

**SIGCo 2018-19 Cyber Insurance Wording**

**1. Insuring Clause**

In consideration of the payment of the premium and subject to the terms, exclusions, limits and conditions hereinafter contained, Underwriters agree to indemnify the Assured for loss, damage, liability or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as a means of inflicting harm, of any computer, Computer System, computer software programme, malicious code, computer virus or process or any other electronic system hereinafter referred to as a Cyber Attack.

**2. Navigational Limits**

Worldwide.

**3. Sum Insured**

**3.1. In respect of each Vessel insured hereunder**

Other than as detailed in Clause 8.8.4, Underwriters hereon shall not be liable for more than the Sum Insured as stated in the Schedule in respect of each Occurrence, inclusive of Claims Expenses. In no event shall the liability for any one Occurrence under this policy exceed the total insured value under the Assured's Hull and Total Loss Interests (Marine or War Risks) policies notwithstanding that the Sum Insured hereunder may be greater than the total insured value under the Assured's Hull and Total Loss Interests (Marine or War Risks) policies.

Vessels deemed fully insured for the purposes of General Average, Salvage and Sue and Labour.

**3.2. In respect of each Fleet insured hereunder**

Underwriters' total liability hereunder in respect of all Vessels on the Schedule shall be subject to an aggregate limit of US \_\_\_\_\_ for the period insured hereunder. The Maximum Aggregate Limit for any one Vessel declared hereunder shall not exceed whichever the lowest of USD 50,000,000 or the Vessel's Sum Insured hereunder or the Vessel's highest total insured value under her Hull and Total Loss Interests (Marine or War Risks) policies.

**4. Deductible**

Each loss shall be adjusted separately and from the amount of each such adjusted loss a deductible of USD 100,000 each Vessel shall be applied. This Clause 4 shall not apply to a claim for total or constructive total loss of the Vessel or, in the event of such a claim, to any associated claim under Clause 12 (Sue and Labour) arising from the same accident, event or Occurrence.

**5. Exclusions**

**5.1. Exclusions to Insuring Agreement**

This insurance shall not cover:

- 5.1.1 costs of updating or upgrading the Assured's Vessel.
- 5.1.2 costs of repairing, recreating, gathering or assembling any electronic data or computer software, or the repair or replacement of any parts or components of any computer hardware.
- 5.1.3 other than Collision Liabilities, any form of third party liability or other legal liability, including but not limited to, any lawsuits, claims or demands by any third party or by any Employee, officer, director or partner of the Assured.
- 5.1.4 loss of use, delay or loss of markets, howsoever caused or arising.
- 5.1.5 increased cost as a result of threat or hoax, in the absence of physical damage due to a Cyber Attack.
- 5.1.6 removal or disposal of obstructions, wrecks or their cargoes under statutory powers or otherwise pursuant to law.
- 5.1.7 cargo or other property not owned or leased by the Assured.
- 5.1.8 the economic or market value of data.
- 5.1.9 the Assured's future profits, restitution, or disgorgement of profits; or the Assured's cost to comply with any order granting injunctive or non-monetary relief, including specific performance, or any agreement to provide such relief.
- 5.1.10 the Assured's return or offset of fees, charges, royalties, or commissions for goods or services already provided or contracted to be provided.
- 5.1.11 punitive or exemplary damages, or fines or penalties of any nature.
- 5.1.12 matters that may be deemed uninsurable under the law pursuant to which this Policy may be construed.

This insurance shall not cover any liability or other amounts or losses, arising out of or resulting, directly or indirectly, from:

- 5.1.13 criminal, dishonest, fraudulent or intentional acts committed by the Assured or on the Assured's behalf, however, if the criminal, dishonest, fraudulent or intentional act is committed by any Employee who is not a principal, partner, officer, director or trustee and without the knowledge or direction of any of the Assured's principals, partners, officers, directors, or trustees, then this exclusion will not apply to that act.
- 5.1.14 failure of:
  - a) telephone lines.
  - b) data transmission lines or wireless communications connection.
  - c) other telecommunications equipment, facilities or electronic infrastructure, including equipment, facilities or infrastructure that supports the operation of computer networks, including the internet, which are used to transmit or receive voice or data communications.
  - d) or malfunction, or inadequacy of any satellite; any electrical or mechanical failure and/or interruption, including but not limited to electrical disturbance, spike, brownout or blackout; or any outage to gas or water supply, or telephone, cable, telecommunications or other infrastructure, or any electrical disturbance caused by any form of detonation whether nuclear or non-nuclear.

