

LILLEHAMMER TERMS OF ENGAGEMENT 2018 FOR ENERGY LOSS ADJUSTERS

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LILLEHAMMER TERMS OF ENGAGEMENT 2018
FOR ENERGY LOSS ADJUSTERS

1 GENERAL

- 1.1 These Terms of Engagement and the Appendices hereto shall be known as the Lillehammer Terms of Engagement 2018 ("LTOE 2018") and shall be the terms applicable to the contract between Subscribing Insurers and the Adjuster in respect of the Services to be provided by the Adjuster, where the appointment of the Adjuster has been made or accepted upon the basis of LTOE 2018.
- 1.2 The purpose of LTOE 2018 is to define the Services which shall be provided by the Adjuster and the Service Standards which shall apply to those Services, together with the additional liability and indemnity provisions as set out in Appendix 2 which, pursuant to the provisions of paragraph 3.3, shall apply and be incorporated herein.
- 1.3 Where there is any conflict and/or overlap between the LTOE 2018 and any other terms relating to the Services, then the LTOE 2018 will take precedence.

2 DEFINITIONS

- 2.1 "Adjuster" shall mean the loss adjusting firm who accepts the appointment by Instructing Insurers to carry out the Services. The Subscribing Insurers and the Adjuster together may be referred to as 'the parties' for the purposes of clauses 16, 17 and 18.
- 2.2 "Appointed Adjuster" shall mean the individual at the Adjuster specifically appointed by Instructing Insurers. Should Instructing Insurers not name an individual then the Adjuster may choose the individual they deem to be most appropriate for the Services to be performed, and that individual shall become the Appointed Adjuster.
- 2.3 "Broker" shall mean the broker who has placed the Policy on behalf of the Insured or who has the conduct of the claim on behalf of the Insured.
- 2.4 "Instructing Insurers" shall mean the Lead Agreement Party and those Subscribing Insurers vested with authority by the relevant Policy to agree claims (commonly known as 'claims agreement parties').
- 2.5 "Insured" shall mean the person firm or company with a potential claim under the Policy.
- 2.6 "Lead Agreement Party" shall mean the overall Policy leader(s) as specified in the Policy.
- 2.7 "Loss Adjuster's Scope of Work Form" shall mean the form prepared by the Adjuster based upon the pro-forma set out in Appendix 1.
- 2.8 "Policy" shall mean the insurance under which the Insured may have a claim.
- 2.9 "Services" are defined in paragraph 5 below.
- 2.10 "Service Standards" are defined in paragraph 6 below.

- 2.11 "Subscribing Insurers" shall mean all insurers subscribing to the Policy, excluding those insurers who are insolvent. The Subscribing Insurers and the Adjuster together may be referred to as 'the parties' for the purposes of clauses 16, 17 and 18.
- 2.12 "Terms of Engagement" shall mean these Lillehammer Terms of Engagement 2018 which shall be referred to as "LTOE 2018".

3 APPLICATION

- 3.1 LTOE 2018 shall apply whenever the appointment of the Adjuster to carry out the Services is stated to be made by Instructing Insurers upon the basis of LTOE 2018 or is accepted by the Adjuster on those terms. Where there is a reference in the appointment to "LTOE", "Lillehammer Terms" or similar words, acronyms, or phrases, then the LTOE 2018 (or the latest version thereof) shall apply.
- 3.2 Where the appointment by Instructing Insurers makes no reference to LTOE 2018, but LTOE 2018 is incorporated by the Adjuster's acceptance of the appointment, Subscribing Insurers shall be deemed to have accepted the application thereof unless they shall repudiate the same in writing to the Adjuster within two weeks of the receipt of the acceptance; but, where the Adjuster's acceptance is communicated only to the Broker and not by the Adjuster to the Instructing Insurer, then this shall mean two weeks from notification by the Broker to the Instructing Insurers that acceptance of the appointment is made on that basis.
- 3.3 Where an appointment is made or accepted on LTOE 2018, it shall be on terms as set out at Appendix 2 (Liability and Indemnity Provisions).

4 APPOINTMENT

- 4.1 The appointment by Instructing Insurers of the Adjuster requires the Adjuster to carry out the Services subject to LTOE 2018, which shall take effect from the date on which the Adjuster accepts the appointment on such terms.
- 4.2 Where the appointment is made by the Broker on behalf of Subscribing Insurers, Subscribing Insurers will authorise the Broker to provide to the Adjuster the complete Policy wording, the placing slip and all endorsements, the Policy itself and (where relevant) similar details of any underlying cover.
- 4.3 Instructing Insurers will request the Broker to identify all solvent insurers subscribing to the Policy and the particular Subscribing Insurers who have been empowered by the Policy to handle and agree claims (i.e. claims agreement parties).
- 4.4 The acceptance of any appointment by the Adjuster shall take effect as acceptance to provide the Services on behalf of Subscribing Insurers.
- 4.5 When the appointment is made by Instructing Insurers directly to the Adjuster, the Instructing Insurers shall immediately request the Broker to provide all the information and documentation as specified in paragraph 4.2 to 4.4.
- 4.6 Should the Broker fail to provide the relevant documentation within 14 days of the acceptance by the Adjuster of the appointment, the Adjuster shall notify the Instructing Insurers of that fact, and the Instructing Insurers shall provide such documentation and information as they have

within their own possession and instruct the Broker to provide the missing documentation and information forthwith.

