

17 February 2017

STOPIA 2006 and TOPIA 2006 – review and amendments for 2017

Background

As advised in our circular of 20 February 2006, the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) and the Tanker Oil Pollution Indemnification Agreement (TOPIA) were put in place to reflect the desire of Members of International Group Clubs to ensure the continuing success of the international oil pollution compensation regime. With the 2003 Supplementary Fund Protocol having been recently introduced at that time, there was a desire to ensure that the costs of responding to spills of persistent oil from tankers should be more equitably borne by shipowners and the receivers of oil.

STOPIA provides for shipowners to make payments to the IOPC Fund which are designed to adjust the financial effect of the limitation of liability provisions contained in the 1992 Civil Liability Convention (CLC 92) for spills from tankers of less than 29,548 GT. TOPIA provides for shipowners to indemnify the Supplementary Fund for 50% of the compensation it pays under the 2003 Supplementary Fund Protocol for pollution damage caused by tankers in States party to the Protocol.

To date, there has been only one STOPIA case and no TOPIA cases since 2006 across all of the International Group Clubs.

STOPIA and TOPIA review

Both agreements contain identical review clauses that provide for a review of CLC 92, IOPC Fund and Supplementary Fund claims data from the period from 20th February 2006 (when both agreements became effective) to 20th February 2016.

The International Group initiated this review at the start of 2016, with the participation of the IOPC Fund Secretariat and the Oil Companies International Marine Forum (OCIMF) representing the cargo contributors.

The outcome of the review highlighted that the total cost of claims paid by shipowners under the international conventions in this ten year period was significantly higher than the total cost of claims paid by cargo contributors in the same period.

Both agreements contain clauses to adjust the financial burden where such an imbalance arises. However, following consultation with the relevant shipowner representative bodies (the International Chamber of Shipping and Intertanko), the International Group decided on this occasion not to implement any of the measures in the agreements to adjust the financial burden. The International Group recognised that the data collated during the period did not fully reflect the total payments to be made by the IOPC Fund in the “Hebei Spirit” case, which will be covered by the next ten year review. When the expected payments on that case are taken into account, the burden is shown to have been more evenly shared. However, the International Group retained the right to consider any necessary adjustment if any future review reveals a continued imbalance.

2017 amendments to STOPIA and TOPIA

During the review, several amendments to the 2006 agreements were made in order to address both the introduction of sanctions legislation and the procedure for future reviews. These amendments will have the effect of:

1. Protecting shipowners and the International Group Clubs in circumstances where, for reasons beyond their control, they are prevented from reimbursing the 1992 Fund and/or the Supplementary Fund in accordance with the agreements, as a result of legislation preventing shipowners and/or insurers from making payments that would fall within the scope of any applicable sanctions regime;
2. Ensuring that future reviews are aligned with the original review period of ten years rather than a future review of claims data over just a five year period as prescribed in the 2006 agreements; and
3. Ensuring that the cumulative claims data collected over all review periods will be considered in future reviews and not just the claims data from that future review period.

The amended agreements are attached to this circular and have been re-titled STOPIA 2006 (as amended 2017) and TOPIA 2006 (as amended 2017).

All Clubs in the International Group have issued similar circulars.

**SMALL TANKER OIL POLLUTION
INDEMNIFICATION AGREEMENT
(STOPIA) 2006 (as amended 2017)**

SMALL TANKER OIL POLLUTION INDEMNIFICATION AGREEMENT (STOPIA) 2006 (as amended 2017)

INTRODUCTION

The Parties to this Agreement are the Participating Owners as defined herein.

The Participating Owners recognize the success of the international system of compensation for oil pollution from ships established by the 1992 Civil Liability and Fund Conventions, and they are aware that it may need to be revised or supplemented from time to time in order to ensure that it continues to meet the needs of society.

A Protocol has been adopted to supplement the 1992 Fund Convention by providing for additional compensation to be available from a Supplementary Fund for Pollution Damage in States which opt to accede to the Protocol. The Parties wish to encourage the widest possible ratification of the Protocol, with a view to facilitating the continuance of the existing compensation system in its current form (but as supplemented by the Protocol).

In consideration of the potential additional burden imposed by the Protocol on receivers of oil, the Participating Owners have agreed to establish the scheme set out herein, whereby the Participating Owners of tankers below a specified tonnage will indemnify the International Oil Pollution Compensation Fund 1992 (“the 1992 Fund”) for a portion of its liability to pay compensation under the 1992 Fund Convention for Pollution Damage caused by such tankers.

This Agreement is intended to create legal relations and in consideration of their mutual promises Participating Owners of each Entered Ship have agreed with one another and do agree as follows

—

I. DEFINITIONS

- (A) The following terms shall have the same meaning as in Article I of the Liability Convention:

“Incident”, “Oil”, “Owner”, “Person”, “Pollution Damage”, “Preventive Measures”, “Ship”.
- (B) “1992 Fund” means the International Oil Pollution Compensation Fund 1992 as established by the 1992 Fund Convention.
- (C) “1992 Fund Convention” means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, as amended and/or supplemented from time to time, and any domestic legislation giving effect thereto.
- (D) “Club” means a Protection and Indemnity (P&I) Association in the International Group; “the Owner’s Club” means the Club by which a Relevant Ship owned by him is insured, or to which he is applying for Insurance; “his Club”, “Club Party” and similar expressions shall be construed accordingly.
- (E) “Entered Ship” means a Ship to which the Scheme applies, and “Entry” shall be construed accordingly.

