wide than both:
- (a) those of the Lloyd's Marine Policy with Institute Time Clauses (Hulls) 1.10.83 and with no deductible or franchise applicable to claims under those policies, and
 - (b) those of the Lloyd's Marine Policy with Institute Time Clauses (Hulls) 1.11.95 and with no deductible or franchise applicable to claims under those policies.

51. Hull and Machinery Insurance Requirements

- 51.1 Unless otherwise expressly agreed in writing by the Insurer, it is a condition precedent to liability under the Contract of Insurance that the Insured has in effect throughout its duration hull and machinery coverage for a proper value on terms which afford the Insured protection no less favourable than that provided under a policy written on terms and conditions no less wide than sections 50(a) and (b) above⁶.

52. War Risks

- 52.1 Save as provided in section 52.2 there shall be no recovery from the Insurer against any liabilities, costs or expenses (irrespective of whether a contributory cause of the same being incurred was any neglect on the part of the Insured or on the part of the Insured's servants, or agents) when the loss or damage, injury, illness or death or any other accident in respect of which such liability arises or costs or expenses is incurred, was caused by:
- (a) war, civil war, revolution, rebellion, insurrection or civil strife arising therefrom, any hostile act by or against a belligerent power, or any act of terrorism; PROVIDED ALWAYS THAT in this section 52.1(a), in the event of any dispute as to whether or not any act constitutes an act of terrorism, the decision of the Insurer shall be final;
 - (b) capture, seizure, arrest, restraint or detainment (barratry and piracy excepted) and the consequences thereof or any attempt thereat;
 - (c) mines, torpedoes, bombs, rockets, shells, explosives or other similar weapons of war provided that this exclusion shall not apply to liabilities, costs or expenses which arise solely by reason of:
 - (i) the transport of any such weapons whether on board the Insured Ship or not; or
 - (ii) the use of such weapons, either as a result of government order or with the written agreement of the Insurer, where the reason for such use is the avoidance or mitigation of liabilities, costs or expenses which would otherwise fall within the cover given by the Insurer;
- PROVIDED ALWAYS THAT in this section 52.1:
- (d) these exclusions shall not apply to liabilities, costs and expenses of an Insured insofar only as they are discharged by the Insurer pursuant to a demand made under any guarantee, undertaking or certificate referred to in section 59.1(a), and

⁶In determining whether the Insured Ship was insured for a proper value the Insurer will need to be satisfied that the said Hull Policies have been the subject of periodic review in the light of proper advice on market conditions. A proper value will be a figure which is reasonably close to the equivalent of the free uncommitted market value of the Ship at the time of the collision.

- (e) where such guarantee, undertaking or certificate is provided by the Insurer on behalf of the Insured as guarantor or otherwise, the Insured agrees to indemnify the Insurer to the extent required by section 59.1(a) and to be bound by section 59.1(b).

52.2 Notwithstanding the provisions of section 52.1 unless otherwise provided under the relevant Certificate of Insurance, cover shall extend to claims:

- (a) which do not exceed the combined single limit referred to in section 49.2;
- (b) which are in excess of the amounts recoverable under the Insured Ship's hull and/or war risks policies and any P&I inclusion clauses attached thereto; and
- (c) which are not in respect of prohibited areas as may be from time to time advised to the Insured.

PROVIDED ALWAYS THAT in this section 52.2 in respect of liabilities, costs and expenses caused by any of the matters recited in section 52.1(a), (b) or (c) above:

- (d) the proper value is an amount reasonably close to the equivalent of the free uncommitted market value of the Insured Ship and for the purposes of this section 52.2 the proper value shall be deemed not to exceed US\$100,000,000;
- (e) cover may be cancelled by the Insurer giving seven days' notice (such cancellation becoming effective on the expiry of seven days from midnight on the day on which notice of cancellation is issued by the Insurer);
- (f) whether or not such notice of cancellation has been given, cover shall terminate automatically:
 - (i) upon the outbreak of war (whether there be a declaration of war or not) between any of the following countries: The United Kingdom, United States of America, France, The Russian Federation, the People's Republic of China and this insurance excludes loss, damage, liability or expense arising from such outbreak of war;
 - (ii) in the event of the Insured Ship being requisitioned either for title or use and this insurance excludes loss, damage, liability or expense arising from such requisition;
- (g) cover shall not become effective if, subsequent to acceptance by the Insurer and prior to the intended time of attachment of risk, there has occurred any event which would have automatically terminated cover under the provisions of this section;
- (h) the Insurer shall not be liable for any losses, liabilities, costs or expenses directly or indirectly caused by or contributed to by or arising from:
 - (i) any chemical, biological, bio-chemical or electromagnetic weapon;
 - (ii) the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus, computer process or any other electronic system.

PROVIDED ALWAYS THAT this Exclusion shall not operate to exclude claims otherwise recoverable under these terms of cover

(A) caused solely through the use or operation of any computer, computer system, computer software programme, computer process or any other electronic system, if such use or operation is not as a means for inflicting harm.

(B) arising from the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile; and

- (i) the Insurer shall not provide insurance for any liabilities, costs or expenses if the provision of such insurance would create a liability for the Insured under the Tanker Oil Pollution Indemnification Agreement 2006 (TOPIA 2006 as amended) to contribute to the IOPC Supplementary Fund.

53. Radioactive Materials

53.1 No claim on the Insurer shall be allowed to any extent whatsoever against liabilities, costs and expenses (irrespective of whether a contributory cause of the same being incurred was any neglect on the part of the Insured or his servants or agents) when the loss or damage, injury, illness or death or other accident in respect of which such liability arises or cost or expense is incurred, was directly or indirectly caused by or arises from:

- (a) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the composition of nuclear fuel; or
- (b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof; or
- (c) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter; or

⁷The United Kingdom Nuclear Installations Act 1965 reflects the provisions of the OECD Paris Convention on Carriage of Nuclear Material. "Excepted matter" is nuclear matter consisting only of one or more of the following:

- 1. isotopes prepared for use for industrial, commercial, agricultural, medical or scientific purposes;
- 2. natural or depleted uranium;
- 3. small quantities of nuclear matter as prescribed (see United Kingdom Nuclear Installations (Excepted Matter) Regulations 1978).

- (d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter;

PROVIDED ALWAYS THAT:

- (e) this section 53 shall not apply to "excepted matter"⁷⁷ (as defined in the Nuclear Installations Act 1965 of the United Kingdom or any regulations made thereunder) carried as cargo in an Insured Ship; and
- (f) this section 53 shall not apply to liabilities, costs and expenses of an Insured insofar only as they are discharged by the Insurer pursuant to a demand made under any guarantee, undertaking or certificate referred to in section 59.1(a), and
- (g) where any guarantee, undertaking or certificate is provided by the Insurer on behalf of the Insured as guarantor or otherwise, the Insured agrees to indemnify the Insurer to the extent required by section 59.1(a) and to be bound by section 59.1(b).