5.1.15 wear and tear, gradual deterioration of any part of the Assured's Vessel or failure to maintain electronic data or computer software or Computer Systems on which such electronic data or computer software is processed or stored, whether owned by the Assured or others.

5.1.16 errors or omissions in the design or configuration or implementation of any part of the Assured's Vessel, or the Assured's Computer System.

In no case shall this insurance cover loss, damage, liability or expense arising out of or resulting, directly or indirectly, from the following:

**5.1.17 War Exclusion**

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

**5.1.18 Malicious Acts**

- a) the detonation of an explosive
- b) any weapon of war

and caused by any person acting maliciously or from a political motive.

5.1.19 chemical or biological release or exposure of any kind.

5.1.20 nuclear detonation, nuclear reaction, nuclear radiation or radioactive contamination, howsoever such nuclear detonation, nuclear reaction, nuclear radiation or radioactive contamination may have been caused.

**6. Definitions**

6.1. **Assured** means the entity named in the Schedule.

The interests of mortgagees where declared under the Assured's Hull Policy are automatically included hereunder.

6.2. **Claims Expenses** means:

6.2.1 fees charged by an attorney designated by Underwriters and consented to by the Assured, with such consent not to be unreasonably withheld.

6.2.2 all other fees, costs and expenses resulting from the forensic investigation, adjustment, defence and appeal of a claim, suit or proceeding arising in connection therewith, if incurred by the Underwriters, or by the Assured with the written consent of the Underwriters.

Claims Expenses does not include:

6.2.3 any salary, overhead or other charges by the Assured for any time spent in cooperating in the defence and investigation of any claim or circumstance notified under this insurance.

6.2.4 any fees, costs or expenses resulting from defending any criminal proceedings.

6.3. **Collision Liabilities** means liabilities to any other person or persons for physical loss or damage to any other vessel or property on any other vessel or fixed or floating objects following a collision, but only to the extent that such liabilities are not recoverable under the collision liability clause contained in the Protection and Indemnity insurance of the insured vessel.

In no case shall Collision Liabilities herein extend to any sum which the Assured shall pay for or in respect of:

6.3.1 removal or disposal of obstructions, wrecks, cargoes or any other thing whatsoever.

6.3.2 the cargo or other property on, or the engagements of, the insured Vessel.

6.3.3 loss of life, personal injury or illness.

6.3.4 pollution or contamination, or threat thereof, of any personal property or thing whatsoever (except other vessels with which the insured Vessel is in collision or property on such other vessels) or damage to the environment, or threat thereof.

6.4. **Computer System** means electronic, wireless, web or similar system (including all hardware and software) used to process data or information in an analogue, digital, electronic or wireless format including computer programs, electronic data, operating systems, and components thereof, including but not limited to, laptops, personal digital assistants, media storage and peripheral devices, media libraries, associated input and output devices, networking equipment, and electronic backup equipment. The Assured's Computer System means a Computer System over which the Assured has direct operational control and that is intended for the purpose of navigation, control or operation of the Assured's Vessel.

6.5. **Cyber Attack** means the use or operation, as a means for inflicting harm, of any computer, Computer System, computer software programme, malicious code, computer virus or process or any other electronic system by any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) and whether or not induced by the use of force or violence or threat thereof to commit such acts, and which directly or indirectly results in actual physical loss or damage to the Vessel or liability of the Vessel.

6.6. **Employee** means any individual in the Assured's service, including any part-time, seasonal, or temporary employee, who is compensated by salary, wages, fees or commissions and whom the Assured has the right to direct and control.

6.7. **Occurrence(s)** means any one loss and/or series of losses commencing during the Policy Period and arising out of and directly occasioned by one Cyber Attack.

6.8. **Vessel** means the Vessel identified in the Schedule (or by whatsoever name or names the said Vessel is or shall be called), which for purposes of this insurance shall consist of her hull and everything connected therewith including but not limited to launches, lifeboats, rafts, furniture, bunkers, stores, supplies, tackle, fittings, equipment, apparatus, machinery, boilers, refrigerating machinery, insulation, motor generators, other electrical machinery, navigational equipment and the Computer System.

In the event any Computer System, equipment or apparatus not owned by the Assured is installed for use on board the Vessel and the Assured has assumed responsibility thereof, it shall also be considered part of the Vessel and the aggregate value thereof shall be included in the Sum Insured.

Notwithstanding the foregoing, cargo containers, barges and lighters shall not be considered a part of the Vessel.

