

YACHT

TERMS & CONDITIONS

AS OF 20 FEBRUARY 2016



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PART 1 ► INSURANCE AGREEMENT

1. TERMS AND SCOPE OF COVER

- 1.1** The *Assured* is insured by *Skuld* in accordance with the terms set out in these Terms and Conditions, the Certificate of Insurance and any Endorsement issued by *Skuld* (together "*this insurance*") for the liability, losses, expenses and costs specified in Part 2 below (and the additional cover under Part 5, where applicable) arising out of an event taking place during the *period of insurance* in direct connection with *the Assured's* ownership and the operation of the *Yacht*, unless expressly excluded under Part 3 below or elsewhere under *this insurance* and subject always to the General Provisions set out in Part 4 below.
- 1.2** The cover under *this insurance* shall extend to cover:
- 1.2.1 the *Yacht's crew* for claims made against them as a result of carrying out their professional duties onboard or in respect of the *Yacht*;
 - 1.2.2 the *Yacht's* guests for claims made against them arising directly from their use of the *Yacht* or her equipment; and
 - 1.2.3 the *Yacht's* charterers for claims made against them arising directly from their charter and use of the *Yacht* or her equipment provided that the *Yacht* is under the control and command of the *Assured's* professionally qualified captain during the charter.
- 1.3** The cover under *this insurance* may be extended to a *Co-assured* on the terms set out in Appendix

2. DEFINITIONS

Words and phrases which appear in italics in these Terms & Conditions are defined in and shall have the meanings set out in Appendix 1.

PART 2 ► INSURANCE COVER

This insurance shall in accordance with Part 1 above cover (unless specifically amended in the Certificate of Insurance or in an Endorsement) the following specified liabilities, losses, expenses or costs:

3. INJURY, ILLNESS OR DEATH

Liability for injury, illness or death of *crew*, *dayworkers* or any *third party*.

4. MEDICAL AND FUNERAL EXPENSES AND REPATRIATION COSTS

Liability to pay for the necessarily and reasonably incurred costs of medical or hospital treatment and ancillary expenses in relation to any injury, illness or death, funeral arrangements, repatriation of an injured person (or a deceased's remains) incurred in respect of:

- 4.1 any person onboard the *Yacht* and any *crew* only to the extent that these costs exceed the amount that is recoverable under the *crew* medical insurance which the *Assured* is required to have in place in accordance with Clause 33 below or would have been recoverable had the *Assured* complied with Clause 33; or
- 4.2 any person who is on a vessel which is in collision with the *Yacht* or who is injured by the *Yacht* or on any property or object damaged by the *Yacht*.

5. CREW

- 5.1 Liability, costs and expenses necessarily and reasonably incurred by the *Assured* pursuant to a statutory obligation by reason of any *crew* who go absent from the *Yacht* without leave, where such costs or expenses cannot be recovered from the *crew* concerned.
- 5.2 Costs of repatriation under a statutory obligation, including the Maritime Labour Convention 2006 or equivalent domestic legislation by a State Party to *MLC*.
- 5.3 Liability for loss of or damage to *personal effects* other than *valuables*.
- 5.4 Liability for compensation for loss of employment to serving *crew* members as a result of being signed off due to a major *casualty* to the *Yacht* which renders the vessel unseaworthy, and necessitates the signing off of the *crew*.
- 5.5 Costs of providing a substitute *crew* member required as a result of the injury, illness or death of a serving *crew* member covered under Clause 3 or repatriation under Clause 5.2.

6. STOWAWAYS, REFUGEES OR PERSONS SAVED AT SEA

Liabilities arising from dealing with stowaways, refugees or persons saved at sea.

7. DIVERSIONS AND RELATED COSTS

Extra costs necessarily, reasonably and solely incurred for landing or dealing with stowaways, refugees or persons saved at sea or for diverting to obtain necessary medical treatment for an injured or sick person or for assisting in the search for or rescue of persons in distress at sea, including the cost of extra fuel consumed as a result.

8. QUARANTINE AND DISINFECTION REQUIREMENTS

Liability for *extra costs* necessarily, reasonably and solely incurred to comply with quarantine, disinfection and fumigation requirements as a result of infectious human and/or animal disease on board the *Yacht*.

9. LIFE SALVAGE

Liability for life salvage payable to *third parties* as a result of saving or attempting to save the life of a person on or from the *Yacht*, to the extent that payment is not recoverable from the *Yacht's* hull underwriters or any other underwriters.

10. SALVAGE OPERATIONS FOR SAVING LIFE AT SEA

Extra costs necessarily, reasonably and solely incurred for salvage operations conducted by the *Yacht* for the purpose of saving life at sea.

11. UNINSURED AND UNDERINSURED BOATER COVER

Medical costs and expenses necessarily and reasonably incurred directly in respect of bodily injury sustained onboard the *Yacht* by the *Assured*, crew or the guests onboard the *Yacht* which are directly caused by an uninsured or underinsured *third party* vessel, provided that such medical costs and expenses are not recoverable from the *third party* vessel, its owner, its operator, the *Yacht's* hull insurance, the *crew medical* insurance which the *Assured* is required to have in place in accordance with the provisions of Clause 33 below, or any other insurance.