- (F) “Indemnification” means the indemnity payable under Clause IV of this Agreement.
- (G) “Insurance”, “insured” and related expressions refer to protection and indemnity cover against oil pollution risks.
- (H) “International Group” means the International Group of P&I Clubs.
- (I) “Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage, 1992, as amended from time to time, and any domestic legislation giving effect thereto, and “CLC 92 State” means a State in respect of which the said Convention is in force.
- (J) “Participating Owner” means the Owner of an Entered Ship who is a Party.
- (K) “Party” means a party to this Agreement.
- (L) “Protocol” means the Protocol of 2003 to supplement the 1992 Fund Convention, and any domestic legislation giving effect thereto.
- (M) “Recourse Conclusion Notice” has the meaning set out in Clause V(C).
- (N) “Relevant Ship” has the meaning set out in Clause III(B).
- (O) “Sanctions Risks” refers to any sanction, prohibition or adverse action in any form whatsoever by any state, international organisation or other competent body, and includes a material risk thereof;
- (P) “Scheme” means the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 (as amended 2017) as established by this Agreement.
- (Q) “Supplementary Fund” means the Fund established by the Protocol.
- (R) “Tons” means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969; the word “tonnage” shall be construed accordingly.
- (S) “Unit of account” shall have the same meaning as that set out in Article V, paragraph 9 of the Liability Convention.

II. GENERAL

- (A) This Agreement shall be known as the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 (as amended 2017).
- (B) The Owner of any Relevant Ship shall be eligible to become a Party and shall do so when made a Party by the Club insuring that Ship as the Rules of that Club may provide.

III. THE STOPIA 2006 (as amended 2017) SCHEME

- (A) This Agreement is made to establish STOPIA 2006 (as amended 2017) for payment of Indemnification to the 1992 Fund on the terms set out herein.

- (B) A Ship shall be eligible for Entry in the scheme if:
- (1) it is of not more than 29,548 Tons;
 - (2) it is insured by a Club; and
 - (3) it is reinsured through the Pooling arrangements of the International Group.

Such a ship is referred to herein as a "Relevant Ship".

- (C) Any Relevant Ship owned by a Participating Owner shall automatically be entered in the Scheme upon his becoming a Party to this Agreement in accordance with Clause II(B) above.
- (D) A Ship which is not a Relevant Ship by reason of the fact that it is reinsured independently of the said Pooling arrangements may nonetheless be deemed to be a Relevant Ship by written agreement between the Owner and his Club.
- (E) Once a Relevant Ship has been entered in the Scheme it shall remain so entered until
- (1) it ceases to be a Relevant Ship (as a result of tonnage re-measurement and/or of ceasing to be insured and reinsured as stated in Clause III(B) above); or
 - (2) it ceases to be owned by a Participating Owner; or
 - (3) the Participating Owner has withdrawn from this Agreement in accordance with Clause X.

IV. INDEMNIFICATION OF THE 1992 FUND

- (A) Where, as a result of an Incident, an Entered Ship causes Pollution Damage in respect of which (i) liability is incurred under the Liability Convention by the Participating Owner of that Ship and (ii) the 1992 Fund has paid or expects to pay compensation under the 1992 Fund Convention, the said Owner shall indemnify the 1992 Fund in an amount calculated in accordance with this Clause.
- (B) Indemnification shall not be payable for:
- (1) the costs of any Preventive Measures to the extent that the Participating Owner is exonerated from liability under Article III, paragraph 3 of the Liability Convention, and for which the 1992 Fund is liable by virtue of Article 4, paragraph 3 of the 1992 Fund Convention;
 - (2) any other Pollution Damage to the extent that liability is incurred by the 1992 Fund but not by the Participating Owner.
- (C) The amount for which Indemnification is payable by the Participating Owner to the 1992 Fund shall be the amount of compensation which the 1992 Fund has paid or expects to pay for Pollution Damage, provided always that:

- (1) Indemnification shall not exceed in respect of any one Incident an amount equivalent to 20 million units of account less the amount of the Owner's liability under the Liability Convention as limited by Article V, paragraph 1 thereof; and
 - (2) the deduction referred to in Clause IV(C)(1) above shall be made irrespective of whether the Participating Owner is entitled to avail himself of limitation.
- (D) Liability to pay Indemnification hereunder shall not affect any rights which the Participating Owner or his Club may have to recover from the 1992 Fund any amounts in respect of the Incident, whether in their own right, by subrogation, assignment or otherwise. For the avoidance of doubt, any such amounts shall be included in the amount of compensation referred to in Clause IV(C) above.
- (E) Unless otherwise agreed with the 1992 Fund –
- (1) the entitlement of the 1992 Fund to receive Indemnification from the Participating Owner accrues when it gives a Recourse Conclusion Notice as defined in Clause V(C) below;
 - (2) prior to that time the 1992 Fund shall be entitled to receive from the Participating Owner such payment or payments on account of Indemnification as the 1992 Fund considers to be equal to the anticipated amount of Indemnification;
 - (3) payment of any amounts which the 1992 Fund is entitled to receive under this Agreement shall be made concurrent with payment of the levies on contributors for the Incident concerned in accordance with Articles 10 and 12 of the 1992 Fund Convention.
- (F) (1) Any payment on account under Clause IV(E) above is made on the conditions that –
- (i) it is credited by the 1992 Fund to a special account relating solely to Indemnification in respect of the Incident concerned;
 - (ii) any surplus of the amount(s) paid by the Participating Owner remaining after all compensation payments by the 1992 Fund have been made shall be refunded to the Participating Owner; and
 - (iii) in so far as a surplus consists of amounts recovered by way of recourse from third parties it shall be credited to the Participating Owner in accordance with Clause V below.
- (2) Nothing in this Clause IV(F) shall prevent the 1992 Fund from making use of any sums paid to it under this Agreement in the payment of claims for compensation arising from the Incident concerned; nor shall it require the 1992 Fund to hold such sums (or any balance thereof) in a separate bank account or to invest them separately from other assets of the 1992 Fund.
 - (3) Save where the 1992 Fund has been notified to the contrary, the Club insuring the Participating Owner shall be deemed to be authorized to act on his behalf in receiving any refund under this Clause.

