

STAMP DUTY  
PAID

## FIXED CONTRIBUTION PROTECTION & INDEMNITY TAKAFUL CERTIFICATE

### INTRODUCTORY

In consideration of the contribution paid hereon, the Takaful operator undertakes to indemnify the Participant against liabilities, losses, costs or expenses as the Participant shall in the capacity as agreed in relation to the vessel covered named herein ("Covered Vessel") have become liable to pay and has paid in respect of the liabilities, risks, or event described in this takaful certificate.

Claims brought under this takaful cover shall always be subject to the limitations specified in Section D of this takaful certificate.

This takaful certificate is only intended to cover liabilities, losses, costs or expenses which arise out of events occurring during the certificate period, in respect of the Participant's interest in the Covered Vessel and only in connection with the operation of the Covered Vessel by or on behalf of the Participant.

### DISCLAIMER

This takaful certificate evidence only of a contract of indemnity takaful cover between the Participant and the Takaful operator and shall not be construed as any evidence of any financial responsibility or undertaking on the part of the Takaful operator to any other party.

In the event that a Participant tenders, shows or offers this takaful certificate to any third party as evidence of cover under any applicable law relating to financial responsibility, or as evidence of cover for any other purpose, such use of the certificate is not to be taken as any indication that the Takaful operator consents to act as guarantor or to be sued directly in any jurisdiction whatsoever. The Takaful operator does not consent to be guarantor or to be sued directly.

This takaful certificate shall not, nor is it intended to, confer any right or benefit on any third party.

## Clauses

The following clauses, endorsements and warranties are applicable to this Certificate:

### 1) Takaful Terminology Clause

This Takaful certificate adopts the international standards wording, as such it may contain insurance terminologies. Accordingly, such terminologies shall be construed in accordance with the corresponding Takaful terminologies, as follows:-

Correct Takaful term	Insurance terms used
Participant	Assured
Takaful	Insurance
Person Covered	Insured
Takaful Operator	Insurer
Interest Covered	Interest Insured
Period of Takaful	Period of Insurance
Certificate	Policy
Contribution	Premium
Sum Covered	Sum Insured

However, where the context requires, certain insurance terminologies may remain in this Takaful certificate.

## 2) Takaful & Surplus Distribution Clause

The Participant agrees to participate in this General Takaful scheme based on the principle of Takaful and to pay the contribution on the basis of Tabarru' (donation) for the purpose of mutual support of other participants and upon payment of the contribution to the General Takaful Fund (Fund), the Participant is entitled to the Takaful cover as per the terms and conditions contained in the Takaful Certificate. Payment of sum covered to participants is payable from the Fund based on the concept of Tabarru'.

This scheme also applies the Wakalah (agency) concept, whereby the participant appoints the Takaful Operator to act on behalf of them to invest and manage General Takaful Fund (Fund). The Fund is collectively owned by the Participants where Tabarru' portion of the contribution is placed for the purpose of takaful. Accordingly, the participant agrees to pay the upfront Wakalah Fee (as shown in the Product Disclosure Sheet or/and the Takaful Certificate) to the Takaful Operator as a deduction of certain amount of contributions, to cover the expenses of managing and operating the Fund based on the following rates:

Commission	: Up to 15% of Contribution
Management Expenses	: Total Wakalah Fee less Commission
Total Wakalah Fee	: 22.5% of Contribution

The Participant also agree to authorize the Takaful Operator to delegate its rights, duties and obligations to any third party as the Takaful Operator deem fit for the purpose of achieving the objective to invest and manage the Fund, provided that, in the event of any such delegation, the Takaful Operator will remain liable and responsible for all such rights, duties and obligations towards the Participant.

At the end of each financial year, the distributable surplus (if any) from the Fund will be determined annually and will only be payable for annual Certificate. The distribution, if any, makes allowance for contingency provisions, and is subject to the surplus policy approved by the Takaful Operator's Shariah Committee. The Participant agrees that the Takaful Operator will receive 50% of distributable surplus for operating and managing the Fund based on the contract of Ju'alah (wage). The balance of 50% will be shared amongst participants whose Takaful certificates have not terminated and who have not made any claim prior to the expiry of their Takaful certificates.

In the event of insufficient balance in the Fund to pay the Participant's Takaful benefits during the period of Takaful, the Takaful Operator will make good the balance in the Fund under the principle of Qard (interest-free loan) from the shareholder's fund provided that the insufficiency is not due to the Takaful Operator's negligence. If the insufficiency is due to the Takaful Operator's negligence, the Takaful Operator will make the outright transfer for the insufficiency. The participants further agree that any future surplus arising from the Fund during their Takaful period can be used to pay for outstanding Qard to the Takaful Operator.

The participant further agrees that if the surplus or any sum payable is less than Ringgit Malaysia Ten (RM 10.00), it will automatically be credited to charitable fund, which will be utilized as Amal Jariah on his/her behalf. The fund will be distributed to eligible recipients as approved by the Takaful Operator's Shariah Committee for charitable purposes.

### Definitions:

**"General Takaful Fund ("Fund")"** means the Participants' account where Tabarru' portion of the Contribution is placed for the purpose of Takaful. The Fund is collectively owned by the Participants and the Sum Covered shown in the Takaful Schedule is payable from the Fund.

**"Ju'alah"** is a wage contract. It is an exchange contract for a known or unknown task, that is difficult to precisely determine and for which payment is due only once the work has been completed. In relation to this Certificate, it refers to the reward given to the Takaful Operator agreed upfront by the Participant and the Takaful Operator for good management of the Fund.

**"Qard"** in the context of this Certificate, means an interest-free loan which is given by the Takaful Operator to the General Takaful Fund when it becomes insufficient to fulfil its Takaful obligation provided that the insufficiency is not due to the Takaful Operator's mismanagement or negligence. The loan will be repaid by the future surpluses from the General Takaful Fund. If the insufficiency is due to the Takaful Operator's mismanagement or negligence, the Takaful Operator will make the outright transfer for the insufficiency.

“**Tabarru**” means contribution donation or gift. In the context of this Certificate, this means Contribution for the purpose of Takaful. This portion is placed in the General Takaful Fund.

“**Takaful**” means mutual assistance, based on the spirit of brotherhood and solidarity, whereby the Participants agree to assist each other financially in case of certain defined needs.

“**Wakalah**” refers to a contract where a party, as principal authorizes another party as his agent to perform a particular task on matters that may be delegated with or without imposition of a fee. In the context of this Certificate, this means that the Participant has appointed the Takaful Operator to invest and manage the General Takaful Fund on his/her behalf. The Participant has also authorized the Takaful Operator to delegate its rights, duties and obligations to any third party as it deems fit. In the event of such delegation, the Takaful Operator will remain liable and responsible for all such rights, duties and obligations towards the Participant.

### 3) **Data Protection Obligations and Rights**

We shall be able to process Personal Data according to the Section 4 of the Personal Data Protection Act 2010. We shall be able to disclose Personal Data provided by You, as the context may require to:

- a) Etiqa General Takaful Berhad, Etiqa General Insurance Berhad, Etiqa Life International (L) Ltd or Etiqa Offshore Insurance (L) Ltd;
- b) Other entities within the Maybank Group;
- c) Our authorised agents and service providers with whom We have contractual agreements for some of Our functions, service and activities;
- d) Other takaful operators or insurance companies and distribution partners (such as, banks, Islamic banks, insurance brokers, takaful brokers, reinsurance companies and retakaful operators);
- e) Industry trade associations such as Life Insurance Association of Malaysia (LIAM), Persatuan Insurans Am Malaysia (PIAM) & Malaysian Takaful Association (MTA);
- f) Our merchants and strategic partners;
- g) Any parties authorised by You (from time to time); or
- h) Regulatory enforcement and governmental agencies as permitted or required by law, authorised by any order of court or to meet obligations to regulatory authorities.

You will keep Us updated in respect of all such Personal Data as soon as is practicable.

We shall not be liable for any direct or indirect loss or damage due to any inaccuracy or incompleteness in the Personal Data provided to Us.

We may from time to time request that You provide other Personal Data required for the purposes of this Certificate.

Prior to providing Us with the Personal Data of the Covered Person, or another individual, You must inform that individual of Our privacy notice.

## General Provision

### **Right to terminate due to Anti-Money Laundering and Counter Financing of Terrorism**

If we discover, or have justified suspicion, that the Certificate is exploited for money laundering activities or to finance terrorism, we reserve the right to terminate the Certificate immediately. We shall deal with all contributions paid and all benefits or sums payable in respect of the Certificate in accordance with any applicable laws.

## Important Notice

The Ombudsman for Financial Services (OFS) and Bank Negara Malaysia’s Laman Informasi , Nasihat & Khidmat (LINK) alternative avenues for members of the public to seek redress against unfair market practices.