12. PROPERTY

12.1. Cover for the *Assured's* liability and loss:

- 12.1.1 Liability arising out of the physical loss of or damage to any vessel, fixed or movable property or any other property or object which is not owned or leased by the *Assured* and for which liability is not excluded elsewhere under *this insurance*;
- 12.1.2 Loss suffered by the *Assured* as a result of the loss of or damage to his own property, to the extent that *Skuld* would have been obliged to indemnify the *Assured* in respect of liability had the property been owned by a *Third Party*.

Provided that if a collision or contact occurs involving the *Yacht* and any other vessel belonging to the same *Assured*, the *Sister Vessel Clause* shall apply.

12.2. Exceptions in respect of the *Assured's* liability or loss in respect of property:

12.2.1 Loss of or damage to the *Yacht*, her equipment, stores, bunkers or supplies; and

12.2.2 Liability or loss recoverable under any other insurances.

13. POLLUTION

13.1 Cover for the *Assured's* liability and costs:

13.1.1 Liability arising out of the actual or threatened escape or discharge of oil or other polluting substance;

13.1.2 Costs of measures reasonably taken, for the purpose of preventing or minimising pollution; and

13.1.3 Costs incurred in order to comply with an order of any government agency or authority for the purpose of preventing or minimising actual or threatened pollution.

13.2 Exceptions in respect of the *Assured's* liability or costs in respect of pollution:

13.2.1 Costs which are required as part of the normal operation or repair of the *Yacht*; and

13.2.2 Pollution resulting from the presence in or the threatened escape or discharge from any land based dump, site, storage or disposal facility of any substance previously carried on the *Yacht* as fuel, stores, waste or otherwise.

14. WRECK REMOVAL

Liability for costs arising out of the raising, removal, destruction, marking or lighting of the wreck of the *Yacht* or its equipment lost as a result of a *casualty*, provided that:

14.1. the raising and other operations are compulsory by law or necessary to avoid or remove a hazard or obstruction;

14.2. no claim for liability, costs or expenses covered by the *Yacht's* Hull, Increased Value or *War Risks* policies shall be recoverable under *this insurance*;

14.3. where the *Assured* transfers his/its interest in the wreck or other property saved otherwise than by abandonment to other underwriters, no claim will be recoverable under *this insurance*; and

14.4. the realised value of the wreck and other property saved shall be credited to *Skuld*.

15. OBSTRUCTION

Liability to *third parties* in respect of their interest in harbours, wharves, canals or similar structures or vessels arising directly from the *Yacht* causing an obstruction as a result of a *casualty*.

16. FINES

Liability for fines imposed on the *Assured* or for which the *Assured* is under a legal obligation to reimburse any *crew* for:

- 16.1. breach of any immigration law or regulation;
- 16.2. in respect of the accidental escape or discharge of oil or other polluting substance or threat thereof;
- 16.3. smuggling or any infringement of any customs law or customs regulation other than in relation to VAT, taxes and/or duties of any nature whatsoever.
- 16.4. an act or omission by any *crew* in the performance of their obligations to the *Assured* under their contract of employment.

17. ARTICLE 14 SALVAGE CONVENTION COMPENSATION

This insurance shall cover special compensation payable to a salvor of the *Yacht* under Article 14 of the 1989 Salvage Convention, including when applicable by virtue of incorporation in Lloyd's Open Form of Salvage Agreement or in any other standard form salvage contract approved by *Skuld*, or under the Special Compensation P&I Clubs Clause (SCOPIC), except where excluded by the provisions of *this insurance*.

18. PIRACY

Liabilities expressly covered under *this insurance* arising from acts of piracy against the *Yacht*.

19. TOWAGE

- 19.1. Liabilities expressly covered under *this insurance* arising out of the *Yacht* towing:
 - 19.1.1 any other vessel or craft (other than the *Yacht's tender(s)* or *toy(s)*) provided such other vessel or craft is in an emergency situation and requests an immediate tow by the *Yacht* provided that such tow by the *Yacht* is either terminated or handed over by the *Yacht* to a more appropriate towing vessel as soon as reasonably possible; or
 - 19.1.2 the *Yacht's tender(s)* and *toy(s)* provided that the equipment used for towing is appropriate for the weight of the *tender* or *toy* being towed in the prevailing conditions.
- 19.2. Liabilities expressly covered under *this insurance* arising from the *Yacht* being towed (excluding the cost of the tow itself):
 - 19.2.1 for the purpose of entering or leaving port and shifting between berths in port and/or securing the *Yacht* in port;
 - 19.2.2 in an emergency situation; or
 - 19.2.3 for any other purpose, provided that the tow is being conducted in accordance with a written agreement on standard un-amended Towcon or Towhire BIMCO forms, or any other standard form towage contract which affords *the Assured* the equivalent or better protection than the standard forms referred to above, or in accordance with an agreement to which *Skuld* has given its prior written approval.