## **7. Conditions**

### **7.1 Duty of Disclosure**

Under the laws of England and Wales a policyholder has a duty to make a fair presentation of the risk, and to disclose all material circumstances, and should be aware of the consequences of not doing so. It is necessary to disclose all information which would influence the judgement of a prudent insurer in determining whether or not to accept a risk, and upon what terms. Failure to comply with this duty may give the insurer the right to void the policy from its inception, or to impose different terms, or to reduce the amount paid on any claim.

### **7.2 Change of Owning Company within the same beneficial Ownership**

Any changes in the Assured under the Hull and Machinery Marine/War policies within the same beneficial Ownership are deemed to be automatically incorporated herein without notice.

### **7.3 Arbitration**

The parties agree that prior to recourse to courts of law any dispute between them concerning the provisions of this insurance shall first be the subject of arbitration.

The following arbitration procedure shall be used in any dispute concerning this insurance and shall exist as a separate contract if there is a dispute over the validity or formation of this insurance.

Unless the parties agree upon a single arbitrator within thirty days of one receiving a written request from the other for arbitration, the claimant (the party requesting arbitration) shall appoint his arbitrator and give written notice thereof to the respondent. Within thirty days of receiving such notice the respondent shall appoint his arbitrator and give written notice thereof to the claimant, failing which the claimant may apply to the appointor hereinafter named to nominate an arbitrator on behalf of the respondent.

Before the commencement of arbitration proceedings the two arbitrators shall appoint a third arbitrator who shall act as chairman of the tribunal. Should they fail to appoint such a third arbitrator within thirty days of the appointment of the respondent's arbitrator then either of them or either of the parties may apply to the appointor for the appointment of the third arbitrator. The arbitrators appointed by the parties in dispute shall decide the verdict but if they cannot agree they shall seek the verdict of the chairman of the tribunal, which shall prevail.

Unless the parties otherwise agree the arbitration tribunal shall consist of persons with not less than ten years' experience of insurance or reinsurance.

The arbitration shall be conducted subject to and in accordance with the Arbitration Act 1996 and any statutory revision or modification thereof.

The appointor shall be the President of the London Maritime Arbitrators' Association:

L.M.A.A.

c/o the Baltic Exchange,

38 St. Mary Axe,

London, EC3A 8BH

All costs of the arbitration shall be at the discretion of the arbitration tribunal who may direct to and by whom and in what manner they shall be paid.

The seat of the arbitration tribunal shall be in London and the arbitration tribunal shall apply the laws of England and Wales as the proper law of this Agreement.

The award of the arbitration tribunal shall be in writing and binding upon the parties who covenant to carry out the same. If either of the parties should fail to carry out any award the other may apply for its enforcement to a court of competent jurisdiction in any territory in which the party in default is domiciled or has assets or carries on business.

### **7.4 Assignment**

No assignment (or any interest in this insurance or in any monies which may be or become payable thereunder) is to be binding on or recognised by the Underwriters unless documentary evidence is provided of such assignment or interest by Hull and/or Club insurers.

### **7.5 Choice of Law and Jurisdiction**

This contract shall be subject to and construed in accordance with the law of England and Wales and, save as provided in the Arbitration Clause, shall be subject to the jurisdiction of the Courts of England and Wales.

### **7.6 Cooperation and Assistance**

In the event of a claim hereunder the Assured shall cooperate with the Underwriters and their representatives at all times and give all reasonable assistance as required.

### **7.7 Due Diligence**

The Assured (or any agent, sub or co-contractor of the Assured) shall at all times and at his own expense use due diligence and do (and concur in doing and permit to be done) all things reasonably practicable, including but not limited to precautions to protect or remove the Assured's Vessel, to avoid or diminish any loss herein insured.

### **7.8 False or Fraudulent Claims**

If any request for indemnity is made and any part of such request is in any respect false or fraudulent or dishonest or exaggerated, as regards the amount or otherwise, this Policy may become void and any indemnity hereunder may be forfeited and Underwriters may not return any premium to the Assured. Underwriters may also take legal action against the Assured.

### **7.9 Other Insurance**

In the event that cover is provided under other insurances, this policy will only respond if those other insurances either exclude or limit their liability in respect of the relevant loss or Occurrence.

### **7.10 Rights of Third Parties**

The provisions of the Contracts (Rights of Third Parties) Act 1999 do not apply to this insurance or to any certificate(s) of insurance issued hereunder. Neither this insurance nor any certificates issued hereunder confer any benefits on any third parties. No third party may enforce any term of this insurance or of any certificate issued hereunder. This clause shall not affect the rights of the Assured (as assignee or otherwise) or the rights of any loss payee.