54. Imprudent or Hazardous Operations, Contraband, Blockade Running, or Unlawful Trading, Wilful Misconduct or Privity

54.1 No claim on the Insurer shall be allowed:

- (a) if it arises out of or is consequent upon an Insured Ship carrying contraband, blockade running or being employed in an unlawful trade; or
- (b) if the Insurer, having regard to all the circumstances, shall be of the opinion that the nature of the carriage, trade or voyage in which the Ship was engaged was imprudent, unsafe, unduly hazardous or improper; or
- (c) if the Insurer, having regard to all the circumstances, shall be of the opinion that the claim arose out of the wilful misconduct of any Insured Party or his managers or managing agents or the Master of the Insured Ship, (being an act intentionally done, or a deliberate omission with knowledge that the performance or omission will probably result in loss, damage or injury, or an act done or omitted in such a way as to allow an inference of a reckless disregard of the probable consequences); or
- (d) if the Insurer, having regard to all the circumstances, shall be of the opinion that the claim arose out of the sending to sea of the Insured Ship in an unseaworthy state with the privity of the Insured or his managers or managing agents.

55. Risks Specifically Excluded

55.1 Unless otherwise agreed by the Insurer in writing there shall be no recovery from the Insurer, except as otherwise provided in this section 55, in respect of:

- (a) DAMAGE TO THE INSURED SHIP: loss of or damage to the Insured Ship or any part thereof;
- (b) EQUIPMENT: loss of or damage to any equipment on board the Insured Ship or any Containers, lashings, stores or fuel thereon to the extent that the same are owned or leased by the Insured or by any associated person of the Insured or by any company under the same management as the Insured;
- (c) REPAIRS TO THE INSURED SHIP:
 - (i) the cost of repairs to the Insured Ship or any charges or expenses in connection therewith; and
 - (ii) the cost of cleaning any part of the Insured Ship or any charges or expenses in connection therewith other than such as may be covered under section 16;
- (d) FREIGHT: claims by or against the Insured for loss of freight or hire or liability for freight or hire unless such liability is covered under sections 13.1(b)(iii), 20 or 21;
- (e) POLLUTION: losses occasioned by pollution other than in accordance with section 16;
- (f) SALVAGE: salvage of an Insured Ship or services in the nature of salvage provided to an Insured Ship and any costs and expenses in connection therewith other than such as may be covered under sections 10, 16.1(e) or 21;
- (g) CHARTER PARTIES: loss arising out of cancellation of a charter or other engagement of an Insured Ship;
- (h) BAD DEBTS: loss arising out of irrecoverable debts or out of the insolvency of any person or out of the fraud of agents;
- (i) ROAD TRAFFIC ACTS: liabilities arising under any statute regulating the use or insurance of road vehicles;
- (j) DEMURRAGE: claims relating to demurrage on, detention of or delay to an Insured Ship;
- (k) TOWAGE: losses arising out of towage other than in accordance with section 18;
- (l) INSURED'S OTHER INTERESTS: any liabilities, costs and expenses incurred by an Insured in a capacity other than that in which he has insured the Ship, including (without limitation) any losses incurred by an Insured in his capacity as owner of cargo save as provided for in section 20.1(l);
- (m) CERCLA-TYPE LIABILITIES: there is no cover in respect of any liability for loss, damage, costs and expenses arising as a consequence of the discharge or escape, or the threat of discharge or escape, of any hazardous waste (previously carried on an insured vessel) from any land-based dump, storage or disposal facility; and
- (n) CYBER RISKS: loss, damage, liabilities, costs or expenses directly or indirectly caused by or contributed to by or

arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus, computer process or any other electronic system. PROVIDED ALWAYS THAT this Exclusion shall not operate to exclude claims otherwise recoverable under these terms of cover caused solely through the use or operation of any computer, computer system, computer software programme, computer process or any other electronic system, if such use or operation is not as a means for inflicting harm. Where this clause is endorsed on policies covering risks of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any person acting from a political motive, the first paragraph of this section 55.1(n) shall not operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile; and

(o) CORONAVIRUS:

- (i) any loss, damage, liabilities, costs or expenses directly arising from the transmission or alleged transmission of:
 - (A) Coronavirus disease (COVID-19);
 - (B) Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2); or
 - (C) any mutation or variation of SARS-CoV-2; or from any fear or threat of (A), (B) or (C) above;
- (ii) any loss, damage, liabilities, costs or expenses to identify, clean up, detoxify, remove, monitor, or test for (A), (B) or (C) above;
- (iii) any loss, damage, liabilities, costs or expenses arising out of any loss of revenue, loss of hire, business interruption, loss of market, delay or any indirect financial loss, howsoever described, as a result of any of (A), (B) or (C) above or the fear or the threat thereof.

56. Exclusion of Certain Risks Relating to Specialist Operations

56.1 Unless otherwise agreed by the Insurer in writing there shall be no recovery from the Insurer in respect of any claim relating to:

- (a) SPECIALIST OPERATIONS: liabilities, costs and expenses incurred by an Insured during the course of performing specialist operations including but not limited to dredging, blasting, pile-driving, well-intervention, cable or pipelaying, construction, installation or maintenance work, core sampling, depositing of spoil, power generation, professional oil spill response or professional oil spill response training and tank cleaning (otherwise than on the Insured Ship) (but excluding firefighting) to the extent that such liabilities, costs and expenses arise as a consequence of:
 - (i) claims brought by any party for whose benefit the work has been performed, or by any third party (whether connected with any party for whose benefit the work has been performed or not), in respect of the specialist nature of the operations; or
 - (ii) the failure to perform such specialist operations by the Insured or the fitness for purpose or quality of the Insured's work, products or services, including any defect in the Insured's work, products or services; or
 - (iii) any loss of or damage to the contract work;

PROVIDED ALWAYS THAT this section 56.1(a) shall not exclude liabilities, costs and expenses incurred by an Insured in respect of:

- (iv) loss of life, injury or illness of crew and other personnel on board the Insured Ship; or
- (v) the wreck removal of the Insured Ship; or
- (vi) oil pollution emanating from the Insured Ship or the threat thereof but only to the extent that such liabilities, costs and expenses are covered by the terms of cover;
- (b) DRILLING AND PRODUCTION OPERATIONS: liabilities, costs and expenses incurred in respect of an Insured Ship carrying out drilling or production operations in connection with oil or gas exploration or production, to the extent that such liabilities, costs or expenses arise out of or during drilling or production operations. For the purposes of section 56.1(b):
 - (i) an Insured Ship shall be deemed to be carrying out production operations if (inter alia) it is a storage tanker or other vessel engaged in the storage of oil, and either:
 - (A) the oil is transferred directly from a producing well to the storage vessel; or
 - (B) the storage vessel has oil and gas separation equipment on board and gas is being separated from oil whilst on board the storage vessel other than by natural venting; and
 - (ii) in respect of any Insured Ship employed to carry out production operations in connection with oil or gas production, the exclusion shall apply from the time that a connection, whether directly or indirectly, has been

established between the Insured Ship and the well pursuant to a contract under which the vessel is employed until such time that the Insured Ship is finally disconnected from the well in accordance with that contract;