20. CONTRACTUAL INDEMNITIES COVER

The *Assured* is insured for any contractual indemnity which would be recoverable under *this insurance* had it not arisen solely by reason of liability under a contract and which arises solely by reason of one of the following written contracts entered into by the *Assured* or by the captain of the *Yacht* on the *Assured's* behalf in connection with the operation of the *Yacht*:

- 20.1. the following standard form contracts: the MYBA Charter Agreement (Revised 2009); Towcon or Towhire, provided that such contract is not amended in any manner which increases the *Assured's* liability;
- 20.2. an MLC compliant Seafarer's Employment Agreement ("SEA") no wider than the provisions of The Standard Cayman Islands Seafarer Employment Agreement (Revision Date: 27/03/13) unless otherwise agreed;
- 20.3. a contract which the *Assured* is required to accept under a shipyard's, port's, marina's, club's or supplier's standard terms of business, provided that such contract is not amended in any manner which increases the *Assured's* liability; or
- 20.4. a contract specified in the Certificate of Insurance or an Endorsement as being approved by *Skuld*;

provided always that the maximum liability of *Skuld* under this Clause 20 for all liability, losses, costs and expenses arising from any one event or series of events shall be US\$5,000,000 any one claim, unless otherwise agreed.

21. WATERSPORTS LIABILITY

Liability to a *third party* arising from the operation of the *Yacht's* tender(s), toy(s) and diving equipment used in conjunction with the insured *Yacht*.

22. HELICOPTERS AND OTHER AIRBORNE CRAFT

Liability to a *third party* arising from an accident in connection with the *Yacht's* helicopter or airborne craft or a *third party's* helicopter or airborne craft onboard the *Yacht* during the period commencing from the later of the moment when all the engines of the helicopter or airborne craft are switched off and all its rotors and/or other propulsion mechanisms have ceased to turn and the helicopter or other airborne craft is secured to the deck of the *Yacht* with all its securings until the earlier of the moment when any of the engines of the helicopter or other airborne craft are switched on and any of its rotors and/or other propulsion mechanisms have begun to turn and/or any of the securings holding the helicopter or other airborne craft to the deck of the *Yacht* have been released.

This insurance does not cover any liability for loss of or damage to any helicopter or airborne craft of any nature whatsoever owned or leased by the *Assured*.

23. HANDGUNS AND SHOTGUNS

Liability to a *third party* arising from having handguns and shotguns on board the *Yacht* provided that such handguns and shotguns are carried, stored and used in strict compliance with all applicable local and international laws and regulations.

24. LEGAL AND ASSOCIATED COSTS

Legal and associated costs necessarily and reasonably incurred by the *Assured* with the consent of *Skuld*, in relation to any liability, loss, expense or costs for which the *Assured* is covered under *this insurance*.

25. INQUIRY COSTS AND EXPENSES

Legal and associated costs necessarily and reasonably incurred by the *Assured* following a *casualty*, with the consent of *Skuld*, to protect the interests of the *Assured* or *crew* before an inquiry or tribunal constituted to investigate that *casualty*.

26. MITIGATION COSTS (SUE AND LABOUR)

Extra costs which are necessarily, reasonably and solely incurred by the *Assured* on or after a *casualty* or event which may give rise to a claim under *this insurance*, in avoiding or minimising any liability, loss, expense or cost covered under *this insurance*, but this Clause shall not cover costs for work which could have been carried out by the *crew*, by reasonable use of the *Yacht* and her equipment, or which are not approved in writing in advance by *Skuld* where it is practicable to obtain such approval.

27. DIRECTIONS OF SKULD

Liability and costs which *the Assured* incurs in accordance with the written direction of *Skuld* which direction specifically refers to this Clause 27.