- 4.7 The Services carried out by the Adjuster are for the benefit of Subscribing Insurers. They are not intended to be for the benefit or relied upon by others or for a different purpose other than the Services.
- 4.8 The Appointed Adjuster is permitted to utilise a second fee earner on a file, within reason, to assist in carrying out the Services.
- 4.9 Further to 4.8 above the Adjuster should, when acknowledging the instruction, set out:
- (a) the hourly rate of the Appointed Adjuster;
 - (b) the hourly rate of any additional fee earner(s); and
 - (c) any additional fee earners' names and job titles.
- 4.10 Should more than two fee earners (including the Appointed Adjuster) be required on a file then each additional fee earner is to be agreed in writing by the Lead Agreement Party before they may bill the file. This applies on a global basis. The Lead Agreement Party will endeavour to respond to requests by the Adjuster for approval for additional fee earners within 48 hours.
- 4.11 Should the Appointed Adjuster wish a fee earner to accompany them in an observation role (i.e. that fee earner is not required to perform the Services) on visits to site/to the Insured then, subject to agreement in writing by the Instructing Insurers, Subscribing Insurers will pay for an economy air fare, meals and accommodation (if required). The additional fee earner may not invoice for this time spent accompanying the Appointed Adjuster (including travel time).

5 THE SERVICES

- 5.1 The Services to be carried out by the Adjuster on behalf of Subscribing Insurers shall include:
- (a) Communicating with the Insured in order to assemble all documentation and information relevant to the loss in respect of which the appointment is made.
 - (b) Effecting site visits as may be required.
 - (c) Assessing the extent of the insured loss or damage and reporting to Subscribing Insurers thereon.
 - (d) Investigating, if necessary with the assistance of third party experts, the cause of the loss and reporting to Subscribing Insurers thereon.
 - (e) Providing, as soon as conveniently possible, an estimate of the insured claim to enable Subscribing Insurers to establish a reserve.
 - (f) Providing periodic written reports to Subscribing Insurers detailing and substantiating each aspect of the claim including the extent of loss or damage, the cause of loss, an estimate of the likely amount for the Insured's loss, the conduct and timing of any repair or remedial works and all other information relevant to the adjustment of the claim including a budget for the Adjuster's costs, a proposed work plan and strategy for adjusting the loss.

- (g) Monitoring the Insured's negotiations with products/service providers to ensure as far as possible that repairs are carried out in a timely manner and at an appropriate cost.
- (h) Protecting the rights and interests of Subscribing Insurers in respect of the Services at all times when dealing with the Insured.
- (i) Investigating potential subrogation opportunities, advising Subscribing Insurers thereof and reporting to Subscribing Insurers in respect of any such action already undertaken by the Insured.
- (j) Organising and conducting market meetings involving all Subscribing Insurers provided that prior approval is obtained from Instructing Insurers.
- (k) If so instructed, conducting settlement discussions with the Insured regarding the claim in order to report to Subscribing Insurers the terms upon which the Insured will accept settlement of the claim under the Policy.

5.2 The Services conducted by the Adjuster on behalf of Subscribing Insurers shall not include:

- (a) Instructing any third party expert on behalf of Subscribing Insurers without prior consultation with and approval from Instructing Insurers. For the avoidance of doubt, any subcontractor of the Adjuster engaged by the Adjuster to assist him in the carrying out of the Services shall not constitute a third party expert.
- (b) Responding to complaints by the Insured or any other party without prior consultation with and approval from Instructing Insurers.
- (c) Providing to the Insured a representative name for the Subscribing Insurers for the purpose of legal proceedings, unless specifically requested and authorised by Instructing Insurers to provide such information to the Insured.
- (d) Binding Subscribing Insurers to any element of the quantum of the Insured's claim without prior approval of Instructing Insurers.
- (e) Confirming or denying Policy coverage or liability to the Insured and/or third parties in any circumstances, save where expressly authorised in writing by Instructing Insurers so to do.
- (f) Performing any warranty survey activity. In the event that the Adjuster is requested by any insurers to perform such activity, such request shall take effect as a separate appointment and LTOE 2018 shall not be applicable to it.

5.3 The Services shall be further defined and may be varied by the terms of the Loss Adjuster's Scope of Work Form as set out in Appendix 1 hereto, save that it shall be understood and agreed that the Adjuster shall have no apparent authority to conduct on behalf of Subscribing Insurers any of the activities excluded by paragraph 5.2 above. In the event that the Adjuster is requested and authorised by Instructing Insurers to carry out any such excluded activity, the Adjuster will be so authorised in writing and is also hereby required to produce to the Insured, and any other relevant party, written evidence of Instructing Insurers' authority, failing which the shall have no authority to act on behalf of Subscribing Insurers or to bind Subscribing Insurers in respect of such activity.