- (G) For the purposes of this Agreement the conversion of units of account into national currency shall be made in accordance with Article V, paragraph 9 of the Liability Convention.
- (H) (1) Indemnification shall not be payable under this Agreement if and to the extent that:
- (i) payment by the Participating Owner of Indemnification to the 1992 Fund, or payment by his Club to indemnify him in respect thereof, would expose either the Participating Owner or his Club to Sanctions Risks; or
 - (ii) the Participating Owner is or would be unable to recover an indemnity from his Club due to terms of cover which exclude or limit the liability of the Club where payment would expose the Club to Sanctions Risks, or where by reason of such risks there is or would be a shortfall in recovery from the International Group Pool and/or Hydra and/or under any other reinsurance/s.
- (2) For the purposes of subparagraph (1)(ii) above, “shortfall” includes any failure or delay in recovery by the Club by reason of reinsurers making payment into a designated account in compliance with the requirements of any state, international organisation or other competent body.
- (3) In the event of any dispute as to whether any payment does or would involve exposure to Sanctions Risks, or whether Sanctions Risks do or would give rise to a shortfall in recovery from reinsurers, Indemnification by the Participating Owner hereunder shall in any event be contingent on liability being accepted or established on the part of his Club to indemnify him in respect thereof.
- (4) The Participating Owner or his Club shall notify the 1992 Fund in the event of non-indemnification pursuant to subparagraph (1) (i) and/or (ii) above.

V. RECOURSE AGAINST THIRD PARTIES

- (A) Any decisions as to whether the 1992 Fund is to take recourse action against any third parties, and as to the conduct of any such action, including any out-of-court settlement, are in the absolute discretion of the 1992 Fund.
- (B) Without prejudice to Clause V(A) above –
- (1) payment by the Participating Owner under this Agreement is made on the condition that he shall, in respect of any amount paid as Indemnification (or as payment on account thereof), acquire by subrogation any rights of recourse that the 1992 Fund may enjoy against third parties, to the extent of the Participating Owner’s interest in the benefit of any recoveries from such parties in accordance with this Agreement;
 - (2) the 1992 Fund may consult with the Participating Owner and/or his Club in relation to any recourse action in which they are actual or potential claimants;
 - (3) nothing in this Agreement shall prevent the 1992 Fund, the Owner and the Club from agreeing on any arrangements relating to such action as may be considered

appropriate in the particular case, including any terms as to the apportionment of costs of funding such action, or as to the allocation of any recoveries made.

- (C) For the purposes of this Agreement, a Recourse Conclusion Notice is notice to the Participating Owner that a final conclusion has been reached in relation to all and any recourse action taken or contemplated by the 1992 Fund against any third parties in respect of the Incident. Such a conclusion may include a decision by the 1992 Fund not to take a recourse action, or to discontinue any such action already commenced.
- (D) Payment by the Participating Owner under this Agreement is made on the conditions that –
- (1) if the 1992 Fund decides to take recourse action against any third party it will, unless otherwise agreed, either (a) seek recovery of compensation it has paid or expects to pay without deduction of any sums paid under this Agreement by the Participating Owner, or (b) on request, execute documentation as described in Clause V(D)(2) below;
 - (2) if the 1992 Fund decides not to take a recourse action (or to discontinue any such action already commenced) against any third party in respect of the incident, the 1992 Fund will, on request, execute such reasonable documentation as may be required to transfer (or affirm the transfer) to the Participating Owner and/or his Club, by subrogation, assignment or otherwise, any rights of recourse which the 1992 Fund may have against that third party, to the extent of any interest which the Participating Owner and/or his Club may have in recovering from that party any amounts paid under this Agreement;
 - (3) if, after it has been paid, the 1992 Fund for any reason recovers any sums from any third party, the 1992 Fund will account to the Participating Owner for such sums after deduction of -
 - (i) any costs incurred by the 1992 Fund in recovering the said sums; and
 - (ii) an amount equal to the compensation which the 1992 Fund has paid or expects to pay for Pollution Damage in respect of the Incident, insofar as this exceeds the amount paid under this Agreement by the Participating Owner.
- (E) Save where the 1992 Fund has been notified to the contrary, the Club insuring the Participating Owner shall be deemed to be authorised to act on his behalf in receiving notice under Clause V(C) above; in receiving any sums payable to the Participating Owner under Clause V(D) above; and in agreeing all and any other matters relating to the operation of this Clause V.