### **Procedure for Complaint to OFS**

The Ombudsman for Financial Services (OFS) may be contacted by the Claimant or Participant, in the event that the Claimant or Participant is dissatisfied with the decision of Etiqa General Takaful Berhad to a dispute, or Etiqa General Takaful Berhad's failure to respond to a complaint within sixty (60) days. The OFS contact details are as follows:

Email: [enquiry@ofs.org.my](mailto:enquiry@ofs.org.my) OR Facsimile Number: +603 2272 1577 OR

Postal address:  
Chief Executive Officer  
Ombudsman for Financial Services  
Level 14, Main Block, Menara Takaful Malaysia  
No.4, Jalan Sultan Sulaiman  
50000, Kuala Lumpur

Alternatively, the Claimant or Participant may file the dispute in person at the OFS office.

The OFS must be contacted within six (6) months from the date of the final decision from Etiqa General Takaful Berhad to the dispute of the Claimant or Participant.

For further details on the OFS, please obtain the information pamphlets from Etiqa General Takaful Berhad or visit the OFS website at [www.ofs.org.my](http://www.ofs.org.my)

Engagement of the OFS is subject to the terms of reference pursuant to section 138 of the Islamic Financial Services Act 2013. Contacting the OFS does not affect the Claimant's or Participant's right to take legal action against Etiqa General Takaful Berhad should they be dissatisfied with the outcome by the OFS.

#### **Procedure for Complaint to LINK**

Any Participant or Claimant who is not satisfied with the conduct of the Takaful Operator may write to LINK, giving details of the complaint, the name of the Takaful Operator and the Certificate number or the claim number.

Copies of the correspondence (if any) between the Participant or the Claimant and the Takaful Operator may be sent to facilitate tracing the case file kept by the Takaful Operator.

The contact details are as follows:  
Director, Jabatan LINK dan Pejabat Wilayah  
Bank Negara Malaysia  
Jalan Dato' Onn  
50480 Kuala Lumpur  
Telephone Number: 1 300 88 5465  
Facsimile Number: +603 2174 1515  
E-mail: [bnmtelelink@bnm.gov.my](mailto:bnmtelelink@bnm.gov.my)

### **Our Commitment to High Standard of Customer Service**

We do everything We can to ensure that You receive the high standard of service You expect. If We fall below these standards, or You are unhappy with Our service, please write to Our Head of Feedback Centre who will ensure that Your feedback is dealt with instantly.

The address is:

Etiqa General Takaful Berhad  
Complaint Management Unit  
Level 6, Tower B, Dataran Maybank  
No 1, Jalan Maarof  
59000 Kuala Lumpur, Malaysia  
Telephone Number: 1300 13 8888 or +603 2780 4500  
Email: [complaint\\_cmu@etiqa.com.my](mailto:complaint_cmu@etiqa.com.my)

## **DEFINITIONS / INTERPRETATION**

### **SECTION A - GENERAL CONDITIONS**

- Clause A.1 - Application of terms
- Clause A.2 - Application of Takaful cover
- Clause A.3 - Takaful Certificate
- Clause A.4 - Hull and Machinery Certificate
- Clause A.5 - Survey by Takaful operator
- Clause A.6 - Co-Takaful
- Clause A.7 - Lay-up returns
- Clause A.8 - Termination of Takaful cover
- Clause A.9 - Ownership
- Clause A.10 – Notice of Cancellation
- Clause A.11 – Payment of contribution
- Clause A.12 – Obligation to Sue and Labour
- Clause A.13 – Owner's limitation
- Clause A.14 – Classification clause
- Clause A.15 – Flag state
- Clause A.16 – International Safety Management (ISM)

### **SECTION B - RISKS COVERED**

- Clause B.1 - Liability in respect of crew
- Clause B.2 - Liability to persons other than crew
- Clause B.3 - Collision liabilities
- Clause B.4 - Damage other than by collision
- Clause B.5 - Liability for loss of or damage to third party property
- Clause B.6 - Liability for removal of wreck
- Clause B.7 - Liability for cargo
- Clause B.8 - Liability for pollution risks
- Clause B.9 - Fines and penalties
- Clause B.10 - Customary Towing of a Covered Vessel
- Clause B.11 – Towing by a Covered Vessel
- Clause B.12 – Stowaways and refugees
- Clause B.13 – Diversion expenses
- Clause B.14 – Life salvage
- Clause B.15 – General average
- Clause B.16 – Costs and expenses

### **SECTION C – EXCLUSIONS AND RESTRICTIONS**

- Clause C. 1 – Pay to be Paid
- Clause C. 2 – War Risks
- Clause C. 3 – Indemnities and Contractual Liabilities
- Clause C. 4 – Illegal and Reckless Trading
- Clause C. 5 – Disease or Cumulative Injury
- Clause C. 6 – Specialist Operations
- Clause C. 7 – Institute Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons Exclusion Clause  
10/11/03
- Clause C.8 – Fishing & Fish Processing Vessel
- Clause C.9 – General Exclusions

### **SECTION D - LIMITATIONS**

- Clause D.1 – Time Limits
- Clause D.2 – Law And Jurisdiction
- Clause D.3 – Financial Limitation of the Takaful Operator's liability
- Clause D.4 – Deductibles

**SECTION E – CLAIMS PROCEDURES**

Clause E.1 – Notification  
Clause E.2 – Conduct

**SECTION F – CLAIMS CONTROL**

Clause F. 1 – Notification  
Clause F. 2 – Costs and Expenses  
Clause F. 3 – Measure of Loss  
Clause F. 4 – Subrogation  
Clause F. 5 – Security  
Clause F. 6 – Contribution  
Clause F. 7 – Transfer of Rights  
Clause F. 8 – Waiver  
Clause F.9 – Terms and Conditions subject to Marine Insurance Act 1906

## DEFINITIONS / INTERPRETATION

Takaful operator	Etiqua General Takaful Berhad
Participant	The person or party who is covered under this certificate and who is named as the Participant in this certificate.
Affiliated/ Associated/ Subsidiary Company	A company which is controlled by or is under common control of the Participant
Takaful Certificate	The document issued by the Takaful operator which is evidence of the takaful contract under this takaful certificate
Co-Participant(s)	The person(s) covered under this takaful certificate and who is (are) named to be the Co-Participant (s) in this takaful certificate
Covered vessel	A ship, boat, hover craft, or other type of vessel or structure which is covered under this takaful certificate.
Cargo	Goods, which are the subject of a contract of carriage to which the Participant is party, and are to be, are or were carried on the Covered vessel, other than containers leased and/or owned by the Participant.
Charter-party	A time charter-party, a voyage charter-party, including contracts of affreightment and booking notes or a space charter party.
Crew	Any person (including the Master) employed or engaged to serve on board the Covered vessel under Articles of Agreement or other crew agreement or contract of service of or employment, including a substitute for such person.
Deductibles	The proportion, percentage or the limited sum of money to be borne by the Participant in respect of any one claim.
Fines	Includes civil penalties, penal damages, and other impositions similar in nature to fines.
Hague-Visby Rules	The International Convention for the Unification of Certain Rules relating to Bills of Lading signed in Brussels on 25 <sup>th</sup> August 1924, as amended by the Protocol to that Convention signed in Brussels on 23 <sup>rd</sup> February 1968
Hamburg Rules	The United Nations Convention on the Carriage of Goods By Sea, 1978
Hague Rules	The International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, signed in Brussels on 25 <sup>th</sup> August 1924, and in force as of 2 <sup>nd</sup> June 1931
Hull Certificate(s) / Hull and Machinery Certificate(s)	The takaful certificate or certificates effected on the hull and machinery of the Covered Vessel, including any interest, increased value, excess liability, war and strikes risks and other total loss certificates.
Contribution	Any contribution or other sums payable to the Takaful operator on such terms as the Takaful operator shall agree in writing.

## SECTION A – GENERAL CONDITIONS

### **Clause 1. Application of Terms**

- 1.1 All takaful contracts afforded by the Takaful operator to the Participant shall incorporate all the provisions set out in this takaful certificate.

### **Clause 2. Application of Takaful cover**

- 2.1 Any application shall be in the form supplied by the Takaful operators from time to time and information given in the course of applying for takaful cover shall be deemed to form part of the takaful contract between the Takaful operator and the Participant.

### **Clause 3. Takaful certificate**

- 3.1 If the Takaful operators accepts an application for takaful cover, the Takaful operator will issue a Takaful certificate, which shall state:
- 3.1.1 The name of Participant on whose behalf the Covered Vessel is covered, the name of the Participant's manager of the Covered Vessel and name of any co-Participant;
  - 3.1.2 The name and principal particulars of the Covered Vessel;
  - 3.1.3 The attachment date of the Covered Vessel and the period of takaful ;
  - 3.1.4 The maximum amount covered;
  - 3.1.5 The applicable deductibles;
- 3.2 If at any time during the period of takaful, the Participant requires a variation of certain terms of the certificate herein, the Participant shall make a formal written request to the Takaful operator with regard the same giving details of the proposed variation/s. The Takaful operator shall, at their absolute discretion, decide if they are agreeable to the proposed variation. In the event, the Takaful operator is agreeable to the proposed variation (or any part thereof), the Takaful operator will issue an endorsement stating the terms and effective date of such variation.
- 3.3 Any change of information related to the Covered Vessel mentioned in the Takaful certificate or information that will influence the takaful cover risk shall be notified to the Takaful operator forthwith.
- 3.4 Every Takaful certificate and any endorsement thereto issued by the Takaful operator shall be conclusive evidence as to the terms as the case may be.