6 SERVICE STANDARDS

- 6.1 Unless otherwise agreed, the Adjuster will comply with the following timetable and advise Subscribing Insurers if the Adjuster cannot comply to a material extent:
- (a) Within 48 hours of receiving an instruction, the Adjuster must confirm receipt and advise whether they are free to accept the appointment without conflict.
 - (b) Within 15 days of acceptance of appointment at the latest, the Adjuster should inform the Insured in writing of the information and documentation that the Adjuster will require to commence the Services.
 - (c) Within 30 days of acceptance of the appointment, the Adjuster shall provide to Subscribing Insurers an initial advice which should include as far as possible comments on the considerations listed in paragraph 5.1(f). The Adjuster should provide with this first advice a Loss Adjuster's Scope of Work Form (including fee budget) as per the pro-forma set out in Appendix 1.
 - (d) Within 90 days of acceptance of the appointment, the Adjuster shall provide to Subscribing Insurers a preliminary/first report which should include a full and detailed discussion of all considerations listed in paragraph 5.1 as appropriate and relevant. This report should, as far as possible, establish the facts surrounding the loss and the Insured's claim, comment on the quantification and notification of an appropriate reserve level for Subscribing Insurers and up-date the content of the Loss Adjuster's Scope of Work Form, in particular the anticipated and actual "Milestones".
 - (e) Every 6 months thereafter, or sooner if developments warrant, the Adjuster should provide to Subscribing Insurers a written report reviewing the claim status and including comments on all relevant matters listed in paragraph 5.1 including comments on the progress of repairs, confirmation of the reserve and information on when the next substantive development is likely to occur. Every such periodic written report should also confirm any changes in the cost budget and should update the content of the Loss Adjuster's Scope of Work Form.
 - (f) Before the end of every calendar year, the Adjuster should also provide a short status report indicating any change or development since the last periodic written report.
 - (g) Notwithstanding paragraphs 6.1 (e) and (f) above, if there has been little or no development then the update should be in the form of an email or letter.
- 6.2 Without prejudice to the generality of paragraph 5 above, all reports referred to in paragraph 6.1 shall include as appropriate and where applicable, the following:
- (a) A full account of the circumstances of the loss and the facts giving rise to the claim under the policy.
 - (b) A summary of the policy terms and conditions relevant to the claim and details of any relevant contracts relating to third parties or otherwise.
 - (c) A statement on the date of loss (with the "spud" date where applicable).
 - (d) An estimate of the claim for the purpose of establishing a reserve.

- (e) A budget for adjusting and expert costs which should reflect the proposed work plan and strategy for handling the claim.
- (f) Details of the proposed repair programme and as applicable analysis of the critical path for those repairs. An outline, as relevant, of the accounting/cost control procedures in place should also be provided.
- (g) An outline of subrogation opportunities and of any potential recovery rights that may exist in favour of Subscribing Insurers if and when a claim is paid. Such outline should also include details of any action already undertaken by the Insured in that connection.
- (h) In all cases, a Loss Adjuster's Scope of Work Form as per the pro-forma set out in Appendix 1.

6.3 These Service Standards shall apply to the provision of all Services under LTOE 2018, save as may be varied by agreement between the Adjuster and Instructing Insurers. Where such a variation is agreed, the details thereof shall be specifically noted in the Loss Adjuster's Scope of Work Form.

7 COMMUNICATION WITH SUBSCRIBING INSURERS

- 7.1 The Adjuster shall communicate directly with the Instructing Insurers concerning conduct of the Services. However, formal periodic written reports from the Adjuster to Subscribing Insurers should normally be submitted via the Broker.
- 7.2 Instructing Insurers will provide specific instructions if alternative reporting procedures are required.
- 7.3 In case of doubt, the Adjuster will seek instructions direct from Instructing Insurers prior to submitting a written report via the Broker.

8 CONFLICT OF INTEREST

- 8.1 The Adjuster will make every reasonable effort to identify any conflict of interest and advise Subscribing Insurers accordingly either prior to accepting the appointment or, if identified subsequently, then as soon as reasonably practicable (following investigation).
- 8.2 In circumstances where there is or may be a conflict of interest between the Adjuster and any other party involved in the Services, including different interests between different insurers when the Adjuster is instructed in respect of multiple policies in relation to the same loss, the Adjuster may have to cease to carry on the Services unless all parties involved agree in writing that the Adjuster shall continue to carry out the Services.
- 8.3 In the event that the Adjuster is unable to act or to continue to act because of a conflict of interest, the Adjuster shall return all papers and/or data supplied to him in the original form without copying any of them and the Adjuster will keep confidential any information supplied and not disclose such information to any other party.
- 8.4 In the event that the Adjuster is obliged to withdraw from the appointment by reason of a conflict of interest, the Adjuster shall be entitled to invoice Subscribing Insurers and to be paid in full by

the Subscribing Insurers for any fees, disbursements, expenses and applicable taxes incurred prior to such withdrawal, provided the Adjuster has acted reasonably in identifying potential conflicts.

- 8.5 The Adjuster will not be prevented or restricted by anything contained in any provision of LTOE 2018 from acting for other principals in connection with the Services where no conflict of interest arises, unless otherwise agreed in writing with Instructing Insurers.

9 BILLING

- 9.1 Unless agreed in writing by Instructing Insurers, all fee earners shall bill their time to the nearest one tenth of an hour (i.e. six minute increments).

- 9.2 The Adjuster should only bill time when fee earners are actually travelling or performing the Services.