- (c) WASTE DISPOSAL AND SUB-SEA ACTIVITIES: liabilities, costs and expenses incurred by an Insured in connection with any claim brought against it arising out of:
- (i) waste incineration or disposal operations carried out by the Insured Ship (other than any such operations carried out as an incidental part of other commercial activities), not being specialist operations;
 - (ii) the operation by the Insured of submarines, diving bells or remotely operated vehicles;
 - (iii) the activities of professional or commercial divers where the Insured is responsible for such activities other than:
 - (A) activities arising out of salvage operations being conducted by an Insured Ship where the divers form part of the crew of that Insured Ship (or of diving bells or other similar equipment or craft operating from the Insured Ship) and where the Insured, having obtained a specific extension of cover under section 25, is responsible for the activities of such divers, or
 - (B) incidental diving operations carried out in relation to the inspection, repair or maintenance of the Insured Ship or in relation to damage caused by the Insured Ship; or
 - (C) recreational diving activities;
- (d) SALVAGE TUGS: liabilities, costs and expenses incurred in respect of an Insured Ship being a salvage tug or other Ship used or intended to be used for salvage operations, when the claim arises as a result of any salvage service or attempted salvage service, other than for the purpose of saving or attempting to save life at sea, unless cover has been specifically extended for such operations under section 25;
- (e) ACCOMMODATION VESSELS: liabilities, costs and expenses incurred by an Insured in respect of any of the following:
- (i) personnel (other than marine crew) on board the Insured Ship (being an accommodation vessel) employed otherwise than by the Insured where either:
 - (A) such vessel is moored or anchored within 500 meters of an oil or gas production or exploration facility; or
 - (B) There has not been a contractual allocation of risks as between the Insured and the employer of the personal which has been approved by the Insurer;
 - (ii) hotel and restaurant guests and other visitors and catering crew of the Insured Vessel when the Insured Vessel is moored (otherwise than on a temporary basis) and is open to the public as hotel, restaurant, bar or other place of entertainment; and
- (f) HEAVY LIFT SHIPS: loss of or damage to or wreck removal of cargo carried on a semi- submersible heavy lift Ship or any other Ship designed exclusively for the carriage of heavy lift cargo, save to the extent that such cargo is being carried under the terms of a contract on Heavycon terms or any other terms approved in writing by the Insurer;

PROVIDED ALWAYS THAT in this section 56 special cover may be agreed in writing between the Insured and the Insurer in accordance with these Terms and Conditions.

57. Classification and Statutory Requirements

57.1 The Insured warrants that:

- (a) the Insured Ship will be and will remain throughout the period of insurance classed with a classification society approved in writing by the Insurer; and
- (b) any incident or condition in respect of which that classification society might make recommendations as to repairs or other action to be taken by the Insured will be promptly reported to that classification society; and
- (c) the Insured will comply with all the rules, recommendations and requirements of the classification society relating to the Insured Ship within the time or times specified by that society; and
- (d) the Insured authorises the Insurer to inspect any documents and obtain any information relating to the maintenance of class of the Insured Ship in the possession of any classification society or societies with which the Ship is, or at any time has been, classed and will, where necessary, authorise such classification society or societies to disclose and make available such documents and information to the Insurer upon its request for whatsoever purposes the Insurer may consider necessary; and
- (e) the Insured will comply or procure compliance with all statutory requirements of the state of the Insured Ship's flag including without limitation those relating to the construction, adaptation, condition, fitment, equipment and manning of the Insured Ship and will at all times maintain the validity of such statutory certificates as are issued by or on behalf of the state of the Insured Ship's flag in relation to such requirements and in relation to the International Safety Management (ISM) Code and the International Ship and Port Facility Security (ISPS) Code or any equivalent mandatory flag state regime; and
- (f) the Insured will give the Insurer prior notice in writing of any proposed change in the classification society of the Insured Ship and/or of any change of flag of the Insured Ship as may be intended during the currency of the cover provided hereunder. In the event that:

- (i) the Insured shall have failed to give the required notice to the Insurer of such change as aforesaid; or
 - (ii) the Insurer shall have notified the Insured that it does not approve of the classification society and/or flag to which the Insured Ship has been changed;
- cover hereunder shall be null, void and of no effect as of the date of such change, save to the extent that the Insurer, in its sole discretion, may otherwise determine.

57.2 Unless otherwise expressly agreed in writing by the Insurer, in the event that an Insured is, or comes to be, in breach of any of the warranties referred to in this section 57, cover automatically ceases with immediate effect without notice. Without prejudice to the provisions of section 66.4, an Insured shall not be entitled to any recovery from the Insurer for any claim of whatsoever nature and howsoever arising during a period in which the Insured is or was in such breach of warranty.

58. Obligations of the Insured in Respect of Surveys

58.1 The Insurer may at any time in its absolute discretion appoint a surveyor or such other person as it may think fit to inspect an Insured Ship. The Insured shall pay upon demand the reasonable costs of such inspection. The Insured shall afford such facilities as may be required for such inspection and shall comply with such recommendations as the Insurer may make following such inspection.

58.2 Notwithstanding anything contained in these Terms and Conditions to the contrary, and unless and to the extent that the Insurer shall otherwise agree, the failure by an Insured to present a Ship for survey by such time and date as shall have been stipulated by the Insurer shall have the effect of causing cover to cease automatically as from such time and date without further notice.

58.3 Unless and to the extent that the Insurer in its absolute discretion otherwise decides, an Insured who commits any breach of its obligations referred to in section 58.1 above shall not be entitled, in relation to any casualty, event or matter occurring during the period of the breach, to any recovery from the Insurer in respect of any claim arising out of such casualty, event or matter.

58.4 Moreover, in the event that a Ship shall, in the sole opinion of the Insurer, have failed to pass survey, cover shall cease automatically with immediate effect without further notice. Cover may be reinstated subject to any special terms and conditions as the Insurer may in its absolute discretion wish to impose. In the absence of such reinstatement, unless and to the extent that the Insurer may in its absolute discretion otherwise decide, an Insured shall not be entitled to any recovery from the Insurer for any claim of whatsoever nature and howsoever arising during the period in which such automatic cesser shall have taken effect.