PART 3 ► EXCLUSIONS

28. *This insurance shall not cover the Assured for any liabilities, losses, expenses or costs for:*
- 28.1 any claim resulting from the *Assured's* deliberate breach of any contract, fraudulent act or *wilful misconduct*;
 - 28.2 any claim resulting from the *Assured* knowingly sending the *Yacht* to sea or operating the *Yacht* in an unseaworthy condition;
 - 28.3 claims resulting directly or indirectly from the *Assured's* failure to keep and/or operate the *Yacht* in compliance with the applicable requirements of her Flag State, Class (if the *Yacht* is classed with a Classification Society at the inception of *this insurance*); Certification (which is mandatory for the size, tonnage and operation of the *Yacht*) as well as all applicable requirements of the *ISM* and *ISPS Codes*, unless such failure was committed without the *Assured's* knowledge, consent or approval;
 - 28.4 any claim involving the *Yacht's tenders, toys* and diving equipment (or *submarine(s)* provided there is cover under Clause 59) unless they are being operated at the time of the *event* by and/or under the control and/or instruction and/or with the permission of a member of the *crew* who is both adequately qualified (where it is a flag state requirement or legal requirement where the *Yacht* is situated to be so qualified) and is also adequately experienced in the operation of such *tender, toy* and/or diving equipment (or *submarine*);
 - 28.5 any claim for liquidated damages;
 - 28.6 any claim for loss of reputation or for punitive or exemplary damages;
 - 28.7 any claim for failure to perform under a contract;
 - 28.8 irrecoverable debts or the insolvency of *the Assured* (save for Clause 5.2) or any other party, or fraud of any of *the Assured's* agents, associated companies or employees when acting on behalf of *the Assured*
 - 28.9 the *Assured's* internal administrative costs or expenses, the daily running costs or expenses of the *Yacht*;
 - 28.10 any claim recoverable by the *Assured* under any other insurance policy;
 - 28.11 the loss of or damage to any property owned or leased by the *Assured* or by any party associated with the *Assured*;
 - 28.12 *personal effects* other than those covered under Clause 5.3
 - 28.13 *nuclear risks*;
 - 28.14 *chemical, bio-chemical, electromagnetical weapons and computer virus risks*;
 - 28.15 any default judgment or default award;
 - 28.16 operation of the *Yacht* for any illegal activity or purpose, so far as the *Assured* can control the matter;
 - 28.17 any payment in respect of bribery, blackmail, kidnap, ransom or any other illegal payment;

- 28.18** the deductible under *this insurance* or any other deductible or franchise or excess under any other insurance;
- 28.19** any claim where payment by *Skuld* or the provision of cover in respect thereof may expose *Skuld* to the risk of being subject to a sanction, prohibition or any adverse action by a state or international organization or competent authority;
- 28.20** any claim directly or indirectly arising from or in respect of:
- 28.20.1 an indemnity or liability arising solely by reason of a contract, except where such contract has been approved in writing in advance by *Skuld* or which is otherwise expressly covered by the provisions of *this insurance*;
 - 28.20.2 *war risks*;
 - 28.20.3 any claim arising out of the use of the *Yacht's submarines*;
 - 28.20.4 bareboat charter where the charterer provides his own *crew* for the *Yacht*;
 - 28.20.5 any claim while the *Yacht* is participating in a race or is subject to the rules of a race;
 - 28.20.6 pre-delivery *crew* cover;
- unless the Certificate of Insurance or an Endorsement expressly specifies that such risk is covered by *this insurance*;

PART 4 ► GENERAL PROVISIONS

Unless otherwise agreed, all cover under *this insurance*, including any applicable additional cover, shall be subject to the conditions and provisions in this Part 4.

29. FULL DISCLOSURE AND CHANGE IN CIRCUMSTANCES

The *Assured* shall:

- 29.1 make full and correct disclosure to *Skuld* of all circumstances which the *Assured* knows or ought to know which might influence *Skuld* in deciding whether and on what terms to provide cover; and
- 29.2 make full, correct and prompt disclosure to *Skuld* of every change in circumstance which the *Assured* knows or ought to know alters the risk(s) covered by *Skuld*;

failing which the *Assured* shall not be entitled to any recovery from *Skuld* in respect of any *event* occurring after the time of the failure to comply with this Clause.

30. PREMIUM DUE BY THE ASSURED

- 30.1 The *Assured's* premium is a fixed premium.
- 30.2 The *Assured* shall pay (without set off) all premium(s) owed to *Skuld* when due and payable, otherwise:
 - 30.2.1 the *Assured* shall not be covered for any liabilities, losses, expenses or costs which arise out of an *event* which occurs at a time when the *Assured* owes any premium to *Skuld*;
 - 30.2.2 *Skuld* shall be entitled to cease handling all or any cases *Skuld* is for the time being handling for the *Assured*; and
 - 30.2.3 *Skuld* may cancel *this insurance* under Clause 38.2.
- 30.3 The *Assured* shall pay *Skuld* on demand the amount of any tax or duty relating to all premium paid or payable by the *Assured* and for which *Skuld* is or may become liable.

31. SURVEY AND AUDIT

- 31.1 *Skuld* may at any time and for its sole benefit, conduct a survey of the condition or operation of the *Yacht* or an audit of the *Assured's* management systems.
- 31.2 If the survey or audit demonstrates that the condition or operation of the *Yacht* or her management systems are not satisfactory, *Skuld* in its sole discretion, shall be entitled to restrict cover by way of an Endorsement until the condition, operation and management of the *Yacht* or her management systems are satisfactory or issue a notice of cancellation of *this insurance* under Clause 38.3.