### **Clause 4 Hull and Machinery Certificate**

- 4.1 Unless otherwise agreed in writing, it is a condition precedent of the Participant's right to recover under this takaful certificate in respect of any liability, loss, damage, costs or expenses that he shall have, in full force and effect, throughout the duration of this certificate, hull and machinery cover in the proper hull value of the vessel under terms and conditions which, at a minimum, shall include provisions of the International Hull Clauses 1.11.03 or the Institute Hull Form(s) - 1.10.83 or 1.11.95 (including the four-fourths running down clause), and the Institute War and Strikes Clauses 1.11.95 (CL 281). Other forms to be agreed by Takaful operator prior to inception of cover.

### **Clause 5. Survey by Takaful operator**

- 5.1 The Participant shall allow the inspection of the Covered Vessel by a surveyor or surveyors appointed on behalf of the Takaful operator prior to inception of this takaful certificate or at any point of time and as often as required by the Takaful operator during the certificate period and will give full co-operation in the performance of such an inspection. The Participant warrants that it shall comply with all recommendations or requirements made by the surveyor or surveyors who perform the inspection within the period required for compliance.



- 5.2 In the event of the Covered Vessel being laid up for a continuous period of 90 or more days, the Participant shall notify the Takaful operator in writing at least 7 days prior to the re-commissioning of the Covered Vessel in order for the Takaful operator to have an opportunity to commission an inspection of the Covered Vessel pursuant to this clause.
- 5.3 It is a condition precedent to the Takaful operator's liability under this takaful certificate that the Participant shall comply with the warranties provided for under this Clause
- 5.4 If the Participant fails to comply with any warranty provided for under this Clause in respect of the Covered Vessel, the remedies provided for under the Marine Insurance Act 1906 shall apply and, in addition the Takaful operator may:
- 5.4.1 cancel cover provided under this certificate by notice in writing to the Participant. Such cancellation shall come into effect from the date of such notice; or
- 5.4.2 vary or restrict the terms on which cover under this takaful certificate is provided.

**Clause 6. Co-Participants**

- 6.1 It is hereby agreed that save insofar as required by written contract, the Participant is granted the privilege of including hereunder other relevant parties as Co-Participant(s). This privilege is subject to:
- 6.1.1 the Takaful operator being given notice in writing of the identity of the proposed co-Participant(s); and
- 6.1.2 The Takaful operator shall have absolute discretion on whether to accept or reject the Participant's request to include other relevant parties as Co-Participant/s.
- 6.2 Notwithstanding the fact that such parties as advised are herein named in their capacity as Co-Participant(s) in this takaful certificate, the liability of the Takaful operator to all Co-Participants shall only extend insofar as the Takaful operator may be found liable to pay in the first instance for liability which is properly the responsibility of the Participant, and nothing herein contained shall be construed as extending cover in respect of any amount which would not have been recoverable hereunder by the Participant had such claim been made or enforced against the Participant. Once indemnification hereunder has been made, the Takaful operator shall be discharged and the Takaful operator shall be under no further liability hereunder to make any further payment to any person or company whatsoever, including the Participant, in respect of that claim.

**Clause 7. Lay-up returns**

- 7.1 Notwithstanding any terms in the certificate herein, unless the Takaful operator in their absolute discretion so agree, there shall be no return of contributions permitted and/or the Participant shall not be entitled to the return of any contributions as a result of the Participant's Vessel being laid up during the period of the takaful.

**Clause 8. Termination of takaful cover**

- 8.1 This takaful certificate shall terminate automatically without notice upon the happening of any of the following events:
- 8.1.1 the Participant, being an individual:
- 8.1.1.1 dies;
- 8.1.1.2 becomes bankrupt;
- 8.1.1.3 is the subject of a receiving order or of a scheme of arrangement or composition with his creditors;
- 8.1.1.4 becomes incapable of managing or administering his business by reason of mental illness or incapacity.

- 8.1.2 the Participant, being a corporation:
- 8.1.2.1 is wound up by an order of the court or by an effective resolution being passed for voluntary winding up;
  - 8.1.2.2 is dissolved;
  - 8.1.2.3 is the subject of the appointment of a receiver, administrator or manager in respect of all or part of its business;
  - 8.1.2.4 possession is taken of any property of the corporation under the provisions of a charge secured upon that property;
  - 8.1.2.5 commences any proceedings under any bankruptcy or insolvency laws to seek protection from its creditors or to re-organize its affairs.
- 8.2 The Participant (or in the case of an individual Participant who dies, his/her personal representative) shall promptly notify the Takaful operator in writing of the occurrence of an event referred to in this Clause.

**Clause 9. Ownership**

- 9.1. Save insofar as the Takaful operator has agreed in writing to maintain or reinstate cover in respect of the Covered Vessel, on the same or on varied or restricted terms, cover in respect of a Covered Vessel shall terminate automatically without notice upon the happening of any of the following events:
- 9.1.1 Sale of the Covered Vessel;
  - 9.1.2 The Participant parts with or assigns part of or all of its interest in the Covered Vessel to a third party;
  - 9.1.3 Change of manager or flag state or classification society in respect of the Covered Vessel;
  - 9.1.4 Mortgage or hypothecation of the Covered Vessel
  - 9.1.5 Relinquishing of possession or control of the Covered Vessel by the Participant or foreclosure by a mortgagee bank in respect of the Covered Vessel;
  - 9.1.6 The Covered Vessel becomes an actual total loss;
  - 9.1.7 The Covered Vessel becomes a constructive total loss, on tender by the Participant of notice of abandonment to the Covered Vessel's Hull and Machinery underwriters and acceptance by the Hull and Machinery underwriters that the Covered Vessel is a constructive total loss;
  - 9.1.8 A compromised or settlement with the Covered Vessel's Hull & Machinery underwriters;
  - 9.1.9 In circumstances where the Takaful operator concludes that the Covered Vessel is a total loss and notifies the Participant in writing accordingly;
  - 9.1.10 The Covered Vessel went missing for a consecutive period of ten days from the date she was last heard or from her being posted at Lloyd's as missing, whichever shall be the earlier.
- 9.2 The Participant shall promptly notify the Takaful operator in writing on the occurrence of a circumstance or event referred to in section A, Clause 9.1 above.
- 9.3 Where cover ceases pursuant to section A, Clause 9.1, the Takaful operator's liability under this certificate shall be limited only in respect of any claim arising prior to the time when cover ceases, except that, where cover ceases by virtue of section A, Clause 9.1.6 (a total loss of the Covered Vessel the Takaful operators shall also be liable in respect of any claim arising directly by reason of the casualty giving rise to the Covered Vessel becoming a total loss.

- 9.4 In the event of the Covered Vessel becomes a total loss, the contribution is deemed to be fully earned and payable to Takaful operators forthwith, no account shall be taken of any amount due or alleged to be due by the Takaful operator to the Participant and no set off against claims is allowed.

**Clause 10. Notice of cancellation**

- 10.1 Without prejudice to the other provisions herein pertaining to the rights of cancellation of the certificate, the Takaful operator or the Participant may for any reason cancel this takaful certificate by giving the other party thirty (30) days written or telegraphic or electronic notice to this effect. The Takaful operator may send notice to the placing broker and such notice shall be deemed valid notice for all purposes hereunder. The certificate shall be deemed cancelled upon expiry of the thirty (30) days written or telegraphic or electronic notice.

**Clause 11. Payment of contribution**

- 11.1.1 The Participant shall be bound to pay and shall pay to the Takaful operator Contribution payable in respect of this takaful certificate on such terms as the Takaful operator shall agree in writing.
- 11.2 In the event of failure by the Participant to pay Contribution or any installment of Contribution due under the said terms, the Takaful operator is entitled to:
- 11.2.1 Cancel this takaful certificate upon giving a minimum notice period of seven (7) days in writing; or
- 11.2.2 Vary or restrict the terms on which cover under this takaful certificate is provided;
- 11.2.3 In the event notice of cancellation is given under Clause 11.2.1, the certificate shall be deemed cancelled upon expiry of the seven (7) days written notice and the Takaful operator shall be relieved of any liability whatsoever under this certificate in respect of any claims whatsoever, whether arising before or after such cancellation. Further, payment of Contribution by the date specified in any cancellation notice given pursuant to Clause 11.2.1, Section A shall be a condition precedent to the Takaful operator's liability under this certificate.
- 11.4 If, during a notice period in respect of a notice given pursuant to Clause 11.2.1 of this Section, an event occurs which gives rise to the automatic termination of the certificate pursuant to Section A, Clause 8 or cessation of cover pursuant to Section A, Clause 9 hereof, the effect of Section A, Clause 11.2.1 shall prevail and the Takaful operator shall be relieved of all liability whatsoever whether arising before or after the date of such cancellation.
- 11.5 Where this takaful certificate is effected on behalf of the Participant by a broker, the broker is not answerable or liable to the Takaful operator for the Contribution payable hereunder.