58.5 The Insurer may at any time in its absolute discretion:

- (a) appoint representatives to visit the Insured's offices or those of any party or parties having operational control of an Insured Ship and/or attend on board such Ship at such time specified by the Insurer to audit the Insured's management systems, including, but not limited to, interviewing all relevant personnel and reviewing all relevant documentation. The Insured shall be under a duty to ensure full cooperation with such representatives, making all requested personnel, information and documentation available and, unless otherwise agreed in writing by the Insurer, shall pay for the reasonable costs of such audits; and
- (b) make recommendations as to the rectification of any deficiencies as may have been identified during the course of such a review either forthwith or within such time as may be specified by the Insurer. The Insured shall inform the Insurer immediately on completion of the implementation of any recommendations which the Insurer shall have made and provide them with such evidence as the Insurer deems fit as to the rectification and any deficiencies it shall have identified; PROVIDED ALWAYS THAT at the Insurer shall have the right to carry out further audits at whatever time and in whatever circumstances it deems appropriate to verify the same.

58.6 In the event of any non-compliance with any of the provisions of this section 58, the Insurer shall be empowered in its absolute discretion to:

- (a) terminate the insurance of any or all Insured Ships from a time and date specified by notice in writing to the Insured; and/or
- (b) determine that there shall be no right of recovery from the Insurer in respect of any liability, cost or expense during a period commencing from the time and date at which the Insured ceases to be in compliance, or such other date as is specified in writing, until the Insurer is satisfied that compliance has been achieved; and/or
- (c) exclude cover for claims arising out of or contributed to by such non-compliance; and/or
- (d) reduce any recovery from the Insurer to the extent that a claim has been contributed to by such non-compliance; and/or
- (e) vary the terms and conditions of this Insurance including, but not limited to, the terms of any or all Insured Ship's premium rating;

PROVIDED ALWAYS THAT nothing in this section 58, or any action taken by the Insurer hereunder shall relieve the Insured of its obligations with regard to those requirements in regard to classification and statutory regulation of the

Insured Ship as set out in section 57, or in regard to the maintenance and/or condition of the Insured Ship generally.

- 58.7 Without prejudice to the generality of section 58, nothing said, seen or done by the surveyor appointed by the Insurer or advice given prior to, during, or after survey and/or inspection shall be taken as in any way derogating from the Insured's responsibility for the safety and seaworthiness of the Ship and its mandatory compliance with any classification, statutory, flag state or port state requirement or any other issues relating to the safety of the Ship, its crew, cargo, and any other person, places or entities which may be affected by the operation of the Ship.
- 58.8 By applying for cover or upon the cover or the continuation of the cover of a Ship under these Terms and Conditions, the Insured or any person who has made an application to become an Insured as the case may be:
- (a) consents to and authorises the disclosure by the Insurer, in the absolute discretion of the Insurer, to any party of any survey or inspection of such Ship undertaken on behalf of the Insurer either pursuant to an application for cover or whilst insured by the Insurer; and
 - (b) waives any rights or claims against the Insurer of whatsoever nature arising in respect of or relating to the contents of or opinions expressed in any survey or inspection so disclosed.

59. Insured's Other Insurances

- 59.1 OBLIGATIONS OF THE INSURED IN RESPECT OF EXCLUDED RISKS: Where the liabilities, costs and expenses of an Insured are discharged by the Insurer pursuant to a demand made under:
- (a) a guarantee or other undertaking given by the Insurer to the Federal Maritime Commission under Section 2 of US Public Law 89-777; or
 - (b) a certificate issued by the Insurer in compliance with Article VII of the International Conventions on Civil Liability for Oil Pollution Damage 1969 or 1992 or any amendments thereof; or
 - (c) a certificate issued by the Insurer in compliance with Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001;
 - (d) a certificate issued by the Insurer in compliance with Article 12 of the Nairobi International Convention on the Removal of Wrecks 2007;
 - (e) a certificate issued by the Insurer in compliance with Regulation 2.5.2, Standard A2.5.2 and Regulation 4.2, Standard A4.2.1(b) of the MLC 2006 or domestic legislation by a state party implementing MLC 2006, notwithstanding the exclusions in section 52 and/or section 53, the Insured shall indemnify the Insurer to the extent that any payment under such guarantee, undertaking or certificate in discharge of the said liabilities, costs and expenses is or would have been recoverable in whole or in part under a standard P&I war risk policy had the Insured complied with the terms and conditions thereof; PROVIDED ALWAYS THAT:
 - (f) a standard P&I war risk policy shall mean an insurance against such risks and for such amounts as the Insurer in its discretion shall decide was reasonable for the Insurer to have obtained; and
 - (g) the Insured agrees that:
 - (i) any payment by the Insurer under any such guarantee, undertaking or certificate in discharge of the said liabilities, costs and expenses shall, to the extent of any amount recovered under any other policy of insurance, be by way of loan; and
 - (ii) there shall be assigned to the Insurer to the extent and on the terms that the Insurer determines in its discretion to be practicable all the rights of the Insured under any other insurance and against any third party.
- 59.2 DOUBLE INSURANCE: The Insurer shall not be liable for any liabilities, costs or expenses recoverable under any other insurance or which would have been so recoverable:
- (a) apart from any terms in such other insurance excluding or limiting liability on the grounds of double insurance; and
 - (b) if the Ship had not been insured by the Insurer with cover against the risks set out in these Terms and Conditions.

60. Circulars

- 60.1 The Insurer may from time to time issue a Circular in respect of any matter as it sees fit.
- 60.2 The Insurer may from time to time make a recommendation to any Insured or to all Insureds in connection with the operation of any or all Insured Ships. Notice of such a recommendation shall be given by Circular either at the commencement of or during the period of insurance and shall take effect as set out in section 72.3 unless the Circular specifies some later date.
- 60.3 An Insured shall use his best endeavours to comply with such a recommendation and the Insurer may, in its absolute discretion, reject or reduce any claim made by the Insured to the extent to which it would not have arisen if the Insured had complied with the recommendation and the burden of proving in each case that the liability, cost or expense (or portion thereof) could not have been avoided by such a compliance shall be on the Insured⁸.