VI. PROCEDURE AND MISCELLANEOUS

Any rights of the 1992 Fund to Indemnification under this Agreement shall be extinguished unless an action is brought hereunder within four years from the date when the Pollution Damage occurred. However, in no case shall an action be brought after seven years from the date of the Incident which caused the damage. Where this Incident consists of a series of occurrences, the seven year period shall run from the date of the first such occurrence.

VII. AMENDMENT

- (A) This Agreement may be amended at any time by the International Group acting as agent for all Participating Owners.

Any such amendment to this Agreement will take effect three months from the date on which written notice is given by the International Group to the 1992 Fund.

- (B) Each Participating Owner agrees that the International Group shall be authorized to agree on his behalf to an amendment of this Agreement if —
- (1) it is so authorized by his Club, and
 - (2) his Club has approved of the amendment by the same procedure as that required for alteration of its Rules.
- (C) Subject to Clause IX(A) below, any amendment of this Agreement shall not affect rights and obligations in respect of any Incident which occurred prior to the date when such amendment enters into force.

VIII. REVIEW

- (A) During the year 2016 a review shall be carried out of the experience of claims for Pollution Damage in the ten years to 20 February 2016. The purpose of the review will be (1) to establish the approximate proportions in which the overall cost of such claims under the Liability Convention and/or the 1992 Fund Convention and/or the Protocol has been borne respectively by shipowners and by oil receivers in the period since 20 February 2006; and (2) to consider the efficiency, operation and performance of this Agreement. Such a review shall be repeated every ten years thereafter, and shall take into account the claims experience data from all previous reviews.
- (B) Representatives of oil receivers, and the Secretariat of the 1992 Fund and Supplementary Fund, are to be invited to participate in any review under this Clause on a consultative basis. The Participating Owners authorize the International Group to act on their behalf in the conduct of any such review.
- (C) If a review under this Clause reveals that in the period since 20 February 2006 either shipowners or oil receivers have borne a proportion exceeding 60% of the overall cost referred to in Clause VIII(A) above, measures are to be taken to adjust the financial burden of such cost with the object of maintaining an approximately equal apportionment.
- (D) Such measures may include —
- (1) amendment of this Agreement to provide for an increase or reduction in the amount of Indemnification payable under this Agreement;
 - (2) amendment of this Agreement to improve its efficiency, operation and performance;

- (3) the conclusion or amendment of any other contractual agreement relating to the apportionment of the cost of oil pollution between shipowners and oil receivers; and
 - (4) any other measure or measures considered appropriate for the purpose of maintaining an approximately equal apportionment.
- (E) If a review under this Clause reveals that either shipowners or oil receivers have borne a proportion exceeding 55% but not exceeding 60% of the overall cost referred to in Clause VIII(A) above, measures as referred to above may be (but are not bound to be) taken.

IX. DURATION AND TERMINATION

- (A) This Agreement shall apply to any Incident occurring after noon GMT on 20 February 2017.
- (B) Unless previously terminated in accordance with the provisions set out below, this Agreement shall continue in effect until the entry into force of any international instrument which materially and significantly changes the system of compensation established by the Liability Convention, the 1992 Fund Convention and the Protocol.
- (C) Each Participating Owner agrees that the International Group shall be authorized to terminate this Agreement on behalf of all Participating Owners if –
- (1) the Clubs cease to provide Insurance of the liability of Participating Owners to pay Indemnification under this Agreement; or
 - (2) the performance of the Agreement becomes illegal in a particular State or States (in which case this Agreement may be terminated in respect of such State or States whilst remaining in effect in respect of other States); or
 - (3) the International Group's reinsurers cease to provide adequate cover against the liabilities provided for by this Agreement, and cover for this risk is not reasonably available in the world market on equivalent terms; or
 - (4) the International Group is disbanded; or
 - (5) termination is authorized by his Club (and his Club has approved of the termination by the same procedure as that required for alteration of its Rules) due to any event or circumstance which prevents the performance of this Agreement and which is not within the reasonable contemplation of the Participating Owners.
- (D) Termination of this Agreement shall not take effect until three months after the date on which the 1992 Fund is notified thereof in writing by the International Group.
- (E) The termination of this Agreement shall not affect rights or obligations in respect of any Incident which occurs prior to the date of termination.

X. WITHDRAWAL

- (A) A Participating Owner may withdraw from this Agreement –

- (1) on giving not less than 3 months' written notice of withdrawal to his Club; or
 - (2) by virtue of an amendment thereto, provided always –
 - (i) that he exercised any right to vote against the said amendment when his Club sought the approval thereto of its members; and
 - (ii) that within 60 days of the amendment being approved by the membership of his Club he gives written notice of withdrawal to his Club; and
 - (iii) that such withdrawal shall take effect simultaneously with the entry-into-effect of the amendment, or on the date on which his notice is received by his Club, whichever is later.
- (B) If a Participating Owner ceases to be the owner of a Relevant Ship he shall be deemed, in respect of that ship only, to withdraw from this Agreement with immediate effect, and he or his Club shall give written notice to the 1992 Fund that he has ceased to be the owner of that Relevant Ship.
- (C) A Participating Owner withdrawing from this Agreement shall have no further liability hereunder as from the date when his withdrawal takes effect; provided always that no withdrawal shall affect rights or obligations in respect of any Incident which occurs prior to that date.