#### 7.11 Sanctions Limitation and Exclusion

Underwriters shall not be deemed to provide cover and shall not be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

#### 7.12 Subrogation

If the Underwriters become liable for any payment under this Insurance in respect of loss or damage the Underwriters shall be subrogated, to the extent of such payment, to all the rights and remedies of the Assured against any party in respect of such loss or damage and shall be entitled at their own expense to sue in the name of the Assured. The Assured shall give to the Underwriters all such assistance in his power as the Underwriters may require to secure their rights and remedies and, at Underwriters' request shall execute all documents necessary to enable Underwriters effectively to bring suit in the name of the Assured including the execution and delivery of the customary form of loan receipt.

#### 7.13 Termination

7.13.1 This cover may be cancelled by the Underwriters giving seven days' notice of cancellation. The cancellation becomes effective at midnight on the seventh day from the date the cancellation notice was issued. The Underwriters agree, however, to reinstate this cover subject to prior agreement being reached as to the new rate of premium to be charged and conditions or warranties to be applied.

#### 7.13.2 Automatic Termination of Cover

Whether or not such notice of cancellation has been given cover hereunder shall TERMINATE AUTOMATICALLY

7.13.2.1 upon the outbreak of war (whether there be a declaration of war or not) between any of the following: United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China;

7.13.2.2 in respect of any Vessel, in connection with which cover is granted hereunder, in the event of such Vessel being requisitioned either for title or use.

#### 7.13.3 Five Powers War Exclusion

This insurance excludes

7.13.3.1 loss damage liability or expense arising from:

7.13.3.1.1 the outbreak of war (whether there be a declaration of war or not) between any of the following: United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China.

7.13.3.1.2 requisition either for title or use.

Cover in respect of the risks insured hereunder shall not become effective if, subsequent to acceptance by Underwriters 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 clause.

### 8. Claims

8.1 In the event of a suspected Cyber Attack which may result in a claim under this insurance, so that Underwriters' Appointed Consultants may be appointed if the Underwriters so desire, notice must be given to the Underwriters promptly after the date by which the Assured become or should have become aware of both the potential loss, damage or liability and that their Marine Hull and/or their War Risks and/or their P&I Underwriters have formally advised the Assured that the potential loss, damage or liability may have arisen as a result of a Cyber Attack.

If notice is not given to the Underwriters within twelve months of the expiry of the policy, unless the Underwriters agree to the contrary in writing, the Underwriters will be automatically discharged from liability for any claim under this insurance in respect of or arising out of such Cyber Attack.

8.2 The Underwriters shall be entitled to decide the port to which the Vessel shall proceed for docking or repair (the actual additional expense of the voyage arising from compliance with the Underwriters' requirements being refunded to the Assured) and shall have a right of veto concerning a place of repair or a repairing firm.

8.3 The Underwriters may also take tenders or may require further tenders to be taken for the repair of the Vessel. Where such a tender has been taken and a tender is accepted with the approval of the Underwriters, an allowance shall be made at the rate of 30% per annum on the insured value for the time lost between the despatch of the invitations to tender required by the Underwriters and the acceptance of a tender to the extent that such time is lost solely as the result of tenders having been taken and provided that the tender is accepted without delay after receipt of the Underwriters' approval.

8.4 Due credit shall be given against the allowance as above for any amounts recovered in respect of fuel and stores and wages and maintenance of the Master, Officers and Crew or any member thereof, including amounts allowed in general average, and for any amounts recovered from third parties in respect of damages for detention and/or loss of profit and/or running expenses, for the period covered by the tender allowance or any part thereof.

8.5 Where a part of the cost of the repair of damage other than a fixed deductible is not recoverable from the Underwriters, the allowance shall be reduced by a similar proportion.

8.6 In the event of loss or damage to equipment or apparatus not owned by the Assured but installed for use on board the Vessel and for which the Assured has assumed responsibility, claim shall not exceed (1) the amount the Underwriters would pay if the Assured were owner of such equipment or apparatus, or (2) the contractual responsibility assumed by the Assured to the owners or lessors thereof, whichever shall be less.

8.7 No claim for unrepaired damages shall be allowed, except to the extent that the aggregate physical damage caused by Cyber Attack during the Policy Period and left unrepaired at the expiration of the Policy shall be demonstrated by the Assured to have diminished the actual market value of the Vessel on that date if undamaged by physical damage following such Cyber Attack.