- 9.3 The practice of listing a group of tasks in a block summary under a single time entry (block billing) must be avoided. The only exceptions are when the fee earner attends site visits, meetings or is travelling.

- 9.4 The Adjuster may bill a maximum of ten hours per fee earner for travel time in any 24 hour period.

- 9.5 The Adjuster may bill a maximum of ten hours (not including travel time) per fee earner in any 24 hour period whilst performing the Services. Where the total daily billing time is likely to exceed ten hours, the Adjuster should obtain written agreement from the Lead Agreement Party before incurring the time. The Lead Agreement Party will endeavour to respond to requests by the Adjuster for approval for travel within 48 hours of the Adjuster's request. Where it is not feasible to obtain written approval in advance, then the Adjuster should obtain written agreement from the Lead Agreement Party as soon as possible and in any event before the time in question is billed.

- 9.6 The Adjuster shall apportion the time and cost charged to Subscribing Insurers if the fee earner performs:

- (a) other work during the travel time or if the fee earner will be undertaking other assignments at the destination or along the route; or
- (b) the Services for multiple interests on a common case/incident. The apportionment shall be approved by the Lead Agreement Party before the time in question is billed.

- 9.7 Where time is apportioned per paragraph 9.6, the Adjuster may not bill more than ten hours a day (not including travel time) across multiple files without prior written agreement from the Lead Agreement Parties on each file.

- 9.8 Where time has been apportioned as above, the Adjuster shall record in the time entry the fact that the time has been apportioned and the number of interests it has been apportioned over.

- 9.9 Invoices shall be submitted by the Adjuster directly on to the relevant market system, or via the broker or collection agency, unless instructed otherwise by Instructing Insurers. Subscribing Insurers shall be responsible for their respective several proportions of the market share. The invoices should have been approved and signed by an officer of the Adjuster and should include the following:

- (a) A statement that the Services are performed on the basis of LTOE 2018.
- (b) A summary table showing the total charge of each fee earner, with details of their full name, hourly rate and total hours accrued in the invoice.
- (c) A detailed narrative setting out for each time entry:
 - (i) the initials of the fee earner;
 - (ii) the time expended (in six minute increments); and
 - (iii) a sufficiently clear description of the work performed.

The narrative should combine the time entries of all fee earners and be presented in a single chronological run.

Expenses listed in clear identifiable sub-groups.

- (d) Disbursements listed in detail and invoices from any third party expert attached. Any third party invoice including a time element should comply so far as possible with this paragraph 9.9.
- (e) The Appointed Adjuster should comment on the reasonableness of any invoices rendered by third party experts.
- (f) The hourly rate of any additional fee earners from other offices must be clearly displayed in their local currency with the rate of exchange in the summary table. Unless agreed in advance, the rate of exchange used should be rate at the date of invoice.
- (g) Notwithstanding paragraph 6.2 (e) above, the Adjuster shall also include in each invoice:
 - (i) the fee estimate;
 - (ii) any revisions to the fee estimate;
 - (iii) the current erosion of the fee estimate; and
 - (iv) the outstanding balance to invoice.
- (h) Where any elements of the invoice require pre-approval from the Lead Agreement Party in accordance with the LTOE 2018, copies of such written approval(s).

9.10 Unless otherwise agreed in writing, the Adjuster should issue invoices on a quarterly basis in accordance with the procedures outlined above. Exceptions to this are when extensive overseas travel is required and/or when other exceptional Disbursements are incurred, whereby the Adjuster is permitted to submit an invoice for immediate reimbursement.

9.11 Invoices may be issued containing payment terms which Subscribing Insurers will endeavour to comply with.

- 9.12 Notwithstanding 9.10 above, invoices shall not be submitted with time entries older than 12 months prior to the date of invoice without written agreement from the Lead Agreement Party before the invoice is issued.
- 9.13 Once a file is closed, the Adjuster shall submit the final invoice no later than six months from the date of closure unless otherwise agreed in writing by the Lead Agreement Party.
- 9.14 Should the Adjuster be requested to incur travel expenses on behalf of Subscribing Insurers (other than the Lead Agreement Party) then, prior to booking, the Subscribing Insurers shall provide the Adjuster with written evidence that the same has been agreed by the majority of Instructing Insurers, including the Lead Agreement Party.

10 **INCIDENTAL DISBURSEMENTS**

- 10.1 Travel – acceptable costs are:
- (a) for air travel, the lowest available flexible fare should be used where the journey is less than four hours. In excess of four hours not more than the lowest available flexible business class fare.
 - (b) for any other form of travel the most economical fare.
- 10.2 Hotel accommodation – all costs must be kept to a reasonable level.
- 10.3 Other – reasonably and necessarily incurred disbursements in the course of investigating the claim.

11 **AUDIT AND ACCESS TO RECORDS**

- 11.1 At Subscribing Insurers' discretion and with reasonable notice, periodic audits of charges and disbursements may be conducted during normal business hours. The Adjuster will provide any assistance required without charge, including making staff available and producing files and other documentation. Subscribing Insurers' own representatives or a professional adviser may carry out the audit.
- 11.2 Payment of any charges or disbursements will not constitute a waiver of Subscribing Insurers' right to be reimbursed for any overpayment discovered during an audit or at any other time.
- 11.3 The Adjuster will make available to Subscribing Insurers or their nominated representative upon their request, all files and records in the Adjuster's possession relating to any instruction given to the Adjuster by Subscribing Insurers.
- 11.4 All such files and records shall not be released to any third party, including regulatory authorities, except with written permission of the Instructing Insurers or under compulsion of law or regulation.
- 11.5 In the event that the files and records of the Adjuster are requested by a third party, the Adjuster shall give prompt notice of such request to Instructing Insurers in order to give the Instructing Insurers the opportunity to challenge such request if they so wish.