**Clause 12. Obligation To sue and Labour**

- 12.1 Upon the occurrence of any casualty, event or matter liable to give rise to a claim under this takaful certificate, the Participant or his agents are responsible to take and to continue to take all such steps as may be reasonable for the purpose of averting and minimising any expense or liability in respect of which he may recovered from the Takaful operator. If the Participant or his agents are in breach of this obligation, the Takaful operator may in their absolute discretion reject any claim arising out of the casualty, event or matter, or reduce the amount of payment in respect of such claim by such amount as they may determine.

**Clause 13. Owner's limitation**

- 13.1 If and when the Participant under this takaful certificate has any interest other than as a shipowner in the Covered Vessel, the Takaful operator shall not be liable under this takaful certificate to any greater extent than if such Participant was the owner and was entitled to all the rights of limitation to which a shipowner is entitled to.

**Clause 14.      Classification clause**

14.1 Unless otherwise agreed by the Takaful operator in writing, it is warranted that the Covered Vessel is, at the time of inception of this takaful certificate, classed with a classification society approved by the Takaful operator, and shall remain so classed throughout the certificate period.

14.2 The Participant further warrants the followings:

14.2.1 that the Participant shall fully and timely comply with the rules of that classification society, and comply with any recommendation or requirement issued by it in accordance with those rules within any period or by any date stated by that classification society for compliance.

14.2.2 that the Participant shall notify and secure the Takaful operator's approval in writing of any intended change of classification society in respect of the Covered Vessel, stating in full all outstanding requirements, recommendations and restrictions to which the Covered Vessel is subject.

14.2.3 that the Participant shall promptly notify the classification society of any event or circumstance which may affect the Covered Vessel's class, including, but not limited to, any event or circumstance which might cause the classification society to impose a requirement or make a recommendation under its rules.

14.3 It is a condition precedent to the Takaful operator's liability under this takaful certificate that the Participant will:

14.3.1 Disclose to the Takaful operator all information and documents that the Takaful operator may require relating to the class of the vessel, including, but not limited to, information and documents relating to any requirements or recommendations imposed, any special survey or dry-docking of the Covered Vessel, and the granting of any extensions by the classification society under its rules.

14.3.2 Authorise a nominated representative of the Takaful operator, to inspect and copy documents or information relating to the Covered Vessel's class either in the Participant's possession or in the possession of the Classification Society.

14.4 In the event of a failure by the Participant to comply with any warranty provided for under this Clause in respect of the Covered Vessel, the remedies provided for under the Marine Insurance Act 1906 shall apply and, in addition, the Takaful operator may:

14.4.1 cancel the cover provided under this certificate in respect of the Covered Vessel by giving notice in writing to the Participant and such cancellation shall come into effect from the date of such notice; or

14.4.2 vary or restrict the terms on which cover under this takaful certificate is provided.

**Clause 15.      Flag Administration**

15.1 The Participant warrants that the Covered Vessel complies at the time of inception of this takaful certificate with all requirements of the Covered Vessel's flag state including those relating to:

15.1.1 The construction, adaptation, condition, fitment, manning and equipment of the Covered Vessel.

15.1.2 The preservation of valid statutory certificates issued by or on behalf of the Covered Vessel's flag state.

15.2 It is a condition precedent to the Takaful operator's liability under this takaful certificate that the Covered Vessel has complied with such requirements throughout the certificate period.

15.3 In the event of a failure by the Participant to comply with any warranty provided for under this Clause in respect of the Covered Vessel, the remedies provided for under the Marine Insurance Act 1906 shall apply and, in addition, the Takaful operator may:

15.3.1 cancel cover provided under this takaful certificate by giving notice in writing to the Participant and such cancellation shall take effect from the date of such notice; or

15.3.2 vary or restrict the terms on which cover under this takaful certificate is provided.

**Clause 16.      International Safety Management (ISM)**

- 16.1      Where there is a requirement, under SOLAS 1974 Chapter IX, for the Participant to be ISM Compliant, it is a warranty under this takaful certificate that the Participant shall throughout the certificate period comply at all times with all applicable provisions and requirements of SOLAS 1974 and the ISM Code.
  
- 16.2      In the event of any claim arising hereunder, the Takaful operator will require production of a copy of the Safety Management Certificate (SMC) and the Document of Compliance (DOC) and The Designated Person will be required to produce a statement confirming that all aspects of the code for which he has specific responsibility have been carried out in accordance with the provisions of the code.

## SECTION B - RISKS COVERED

### Clause 1. Liability in respect of crew

- 1.1 The Participant shall be indemnified against any loss, damage or expense for:
- 1.1.1 loss of life, personal injury or illness of any member of the crew of the Covered Vessel including medical, hospital, funeral or other expenses necessarily and reasonably incurred in relation to such illness, personal injury or death.
  - 1.1.2 repatriation expenses of any member of the crew of the Covered Vessel who has been ill, injured or died giving rise to a claim covered under Clause 1.1.1 above where such expenses were necessarily and reasonably incurred, excepting such expenses as arise out of or ensue from the termination of any agreement in accordance with the terms thereof, or by mutual consent, or by sale of the said vessel, or by other act of the Participant.
  - 1.1.3 costs and expenses necessarily incurred to substitute a member of the crew who shall have died or been left behind in consequence of illness, injury, desertion or any other cause, provided that such expenses could not be reasonably avoided. Wages are only recoverable as part of the said expenses when they are paid to a substitute engaged abroad while awaiting or during repatriation.
- 1.2 Liability for repatriation expenses in respect of any member of the crew of the Covered Vessel necessarily incurred under the terms of any contract of service or employment, or Collective Agreement, or under any statutory obligation or any order or decree issued by a governmental agency or authority. There shall be no recovery where such expenses arise out of termination of any contract of service or employment or Collective Agreement or by agreement, sale or disposal of the vessel, default of the Participant or laying up of the Covered Vessel.
- 1.3 Liability to pay for the loss of or damage to the personal effects of any member of the crew of the Covered Vessel, save where that liability arises under any contract of service or employment or Collective Agreement unless the terms of the relevant contract of service or employment or Collective Agreement shall have been approved by the Takaful operator in writing. No payment shall be made in respect of claims relating to cash, negotiable instruments, credit or charge cards, precious or rare metals or stones, valuables or objects of a rare or precious nature.
- 1.4 Where the liability arises, or the costs or expenses are incurred pursuant to the terms of any contract of service or employment, or collective agreement with any member of the crew of the Covered Vessel, such liability or costs or expenses shall only be covered under this takaful certificate where those terms have been approved by the Takaful operator in writing.

### Clause 2. Liability to persons other than crew

- 2.1 Liability to pay for damages or compensation for personal injury, illness or death of any person other than the persons specified in Clause 1 above including hospital, medical or funeral expenses incurred in relation to such injury, illness or death, subject to the proviso that cover under this Clause is limited to liabilities arising out of a negligent act or omission on board, or in relation to, the Covered Vessel and only in connection with the operation of the Covered Vessel, or in relation to the handling of its cargo from the time of receipt of that cargo at the port of shipment till delivery of that cargo at the port of discharge.

### Clause 3. Collision liabilities

- 3.1 Liability for loss or damage which arises from the collision of the Covered Vessel with another vessel, but only to the extent that such liability is not recoverable under the collision liability clause contained in the Hull Certificates of the Covered Vessel and provided that it has been agreed in writing between the Takaful operator and the Participant prior to inception what proportion of the Covered Vessel's collision liability is covered under this Clause.

- 3.2 If the Covered Vessel shall come into collision with another vessel belonging wholly or in part to the Participant, the Participant shall be entitled to recover from the Takaful operator, and the Takaful operator shall have the same rights, as if the vessels belonged to different owners.
- 3.3 In any instance in which both vessels involved in a collision are to blame and the liability of either or both vessels becomes limited by law, the claims under this section shall be settled on the principle of single liability. In all other instances, the claims shall be settled on the principle of cross liabilities, as if the owner of each vessel had been compelled to pay the other owner such proportion of the latter's damages as may have been properly allowed in ascertaining the balance payable by or to the former.
- 3.4 Notwithstanding the foregoing, there shall be no right of recovery under this clause if any one or more of the various liabilities arising from such collision has been compromised, settled or adjusted without the written consent of the Takaful operator, for any and all claims hereunder.
- 3.5 There shall be no right of recovery in respect of any deductible applicable under the Hull Certificates of the Covered Vessel.
- 3.6 Recovery from the Takaful operator under this Clause shall be limited to the excess, if any, of the amount which would have been recoverable under the Hull Certificates of the Covered Vessel if that vessel had been covered thereunder at the proper value.