32. THE ASSURED'S OBLIGATIONS FOLLOWING AN EVENT

On the happening of an *event* which may give rise to liability, loss, expense or cost which may be recoverable under *this insurance*, the *Assured* shall:

- 32.1 notify *Skuld* promptly;
- 32.2 notify the relevant government authority or agency if the *Assured* considers a crime to have been committed or if required to do so by local practice or law;
- 32.3 take all reasonable steps to avert or minimise any liabilities, losses, expenses and costs which may be covered under *this insurance*;
- 32.4 comply with *Skuld's* request for information, documents, statements or inspection;
- 32.5 refrain from admitting liability, waiving rights, settling any claim or appointing any lawyers or arbitrators without the prior written approval of *Skuld*;
- 32.6 preserve any right of recourse against third parties;
- 32.7 allow *Skuld* to handle or take over the handling of any claim or legal or other proceedings in respect of any liability, loss, cost or expense for which the *Assured* is or may be wholly or partly covered under *this insurance* and to conduct such proceedings in the name of the *Assured* and authorise *Skuld* to appoint lawyers, experts, arbitrators, surveyors and other parties on behalf of the *Assured*.

This insurance shall not cover the *Assured* for any liabilities, losses, expenses or costs resulting from the *Assured's* failure to comply with any of the obligations set out in this Clause 32 to the extent that the failure has materially prejudiced *Skuld's* interests.

33. OBLIGATORY CREW MEDICAL INSURANCE

The *Assured* is required to have in place medical insurance for the *Yacht's crew* with a reputable medical insurer with cover for at least US\$100,000 (or equivalent in any other currency) for each member of *crew* for each accident, occurrence or illness limited to US\$500,000 each accident, occurrence or illness.

34. LIMITATION

Where an *Assured* is entitled to limit any liability for any marine claim recoverable under *this insurance*, there shall be no recovery in respect of such liability for more than the amount to which liability could have been limited.

35. LIMIT OF INSURANCE

- 35.1 There shall be no recovery under *this insurance* in excess of the Limit(s) specified in the Certificate of Insurance or an Endorsement arising out of any one *event* notwithstanding the number of *third parties* claiming against the *Assured(s)* and/or the number of *Assureds* or others claiming an indemnity under *this insurance*.

- 35.2** In the event of shortfall in recovery from *Skuld's* reinsurers by reason of a sanction, prohibition or adverse action against the reinsurers by a state, international organisation or other competent authority or the risk thereof if payment were to be made by such reinsurers, the *Assured* shall in no circumstances be entitled to recover from *Skuld* that part of any liabilities, costs and expenses which is not recovered by *Skuld*. For the purposes of this provision, the word "shortfall" includes any failure or delay in recovery by *Skuld* by reason of the parties or reinsurers making payment in to a designated account in compliance with the requirements of any state, international organisation or other competent authority.

36. DEDUCTIBLES

- 36.1** The deductible of US\$1,000 (or if greater, the amount specified as the Deductible in the Certificate of Insurance) shall be paid to *Skuld* in respect of a claim under *this insurance* for liabilities, losses, expenses and costs arising under any one event.
- 36.2** Where more than one deductible applies in respect of one event, the *Assured* will only be required to pay the largest applicable deductible.
- 36.3** Failure by the *Assured* to pay a deductible which is due will entitle *Skuld* to withhold the indemnity due under *this insurance*.
- 36.4** Any policy limits shall apply to the total amount of any claim, inclusive of deductibles.

37. AUTOMATIC TERMINATION OF THIS INSURANCE

This insurance shall terminate automatically without notice to the *Assured* in the following circumstances:

- 37.1** there is a change of ownership of the *Yacht* without notice to and prior written approval of *Skuld*;
- 37.2** the *Assured* becomes insolvent, bankrupt, is dissolved or wound up, has a receiver or liquidator appointed or commences proceedings under any bankruptcy or insolvency laws to seek protection (or interim protection) from creditors;
- 37.3** the *Yacht* becomes a total loss or the *Yacht's* hull underwriters have accepted that the *Yacht* as a constructive, compromised or arranged total loss (or is deemed by *Skuld* to be so), except in respect of liability arising out of the *casualty* which gives rise to the total loss of the *Yacht*;
- 37.4** the *Yacht* is missing and there has been no news of her for thirty (30) days;
- 37.5** the *Yacht* is requisitioned by a State or Government Authority;
- 37.6** expiration of the *period of insurance*.

38. TERMINATION OF THIS INSURANCE BY NOTICE

Skuld may terminate *this insurance* by giving:

- 38.1** immediate notice of cancellation to the *Assured*, where the *Assured* is in breach of his obligations of disclosure under Clause 29 or, if in the sole opinion of *Skuld*, the *Assured* has acted in a fraudulent manner or with *wilful misconduct* (in which case there shall be no return of premium to the *Assured*);

- 38.2** 7 (seven) days' notice to the *Assured* where the *Assured* is in breach of his obligation regarding payment of premium under Clause 30; or following *Skuld's* survey of the *Yacht* or its management systems under Clause 31;
- 38.3** 30 (thirty) days' notice to the *Assured* without giving any reason, or
- 38.4.** on such notice in writing as *Skuld* may decide where, in the opinion of *Skuld*, the *Assured* has exposed or may expose *Skuld* to the risk of being or becoming subject to a sanction, prohibition, restriction or other adverse action by a state or international organisation or competent authority.