XI. LEGAL RIGHTS OF 1992 FUND

- (A) Though not a Party to this Agreement, the 1992 Fund is intended to enjoy legally enforceable rights of Indemnification as described herein, and accordingly the 1992 Fund shall be entitled to bring proceedings in its own name against the Participating Owner in respect of any claim it may have hereunder. Such proceedings may include an action brought by the 1992 Fund against a Participating Owner to determine any issue relating to the construction, validity and/or performance of this Agreement.
- (B) Notwithstanding Clause XI(A) and Clause VII(A) above, the consent of the 1992 Fund shall not be required to any amendment, termination or withdrawal made in accordance with the terms of this Agreement.
- (C) The Parties to this Agreement authorize the International Group to agree terms with the 1992 Fund on which a claim for Indemnification under this Agreement in respect of an Entered Ship (or previously Entered Ship), or proceedings to determine any issue of construction, validity and/or performance of this Agreement, may be brought directly against the Club insuring the Ship at the time of the Incident. They also agree that in the event of the 1992 Fund bringing proceedings to enforce a claim against a Club in respect of an Entered Ship, the Club may require the Participating Owner to be joined in such proceedings.

XII. LAW AND JURISDICTION

This Agreement shall be governed by English law and the English High Court of Justice shall have exclusive jurisdiction in relation to any disputes hereunder.

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**TANKER OIL POLLUTION
INDEMNIFICATION AGREEMENT
(TOPIA) 2006 (as amended 2017)**

TANKER OIL POLLUTION INDEMNIFICATION AGREEMENT (TOPIA) 2006 (as amended 2017)

INTRODUCTION

The Parties to this Agreement are the Participating Owners as defined herein.

The Participating Owners recognize the success of the international system of compensation for oil pollution from ships established by the 1992 Civil Liability and Fund Conventions, and they are aware that it may need to be revised or supplemented from time to time in order to ensure that it continues to meet the needs of society.

A Protocol has been adopted to supplement the 1992 Fund Convention by providing for additional compensation to be available from a Supplementary Fund for Pollution Damage in States which opt to accede to the Protocol. The Parties wish to encourage the widest possible ratification of the Protocol, with a view to facilitating the continuance of the existing compensation system in its current form (but as supplemented by the Protocol).

In consideration of the potential additional burden imposed by the Protocol on receivers of oil, the Participating Owners have agreed to establish the scheme set out herein, whereby the Participating Owners of tankers will indemnify the Supplementary Fund for 50% of its liability to pay compensation under the Protocol for Pollution Damage.

This indemnity is restricted in respect of Pollution Damage caused by terrorist risks, in recognition of the restrictions on cover against such risks in liability insurance available to shipowners.

This Agreement is intended to create legal relations and in consideration of their mutual promises Participating Owners of each Entered Ship have agreed with one another and do agree as follows —

I. DEFINITIONS

- (A) The following terms shall have the same meaning as in Article I of the Liability Convention:

“Incident”, “Oil”, “Owner”, “Person”, “Pollution Damage”, “Preventive Measures”, “Ship”.
- (B) “1992 Fund” means the International Oil Pollution Compensation Fund 1992 as established by the 1992 Fund Convention.
- (C) “1992 Fund Convention” means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, as amended and/or supplemented from time to time, and any domestic legislation giving effect thereto.
- (D) “Club” means a Protection and Indemnity (P&I) Association in the International Group; “the Owner’s Club” means the Club by which a Relevant Ship owned by him is insured, or to which he is applying for Insurance; “his Club”, “Club Party” and similar expressions shall be construed accordingly.

- (E) “Entered Ship” means a Ship to which the Scheme applies, and “Entry” shall be construed accordingly.
- (F) “Indemnification” means the indemnity payable under Clause IV of this Agreement.
- (G) “Insurance”, “insured” and related expressions refer to protection and indemnity cover against oil pollution risks.
- (H) “International Group” means the International Group of P&I Clubs.
- (I) “Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage, 1992, as amended from time to time, and any domestic legislation giving effect thereto.
- (J) “Participating Owner” means the Owner of an Entered Ship who is a Party.
- (K) “Party” means a party to this Agreement.
- (L) “Protocol” means the Protocol of 2003 to supplement the 1992 Fund Convention, and any domestic legislation giving effect thereto; and “Protocol State” means a State in respect of which the said Protocol is in force.
- (M) “Recourse Conclusion Notice” has the meaning set out in Clause V(C).
- (N) “Relevant Ship” has the meaning set out in Clause III(B).
- (O) “Sanctions Risks” refers to any sanction, prohibition or adverse action in any form whatsoever by any state, international organisation or other competent body, and includes a material risk thereof;
- (P) “Scheme” means the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006 (as amended 2017) as established by this Agreement.
- (Q) “Supplementary Fund” means the Fund established by the Protocol.
- (R) “Tons” means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969; the word “tonnage” shall be construed accordingly.
- (S) “Unit of account” shall have the same meaning as that set out in Article V, paragraph 9 of the Liability Convention.