Part VII: Claims

61. Obligations of the Insured in Respect of Claims

- 61.1 NOTICE: Every Insured shall be bound to give prompt notice in writing to the Insurer of every incident which could reasonably be expected to give rise to a claim under these Terms and Conditions and shall furnish the Insurer as soon as reasonably possible with all documents or information relevant thereto.
- 61.2 MITIGATION OF LOSS: Upon the occurrence of any incident which may give rise to a claim under these Terms and Conditions, the Insured shall take such steps as at the time shall appear proper for the purpose of averting or minimising any loss, damage, expense or liability in respect of which the Insured may be covered under these Terms and Conditions. An Insured shall neither settle nor make any admission in respect of liabilities, costs or expenses for which it is insured without the prior written consent of the Insurer.
- 61.3 INFORMATION: An Insured must at all times promptly notify the Insurer of any information, documents or reports in his or his agents' possession or knowledge relevant to any incident referred to under section 61.1. Further he shall, whenever so requested by the Insurer, give the Insurer or its representatives free access to such information, documents or reports with liberty to inspect and copy. Such free access shall include the right to conduct a survey, or to interview any officer, servant or agent of the Insured who may in the opinion of the Insurer be in possession of information relevant to the said incident. The provision of such notification and/or free access shall not constitute a waiver of confidentiality or privilege as against third parties.
- 61.4 TIME LIMIT FOR NOTICE: Every claim against the Insured in respect of an incident referred to in section 61.1, shall be notified to the Insurer as soon as possible, but in no case later than twelve months after the Insured has received notice that the claim is being, or may be, made against him in respect of such incident.
- 61.5 TIME LIMIT FOR REIMBURSEMENT: All requests by an Insured for reimbursement of any losses, costs or expenses recoverable from the Insurer under these Terms and Conditions and the Certificate of Insurance must be made to the Insurer within twelve months of the incurring of the loss or the payment of the cost or expense by the Insured.
- 61.6 CONDITION PRECEDENT TO RECOVERY: Compliance with the provisions of sections 61.1, 61.3., 61.4 and 61.5 shall be a condition precedent to an Insured's right to recover from the funds of the Insurer.

62. Powers of the Insurer Relating to the Handling and Settlement of Claims

- 62.1 The Insurer shall have the right, if it so decides, to control or direct the conduct of any claim or legal or other proceedings relating to any matter which may result in loss, damage, expense or liability in respect of which the Insured is or may be insured under these Terms and Conditions and the Certificate of Insurance and to require the Insured to settle, compromise or otherwise dispose of such claim or proceedings in such manner and upon such terms as the Insurer sees fit.
- 62.2 If the Insured does not settle, compromise, or dispose of a claim or of proceedings after being required to do so by the Insurer in accordance with section 62.1, any eventual recovery by the Insured from the Insurer in respect of such claim or proceedings shall be limited to the amount he would have recovered if he had acted as required by the Insurer.
- 62.3 Where the Insurer makes a payment to or discharges a liability of an Insured Party and the Insured Party has rights against a third party, whether by way of a claim for contribution, indemnity or otherwise, arising out of a claim or matter in respect of which the Insurer has made such payment or discharged such liability, the Insurer shall be subrogated to the rights of the Insured Party in respect of the claim or matter to the extent of that payment or discharge, including the right to any interest accruing and the right to recover any costs incurred in relation to the exercise of such rights. Further, the Insured Party agrees to provide or execute any documents required to allow the Insurer to enforce such rights. All such recoveries, including interest and recovered costs, are to be paid to the Insurer, provided that if any such recovery exceeds the amounts paid or discharged by the Insurer, the balance shall be paid to the Insured.
- 62.4 ABANDONMENT: In the event of an Insured Ship becoming an actual or constructive total loss, the Insurer shall, subject to the hull underwriters' rights in the matter, be entitled to request the Insured concerned to abandon the Ship to the Insurer or to such other person (including the world at large) as the Insurer shall nominate. If the Insured concerned does not abandon the Ship having received such a request from the Insurer, the Insurer shall not be responsible for any claim that could have been avoided had the Insured abandoned the Ship as aforesaid, and the burden of proving that the claim could not have been avoided by such abandonment shall be upon the Insured.

62.5 APPOINTMENT: Without prejudice to any other provision of these Terms and Conditions and without waiving any of the Insurer's rights hereunder, the Insurer may at any and all times appoint on behalf of the Insured, upon such terms as the Insurer may think fit, lawyers, surveyors or other persons with a view to advising them upon, investigating or dealing with any matter which may result in loss, damage, expense or liability in respect of which the Insured is or may be insured under these Terms and Conditions including taking or defending legal or other proceedings in connection therewith. The Insurer may also at any time discontinue such employment if it thinks fit.

- (b) All lawyers, surveyors or other persons appointed by the Insurer on behalf of the Insured, or appointed by the Insured with the prior consent of the Insurer, shall at all times be and be deemed to be appointed and employed on the terms:
 - (i) that they have been instructed by the Insured at all times (both while so acting and after having retired from the matter) to give advice and to report to the Insurer in connection with the matter without prior reference to the Insured and to produce to the Insurer without prior reference to the Insured any documents or information in their possession or power relating to such matter, all as if such person had been appointed to act and had at all times been acting on behalf of the Insurer; and
 - (ii) that any advice they may give to the Insured is that of an independent contractor employed by the Insured and shall in no way bind the Insurer.
- (c) Without prejudice to the generality of the above provisions or section 68, nothing said, seen or done by the surveyor appointed by the Insurer or advice given prior to, during, or after survey and/or inspection shall be taken as in any way derogating from the Insured's responsibility for the safety and seaworthiness of the Ship and its mandatory compliance with any classification, statutory, flag state or port state requirement or any other issues relating to the safety of the Ship, its crew, cargo, and any other person, places or entities which may be affected by the operation of the Ship.

62.6 BAIL:

- (a) The Insurer is under no obligation to provide bail or other security on behalf of any Insured, but where the same is provided it shall be on such terms as the Insurer may consider appropriate and shall not constitute any admission of liability by the Insurer for the claim in respect of which the bail or other security is given. In no case shall cash deposits be made by the Insurer;
- (b) It shall be a condition precedent for the provision of bail or other security on behalf of any Insured, that the Insured shall indemnify the Insurer for any costs associated with the provision of such bail or other security and for any liability the Insurer may incur to a third party under or in connection with such bail or other security; PROVIDED ALWAYS THAT in section 62.6(b) the indemnity shall not extend to those amounts that the Insured would have been entitled to recover from the Insurer under these Terms and Conditions had he paid them directly.
- (c) The Insured agrees that by authorising the provision of bail or other security, the Insurer is given full and unconditional power to conduct and control all related proceedings (including the power to settle, compromise or dispose of such proceedings) and the Insured shall provide or execute any documents required to allow the Insured to effect such conduct or control.

63. Powers of the Insurer Relating to the Settlement of Claims

63.1 CLAIMS: Without prejudice to any other provisions of these Terms and Conditions, the Insurer shall have power in its discretion to reject a claim or reduce the sum payable by the Insurer in respect thereof if the Insured shall have failed to comply with any of the provisions of sections 61 and 62.

63.2 INTEREST AND CONSEQUENTIAL LOSS: In no case shall an Insured be entitled to be paid interest on his claim against the Insurer. An Insured shall have no rights to recover any losses suffered as a consequence of delay or failure on the part of the Insurer to reimburse an Insured.