12 DOCUMENTS AND PRIVILEGE

- 12.1 All documents relating to the loss in respect of which the appointment is made shall be held by the Adjuster to the order of Subscribing Insurers and where necessary, shall be subject to the Non-Disclosure Endorsement JR2018-005, or equivalent.
- 12.2 To the extent that any privilege, legal or otherwise, attaches to any such documents obtained by the Adjuster, whether provided by the Insured or by Subscribing Insurers and/or any other party, that privilege shall be preserved and continue to apply to the said document within the Adjuster's possession, custody or control and the Adjuster has no authority to waive that privilege.
- 12.3 The Adjuster will use their best endeavours to maintain privilege in respect of any such document, subject to all laws and regulations and to the order or mandatory instruction of any Court, regulator or authority to release any documents or information. The Adjuster will (to the extent permitted) inform the Subscribing Insurers as soon as practicable upon receipt of such an order or mandatory instruction to provide a document.
- 12.4 In the event that the Adjuster is requested and authorised by Instructing Insurers to appoint coverage lawyers on behalf of Subscribing Insurers and/or to correspond with such coverage lawyers as may have been appointed, all such correspondence and all work product of the coverage lawyers which shall come into the possession, custody or control of the Adjuster shall be subject to such privilege as may attach to the documentation and/or communications and that privilege is expressly reserved and the Adjuster has no authority to waive that privilege.
- 12.5 Save for documents obtained from the Insured, Subscribing Insurers or third parties (where the information is proprietary to the third party), the Adjuster's file is their own property, but information upon the Adjuster's file may not be disclosed to any party other than Subscribing Insurers without prior authority of Instructing Insurers, subject to all laws and regulations and to the order or mandatory instruction of any Court, regulator or authority to release any documents or information (and the Adjuster shall be permitted to comply with any such order or mandatory instruction). The Adjuster will (to the extent permitted) inform the Subscribing Insurers as soon as practicable upon receipt of such an order or mandatory instruction to provide a document. Privileged information shall be retained subject to that privilege at all times.
- 12.6 The Adjuster will keep confidential all information obtained in the course of carrying out these Services, except insofar as the Adjuster is required by law or other regulatory process to disclose such information or disclosure is permitted by paragraph 12.4 above or otherwise authorised by Instructing Insurers. This provision shall not apply to information which the Adjuster obtains or develops independently of the Services or which is already in the public domain.
- 12.7 The Adjuster shall retain and keep in safe storage all papers and/or data relating to the Services for a minimum period of six years from the date of loss or three years from the date that the claim relating to the loss was finally settled, whichever period expires later. In the event that papers and/or data contains any personal information, as defined in relevant data protection Legislation, the Adjuster shall consider, on a regular basis, whether it is necessary for this data to be retained and shall alert Subscribing Insurers should they believe that earlier deletion is required.

13 **TERMINATION**

- 13.1 Instructing Insurers may terminate the Adjuster's appointment at any time on 14 days' notice, transfer the matter to another adjuster or otherwise modify the scope of the Adjuster's instruction in relation to the handling of a particular matter. In the event of such termination, transfer or modification, the Adjuster will assist in the prompt transfer of the files to Instructing Insurers or their representatives subject to arrangements being made for payment of any outstanding fees and disbursements as the Adjuster may reasonably request.
- 13.2 Subscribing Insurers will remain liable for the proper fees and disbursements of the Adjuster prior to termination.
- 13.3 The Adjuster may terminate the appointment by giving 14 days notice to Subscribing Insurers and will deliver up any papers and/or data to Instructing Insurers or as they may reasonably direct subject to arrangements being made for payment of any outstanding fees and disbursements as the Adjuster may reasonably request.

14 **FORCE MAJEURE**

- 14.1 The Adjuster and the Subscribing Insurers shall not be liable to the other for any failure to perform its obligations under LTOE 2018 caused by acts, events, omissions or accidents beyond their reasonable control.

15 **COMPLIANCE WITH THE LAW AND FINANCIAL CRIME**

- 15.1 The Adjuster shall not undertake any activity in anyway that would constitute a criminal act within the jurisdiction in which it is located or doing business.
- 15.2 The Adjuster shall conduct their business in accordance with all relevant anti-money laundering and international economic or financial sanctions legislation.
- 15.3 The Adjuster shall not be involved in the offering, promising or giving of any financial or other advantage to any person in breach of any law against bribery (including without prejudice to the generality of the foregoing the Bribery Act 2010) and the Adjuster shall insofar as required to do so, and whether or not the Adjuster is an associated person of Subscribing Insurers for the purposes of the Bribery Act 2010, maintain on an ongoing basis its own anti-corruption/bribery policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to prevent corruption/bribery offences and will enforce them where appropriate.
- 15.4 The Adjuster shall maintain, on an ongoing basis, appropriate systems procedures and controls designed to prevent any breach of this section 15.