II. GENERAL

- (A) This Agreement shall be known as the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006 (as amended 2017).
- (B) The Owner of any Relevant Ship shall be eligible to become a Party and shall do so when made a Party by the Club insuring that Ship as the Rules of that Club may provide.

III. THE TOPIA 2006 (as amended 2017) SCHEME

- (A) This Agreement is made to establish TOPIA for payment of Indemnification to the Supplementary Fund on the terms set out herein.
- (B) A Ship shall be eligible for Entry in the scheme if:
 - (1) it is insured by a Club; and
 - (2) it is reinsured through the Pooling arrangements of the International Group.Such a Ship is referred to herein as a “Relevant Ship”.
- (C) Any Relevant Ship owned by a Participating Owner shall automatically be entered in the Scheme upon his becoming a Party to this Agreement in accordance with Clause II(B) above.
- (D) A Ship which is not a Relevant Ship by reason of the fact that it is reinsured independently of the said Pooling arrangements may nonetheless be deemed to be a Relevant Ship by written agreement between the Owner and his Club.
- (E) Once a Relevant Ship has been entered in the Scheme it shall remain so entered until
 - (1) it ceases to be a Relevant Ship (as a result of ceasing to be insured or reinsured as stated in Clause III(B) above); or
 - (2) it ceases to be owned by a Participating Owner; or
 - (3) the Participating Owner has withdrawn from this Agreement in accordance with Clause X.

IV. INDEMNIFICATION OF THE SUPPLEMENTARY FUND

- (A) Where, as a result of an Incident, an Entered Ship causes Pollution Damage in respect of which (1) liability is incurred under the Liability Convention by the Participating Owner of that Ship and (2) the Supplementary Fund has paid or expects to pay compensation under the Protocol, the said Owner shall indemnify the Supplementary Fund in an amount calculated in accordance with this Clause.
- (B) Indemnification shall not be payable for:
 - (1) the costs of any Preventive Measures to the extent that the Participating Owner is exonerated from liability under Article III, paragraph 3 of the Liability Convention, and for which the Supplementary Fund is liable by virtue of the Protocol;
 - (2) any other Pollution Damage to the extent that liability is incurred by the Supplementary Fund but not by the Participating Owner.
- (C) The amount for which Indemnification is payable by the Participating Owner to the Supplementary Fund shall be 50% of the amount of compensation which the

Supplementary Fund has paid or expects to pay for Pollution Damage caused by the Incident.

- (D) Liability to pay Indemnification hereunder shall not affect any rights which the Participating Owner or his Club may have to recover from the Supplementary Fund any amounts in respect of the Incident, whether in their own right, by subrogation, assignment or otherwise. For the avoidance of doubt, any such amounts shall be included in the amount of compensation referred to in Clause IV(C) above.
- (E) Unless otherwise agreed with the Supplementary Fund –
 - (1) the entitlement of the Supplementary Fund to receive Indemnification from the Participating Owner accrues when it gives a Recourse Conclusion Notice as defined in Clause V(C) below;
 - (2) prior to that time the Supplementary Fund shall be entitled to receive from the Participating Owner such payment or payments on account of Indemnification as the Supplementary Fund considers to be equal to the anticipated amount of Indemnification;
 - (3) payment of any amounts which the Supplementary Fund is entitled to receive under this Agreement shall be made concurrent with payment of the levies on contributors for the Incident concerned in accordance with Articles 10 and 12 of the Protocol.
- (F) (1) Any payment on account under Clause IV(E) above is made on the conditions that –
 - (i) it is credited by the Supplementary Fund to a special account relating solely to Indemnification in respect of the Incident concerned;
 - (ii) any surplus of the amount(s) paid by the Participating Owner remaining after all compensation payments by the Supplementary Fund have been made shall be refunded to the Participating Owner; and
 - (iii) in so far as a surplus consists of amounts recovered by way of recourse from third parties it shall be credited to the Participating Owner in accordance with Clause V below.
 - (2) Nothing in this Clause IV(F) shall prevent the Supplementary Fund from making use of any sums paid to it under this Agreement in the payment of claims for compensation arising from the Incident concerned; nor shall it require the Supplementary Fund to hold such sums (or any balance thereof) in a separate bank account or to invest them separately from other assets of the Supplementary Fund.
 - (3) Save where the Supplementary Fund has been notified to the contrary, the Club insuring the Participating Owner shall be deemed to be authorized to act on his behalf in receiving any refund under this Clause.
- (G) No Indemnification shall be payable under this Agreement for any amounts paid by the Supplementary Fund in respect of Pollution Damage caused by any act of terrorism

save to the extent, if any, that such amounts are covered by any insurance or reinsurance in force at the time of the Incident. This provision shall apply irrespective of whether the Owner is exonerated from liability under the Liability Convention by virtue of Article III, paragraph 2 thereof.

(H) In the event of any dispute as to whether or not any act constitutes an act of terrorism for the purposes of this Agreement, Indemnification by the Participating Owner hereunder shall in any event be contingent on liability being accepted or established on the part of his Club to indemnify him in respect thereof.