Part VIII: Cesser of Insurance

64. Cesser of All Insurances

- 64.1 An Insured shall immediately cease to be insured by the Insurer in respect of any and all Insured Ship or Ships (or in a Fleet of which any one or all of his Ships forms part) upon the happening of any of the following events:
- (a) where the Insured, being a company or corporation:
 - (i) has a receiver, manager, administrator, administrative receiver, liquidator (provisional or otherwise) supervisor or nominee proposed or appointed; or
 - (ii) passes a resolution for winding up (otherwise than for the purpose of a solvent amalgamation or reconstruction); or
 - (iii) proposes, enters into or is subject to any composition or arrangement with his creditor; or
 - (iv) has an administration order made in relation to him; or
 - (v) becomes the subject of a voluntary arrangement; or
 - (vi) makes or is the subject of an application to a court (or its equivalent) of competent jurisdiction for protection from his creditors; or
 - (vii) is the subject of a court order to the effect stipulated in (i) to (vi) above; or
 - (viii) files a petition, passes any resolution or takes any other step to procure the commencement of any proceedings or process of a nature described in (i) to (vii) above or there commences any similar proceeding against him or his assets under applicable bankruptcy or insolvency laws in any jurisdiction; or
 - (ix) ceases to trade, is struck off or dissolved;
 - (b) where the Insured, being an individual or partnership:
 - (i) applies for an interim order; or
 - (ii) proposes or enters into an individual voluntary arrangement or is made bankrupt; or
 - (iii) proposes, enters into or is subject to any composition or arrangement with his creditors; or
 - (iv) has a receiver or manager appointed over any of his assets, business or income; or
 - (v) proposes, makes or is the subject of an application to or order by a court for his winding up or administration; or
 - (vi) makes or is the subject of an application to a court (or its equivalent) of competent jurisdiction for protection from his creditors; or
 - (vii) files a petition, passes any resolution or takes any other step to procure the commencement of any proceedings or process of a nature described in (i) to (vi) above or there commences any similar proceeding against him or his assets under applicable bankruptcy or insolvency laws in any jurisdiction; or
 - (viii) ceases to trade and where the Insured is a partnership, is dissolved; or
 - (ix) dies or becomes incapable by reason of mental disorder of managing and administering his property and affairs (and if a partnership, all of the partners die or become mentally incapable); and
 - (c) if the Insured at any time fails to pay, either in whole or in part, any amount due from the Insured to the Insurer (including any amount for which the Insured may be jointly and severally liable to the Insurer).

65. Cesser of Ship Cover

- 65.1 An Insured shall immediately cease to be insured by the Insurer in respect of an Insured Ship upon the happening of any of the following events in relation to such Ship:
- (a) TRANSFER OF INTEREST:
 - (i) if the Insured shall cease to have a legal, beneficial or other interest in the Ship, or if entire control and possession is transferred whether by demise charter or otherwise;
 - (ii) if the managers or operators of the Ship shall be changed; PROVIDED ALWAYS THAT the Insurer at their sole discretion may waive this section 65.1(a)(ii);
 - (b) TOTAL LOSS:
 - (i) if the Ship becomes a total loss or is accepted by the hull underwriters as being a constructive, compromised or arranged total loss or upon a decision by the Insurer that the Ship is deemed to be a constructive, compromised or arranged total loss, except as regards liabilities covered by these Terms and Conditions and flowing from the casualty which gave rise to such total loss or deemed total loss of the Ship;

- (ii) if the Ship shall be missing for 10 days from the date she was last heard of or from her being posted at Lloyd's as missing, whichever shall be the earlier;
 - (c) MORTGAGE: if the Ship be mortgaged or otherwise hypothecated, unless an undertaking or guarantee approved in writing by the Insurer is given to pay all Contributions due or to become due in respect of the Ship; PROVIDED ALWAYS THAT the Insurer may waive this section 65.1(c);
 - (d) CLASSIFICATION: if there is a breach of any of the warranties set out in section 57.1; and
 - (e) SANCTIONS, PROHIBITION AND ADVERSE ACTION: if the Insured Ship is employed by the Insured in a carriage, trade or on a voyage which, or the provision of insurance for which, will thereby in any way howsoever expose the Insurer to the risk of being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by any state or international organisation.
- 65.2 An Insured shall cease to be insured by the Insurer in respect of an Insured Ship in the event that the Insurer decides to terminate the Contract of Insurance due to non-compliance with any of the provisions of section 58 from the time and date specified in writing in the notice to the Insured (the "Termination Date") given in accordance with section 58.6(a).
- 65.3 The Insurer may at any time by giving 30 days' written notice to the Insured terminate the Insurance of any Insured Ship.

66. Effect of Cesser of Insurance

- 66.1 FOR FAILURE TO PAY: If the cesser of insurance shall have occurred by virtue of section 64.1(c), the time of the occurrence of which being hereinafter referred to as "the date of termination", the following consequences shall ensue:
- (a) the Insured shall remain liable for all Premiums and any other amount due from the Insured to the Insurer;
 - (b) the Insurer shall with effect from the date of termination cease to be liable for any claims of whatsoever nature and howsoever arising under the Insurance in respect of any and all vessels in relation to which the Insurance has been terminated, irrespective of whether:
 - (i) such claims have arisen by reason of any event which has occurred at any time prior to the date of termination, including during previous policy periods;
 - (ii) such claims arise by reason of any event occurring after the date of termination;
 - (iii) the Insurer may have admitted liability for or appointed attorneys, surveyors or any other person to deal with such claims; or
 - (iv) the Insurer at the date of or prior to the date of termination knew that such claims might or would arise; and
 - (v) as from the date of termination any liability of the Insurer for such claims shall cease retroactively and the Insurer shall be under no liability to the Insured for any such claims or on any account whatsoever.
- 66.2 FOR NON-COMPLIANCE WITH ANY OF THE OBLIGATIONS IN SECTION 58: If the cesser of insurance shall have occurred in accordance with section 65.2, the following consequences shall ensue:
- (a) the Insured shall remain liable for all Premiums and any other amount due from the Insured to the Insurer; and
 - (b) the Insurer shall remain liable for all claims under the Contract of Insurance arising by reason of any incident which occurred before the Termination Date but shall be under no liability whatsoever by reason of any incident which occurred after the Termination Date.
- 66.3 UPON 30 DAYS' NOTICE: If the cesser of insurance shall have occurred in accordance with section 65.3, the following consequences shall ensue:
- (a) the Insured shall remain liable for all Premiums up to the date of cessation on a pro rata basis and any other amount due from the Insured to the Insurer; and
 - (b) the Insurer shall remain liable for all claims under the Contract of Insurance arising by reason of any incident which occurred before the date of cessation but shall be under no liability whatsoever by reason of any incident which occurred after the date of cessation.
- 66.4 FOR ANY OTHER REASON: Except as set out in sections 66.1 to 66.3, if the cesser of insurance shall have occurred by virtue of any other reason the following consequences shall ensue:
- (a) the Insured shall remain liable for all Premiums and any other amount due from the Insured to the Insurer; and
 - (b) the Insurer shall remain liable for all claims under the Contract of Insurance arising by reason of any incident which occurred before the cesser but shall be under no liability whatsoever by reason of any incident which occurred after the cesser.