Where *this insurance* is terminated under Clauses 37, 38.2, 38.3 or 38.4, the *Assured* will be entitled to a pro-rata return of the remaining premium for the *period of insurance*.

Where *this insurance* terminates or cover is otherwise restricted or lost under *this insurance*, the *Assured* shall remain liable for all premiums due.

39. TIME LIMITS

Any claim against *Skuld* shall be time barred unless the *Assured*:

- 39.1** gives written notice to *Skuld* of any *event* which may give rise to a claim under *this insurance* within 6 (six) months of the *Assured* becoming aware of that *event*; and
- 39.2** commences proceedings against *Skuld* in respect of a claim under *this insurance* within 12 (twelve) months of receiving written notice from *Skuld* stating that the claim has been declined.

40. PROVISION OF SECURITY

Skuld shall be under no obligation to provide security on behalf of the *Assured*.

41. WAIVER

- 41.1** In the absence of an express written confirmation of cover by *Skuld*, no act (including the provision of security, payment of any sum or handling of any claim) or omission or delay by *Skuld* shall be treated as a waiver of *Skuld's* rights or acceptance of cover.
- 41.2** If *Skuld* provides security, incurs costs, or makes any payment in respect of a claim or dispute which turns out not to be covered, *Skuld's* position under *this insurance* is not waived and the *Assured* shall indemnify *Skuld*.

42. SUBROGATION

Where *Skuld* makes any payment in respect of any liability or costs, it shall be subrogated to the rights of the *Assured* and any recovery shall be passed to *Skuld* which shall be entitled to deduct a sum up to the amount paid by *Skuld* before any balance is credited to the *Assured*.

43. EXEMPTION OF LIABILITY

Skuld, its officers and employees shall not be liable in respect of any act or omission of *Skuld*, its officers, employees, correspondents, agents, representatives, lawyers, experts, surveyors or other party employed or appointed by *Skuld*, whether or not negligence is involved.

44. BURDEN OF PROOF

The *Assured* shall have the burden of proving that any claim against *Skuld* results from a risk covered under *this insurance*.

45. SAVINGS BY THE ASSURED

Where the *Assured* as a consequence of an event which is covered by *this insurance* obtains extra revenue, saves expenses or avoids liability or loss which otherwise would have been incurred and which would not have been covered by *this insurance*, *Skuld* shall be entitled to recover from the *Assured* or retain from any sum which would otherwise be payable to the *Assured*, an amount equivalent to the benefit obtained by the *Assured*.

46. ASSIGNMENT AND TRANSFERS

The *Assured* shall not, without the written consent of *Skuld*, assign or transfer any rights under *this insurance*, but in no circumstances, shall any assignee or transferee have a greater right than the *Assured*. Any assignment or transfer without *Skuld*'s written consent shall not bind *Skuld*.

47. SET OFF

Skuld shall be entitled to set off any amount due by the *Assured* to *Skuld* against any amount that may be due to the *Assured*.

48. INTEREST

In no case whatsoever shall interest be paid on any amount due by *Skuld*.

49. NOTICES

Notices are to be given in writing. Notices to the *Assured* and to *Skuld* are to be sent to their addresses set out in the Certificate of Insurance.

50. OMNIBUS

In exceptional circumstances, *Skuld* may, in its absolute discretion, cover the *Assured*'s liability, loss, expense or costs which would not otherwise be covered under *this insurance*, to the extent that *Skuld* considers that such cover would be appropriate.

51. LAW

The *Assured* and *Skuld* are free to choose the law applicable to *this insurance*. Unless the Certificate of Insurance states to the contrary, *this insurance* shall be governed by and construed in accordance with English law.

52. JURISDICTION

Unless the Certificate of Insurance states to the contrary, *this insurance* shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

53. MEDIATION

Without prejudice to Clause 52 above, the *Assured* and *Skuld* agree to use reasonable endeavours to resolve any dispute amicably and if appropriate, refer the dispute to mediation.

54. RIGHTS OF THIRD PARTIES

No term of *this insurance* is intended to confer any benefit or right on any *third party* under any applicable legislation including, but not limited to, the Contract (Third Parties) Act 1999.

55. MISCELLANEOUS

Headings in these Terms and Conditions are for ease of reference and convenience and the headings shall not affect the meaning and/or interpretation of any of the provisions of *this insurance*.