**Clause 4. Damage other than by collision**

- 4.1 Liability for loss of or damage to any other vessel or craft or to property on board such other vessel or craft, caused otherwise than by collision with the Covered Vessel, and arising out of the negligent navigation or management of the Covered Vessel or other negligent act or omission on board or in relation to the Covered Vessel provided such liability does not arise solely by reason of a contract entered into by the Participant.
- 4.2 Where such other vessel or craft or property on board such other vessel or craft belongs to the Participant, claims hereunder shall be adjusted as if it belonged to a third person; provided, however, that if such vessel, craft or property be covered, the Takaful operator shall be liable hereunder only insofar as the loss or damage, but for the takaful cover herein provided, is not or would not be recoverable by the Participant under such other takaful cover.

**Clause 5. Liability for loss of or damage to third party property**

- 5.1 Liability to third parties for loss of or damage to any dock, pier, harbour, jetty, buoy, lighthouse, breakwater, structure, beacon, cable, or to any fixed or movable object or property whatsoever (other than liabilities arising from pollution risks under Clause 9 ), except another vessel or craft, or property on another vessel or craft if liability for such loss or damage is imposed by statute or arose out of the negligent navigation or management of an Covered Vessel or other negligent act or omission on board or in relation to an Covered Vessel.
- 5.2 Where any such object or property belongs to the Participant, claims hereunder shall be adjusted as if it belonged to a third person; provided, however, that if such object or property be covered, the Takaful operator shall be liable hereunder only insofar as the damage, but for the takaful cover herein provided, is not or would not be recoverable by the Participant under such other takaful cover.

**Clause 6. Liability for removal of wreck**

- 6.1 Liability for the costs or expenses relating to the raising, removal, destruction, lightning or marking of the wreck of the Covered Vessel where such raising, removal, destruction, lightning or marking is compulsory by law, provided always that:-
- 6.1.1 The salvaged value of the wreck, cargo, property or goods shall first be deducted from such costs and expenses, and only the balance thereof, if any, shall be recoverable under this Clause.
- 6.1.2 There is no right of recovery under this Clause if the Participant has divested itself or its interest in the wreck, cargo, property or goods other than by way of abandonment, before such raising, removal, destruction, lightning or marking of the wreck of the Covered Vessel.

- 6.1.3 The Takaful operator shall not be liable for such costs or expenses which would be covered by the Participant's Hull and Machinery Certificate as outlined in Section A Clause 4 of this Certificate.

**Clause 7      Liability for cargo**

- 7.1 Liability for claims, costs and expenses in respect of loss, shortage, damage or delay arising out of any breach by the Participant, or by any other person for whose acts, neglect or default he may be legally liable, of his obligations properly to load, handle, stow, carry, keep, care for, discharge or deliver the cargo.
- 7.2 All contracts of carriage entered into by the Participant shall be subject to the Hague Rules, Hague Visby Rules or the Hamburg Rules or an equivalent thereof.
- 7.3 Liability hereunder shall be limited to such as would exist if the charter party, bill of lading or contract of affreightment contained the following clause (in substitution for the clause commonly known as the New Jason Clause):

*"In the event of accident, danger, damage or disaster before or after commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the shipowner is not responsible, by statute or contract or otherwise, the shippers, consignees or owners of the cargo shall contribute with the shipowner in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the cargo."*

- 7.4 There shall be no recovery under this takaful certificate in respect of liabilities which result from the carriage of goods on terms and subject to exclusions and limitations of liability less favourable to the Participant than those which would have applied had the goods been carried subject to the Hague Rules, Hague-Visby Rules or the Hamburg Rules where the Hague Rules, Hague-Visby Rules or the Hamburg Rules are compulsorily applicable to such carriage unless cover has been specifically agreed in writing by the Takaful operator. The Participant shall expressly states in the contract of carriage that the Hague Rules, Hague-Visby Rules or the Hamburg Rules apply.
- 7.5 There shall be no liability under this takaful certificate in respect of costs or expenses arising from:
- 7.5.1 A bill of lading, way bill or other document containing or evidencing the contract of carriage, issued with the knowledge of the Participant, or his agent with a false description of the cargo, or its condition or its quantity;
  - 7.5.2 The issue of a bill of lading, waybill or other document containing or evidencing the contract of carriage which contains any fraudulent misrepresentation, including but not limited to the issue of an ante-dated or post-dated bill of lading recording the loading of cargo on a date prior to or subsequent to the date on which cargo was in fact loaded, shipped or received for shipment;
  - 7.5.3 The discharge and/or delivery of cargo carried under a negotiable bill of lading or similar document of title without production of that bill of lading or document by the person to whom delivery is made;
  - 7.5.4 Delivery of cargo carried under a waybill or similar non-negotiable document to a party other than the party nominated by the shipper as the person to whom delivery should be made;
  - 7.5.5 The carriage of cargo on-deck, unless the bill of lading, waybill or other document evidencing or containing the contract of carriage expressly permits carriage on deck and states that cargo is carried on deck. The terms of the bill of lading, waybill or other document evidencing or containing the contract of carriage must also provide that:
    - (i) the cargo is carried on deck at shipper's risk without any responsibility on the part of the Participant for loss or damage howsoever caused; or
    - (ii) the Hague Rules, Hague-Visby Rules or the Hamburg Rules apply to the carriage of cargo on deck notwithstanding Article I (c) of the said Rules; or



- (iii) the Participant is entitled to the benefits of rights, immunities and limitations at least as favourable as the Hague Rules, Hague-Visby Rules or the Hamburg Rules, which apply to the carriage of cargo on deck.
- 7.5.6 Late arrival or non-arrival of the Covered Vessel at a port or place of loading or failure to load any particular cargo, unless the late arrival or failure to load is caused by matters beyond the Participant's control;
- 7.5.7 The lien or sale of cargo or other property for any purpose;
- 7.5.8 Inherent defect or other vice of the cargo or delay in delivery or loss of market or import licence in respect of such cargo;
- 7.5.9 Loss or damage to property or cargo owned by the Participant or affiliated/associated companies;
- 7.5.10 Loss of or damage to or injury or sickness arising out of the carriage of livestock or other live animals;
- 7.6 **Ad Valorem bills of lading** – Unless and to the extent that special cover has been agreed in writing by the Takaful operator, the Takaful operator shall not be liable for payments to cargo claimants of amounts exceeding whichever is the higher of USD2,500 per unit, piece or package or the limitation per unit, piece or package specified in the standard term of carriage in respect of shipments of goods carried under an ad valorem bill of lading, waybill or other document containing or evidencing the contract of carriage in which the value of the relevant unit, piece of package has been stated to be in excess of USD2,500.
- 7.7 **Rare and valuable cargo** – Unless and only to the extent that cover has been specifically agreed in writing by the Takaful operator, there shall be no recovery in respect of claims relating to the carriage of specie, bullion, fine art, cargo of a rare or precious nature, bank notes or other forms of currency, bonds or other negotiable instruments.
- 7.8 **Heavy lift structures carried on deck** – Unless and to the extent that cover has been specifically agreed in writing by the Takaful operator, the Takaful operator is not liable in respect of any claims relating to the carriage of any structure on deck and such special cover as has been agreed as aforesaid shall only apply if:
  - 7.8.1 The structure is separately covered under a cargo certificate which, at a minimum, should include provisions of the Institute Cargo Clauses 'A' or equivalent with the Participant being named as an Participant or Co-Participant under such certificate; or
  - 7.8.2 The Participant has disclaimed all liability for loss of or damage to the structure carried howsoever arising in the contract of carriage and in addition has obtained an indemnity from the owners of the structure and a waiver of subrogation from any and all takaful operators of the said structure including, but not limited to, responsibility for pollution emanating from, removal and/or wreck removal of the structure howsoever caused and/or by whomsoever required.
- 7.9 **Pre-loading steel surveys** – Subject to any special terms which may have agreed in writing between the Participant and the Takaful operator writing, it is a condition precedent to Takaful operator's liability under this takaful certificate that the Participant will perform a pre-loading survey at each and every load port at which any full or part cargo of steel is to be loaded on board the Covered Vessel. In the event the Participant fails to comply with this condition this certificate excludes, all claims in respect of liabilities arising out of or in connection with the carriage of such cargo shall be excluded from this takaful certificate.

**Clause 8. Liability for pollution risks**

- 8.1 Liability, costs and expenses incurred as a result of or in consequence of the actual or threatened accidental release or escape of oil or any other polluting substance from the Covered Vessel including:
  - 8.1.1 Liability for loss of or damage to property belonging to any third party arising from or in consequence of in contamination;
  - 8.1.2 Death or personal injury or illness suffered by any person arising from or in consequence of such occurrence

- 8.1.3 The cost of any measures reasonably taken to avoid or minimise the risk of an imminent release or escape of oil or any other polluting substance from the Covered Vessel, together with any liability incurred as a result of the measures taken;
- 8.1.4 The cost of any measures reasonably taken, after the accidental release or escape of oil or any other polluting substance from the Covered Vessel, in containing the spread of or cleaning up of such oil or any other polluting substance, in order to minimise any resulting loss, damage or contamination.
- 8.1.5 Compliance with any direction, decree or order made by any governmental agency or authority for the purpose of averting or minimising the threat of pollution, or following such accidental release or escape, save where such liabilities, costs or expenses are recoverable under the Covered Vessel's hull and machinery takaful cover or would be incurred in any event in the course of the performance of repair work or salvage services.