(I) (1) Indemnification shall not be payable under this Agreement if and to the extent that:

(i) payment by the Participating Owner of Indemnification to the Supplementary Fund, or payment by his Club to indemnify him in respect thereof, would expose either the Participating Owner or his Club to Sanctions Risks; or

(ii) the Participating Owner is or would be unable to recover an indemnity from his Club due to terms of cover which exclude or limit the liability of the Club where payment would expose the Club to Sanctions Risks, or where by reason of such risks there is or would be a shortfall in recovery from the International Group Pool and/or Hydra and/or under the Group's Excess Loss Reinsurance Contract and/or Hydra Reinsurance Contract and/or under any other reinsurance/s.

(2) For the purposes of subparagraph (1)(ii) above, "shortfall" includes any failure or delay in recovery by the Club by reason of reinsurers making payment into a designated account in compliance with the requirements of any state, international organisation or other competent body.

(3) In the event of any dispute as to whether any payment does or would involve exposure to Sanctions Risks, or whether Sanctions Risks do or would give rise to a shortfall in recovery from reinsurers, Indemnification by the Participating Owner hereunder shall in any event be contingent on liability being accepted or established on the part of his Club to indemnify him in respect thereof.

(4) The Participating Owner or his Club shall notify the Supplementary Fund in the event of non-indemnification pursuant to subparagraph (1) (i) and/or (ii) above.

V. RECOURSE AGAINST THIRD PARTIES

(A) Any decisions as to whether the Supplementary Fund is to take recourse action against any third parties, and as to the conduct of any such action, including any out-of-court settlement, are in the absolute discretion of the Supplementary Fund.

(B) Without prejudice to Clause V(A) above –

(1) payment by the Participating Owner under this Agreement is made on the condition that he shall, in respect of any amount paid as Indemnification (or as payment on account thereof), acquire by subrogation any rights of recourse that the Supplementary Fund may enjoy against third parties, to the extent of the

Participating Owner's interest in the benefit of any recoveries from such parties in accordance with this Agreement;

- (2) the Supplementary Fund may consult with the Participating Owner and/or his Club in relation to any recourse action in which they are actual or potential claimants;
 - (3) nothing in this Agreement shall prevent the Supplementary Fund, the Owner and the Club from agreeing on any arrangements relating to such action as may be considered appropriate in the particular case, including any terms as to the apportionment of costs of funding such action, or as to the allocation of any recoveries made.
- (C) For the purposes of this Agreement, a Recourse Conclusion Notice is notice to the Participating Owner that a final conclusion has been reached in relation to all and any recourse action taken or contemplated by the Supplementary Fund against any third parties in respect of the Incident. Such a conclusion may include a decision by the Supplementary Fund not to take a recourse action, or to discontinue any such action already commenced.
- (D) Payment by the Participating Owner under this Agreement is made on the conditions that –
- (1) if the Supplementary Fund decides to take recourse action against any third party it will, unless otherwise agreed, either (a) seek recovery of compensation it has paid or expects to pay without deduction of any sums paid under this Agreement by the Participating Owner, or (b) on request, execute documentation as described in Clause V(D)(2) below;
 - (2) if the Supplementary Fund decides not to take a recourse action (or to discontinue any such action already commenced) against any third party in respect of the incident, the Supplementary Fund will, on request, execute such reasonable documentation as may be required to transfer (or affirm the transfer) to the Participating Owner and/or his Club, by subrogation, assignment or otherwise, any rights of recourse which the Supplementary Fund may have against that third party, to the extent of any interest which the Participating Owner and/or his Club may have in recovering from that party any amounts paid under this Agreement;
 - (3) if, after payment by the Participating Owner has been made, the Supplementary Fund recovers any sums from any third party, 50% of such recoveries (net of the costs incurred in making them) shall be retained by the Supplementary Fund and the remaining 50% shall be paid by the Supplementary Fund to the Participating Owner.
- (E) Save where the Supplementary Fund has been notified to the contrary, the Club insuring the Participating Owner shall be deemed to be authorised to act on his behalf in receiving notice under Clause V(C) above; in receiving any sums payable to the Participating Owner under Clause V(D) above; and in agreeing all and any other matters relating to the operation of this Clause V.

VI. PROCEDURE AND MISCELLANEOUS

Any rights of the Supplementary Fund to Indemnification under this Agreement shall be extinguished unless an action is brought hereunder within four years from the date when the Pollution Damage occurred. However, in no case shall an action be brought after seven years from the date of the Incident which caused the damage. Where this Incident consists of a series of occurrences, the seven year period shall run from the date of the first such occurrence.

VII. AMENDMENT

- (A) This Agreement may be amended at any time by the International Group acting as agent for all Participating Owners. Any such amendment to this Agreement will take effect three months from the date on which written notice is given by the International Group to the Supplementary Fund.
- (B) Each Participating Owner agrees that the International Group shall be authorized to agree on his behalf to an amendment of this Agreement if —
 - (1) it is so authorized by his Club, and
 - (2) his Club has approved of the amendment by the same procedure as that required for alteration of its Rules.
- (C) Subject to Clause IX(A) below, any amendment of this Agreement shall not affect rights and obligations in respect of any Incident which occurred prior to the date when such amendment enters into force.