16 **DATA PROTECTION**

- 16.1 The Adjuster agrees to comply with its obligations and shall co-operate with Subscribing Insurers in order to promote and secure compliance at all times (in any applicable jurisdiction) under any law or regulations (hereinafter "Legislation") governing data protection, including the collection, storage, use and dissemination of personal data and privacy. It is the responsibility of the Adjuster to ensure they have knowledge and understand the requirements of any applicable Legislation concerning data protection. Subscribing Insurers agree to comply with their

obligations under any data protection Legislation.

16.2 If applicable in the relevant jurisdiction, the Adjuster agrees that it shall:

- (a) comply with the data protection Legislation and any subordinate Legislation relating thereto as it applies to the Adjuster including:
 - (i) to maintain technical and organisational security measures sufficient to comply at least with the obligations imposed on Subscribing Insurers; and
 - (ii) only to process personal data for and on behalf of Subscribing Insurers for the purpose of performing the obligations imposed on it by this Agreement; and
 - (iii) use all reasonable efforts to assist Subscribing Insurers to comply with all obligations imposed on Subscribing Insurers by any data protection Legislation. For the avoidance of doubt, this includes any obligation to (subject to law and jurisdiction):
 - 1. provide Subscribing Insurers with reasonable assistance in complying with any subject access request served on Subscribing Insurers; and
 - 2. promptly inform Subscribing Insurers about the receipt of any subject access request received by the Adjuster; and
 - 3. respond to any subject access request, although it is understood that the Adjuster shall not, to the extent possible, disclose or release any personal data in response to such a request without first consulting with and obtaining the consent of Subscribing Insurers; and
 - 4. not disclose personal data or allow access to it other than by employees and/or third parties engaged by the Adjuster to perform the obligations imposed on the service provider by this Agreement and to ensure that such employees and/or third parties are subject to written contractual obligations obliging them to comply with the relevant data protection legislation.
 - (iv) to provide the Subscribing Insurers only with that personal data which is required for the purposes of investigating a claim, unless otherwise requested; and
 - (v) to ensure that personal data which is provided to Subscribing Insurers is accurate and up to date.
- (b) not transfer personal data outside the jurisdiction without first obtaining the prior written consent of Subscribing Insurers and confirming that appropriate safeguards are in place in relation to the personal data.
- (c) alert the Subscribing Insurers within 24 hours in the event of becoming aware of any incident which would qualify as a breach of applicable data protection Legislation.
- (d) in applicable jurisdictions, providing to an Insured such information as is required detailing the purpose for which personal data is required by the Adjuster.

16.3 All parties acknowledge that this clause 16 does not relieve, remove, or replace any party's duty under applicable data protection Legislation.

- 16.4 The Adjuster and Subscribing Insurers agree that they shall follow any applicable policies or other arrangements that the parties have in place relating to the processing of personal data.

17 GOVERNING LAW AND ARBITRATION

- 17.1 Any appointment under LTOE 2018 shall be governed by and construed in accordance with English law and any dispute or difference arising out of or in connection with these Terms of Engagement, including any question regarding the existence, validity or termination of the legal relationships established by the appointment and its terms, shall be finally resolved by arbitration. It shall be deemed an express term of the appointment and acceptance thereof that the reference to LTOE 2018 includes a reference this arbitration and governing law provision.
- 17.2 Where a dispute is referred to arbitration under LTOE 2018, it is agreed that:
- (a) The Arbitration Tribunal shall consist of one Arbitrator who shall be a practicing Queen's Counsel at the English Bar;
 - (b) In default of the parties' agreement as to the Arbitrator, the appointing authority shall be the President of the Law Society;
 - (c) The seat of the arbitration shall be London but the venue may be a different location by agreement between the parties; and
 - (d) The language of the arbitration shall be English.
- 17.3 Subject to either party's right to arbitrate at any time, the parties shall use their reasonable endeavours to resolve any dispute or difference between them through negotiation or mediation. The parties may agree at any time and more than once to refer to mediation any difference and/or dispute arising out of or in connection with the appointment and the provision of Services pursuant to LTOE 2018.
- 17.4 In the case of a dispute in respect of which arbitration has been commenced, the following shall apply:
- (a) Either party may at any time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the "Mediation Notice") calling on the other party to agree to mediation.
 - (b) The other party shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitrator or such person as the Arbitrator may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and in such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.
 - (c) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest.

18 **ENTIRE AGREEMENT**

- 18.1 The parties confirm that these LTOE 2018 represent the entire understanding, and constitute the whole agreement, in relation to their subject matter and supersedes any previous agreements, representations, negotiations or understandings, whether oral or in writing, between the parties with respect to such subject matter.
- 18.2 Each party acknowledges and agrees that in entering into these LTOE 2018, it has not relied and is not relying upon any representation, statement, assurance or warranty, whether oral or written, of any person (whether party to these LTOE 2018 or not) other than those expressly set out in these LTOE 2018.
- 18.3 This paragraph 18 shall not exclude any liability for (or remedy in respect of) fraudulent misrepresentation.

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for and record the cost of the Adjuster and associated services. Finally, the form records cash projections through the Adjuster's advice of anticipated claim settlement dates.