67. Amounts Due on Cesser of Insurance

- 67.1 Subject to the provisions of section 66.3, an Insured whose Insured Ship or Ships cease to be insured by the Insurer for any reason, including the events specified under sections 65.1(a) to (e) shall be and remain liable to pay to the Insurer all Premium in respect of such Ship or Ships due under the Contract(s) of Insurance as if the insurance of such Ship or Ships had not ceased.
- 67.2 For the purpose of determining whether any (and if so, what) sum is due for the purposes of section 67.1 or otherwise under these Terms and Conditions no account shall be taken of any amount due or alleged to be due by the Insurer to the Insured for any reason whatsoever, and no set-off of any kind (including any set-off which might otherwise have arisen by reason of the bankruptcy or winding up of the Insured) shall be allowed against such sum.
- 67.3 An Insured whose Insured Ship or Ships cease to be insured by the Insurer for any reason shall immediately become liable to pay to the Insurer a sum equivalent to any deductible under the Insured's terms of cover for any claim for which bail or other security has been provided by the Insurer under section 62.6.

Part IX: General Terms and Conditions

68. Forbearance

- 68.1 No act, omission, course of dealing, forbearance, delay, indulgence or conduct (including negligence) of the Insurer whatsoever and whensoever occurring, whether by or through its employees, officers, servants or agents or otherwise, shall constitute any admission or promise that the Insurer will forego any of its rights under these Terms and Conditions or relevant statutory enactments.

69. Assignment

- 69.1 No Insurance given by the Insurer and no interest under these Terms and Conditions or under any contract between the Insurer and any Insured may be assigned without the written consent of the Insurer who shall have the right in his discretion to give or refuse such consent without stating any reason or to give such consent upon any such terms or conditions as he may think fit.

70. Set-Off

- 70.1 Without prejudice to any other part of these Terms and Conditions, the Insurer shall be entitled to set off any amount due from any Insured or Insured Party against any amount due to such Insured from the Insurer.
- 70.2 The Insurer shall be entitled before making any payment to an assignee to deduct or retain such amount as the Insurer may then estimate to be sufficient to discharge any liabilities or potential liabilities of the Insured to the Insurer.

71. Dispute Resolution

- 71.1 Any difference or dispute which arises between an Insured Party and the Insurer out of or in connection with these Terms and Conditions or any contract between them or as to the rights or obligations of the Insurer or the Insured Party thereunder or in connection therewith, shall be referred to the arbitration in London of two Arbitrators (one to be appointed by the Insurer and the other by such Insured Party) and an Umpire to be appointed by the Arbitrators, and the submission to arbitration and all the proceedings therein shall be subject to the provisions of the English Arbitration Act, 1996 and any statutory modification or re-enactment thereof.
- 71.2 Notwithstanding section 71.1, the Insurer may, in its sole discretion, recover any monies from time to time payable by an Insured Party either:
- (a) by court proceedings. Where an Insured Party is domiciled within a State which is an original and/or acceding party to the 1968 Brussels Convention and/or 1988 Lugano Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters, the English courts will have jurisdiction in respect of court proceedings commenced for the recovery of any such monies payable by that Insured Party; or
 - (b) by arbitration in London before two Arbitrators (one to be appointed by the Insurer and the other by the Insured Party) and an Umpire to be appointed by the Arbitrators, with the submission to arbitration and all the proceedings therein being subject to the English Arbitration Act 1996 and any statutory modification or re-enactment thereof.
- 71.3 No Insured Party shall be entitled to maintain any demand, claim, counterclaim or set-off in any legal proceedings whatsoever whether commenced by or against the Insurer or any action, suit or other legal proceedings whatsoever against the Insurer otherwise than in accordance with the procedures laid down in section 71.1 and may only commence proceedings other than the arbitration so as to enforce an award under such arbitration and then only for such sum if any as the award may direct to be paid by the Insurer.
- 71.4 The sole obligation of the Insurer to such Insured Party under these Terms and Conditions and any Certificate of Insurance in respect of such difference or dispute shall be to pay such sum as may be directed by such an award or any appeal therefrom; PROVIDED ALWAYS THAT notwithstanding sections 71.1, 71.2 and 71.3 the Insurer shall be entitled at any time to take whatever action is deemed necessary by the Insurer to obtain security for any claims the Insurer may have against the Insured Party, including the right of the Insurer to take action and/or commence proceedings in any jurisdiction to enforce its right of lien on ships.

72. Notices

- 72.1 ON THE INSURER: A notice or other document required under these Terms and Conditions to be served on the Insurer may be served in writing by sending it through the post in a prepaid letter or by sending it by courier, email (to FPclaims@nepia.com) or other electronic communication addressed to the Insurer at The Quayside, Newcastle upon Tyne, NE1 3DU or such other address as may be specified by the Insurer to the Insured.

- 72.2 ON AN INSURED PARTY: A notice or other document required under these Terms and Conditions to be served on an Insured Party may be served in writing by sending it through the post in a pre-paid letter or by sending it by courier, facsimile, email or other electronic communication addressed to the Insured at his address appearing in the Insured's records or to his broker or agent. In the case of Joint Insureds notice shall be served on any such Insured or on his broker or agent and such service shall be sufficient service upon all Joint Insureds.
- 72.3 DATE OF SERVICE: Any notice or other document, if served by post or courier, shall be deemed to have been served on the day following the day on which the letter containing the same was put in the post or handed to the courier and in proving such service it shall be sufficient to prove that the letter containing the notice or other document was properly addressed and put into the post in a pre-paid letter or handed to the courier. Any such notice or other document served by email or other electronic communication, shall be deemed to have been served on the day on which it was despatched and in proving such service it shall be sufficient to prove that such facsimile, email or other electronic communication was duly despatched.
- 72.4 SUCCESSORS:
- (a) An Insured, Insured Party or other person by whom or on whose behalf an application is made for insurance by the Insurer shall be deemed to have agreed not only on its own behalf but also on behalf of its successors and each of them will in every respect be subject to and bound by all the provisions of the Insured's contract of insurance with the Insurer.
 - (b) The successors of anyone who is or was at any time an Insured Party shall be bound by a notice or other document served as aforesaid if sent to the last such address of the Insured or of his broker or agent notwithstanding that the Insurer may have notice of the Insured Party's death, disability, lunacy, bankruptcy or liquidation.
- 73. No Corporate Membership Rights**
- 73.1 The Insured and/or the Insured Parties named in the Certificate of Insurance shall not, by virtue of this Insurance, be entitled to corporate membership rights in The North of England Protecting and Indemnity Association Limited and/or North of England P&I Designated Activity Company.
- 74. Contracts (Rights of Third Parties) Act 1999**
- 74.1 It is not intended that any benefit or rights should be acquired through the operation of the Contracts (Rights of Third Parties) Act 1999 or other similar legislation.
- 75. Governing Law**
- 75.1 These Terms and Conditions and any contract of insurance between the Insurer and an Insured shall be governed by and construed in accordance with English law, subject to the right of the Insurer under section 71.2 to enforce its right of lien in any jurisdiction in accordance with the local law of such jurisdiction.