PROVIDED ALWAYS THAT:

- 8.2 there shall be no recovery for liability for pollution or contamination arising out of waste dumping or incineration howsoever carried out from, or on, the Covered Vessel.

**Clause 9. Fines and penalties**

- 9.1 Liability for fines and penalties imposed by any court, tribunal or authority upon the Participant or upon any person for whom the Participant may be legally liable to reimburse or reasonably reimburses provided always that the Takaful operator shall not be liable to indemnify the Participant against a fine or monetary penalty imposed on the Participant in respect of:
  - 9.1.1 Any overloading of the Covered Vessel, or the presence on board the Covered Vessel of a greater number of passengers than is legally permitted;
  - 9.1.2 Contravention of any law, regulation or requirement in respect of fishing;
  - 9.1.3 The entry of the Covered Vessel into Prohibited Waters;
  - 9.1.4 The disregarding of routing regulations;
  - 9.1.5 Criminal activity embarked on with the knowledge or connivance or complicity or reckless disregard of the Participant;
  - 9.1.6 Any breach or infringement by the Participant of the requirements and provisions relating to the configuration and equipping of the Covered Vessel under the International Convention For The Prevention of Pollution From Ships 1973, as amended or any statutory re-enactment of such requirements and provisions; and/or
  - 9.1.7 Any other failure, omission, or default of whatsoever nature, howsoever arising, of the Participant or his managing officers or managing agents to exercise due diligence in preventing the liability from arising.

**Clause 10. Customary Towage of a Covered Vessel**

- 10.1 Liabilities, loss or damage which arise out of or incurred during the course of customary towage of the Covered Vessel in the ordinary course of trading for which the Participant may become liable under the terms of the towage or other contract (save in respect of payment for the tow itself) but only to the extent that the Participant is not covered against such liabilities, costs and expenses under the Hull and Machinery Certificate of the Covered Vessel and provided always that:
  - 10.1.1 The expression "customary towage" shall mean towage for the purpose of entering or leaving a port or manoeuvring within a port during the ordinary course of trading; or
  - 10.1.2 shifting the Covered Vessel in port or between places, and securing the Covered Vessel in port, for the purpose of the Covered Vessel's ordinary trading; or

- 10.1.3 towage of the Covered Vessel as is habitually towed in the ordinary course of its trading from port to port or from place to place, provided notice of such trade and/or towage is given to the Takaful operator in writing prior to the conclusion of the takaful contract evidenced by this takaful certificate. The provision of such notice is a condition precedent to Takaful operator's liability under this takaful certificate.

PROVIDED ALWAYS THAT:-

- 10.2 Any contract for such towage of the Covered Vessel is on the Towcon or Towhire standard forms, all in un-amended form, or any other standard form towage contract which affords the Participant equivalent or better protection than the said standard conditions or standard forms, and to which the Takaful operator may on such terms as it requires, agree in writing.
- 10.3 Liability under the terms of a contract of a towage of another ship or object is only recoverable from the Takaful operator, if the contract is approved in writing by the Takaful operator and cover has been agreed between the Takaful operator and the Participant.

**Clause 11. Towage by a Covered Vessel**

- 11.1 Liability, costs and expenses arising out of towage by the Covered Vessel of any other vessel or object arising out of towage of another vessel or object by the Covered Vessel, but only if and to the extent that:
- 11.1.1 cover for such liability has been agreed by the Takaful operator in writing upon such terms as the Takaful operator may require; or
- 11.1.2 such towage was necessary for the purpose of saving or attempting to save life or property at sea.

Provided always that:-

- 11.2 Unless agreed by the Takaful operator in writing, such cover shall be deemed to exclude on all occasions liability howsoever arising on the part of the Covered Vessel for loss of, damage to, or wreck removal of the towed vessel or object or any cargo or property on such tow, except where the Covered Vessel is towing under a contract approved by the Takaful operator, or cover has otherwise been agreed by the Takaful operator in writing.

**Clause 12. Stowaways and refugees**

- 12.1 Subject to a Limit of Liability of USD10,000 each single voyage and subject always to the combined single limit, cover is granted for liabilities and expenses incurred by the Participant in meeting its legal obligations in respect of deserters, stowaways and refugees or persons saved at sea, including rescue expenses, but only if and to the extent that the Participant is legally liable for the expenses or such expenses have been incurred with the agreement of the Takaful operator provided always that:-
- 12.1.1 The Participant shall take all appropriate steps permitted by law to recover such expenses from such deserters, stowaways and refugees or persons saved at sea, or from any other person or takaful operator, or from any national or international bodies or organizations concerned with such persons; and
- 12.1.2. There shall be no recovery in respect of any consequential loss of profit or depreciation.
- 12.2. Any claim for costs and expenses in respect of bunkers, stores, crew wages, takaful cover and port charges shall be limited to the Participant's net loss.

**Clause 13. Diversion expenses**

- 13.1 Expenses incurred as a result of diversion or delay of the Covered Vessel (over and above the expenses that would have been incurred but for the diversion or delay) only for the following reasons:
- 13.1.1 To obtain treatment ashore or medical attention for a sick or injured seaman aboard the Covered Vessel.

13.1.2 Awaiting a substitute seaman for a sick or injured seaman who has been landed ashore for treatment.

**Clause 14. Life salvage**

14.1 Sums legally due to third parties by reason of the fact that they have saved or attempted to save the life of any person on or from the Covered Vessel, but only if and to the extent that such payments are not recoverable under the Hull Certificates of the Covered Vessel or from cargo owners or cargo takaful operators/insurers.

**Clause 15. General average**

15.1 Liability for the proportion of general average expenditure and special charges due to the Participant for any third party including but not limited to cargo interests, but which are not legally recoverable solely by reason of a breach of the Participant's obligation as carrier under a contract of carriage with that third party; subject however, to the exclusions of section A, Clause 8, and provided, that if the contract of carriage does not contain the alternative to the New Jason Clause set out in section A Clause 8.3, the Takaful operator's liability hereunder shall be limited to the extent as would exist if such clause were contained therein.

15.2 Liability for the proportion of general average expenditure, due in respect of the Covered Vessel which is not recoverable under the Hull Certificate of the Covered Vessel by reason of that proportion being adjusted on the basis of a sound valuation of the Covered Vessel which exceeds its covered value under the Hull Certificate of the Covered Vessel. The Takaful operator shall determine whether the Participant's vessel was covered for the proper value under the Hull Certificates. If the Takaful operator determines the amount actually covered to be less than the proper value, the Participant shall only be entitled to recover the excess of the amount which would have been recoverable under the Hull Certificate if the vessel had been covered under the proper value.

**Clause 16. Costs and expenses**

16.1 Legal costs and expenses which the Participant may incur in respect of any liability or expenditure against which the Participant is covered under this takaful certificate, subject to the agreed deductibles applicable, and subject further to the conditions and limitations provided in the takaful certificate.

16.2 Losses, costs and expenses necessarily incurred by the Participant after an incident in order to avoid or reduce a liability or expenditure against which the Participant is covered by the Takaful operator, even if such losses, costs and expenses would otherwise be excluded by this takaful certificate.

16.3 Losses, costs and expenses, which the Participant may be required to incur by special direction of the Takaful operators in cases in which the Takaful operator, in their absolute discretion, decides that it is in the interests of the Takaful operators that the direction be given, even if such losses, costs and expenses would otherwise be excluded by this takaful certificate.

**PROVIDED ALWAYS THAT:-**

16.4 No such losses, costs or expenses shall be recoverable unless either they have been incurred with the prior agreement of the Takaful operators or the Takaful operator shall determine that such losses, costs and expenses were reasonably incurred.

16.5 Unless otherwise agreed, the costs and expenses incurred under Clause 16.1 shall be free of deductible and any losses, costs and expenses incurred under Clause 16.2 and 16.3 shall bear the same deductible as the liability or expenditure so avoided or reduced would have been borne;

16.6 Costs and expenses incurred in respect of a formal enquiry into a casualty involving the Participant's vessel shall be recoverable to such extent only as the Takaful operator may determine.

## SECTION C - EXCLUSIONS AND RESTRICTIONS

### Clause 1. Pay to be paid

- 1.1 Unless the Takaful operator in its discretion otherwise determines, it is a condition precedent of the Participant's right to recover from the Takaful operator in respect of any liabilities, costs or expenses that it shall first have discharged and paid the same.