Guidance for the completion of the LASW form is provided under the following form headings:

1.1 Summary

Against this heading, the Appointed Adjuster is to provide a summary of their proposed scope of work in narrative form. This is intended to be a high level summary of the Appointed Adjuster's work plan and it is not necessary to recite routine tasks. The work topics covered should include rationale for site attendances, appointment of experts or in-house technical studies; this should include audit thresholds and plans for addressing contentious issues.

1.2 Fee Agreements

This section is to detail any applicable fee agreements, such as Third Party Expert terms and to outline any fee sharing arrangements for the Adjuster and/or Third Party Expert. This section should also clearly state the percentage of charges from each Third Party Expert that is to be carried by Subscribing Insurers.

1.3 Cost Estimates

This section is to record the Appointed Adjuster's estimate of the total fees and expenses (excluding Third Party Experts), together with amounts billed to date and the expected balance to bill. In addition, this section is to record the estimated cost of Third Party Experts to be billed through the Adjuster's invoices.

All the estimates stated should reflect apportionments and budgets separately agreed with Instructing Insurers, as identified in the section for Fee Agreements above.

1.4 Milestones

Milestones should be predicted to the extent possible at the time each version of the LASW form is completed. Actual Milestone dates should be added as they are passed and the last anticipated date left for comparison.

Milestones will include dates of instruction, initial contact with the Insured, all site visits, all meetings, teleconferences, third party expert's deliverables and advices and reports

1.5 Payments

The Appointed Adjuster will record their best estimate of the anticipated dates for future claim settlements (interim and final).

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APPENDIX 2

LIABILITY AND INDEMNITY PROVISIONS

1 LIMITATION OF LIABILITY

- 1.2 The Adjuster's liability to Subscribing Insurers for any loss or damage the Subscribing Insurers may suffer arising out of breach of LTOE 2018 or inadequate performance of the Services shall be determined in accordance with English law and subject to the arbitration provision in paragraph 17 of LTOE 2018.
- 1.3 The Subscribing Insurers agree that the limitation and exclusions of the Adjusters' potential liability are reasonable based on:-
- (a) The amount of any likely liability to Subscribing Insurers if a breach by the Adjuster occurs,
 - (b) The current and future availability and cost to the Adjuster of professional indemnity insurance,
 - (c) The fees payable to the Adjuster, and
 - (d) The level of risk assumed by the Adjuster in connection with its obligations in connection with the Services.
- 1.4 Without affecting any other provision in LTOE 2018, the Adjuster's liability to Subscribing Insurers under or in connection with LTOE 2018, however that liability arises (including a liability arising by breach of contract, arising by tort, including the tort of negligence, or arising by breach of statutory duty), shall be limited to £5,000,000 (five million pounds sterling) provided that this clause 1.3 shall not exclude or limit any liability of the Adjuster to any party for:
- (a) Death or personal injury;
 - (b) Loss or damage arising from fraud or wilful conduct; or
 - (c) Any other situation in which the limitation of liability is prohibited by law.
- 1.5 For the avoidance of doubt, the limit in clause 1.4 shall be an aggregate limit applied to all claims in respect of which the Adjuster is instructed arising out of one set of circumstances irrespective of the number of separate policies or policy layers that may be involved and not separately in respect of each Instructing Insurer or to each separate incident of loss or damage.
- 1.6 In no circumstances shall the Adjuster be liable in any way to Subscribing Insurers under LTOE 2018 after the later of (i) the second anniversary of the termination of an appointment accepted pursuant to LTOE 2018 for whatever reason and (ii) the second anniversary of the Adjuster's final adjustment of any claim under LTOE 2018.

- 1.7 Neither party shall be liable for any indirect, special or consequential losses or damages (whether or not such losses or damages were foreseen, direct, foreseeable, known or otherwise), howsoever arising, including without limitation: loss of revenue and/or profit; loss of business and/or opportunity; loss of goodwill and/or reputation; and/or loss or damage to, or corruption of, data.
- 1.8 The express terms and conditions of LTOE 2018 shall apply in place of all warranties, conditions, terms, representations, statements, undertakings and obligations expressed or implied by statute, common law, custom, usage or otherwise, all of which are excluded to the fullest extent permitted by law.
- 1.9 For the avoidance of doubt, the provisions of clauses 1.3 to 1.6 (inclusive) above shall each be construed as a separate limitation of liability. If any of the provisions of this section 1 shall be found to be invalid or unenforceable but would be valid or enforceable if part of the wording of the provision were deleted or reduced in scope, the provision concerned shall apply with such modifications as may be necessary to make it valid and enforceable.

This Appendix 2 shall survive the termination or expiry of LTOE 2018 for whatever reason.