Part X: Interpretation and Definitions

76. Interpretation and Definitions

76.1 In these Terms and Conditions:

- (a) "Writing" shall include any method of reproducing words in a visible or non-transitory form, including email;
- (b) words importing the singular number only shall include the plural number and vice versa;
- (c) words importing the masculine gender only shall include the feminine gender; and
- (d) words importing persons shall include individuals, partnerships, corporations and associations.

76.2 The headings hereto shall not affect the construction or interpretation of these Terms and Conditions.

76.3 In these Terms and Conditions the following words shall have the following meanings:

Certificate of Insurance	A document and any endorsement or variation thereto issued by the Insurer evidencing the Contract of Insurance.
Circular	A notice in writing to an Insured pursuant to section 60.
Contract of Insurance	The contract of insurance between the Insured and the Insurer which includes the provisions of the Certificate of Insurance, any additional terms and conditions scheduled thereto, any endorsement or variation thereto issued by the Insurer to the Insured and these Terms and Conditions as set out herein in effect as at the date of the Certificate of Insurance was issued, save to the extent that these Terms and Conditions are amended in the Certificate of Insurance.
Container	Any device or receptacle in or on which cargo is carried including trailer, flat, pallet, tank or similar receptacle which is owned by or leased to an Insured, and which is either designed to be, or expected to be, carried in a ship.
Day	The day of any occurrence means the day as computed according to the Greenwich Mean Time.
EEA	European Economic Area.
Fleet	Any two or more vessels insured hereunder having common nominal, or beneficial, ownership, management or control.
Full Tonnage	The gross tonnage (which, for the purposes of these Terms and Conditions shall include the gross register tonnage of any Ship which has not been remeasured pursuant to the International Convention on Tonnage Measurement of Ships 1969) of a Ship as certified or stated in the Certificate of Registry or other official document relating to the registration of such Ship or, if more than one tonnage is shown, the higher. For the purposes of these Terms and Conditions the gross tonnage of a Ship shall remain unchanged for each period of insurance.
GMT	Greenwich Mean Time.
Hague Rules	The International Convention for the Unification of Certain Rules Relating to Bills of Lading signed at Brussels on 25 August 1924.
The Hague-Visby Rules	The Hague Rules as amended by the Protocol signed at Brussels on 23 February 1968.
Hamburg Rules	The United Nations Convention on the Carriage of Goods by Sea 1978 done at Hamburg on 31 March 1978.
Hull Policies	Policies effected on the hull and machinery of a ship including any excess liability policy.
Insurance	Any insurance or reinsurance against the risks specified in these Terms and Conditions.
Insured	The person insured under the Contract of Insurance and who is stated as being the Insured in the Certificate of Insurance. Where the context permits, Insured shall include a former Insured.
Insured Parties	The Insured, Joint Insured, co-assured or affiliated or associated person in respect of the insurance provided under these Terms and Conditions and each being an "Insured Party".

Insured Ship	A Ship which has been insured by the Insurer under these Terms and Conditions and the name of which appears in the Certificate of Insurance.
Insured Tonnage	The tonnage for which a Ship is insured and upon which premium is calculated.
Insurer	The North of England Protecting and Indemnity Association Limited in respect of Insureds whose place of management is outside of the EEA and North of England P&I Designated Activity Company in respect of Insureds whose place of management is within the EEA and as set out in the Certificate of Insurance.
Joint Insured	Has the meaning set out in section 38.
Knock for Knock	A provision or provisions stipulating that: <ul style="list-style-type: none"> (a) each party to a contract shall be similarly responsible for loss of or damage to, or injury and/or death of, its own property or personnel and/or property or personnel of its contractors and/or of its and their sub-contractors and/or of other third parties, and that (b) such responsibility shall be without recourse to the other party and arise notwithstanding any fault or neglect of any party, and that (c) each party shall, in respect of those losses, damages or other liabilities for which it has assumed responsibility, correspondingly indemnify the other against any liability that party shall incur in relation thereto.
MLC 2006	The Maritime Labour Convention 2006 as Amended or any legislation giving effect to or equivalent to the Maritime Labour Convention 2006 as Amended.
Passenger	A person carried on board an Insured Ship pursuant to a passage contract.
Personal Effects	Personal property, documents, navigational or other technical instruments and tools brought on board, or being taken to or from the Insured Ship by a Seaman or Supernumerary but excluding cash, valuables, or any other article which in the opinion of the Insurer is not an essential requirement for a Seaman.
Premium	Any monies payable to the Insurer in respect of an Insured Ship in respect to this Insurance.
Seaman	A person (including the Master) engaged under articles of agreement or otherwise contractually obliged to serve on board an Insured Ship (except persons engaged only for nominal pay) including a substitute for such person and also including such persons while proceeding to or from such Ship and two or more being referred together as "Seamen".
Senior Insured	Has the meaning set out in section 38.
Ship	A ship, boat, hovercraft or other description of vessel or structure (including any ship, boat, hovercraft or other vessel or structure under construction, but excluding (a) a unit or vessel constructed or adapted for the purpose of carrying out drilling operations in connection with oil and gas exploration or production, (b) a fixed platform or fixed rig and (c) a wing-in-ground craft) used or intended to be used for any purposes whatsoever in navigation or otherwise on, under, over or in water, or any part of such ship, or any proportion of the tonnage thereof, or any share therein.
Supernumerary	A relative of a Seaman, or any other person whom an Insured has agreed to maintain or carry on board an Insured Ship (except a Passenger) and including persons engaged under articles of agreement for nominal pay.
Terms and Conditions	These fixed premium terms and conditions.
The United Kingdom	Great Britain and Northern Ireland.

- 76.4 For the purposes of these definitions, all claims (other than claims or parts of claims arising in respect of oil pollution) incurred by the Insurer under the insurance of any one Insured Ship arising from any one event including any claim in respect of liability for the removal or non-removal of any wreck shall be treated as if they were one claim.
- 76.5 Any reference to a claim in these Terms and Conditions shall be deemed to include the costs and expenses associated therewith.
- 76.6 The footnotes in these Terms and Conditions constitute a term of the Insurance.

