Dear Sirs

**INTER-CLUB NEW YORK PRODUCE EXCHANGE AGREEMENT 1996**

Although the New York Produce Exchange Form (NYPE) Charterparty has been in widespread use for many years, the cargo responsibility provisions do not readily enable Owners and Charterers to apportion responsibility for cargo claims. More than 25 years ago the International Group Clubs reached an agreement on a relatively simple formula for the apportionment of cargo claims which they would recommend to their Members. The NYPE Inter-Club Agreement seems to have become an industry standard in the sense that NYPE charterparties now routinely regulate the settlement of cargo claims between Owners and Charterers in accordance with the Agreement’s formulae.

The Agreement was updated in 1984 to deal with one particular shortcoming relating to the time limit for the making of claims. Otherwise, there have been no significant changes.

Whilst the Agreement has worked very well, it has in certain areas become outdated and subject to certain legal anomalies, particularly with regard to its application to containerized cargo. In view of these deficiencies, a small Sub-Committee representing the International Group of P&I Clubs was given the task of producing a redrafted Agreement to reflect modern practices and to encourage its continued use.

The Inter-Club Agreement 1996 does not deviate from the fundamental nature of its predecessor and retains a mechanical approach to the apportionment of liability, which has been so successful in avoiding protracted and costly litigation.

Whilst the fundamental nature of the Agreement remains unchanged, the Agreement has been arranged in a more logically structured way to make it simpler, easier to read and therefore more user friendly. A number of redundant or unnecessary provisions have been removed.

The following new features should be noted:

- The definition of cargo claim(s) has been broadened and now includes related customs dues or fines, interest and certain costs.

- Claims arising under Through Transport or Combined Transport Bills of Lading are included but only when it is established that the cause of the loss or damage occurs between and including loading and discharge of the chartered vessel. Claims arising under other types of contracts of carriage, such as waybills and voyage charterparties are also included.

- The new time bar provision also caters for the possibility that the Hamburg Rules will apply.

A copy of the Inter-Club Agreement 1996 is attached herewith. It will take effect from 1st September 1996.

Yours faithfully

American Steamship Owners Mutual Protection & Indemnity Association, Inc.
Assuranceforeningen Gard
Assuranceforeningen Skuld
The Britannia Steam Ship Insurance Association Ltd.
The Japan Ship Owners’ Mutual Protection & Indemnity Association
Liverpool and London Steamship Protection and Indemnity Association Ltd.
The London Steam-Ship Owners’ Mutual Insurance Association Ltd.
Newcastle Protection & Indemnity Association
The North of England Protecting & Indemnity Association Ltd.
The Shipowners’ Mutual Protection and Indemnity Association (Luxembourg)
Skuld Mutual Protection and Indemnity Association (Bermuda) Ltd.
The Standard Steamship Owners’ Protection & Indemnity Association Ltd.
The Standard Steamship Owners’ Protection & Indemnity Association (Bermuda) Ltd.
The Steamship Mutual Underwriting Association (Bermuda) Ltd.
Sveriges Angfartygs Assurans Forening (The Swedish Club)
The United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd.
The West of England Ship Owners Mutual Insurance Association (Luxembourg)

INTER-CLUB NEW YORK PRODUCE EXCHANGE AGREEMENT 1996

This Agreement is made on the 1st of September 1996 between the P&I Clubs being members of The International Group of P&I Associations listed below (hereafter referred to as the Clubs).

This Agreement replaces the Inter Club Agreement 1984 in respect of all charterparties specified in clause (1) hereof and shall continue in force until varied or terminated. Any variation to be effective must be approved in writing by all the Clubs but it is open to any Club to withdraw from the Agreement on giving to all the other Clubs not less than three months’ written notice thereof, such withdrawal to take effect at the expiration of that period. After the expiry of such notice the Agreement shall nevertheless continue as between all the Clubs, other than the Club giving such notice who shall remain bound by and be entitled to the benefit of this Agreement in respect of all Cargo Claims arising out of charterparties commenced prior to the expiration of such notice.

The Clubs will recommend to their Members without qualification that their Members adopt this Agreement for the purpose of apportioning liability for claims in respect of cargo which arise under, out of or in connection with all charterparties on the New York Produce Exchange Form 1946 or 1993 or Asbatime Form 1981 (or any subsequent amendment of such Forms), whether or not this Agreement has been incorporated into such charterparties.

Scope of Application

1. This Agreement applies to any charterparty which is entered into after the date hereof on the New York Produce Exchange Form 1946 or 1993 or Asbatime Form 1981 (or any subsequent amendment of such Forms).

2. The terms of this Agreement shall apply notwithstanding anything to the contrary in any other provision of the charterparty; in particular the provisions of clause (6) (time bar) shall apply notwithstanding any provision of the charterparty or rule of law to the contrary.

3. For the purposes of this Agreement, Cargo Claim(s) mean claims for loss, damage, shortage (including slackage, ullage or pilferage), overcarriage of or delay to cargo including customs dues or fines in respect of such loss, damage, shortage, overcarriage or delay and include:
1. Apportionment under this Agreement shall only be applied to Cargo Claims where:

1. This Agreement applies regardless of legal forum or place of arbitration specified in the charterparty and regardless of any incorporation of the Hague, Hague Visby Rules or Hamburg Rules therein.

**Time Bar**

1. Recovery under this Agreement by an Owner or Charterer shall be deemed to be waived and absolutely barred unless written notification of the Cargo Claim has been given to the other party to the charterparty within 24 months of the date of delivery of the cargo or the date the cargo should have been delivered, save that, where the Hamburg Rules or any national legislation giving effect thereto are compulsorily applicable by operation of law to the contract of carriage or to that part of the transit that comprised carriage on the chartered vessel, the period shall be 36 months. Such notification shall if possible include details of the contract of carriage, the nature of the claim and the amount claimed.

**The Apportionment**

1. The amount of any Cargo Claim to be apportioned under this Agreement shall be the amount in fact borne by the party to the charterparty seeking apportionment, regardless of whether that claim may be or has been apportioned by application of this Agreement to another charterparty.

2. Cargo Claims shall be apportioned as follows:

**Governing Law**

1. This Agreement shall be subject to English Law and Jurisdiction, unless it is incorporated into the charterparty (or the settlement of claims in respect of cargo under the charterparty is made subject to this Agreement), in which case it shall be subject to the law and jurisdiction provisions governing the charterparty.

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