PART 5 ► ADDITIONAL COVER

56. WAR P&I RISKS COVER

The Assured will be insured for liabilities, costs and expenses in respect of which cover under *this insurance* is excluded solely by reason of the exclusion under Clause 28.20.2 for *war risks* provided that:

- 56.1 the Certificate of Insurance or an Endorsement specifies that the Assured is insured for "War P&I Risks Cover";
- 56.2 cover under this Clause shall only cover such liabilities, costs and expenses insofar as they exceed amounts recoverable under any other insurance (including, but not limited to, the Yacht's War Risks insurance);
- 56.3 cover under this Clause may be cancelled by *Skuld* giving the Assured seven (7) days' notice of cancellation in writing;
- 56.4 cover under this Clause shall exclude liabilities, costs and expenses arising out of the outbreak of war (whether declared or not) between any of the following countries: the United Kingdom, the United States of America, the People's Republic of China, France or the Russian Federation;
- 56.5 cover under this Clause will terminate automatically without notice to the Assured should war (whether declared or not) break out between any of the following countries: the United Kingdom, the United States of America, the People's Republic of China, France or the Russian Federation.

57. LIABILITY TO AND OF PRE-DELIVERY CREW

Where the Assured has entered into a written contract with:

- 57.1 a yard for the purchase of a new Yacht and stations crew at the yard or the port where the Assured's Yacht is being constructed and/or completed prior to handover and delivery of the Yacht by the yard to the Assured; or
- 57.2 the Seller for the purchase of a second hand Yacht and stations crew onboard the Yacht for the purpose of inspection, work, familiarisation or hand-over;

the Assured will be insured for liabilities, costs and expenses covered under *this insurance* for:

- 57.3 the actions or omissions of such crew; and
- 57.4 claims brought against the Assured by such crew; provided that:
 - 57.4.1 the Certificate of Insurance or an Endorsement specifies that the Assured is insured for "Pre-Delivery Crew Cover";
 - 57.4.2 cover under this Clause shall only cover such liabilities, costs and expenses insofar as there is no cover under any other insurance; and
 - 57.4.3 no claim for damage caused to the Yacht or any equipment allocated to the Yacht shall be recoverable under *this insurance*.

58. RACING

Liabilities covered under *this insurance* incurred while the *Yacht* is participating in a race or is subject to the rules of the race provided that the Certificate of Insurance or an Endorsement specifies that the *Assured* is insured for "Racing".

59. SUBMARINES

Liabilities covered under *this insurance* incurred in respect of the *Yacht's submarine(s)* provided that:

- 59.1 the Certificate of Insurance or an Endorsement specifies that the *Assured* is insured in respect of the "*Yacht's Submarines*"; and
- 59.2 the *Yacht's submarine(s)* is/are constructed, surveyed, certificated and operated in conformity with the applicable requirements, rules and regulations of the *Yacht's* Classification Society and her Flag State.

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APPENDIX 1

DEFINITIONS

AFFILIATE

A person or company affiliated with the *Assured* including but, not limited to, the beneficial owner of the *Yacht* and his/her immediate family.

ASSURED

A person or company named as the *Assured* in the Certificate of Insurance, including any *Co-Assured* or *Affiliate*.

CASUALTY

An incident affecting the physical condition of the *Yacht* which renders the *Yacht* incapable of safe navigation to her intended destination or which creates a threat to the life or safety of her *crew* or guests.

CHEMICAL, BIO-CHEMICAL, ELECTROMAGNETICAL WEAPONS AND COMPUTER VIRUS RISKS

Loss, damage, liability or expense directly or indirectly caused by or contributed to or arising from:

- (a) any chemical, biological, bio-chemical or electromagnetic weapon;
- (b) the use or operation, as a means of inflicting harm, of any computer virus.

CO-ASSURED

A person or company named as the *Co-assured* in the Certificate of Insurance.

CREW

A person employed or engaged to serve on board the *Yacht* in accordance with a *crew* agreement or contract of employment, including a substitute for such a person.

DAYWORKER

A person, not being a member of the *crew*, employed by or on behalf of the *Assured* to carry out casual work onboard the *Yacht* on a temporary basis.

EVENT

A *casualty*, incident, accident or occurrence arising from the operation or use of the *Yacht* which may give rise to a claim under *this insurance*. A series of *events* which have the same cause will be treated as one *event* for the purpose of deductibles.

EXTRA COSTS

Those additional costs necessarily and reasonably incurred by the *Assured* over and above the costs that would have been incurred by the *Assured* had the *event* giving rise to the claim under *this insurance* not occurred.

ISM CODE

International Safety Management Code.

ISPS CODE

The International Ship and Port Facility Security Code.

MLC

The Maritime Labour Convention.

NUCLEAR RISKS

Liabilities, costs and expenses directly or indirectly caused by or contributed to by or arising from:

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

PERIOD OF INSURANCE

The period of cover under *this insurance* commencing unless otherwise agreed at 00:00 hours GMT on the date prescribed in the Certificate of Insurance and ending at the time and date set out in the Certificate of Insurance, unless amended by way of an Endorsement or terminated in accordance with the provisions of *this insurance*.

PERSONAL EFFECTS

Items of a personal and portable nature which are taken onboard the *Yacht* and which would not normally be sold with the *Yacht*.