### Clause 2. War risks

- 2.1 There shall be no right of recovery by the Participant from the Takaful operator in respect of any liabilities, loss, damage, costs or expenses incurred (without regard to whether such liabilities, loss, damage, costs or expenses were incurred by the Participant as a result of any negligence on his part or otherwise, and whether or not it is before or after a declaration of a war) arising from or caused by the following:
- 2.1.1 capture, seizure, arrest, restraint or detainment and the consequences thereof; or
  - 2.1.2 military, naval or air action by force of arms, including mines and torpedoes or other missiles or engines of war, whether of enemy or friendly origin,
  - 2.1.3 placing the vessel in jeopardy as an act or measure of war taken in the actual process of a military engagement;
  - 2.1.4 terrorism and/or steps taken to prevent, suppress, control or reduce the consequences of any actual, attempted, anticipated, threatened, suspected or perceived terrorism.
- 2.2 For the purpose of this Clause, 'terrorism' means any act(s) of any person(s) or organisation(s) involving:
- 2.2.1 The causing, occasioning or threatening of harm of whatever nature and by whatever means.
  - 2.2.2 Putting the public or any section of the public in fear, in circumstances in which it is reasonable to conclude that the purpose(s) of the person(s) or organisation(s) concerned are wholly or partly of a political, religious, ideological or similar nature.
- 2.3 No claims shall be brought under this takaful certificate for any liabilities, lost, damage, costs or expenses directly or indirectly caused by or arising from:
- 2.3.1 Any chemical, biological, bio-chemical or electromagnetic weapon.
  - 2.3.2 The use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, computer virus or process or any other electronic system.

### Clause 3. Indemnities and contractual liabilities

- 3.1 Notwithstanding anything to the contrary contained herein, cover under this takaful certificate does not extend to:
- 3.1.1 Any claims for liabilities, loss, costs, compensation or wages, damage or expense, arising from or in consequence of an indemnity granted by the Participant or under the terms of a contract to which the Participant is party unless the terms of such indemnity or contract have the prior approval in writing of the Takaful operator.
  - 3.1.2 The cancellation or breach of any charter, bad debts, fraud of agents, insolvency, loss of freight, hire or demurrage, or as a result of the breach of any undertaking to load any cargo.
  - 3.1.3 Unless otherwise agreed in writing pursuant to section B, sub-section 11 hereof, any loss, damage, liability or expense or claim arising out of in relation to the towage of any other vessel or craft, whether under agreement or not, except where the purpose of such towage was to assist such other vessel or craft in distress to a port or place of safety, subject to the proviso that this clause shall not apply to claims under this certificate for loss of life or personal injury to passengers and/or members of the crew of the Covered Vessel arising from the towing.

3.1.4 Any claim for loss of life or personal injury in relation to the handling of cargo where such claim arises under a contract of indemnity between the Participant and its sub-contractor.

3.1.5 Any liability imposed on the Participant as punitive or exemplary damages, howsoever described.

**Clause 4. Illegal and reckless trading**

4.1 There shall be no recovery by the Participant from the Takaful operator in respect of any claims for liabilities, loss, costs, compensation or wages, damage or expenses arising out of or consequent upon the Participant's vessel carrying contraband, blockade running, or being employed in an unlawful trade, or performing any voyage or being employed in any trade if the Takaful operators in their absolute discretion shall be of the opinion that the nature of the carriage, trade or voyage in which the vessel was engaged was imprudent, unsafe, unduly hazardous or improper.

**Clause 5. Disease or cumulative injury**

5.1 There shall be no recovery by the Participant from the Takaful operator in respect of:

5.1.1 any liability for illness, personal injury or death, or loss of, damage to, or loss of use of property directly or indirectly caused by asbestos and/or lead, or any claim arising by reason of or in connection with:

5.1.1.1 Occupational Disease suffered by any individual.

5.1.1.2 Cumulative Injury suffered by any individual.

5.1.1.3 Death of any individual caused by or as a result of Occupational Disease or Cumulative Injury.

5.1.2 any claim arising from directly or indirectly or caused by or associated with Human T-Cell Lymphotropic Virus type III (HIVL III) or Lymphadenopathy Associated Virus (LAV) or the mutant derivatives or variations thereof or in any way related to Acquired Immune Deficiency Syndrome or any syndrome or condition of a similar kind howsoever it may be named.

5.1.3 any claim for medical expenses, costs, fees or any related expense or any other liability whatsoever arising out of illness or injury in any way related to or caused by exposure to the sun or the sun's rays either suddenly or cumulatively.

**Clause 6. Specialist operations**

6.1 There shall be no recovery by the Participant from the Takaful operator in respect of any liabilities, loss, damage, costs and expenses incurred by the Participant during the course of performing specialists operations of any kind whatsoever, including, but not limited to :

6.1.1 dredging, salvage, well-stimulation, cable or pipe laying, construction, installation or maintenance work, core sampling, depositing of spoil, professional oil spillage response, training or fire-fighting;

6.1.2 any claim arising out of waste incineration or disposal operations carried out by the Participant;

6.1.3 any claim arising out of the operation by the Participant of submarines, mini submarines or diving bells;

6.1.4 any claim arising in respect of divers or diving operations.

**Clause 7. Institute Radioactive Contamination, Chemical, Biological, Bio-Chemical And Electromagnetic Weapons Exclusion Clause 10/11/03**

7.1 This clause shall be paramount and shall override anything contained in this takaful certificate inconsistent therewith

7.1.1 In no case shall this takaful certificate cover loss, damage, liability or expense directly or indirectly caused by, or contributed to by or arising from:

- 7.1.1.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel.
- 7.1.1.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof.
- 7.1.1.3 any weapon or device war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
- 7.1.1.4 the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes.
- 7.1.1.5 any chemical, biological, bio-chemical, or electromagnetic weapon.

**Clause 8. Fishing and fish processing vessels**

8.1 Notwithstanding anything to the contrary contained in this takaful certificate, the followings are excluded from the cover of this takaful certificate:

- 8.1.1 Any costs, liabilities and expenses arising from the Covered Vessel entering prohibited waters or engaging in unlawful fishing.
- 8.1.2 Any claims for loss of, or damage to, the nets and gear of any vessel, including those of the Participant.
- 8.1.3 Any claim for loss of, or damage to, or liability in respect of, any vessel, including the Covered Vessel, caused by the nets and gear of the Participant;
- 8.1.4 Any claim in connection with cargo and/or catch whatsoever whether or not on board the Covered Vessel.

**Clause 9. General exclusions**

9.1 For the avoidance of doubt, no claims shall be brought in respect of liability, costs or expenses arising out of or in connection with the following save in so far as specifically provided for under the Clauses referred to as follows:

- 9.1.1 Pollution – except as provided under section B, Clause 8.
- 9.1.2 Salvage – except in respect of a claim for salvage which forms part of a claim for life salvage under section B, Clause 14 or General Average under section B, Clause 15.
- 9.1.3 Towage – except as provided under section B, Clause 11.
- 9.1.4 Passengers – except as provided under section B, Clause 2 and in any event liability to a passenger shall be limited to the extent that the Participant would be liable had any contract with that passenger provided the Participant with the maximum protection by way of the limitation or exclusion of liability permitted in accordance with applicable law.

## SECTION D - LIMITATIONS

### Clause 1. Time limits

- 1.1 The Participant's right to seek indemnity from the Takaful operator under this takaful certificate is subject to the following conditions being fulfilled:
  - 1.1.1 Notice has been given in accordance with Section E of this takaful certificate; and
  - 1.1.2 any claim arising is made against the Takaful operator within one (1) year after the final judgement or decree is entered in any litigation against the Participant; or
- 1.2 In any event and notwithstanding anything else to the contrary contained in this takaful certificate, the Takaful operator shall not be liable for any claim not presented to the Takaful operator with proper proof of loss after the expiration six (6) months from the date of payment of such claim by the Participant.
- 1.3 It is a condition precedent to the Takaful operator's liability under this takaful certificate that each and every time limit imposed under the terms of this takaful certificate is strictly complied with.

### Clause 2. Law and jurisdiction

- 2.1 Notwithstanding anything else to the contrary contained in this certificate, this takaful certificate shall be governed by and construed in accordance with English Law and any and all disputes, matters, differences of whatsoever nature and howsoever arising out of this Agreement shall be referred to arbitration in Malaysia. One Arbitrator to be appointed by each party. The two appointed arbitrators shall forthwith appoint a third arbitrator and the tribunal shall consist of three arbitrators. On the receipt by one party of the nomination in writing of the other party's arbitrator that party shall appoint their arbitrator within 14 days, failing which the arbitrator already appointed shall act as a sole arbitrator.
- 2.2 In the event of a conflict between this clause and any other provision of this takaful cover, this clause shall prevail and the right of either party to commence proceedings before any Court or Tribunal in any other jurisdiction shall be limited to the process of enforcement of any award hereunder.