#### 8.8 Assistance and Cooperation

8.8.1 The Underwriters shall not be called upon to assume charge of the settlement or defence of any claim, but the Underwriters shall have the right and shall be given the opportunity to associate with the Assured or the Assured's Marine insurers or both in the defence and control of any claim, suit or proceeding relative to any Occurrence where the claim involves, or appears reasonably likely to involve, the Underwriters, in which event the Assured and the Underwriters shall cooperate in all things in the defence of such claim.

8.8.2 The Assured shall furnish promptly all information reasonably requested by the Underwriters with respect to any Occurrence, both with respect to any claim and pertaining to coverage under this Policy.

- 8.8.3. If liabilities, losses, costs and/or expenses are in part covered by this Policy and in part not covered by this Policy, such losses, costs and/or expenses shall be apportioned on a pro-rata basis between insured and uninsured losses.
- 8.8.4. Those expenses incurred by the Underwriters on their own behalf in connection with claims representation pursuant to this Condition shall be at their own expense and shall not erode the Policy Limit.

## **9 General Average and Salvage**

- 9.1 This insurance covers the Vessel's proportion of salvage, salvage charges and/or general average but in case of general average sacrifice of the Vessel the Assured may recover in respect of the whole loss without first enforcing their right of contribution from other parties.
- 9.2 Claims to be adjusted in accordance with applicable law and practice at the termination of the adventure but where the contract of affreightment provides otherwise, then the claim will be adjusted in accordance with such provisions.
- 9.3 When the Vessel sails in ballast, not under charter, the provisions of the York-Antwerp Rules, 1994 (excluding Rules XI(d), XX and XXI) shall be applicable, and the voyage for this purpose shall be deemed to continue from the port or place of departure until the arrival of the Vessel at the first port or place thereafter other than a port or place of refuge or a port or place of call for bunkering only. If at any such intermediate port or place there is an abandonment of the adventure originally contemplated, the voyage shall thereupon be deemed to be terminated.
- 9.4 No claim under this Clause 9 shall in any case be allowed for or in respect of:
- 9.4.1 special compensation payable to a salvor under Article 14 of the International Convention on Salvage, 1989 or under any other provision in any statute, rule, law or contract which is similar in substance.
- 9.4.2 expenses or liabilities incurred in respect of damage to the environment, or the threat of such damage, or as a consequence of the escape or release of pollutant substances from the Vessel, or the threat of such escape or release.
- 9.5 Clause 9.4 shall not however exclude any sum which the Assured shall pay to salvors for or in respect of salvage remuneration in which the skill and efforts of the salvors in preventing or minimising damage to the environment as is referred to in Article 13 paragraph 1(b) of the International Convention on Salvage, 1989 have been taken into account.

## **10 Constructive Total Loss**

- 10.1 In ascertaining whether the Vessel is a constructive total loss, the insured value shall be taken as the repaired value and nothing in respect of the damaged or break-up value of the vessel or wreck shall be taken into account.
- 10.2 No claim for constructive total loss based upon the cost of recovery and/or repair of the Vessel shall be recoverable hereunder unless such cost would exceed the insured value under the Vessel's Hull and Machinery (Marine or War risks) policy. In making this determination, only the cost relating to a single accident or sequence of damages arising from the same accident shall be taken into account.

## **11 Freight Waiver**

In the event of total or constructive total loss no claim to be made by the Underwriters for freight whether notice of abandonment has been given or not.

## **12 Duty of Assured (Sue and Labour)**

- 12.1 In case of any loss or misfortune it is the duty of the Assured and their servants and agents to take such measures as may be reasonable for the purpose of averting or minimising a loss which would be recoverable under this insurance.
- 12.2 Subject to the provisions below and to any applicable Deductible the Underwriters will contribute to charges properly and reasonably incurred by the Assured their servants or agents for such measures. General average, salvage charges, special compensation and expenses as referred to in Clause 9.4 and collision defence or attack costs are not recoverable under this Clause.
- 12.3 Measures taken by the Assured or the Underwriters with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.
- 12.4 When expenses are incurred pursuant to this Clause the liability under this insurance shall not exceed the proportion of such expenses that the amount insured hereunder bears to the value of the Vessel as stated herein within Clause 3.1. Where the Underwriters have admitted a claim for total loss and property insured by this insurance is saved, the foregoing provisions shall not apply unless the expenses of suing and labouring exceed the value of such property saved and then shall apply only to the amount of the expenses which is in excess of such value.
- 12.5 No claim under this Clause 12 shall in any case be allowed where the loss was not incurred to avoid or in connection with avoidance of physical loss or damage following a Cyber Attack.