SISTER VESSEL CLAUSE

The *Assured* shall be entitled to recover from *Skuld* and *Skuld* shall have the same rights as if the *Yacht* and the other Vessel had belonged to different owners. Unless otherwise agreed between the *Assured* and *Skuld*, if both the *Yacht* and the other Vessel involved in a collision are to blame, then where the liability of either or both of the *Yacht* and the other Vessel in collision becomes limited by law, claims under this provision shall be settled upon the principle of single liability, but in all other cases claims under this provision shall be settled upon the principle of cross liabilities, as if the owner of each vessel had been compelled to pay the owner of the other vessel such proportion of that owner's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the *Assured* in consequence of the collision.

SKULD

Assuranceforeningen *Skuld* (Gjensidig).

SUBMARINE

A craft that is designed to travel under the surface of the water and where its occupant(s) is/are fully enclosed inside such craft or vessel.

TENDER

Any craft owned by *the Assured* which is either stowed onboard the *Yacht* and/or towed by the *Yacht* when she is underway and which is used in connection with the *Yacht* to transfer the owner, guests and crew of the *Yacht* or to provide support to the *Yacht* and/or entertainment to the owner, guests and crew of the *Yacht*.

TOYS

Any personal watercraft (PWC), jetski and other watercraft (other than the *Yacht* or *tender*), para-sailers, para-gliders, bananas, doughnuts or other watersports equipment owned by the *Assured* and stored onboard the *Yacht* when underway.

THIRD PARTY

Any person or company other than the *Assured*.

THIS INSURANCE

These Terms and Conditions, the Certificate of Insurance and any Endorsement issued by *Skuld* (together "*this insurance*")

VALUABLES

Cash, banknotes or other forms of currency, bullion, works of art, precious or rare metals or stones, plate or other objects of a rare or precious nature, specie, bonds or other negotiable instruments

WAR RISKS

Liabilities, costs or expenses (irrespective of whether a contributory cause of the same being incurred was any neglect on the part of the *Assured* 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 caused by:

- (a) War, civil war, revolution, rebellion, insurrection or resultant civil strife or any hostile act by or against a belligerent power or by any person acting maliciously or from a political motive or by any act of terrorism (provided that, in the event of any dispute as to whether or not, for the purposes of this paragraph (a), an act constitutes an act of terrorism, the decision of *Skuld* shall be final
- (b) capture, seizure, arrest, restraint, detainment (barratry and piracy excepted) and the consequences thereof or any attempt thereat;
- (c) mines, torpedoes, bombs, rockets, shells, explosions or other similar weapons of war.

WILFUL MISCONDUCT

An act intentionally done, or a deliberate omission by the *Assured*, with the knowledge that the performance or omission will probably result in injury, loss, or damage, or an act done or omitted in such a way as to allow an inference of a reckless disregard of the probable consequences.

YACHT

The *yacht* named on the Certificate of Insurance as *the Yacht* insured under *this insurance*, including her *tender(s)*, *toy(s)*, watersports equipment and other equipment on board. This does not include any shadow vessel in support of *the Yacht* or the shadow vessel's *tender(s)*, *toy(s)* and equipment.

APPENDIX 2

CO-ASSUREDS

1. *Skuld* may agree to extend the cover afforded to the *Assured* to a *Co-assured* named in the Certificate of Insurance.
2. The cover shall extend only to risks, liabilities and expenses which are within the scope of cover afforded by *this insurance*.
3. Any payment by *Skuld* to the *Assured* or any *Co-assured* shall be deemed to be payment to the *Assured* and to all *Co-assureds* jointly and shall fully discharge the obligations of *Skuld* in respect of that payment.
4. Where *Skuld* makes any payment to any *Co-assured* in respect of any liability or costs, it shall be subrogated to the rights of the *Co-assured* and any recovery shall be passed to *Skuld* which shall be entitled to deduct a sum up to the amount paid by *Skuld* before any balance is credited to the *Co-assured*.
5. The contents of any communication between *Skuld* and the *Assured* or any *Co-assured* shall be deemed to be within the knowledge of the *Assured* and all *Co-assureds*.
6. Any failure by the *Assured* or any *Co-assured* to comply with any of the obligations under *this insurance* shall be deemed to be a failure of the *Assured* and all *Co-assureds*.
7. Any conduct or omission by the *Assured* or any *Co-assured* which would have entitled *Skuld* to reject or reduce any claims shall be deemed to have been the failure of the *Assured* and all *Co-assureds*.
8. *Skuld* shall not cover any liability, loss, expense or costs in respect of any dispute between the *Assured* and any *Co-assured*.
9. The total liability of *Skuld* in respect of any one *event*, to the *Assured* and to any *Co-assured* shall not, in any circumstances, exceed such sum as would have been recoverable from *Skuld* only by the *Assured*.
10. In the event that the total liability of *Skuld* is less than the total sum claimed by the *Assured* and by any *Co-assured*, *Skuld* shall be entitled to apportion payment in proportion to the respective amounts claimed.