### Clause 3. Financial limitation of the Takaful operator's liability

- 3.1 The liability of the Takaful operators in respect of each accident or occurrence relating to the Covered Vessel giving rise to one or more claims under this takaful certificate shall be limited to such sum as specified in the Takaful certificate issued under this takaful certificate.

### Clause 4. Deductibles

- 4.1 The Participant's right of recovery from the Takaful operator shall be subject to such deductible as may be agreed by the Takaful operator in writing.
- 4.2 The Participant shall bear:
  - 4.2.1 the first .....of such costs and expenses as total up to ..... incurred in connection with any claim, dispute or proceedings;
  - 4.2.2 one fourth of such costs and expenses as exceed ..... in total, subject to a maximum deductible of .....
- 4.3 In assessing the Participant's right of recovery from the Takaful operator, account shall be taken of any costs paid or set off by the other party to the claim, dispute or proceedings and the Participant's right of recovery shall be limited to the net costs payable by the Participant.
- 4.4 In the case of a settlement of a claim, dispute or proceedings in which the other party does not make any contribution to the Participant's costs, the Takaful operator in its discretion shall decide the sum to which the Participant's right of recovery from the Takaful operator shall be restricted.



## SECTION E – CLAIMS PROCEDURES

### Clause 1. Notification

- 1.1 It is a condition precedent to the Takaful operator's liability under this takaful certificate that in the event of any occurrence which may result in loss, damage and/or expense for which the Takaful operator is or may become liable, the Participant shall:
- 1.1.1 Promptly notify the Takaful operator's solicitors, M/s T S Oon & Bazul of any event or matter which is liable to give rise to a claim under the certificate and/or of every event or matter including any legal or arbitration proceedings commenced against the Participant which is liable to cause the Takaful operator to incur liabilities or expenses for which the Participant may be covered under the certificate.
- 1.1.2 Notify the Takaful operator as soon as reasonably practicable and in every case within twelve (12) months, of any event which may give rise to a claim under this takaful certificate.
- 1.1.3 Notify the Takaful operator in writing forthwith, but in no case later than three (3) months after the Participant has received notice, of any legal or other proceedings brought against the Participant or in respect of the Covered Vessel.
- 1.1.4 Notify the Takaful operator in writing of every claim made by a third party against the Participant as soon as possible, but in no case later than three (3) months after the Participant has received notice that the claim is or may be made against it.
- 1.2 Notwithstanding anything else to the contrary contained in this certificate, the Takaful operator is not liable for any loss, damage, injury, expense, cost or claim whatsoever which otherwise would be recoverable under this takaful certificate, unless notice of such loss, damage, injury, expense, cost or claim and/or circumstances which has not, but may give rise to, a claim against the Participant, is given in writing within twelve (12) months from the expiry date of this takaful certificate.

If the aforesaid twelve (12) month period relating to written notification to the Takaful operator is invalidated during the period of this takaful certificate by any law to which the Participant is subject, then such period shall be deemed to be amended to the minimum period permitted by such law.

### Clause 2. Conduct

- 2.1 It is a condition precedent to the Takaful operator's liability under this takaful certificate that, in the event of any occurrence which may result in loss, damage and/or expense for which the Takaful operator is or may become liable, the Participant shall:
- 2.1.1 Not make any admission of liability, either before or after any occurrence which may result in a claim for which the Takaful operator may be liable.
- 2.1.2 Provide to the Takaful operator or to any party nominated by the Takaful operator as soon as reasonably practicable all material, including documents, photographs or reports in the possession of the Participant or its agents, and any information known to the Participant or its agents, relating to any event which may give rise to a claim under this certificate and continue to keep the Takaful operator advised of all material developments in respect of such an event or claim.
- 2.1.3 Not interfere in any negotiations by the Takaful operator, for settlement of any dispute and/or legal proceedings in respect of any occurrences for which the Takaful operator may be liable under this takaful certificate, provided, however, that in respect of any occurrences likely to give rise to a claim under this certificate, the Participant is obligated to and shall take such steps to protect the Participant's and/or the Takaful operator's interests as would reasonably be taken in the absence of this or similar takaful cover.
- 2.1.4 Whenever required by the Takaful operator, assist in the securing of information and evidence and in obtaining witnesses and co-operate with the Takaful operator in any investigation conducted by or on behalf of the takaful operators into any event which may give rise to a claim under this certificate or in the defence of any claim or suit or procedure or in the appeal from any judgement, in respect of any occurrence as hereinbefore provided.

## SECTION F - CLAIMS MANAGEMENT

### Clause 1. Conduct

- 1.1 In the event of any claim or legal or other proceedings relating to any liability, loss, damage, costs or expenses which might fall within the scope of this Certificate, the Takaful operator shall have the right at its absolute discretion to control or direct the conduct of such claims and shall:
  - 1.1.1 Have the right, if it so decides, to require the Participant to accept any reasonable offer to settle or compromise or otherwise dispose of any claim or proceedings in such manner and upon such terms as the Takaful operators shall see fit.
  - 1.1.2 If the Participant shall fail or refuse to accept any reasonable offer to settle or compromise or otherwise dispose of any claim or proceedings in such manner or upon such terms as the Takaful operator has authorised, the liability of the Takaful operator to the Participant under this takaful certificate shall be limited to the amount for which such reasonable settlement could have been made.

### Clause 2. Cost and expenses

- 2.1 The Takaful operator shall not be liable for the cost or expense of prosecuting or defending any claim or suit unless the same shall have been incurred with the written consent of the Takaful operator or where the Takaful operator shall be satisfied that such approval could not have been obtained under all the circumstances without unreasonable delay, or that such costs and charges were reasonably and properly incurred, such costs or expenses being subject to the applicable deductible.
- 2.2 The cost and expense of prosecuting any claim in which the Takaful operator shall have an interest by subrogation or otherwise, shall be divided between the Participant and the Takaful operator, proportionately to the amounts which they would be entitled to receive respectively, if the suit should have been successful.

### Clause 3. Measure of loss

- 3.1 The Takaful operator shall be liable for the excess where the amount of any deductible under this takaful certificate is exceeded by:
  - 3.1.1 the cost of investigating and/or successfully defending any claim or suit against the Participant based on a liability or an alleged liability of the Participant covered by this takaful certificate; or
  - 3.1.2 the amount paid by the Participant either under a judgment or an agreed settlement based on the liability covered herein including all costs, expenses of defence and taxable disbursements.
- 3.2 The Takaful operator shall be entitled to take credit for any profit accruing to the Participant by reason of any negligence or wrongful act of the Participant's servants or agents up to the measure of their loss, or to recover for its own account from third parties any damage that may be provable by reason of such negligence or wrongful act.

### Clause 4. Subrogation

- 4.1 The Takaful operator shall be subrogated to all rights which the Participant may have against any other person or entity, in respect of any payment made under this takaful certificate, to the extent of such payment, and the Participant shall, upon the request of the Takaful operator execute all documents necessary to secure to the Takaful operator such rights.

### Clause 5. Security

- 5.1 The Takaful operator is under no obligation to provide bail or other security on behalf of the Participant, but may, on such terms as it shall agree, provide security in respect of any claim against the Participant by any party in respect of the risks referred to in section A. Such provision of security shall not constitute any admission of liability by the Takaful operator for the claim in respect of which the bail or other security is given.

- 5.2 In the event security or bail has been provided by the Takaful operator, whether or not at the Participant's request, the Participant shall, on demand, pay to the Takaful operator a sum corresponding to the amount of such bail or other security, whether or not such amount may be recoverable in whole or in part from the Takaful operator.
- 5.3 In no case shall the Takaful operator be liable for the detention of a Covered Vessel or for any other detention or attachment of the Participant's funds or assets or for any damage whatsoever caused to the Participant by reason of the provision or non-provision of bail or other security.

**Clause 6. Contribution**

- 6.1 Provided that where the Participant is, irrespective of this takaful cover, covered or protected against any loss or claim which would otherwise have been paid by the Takaful operator under this takaful certificate, there shall be no contribution by the Takaful operator on the basis of double cover or otherwise.

**Clause 7. Transfer of rights**

- 7.1 No claim or demand against the Takaful operator under this takaful certificate shall be assigned or transferred, and no person, excepting a legally appointed receiver of the property of the Participant, shall acquire any right against the Takaful operator by virtue of this takaful cover without the expressed consent of the Takaful operator.

**Clause 8. Waiver**

- 8.1 No act, omission, course of dealing or forbearance and reimbursement by the Takaful operator of any kind whatsoever, and whensoever occurring, whether relating to the same or a different matter, shall be treated as any evidence of a waiver of the Takaful operators' rights and defences under this takaful certificate and the Takaful operator shall at all times and without notice be entitled to insist upon the strict application thereof.

**Clause 9. Terms and Conditions subject to Marine Insurance Act 1906**

- 9.1 The terms and conditions of this certificate shall be subject to and incorporate the provisions of the Marine Insurance Act 1906 of the United Kingdom and any statutory modifications thereof except insofar as such act or modifications may have been excluded by this certificate or by any terms of such contracts.