VIII. REVIEW

- (A) During the year 2016 a review shall be carried out of the experience of claims for Pollution Damage in the ten years to 20 February 2016. The purpose of the review will be (1) to establish the approximate proportions in which the overall cost of such claims under the Liability Convention and/or the 1992 Fund Convention and/or the Protocol has been borne respectively by shipowners and by oil receivers in the period since 20 February 2006; and (2) to consider the efficiency, operation and performance of this Agreement. Such a review shall be repeated every ten years thereafter, and shall take into account the claims experience data from all previous reviews.
- (B) Representatives of oil receivers, and the Secretariat of the 1992 Fund and Supplementary Fund, are to be invited to participate in any review under this Clause on a consultative basis. The Participating Owners authorize the International Group to act on their behalf in the conduct of any such review.
- (C) If a review under this Clause reveals that in the period since 20 February 2006 either shipowners or oil receivers have borne a proportion exceeding 60% of the overall cost referred to in Clause VIII(A) above, measures are to be taken to adjust the financial burden of such cost with the object of maintaining an approximately equal apportionment.
- (D) Such measures may include —

- (1) amendment of this Agreement to provide for an increase or reduction in the amount of Indemnification payable under this Agreement;
 - (2) amendment of this Agreement to improve its efficiency, operation and performance;
 - (3) the conclusion or amendment of any other contractual agreement relating to the apportionment of the cost of oil pollution between shipowners and oil receivers; and
 - (4) any other measure or measures considered appropriate for the purpose of maintaining an approximately equal apportionment.
- (E) If a review under this Clause reveals that either shipowners or oil receivers have borne a proportion exceeding 55% but not exceeding 60% of the overall cost referred to in Clause VIII(A), measures as referred to above may be (but are not bound to be) taken.

IX. DURATION AND TERMINATION

- (A) This Agreement shall apply to any Incident occurring after noon GMT on 20 February 2017.
- (B) Unless previously terminated in accordance with the provisions set out below, this Agreement shall continue in effect until the entry into force of any international instrument which materially and significantly changes the system of compensation established by the Liability Convention, the 1992 Fund Convention and the Protocol.
- (C) Each Participating Owner agrees that the International Group shall be authorized to terminate this Agreement on behalf of all Participating Owners if—
- (1) the Clubs cease to provide Insurance of the liability of Participating Owners to pay Indemnification under this Agreement; or
 - (2) the performance of the Agreement becomes illegal in a particular State or States (in which case this Agreement may be terminated in respect of such State or States whilst remaining in effect in respect of other States); or
 - (3) the International Group's reinsurers cease to provide adequate cover against the liabilities provided for by this Agreement, and cover for this risk is not reasonably available in the world market on equivalent terms; or
 - (4) the International Group is disbanded; or
 - (5) termination is authorized by his Club (and his Club has approved of the termination by the same procedure as that required for alteration of its Rules) due to any event or circumstance which prevents the performance of this Agreement and which is not within the reasonable contemplation of the Participating Owners.
- (D) Termination of this Agreement shall not take effect until three months after the date on which the Supplementary Fund is notified thereof in writing by the International Group.

- (E) The termination of this Agreement shall not affect rights or obligations in respect of any Incident which occurs prior to the date of termination.

X. WITHDRAWAL

- (A) A Participating Owner may withdraw from this Agreement –
 - (1) on giving not less than 3 months' written notice of withdrawal to his Club; or (2) by virtue of an amendment thereto, provided always –
 - (i) that he exercised any right to vote against the said amendment when his Club sought the approval thereto of its members; and
 - (ii) that within 60 days of the amendment being approved by the membership of his Club he gives written notice of withdrawal to his Club; and
 - (iii) that such withdrawal shall take effect simultaneously with the entry-into-effect of the amendment, or on the date on which his notice is received by his Club, whichever is later.
- (B) If a Participating Owner ceases to be the owner of a Relevant Ship he shall be deemed, in respect of that ship only, to withdraw from this Agreement with immediate effect, and he or his Club shall give written notice to the Supplementary Fund that he has ceased to be the owner of that Relevant Ship.
- (C) A Participating Owner withdrawing from this Agreement shall have no further liability hereunder as from the date when his withdrawal takes effect; provided always that no withdrawal shall affect rights or obligations in respect of any Incident which occurs prior to that date.

XI. LEGAL RIGHTS OF SUPPLEMENTARY FUND

- (A) Though not a Party to this Agreement, the Supplementary Fund is intended to enjoy legally enforceable rights of Indemnification as described herein, and accordingly the Supplementary Fund shall be entitled to bring proceedings in its own name against the Participating Owner in respect of any claim it may have hereunder. Such proceedings may include an action brought by the Supplementary Fund against a Participating Owner to determine any issue relating to the construction, validity and/or performance of this Agreement.
- (B) Notwithstanding Clause XI(A) above and Clause VII(A) above, the consent of the Supplementary Fund shall not be required to any amendment, termination or withdrawal made in accordance with the terms of this Agreement.
- (C) The Parties to this Agreement authorize the International Group to agree terms with the Supplementary Fund on which a claim for Indemnification under this Agreement in respect of an Entered Ship (or previously Entered Ship), or proceedings to determine any issue of construction, validity and/or performance of this Agreement, may be brought directly against the Club insuring the Ship at the time of the Incident. They also agree that in the event of the Supplementary Fund bringing proceedings to enforce a claim

against a Club in respect of an Entered Ship, the Club may require the Participating Owner to be joined in such proceedings

XII. LAW AND JURISDICTION

This Agreement shall be governed by English law and the English High Court of Justice shall have exclusive jurisdiction in relation to any disputes hereunder.