2 INDEMNITY

- 2.1 In this clause, a reference to the Adjuster shall include the Adjuster's subsidiaries, officers, directors, employees, the Appointed Adjuster himself and any subcontractor of the Adjuster engaged by the Adjuster to assist him in the carrying out of the Services, but the reference to Adjuster shall not include any third party expert acting on behalf of Subscribing Insurers even if appointed by the Adjuster pursuant to the terms of paragraph 5.2(a) LTOE 2018.
- 2.2 The provisions of this clause 2 shall be for the benefit of the Adjuster and each subsidiary, officer, director, employee and subcontractor and shall be enforceable by each such subsidiary, officer, director, employee and subcontractor in addition to the Adjuster.
- 2.3 The Subscribing Insurers shall for their respective several proportions indemnify the Adjuster against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Adjuster arising out of or in connection with any claim made against the Adjuster by any third party in connection with Services which the Adjuster was authorised to provide on behalf of Subscribing Insurers.
- 2.4 This indemnity shall apply whether or not the Adjuster has been negligent or at fault in carrying out the Services, save to the extent that the claim by any third party arises from the Adjuster's gross negligence, fraud or wilful default.
- 2.5 In the event that any third party makes a claim or notifies an intention to make a claim against the Adjuster which may reasonably be considered likely to give rise to a liability under the indemnity in clause 2.3 above (a "Claim"), the Adjuster shall:
- (a) As soon as reasonably practicable, give written notice of the Claim to Subscribing Insurers, specifying the nature of the Claim in reasonable detail.
 - (b) Not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of Subscribing Insurers (such consent not to be unreasonably conditioned, withheld or delayed);

- (c) Give Subscribing Insurers and their professional advisers access at all reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, subcontractors, agents, representatives or advisers and to any relevant assets, accounts, documents and records within the power or control of the Adjuster which are reasonably necessary so as to enable Subscribing Insurers and their professional advisers to examine them and to take copies (at Subscribing Insurers' expense) for the purpose of assessing the Claim;
- (d) Subject to Subscribing Insurers providing security to the Adjuster to the Adjuster's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as Subscribing Insurers may reasonably request to avoid, dispute, compromise or defend the Claim.

2.6 Nothing in this clause shall restrict or limit the Adjuster's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a Claim under this indemnity.

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APPENDIX 3

DRAFT INVOICE

Interested Underwriters & Insurers per Lloyds Broker	Our Ref: Invoice No: Your Ref: Date: VAT Reg. No:	LLOYDS01578 LON123 B0579 RF50000701 22 July 2016 GB 178 6426 22
Oil & Gas (Houston) Ltd Houston Refinery Power supply failure resulting in potential damage to heat exchanger Date of Loss: 28 May 2016 Acting in accordance with Insurers' instructions as per attached time and expenses detail breakdown.		
Bank Account details		

Company Name

Office details
Address

Phone no
Fax No

FEE ESTIMATE EROSION

	First Estimate GBP	Current Estimate GBP	Invoiced to Date GBP	Balance to Bill GBP
Loss Adjusting Fees	65,000.00		7,090.99	57,909.01
Expenses	15,000.00		4,535.86	10,464.14
Disbursements	35,000.00		0	35,000.00
Total	115,000.00		11,626.86	103,373.14

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TIMESHEETS

Date	Adj	Description	Total
03/06/2016	LA	Received notification of claim and telecon with broker	1.40
03/06/2016	HA	Receive notification from London / Reviewing initial data and telecon with broker	1.40
03/06/2016	HA	Claim correspondence with Broker	0.50
03/06/2016	LA	Review policy data and mark up	1.00
04/06/2016	HA	Drafting RFI	2.20
04/06/2016	HA	Review of RFI, finalise and release	0.80
01/07/2016	HA	Conference call re status of RFI response	0.80
01/07/2016	LA	Claim correspondence with Broker	0.20
04/07/2016	HA	Review data received and prepare for CAPS meeting	2.80
04/07/2016	HA	Drafting presentation for CAPS meeting	2.30
06/07/2016	LA	Pre-meeting preparation	0.70
06/07/2016	HA	Pre-meeting preparation	0.70
06/07/2016	LA	Meeting with CAPs	1.80
06/07/2016	HA	Meeting with CAPs	1.80
06/07/2016	LA	Post meeting debrief and next steps	0.40
06/07/2016	HA	Post meeting debrief and next steps	0.40
07/07/2016	LA	Claim progression discussion with broker	0.80
07/07/2016	LA	Various correspondence to broker and Insured re meeting with Insured	0.90
08/07/2016	LA	Travel arrangements to Houston and meeting preparation	1.50
08/07/2016	LA	Review further documentation received by Insured in preparation for meeting	2.20
08/07/2016	HA	Prepare for upcoming meeting with Insured	1.50
09/07/2016	LA	Travel to Houston from London (apportioned x 2)	5.00
Total			31.10

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APPENDIX 4

USER GUIDELINES

THE FOLLOWING POINTS REFER TO THE RELEVANT SECTION OF THE LTOE 2018 AND ARE NOT INTENDED TO BE INTERPRETED INDEPENDENTLY.

GENERAL

These User Guidelines are to be used in conjunction with the terms laid out in the Lillehammer Terms of Engagement 2018 ("LTOE 2018"). Nothing contained herein supersedes or overrides anything contained within LTOE 2018, but instead to provide guidance as how to best implement the terms for both the Adjuster and the Claims Agreement Parties (as defined within LTOE 2018).

These User Guidelines will only refer to those parts of the LTOE 2018 which require guidance, as such, certain sections will not be referred to, however the **numbering will remain consistent with the relevant sections in LTOE 2018** for ease of reference.

4 APPOINTMENT

4.1 Instructing Insurers should specifically name the Appointed Adjuster at the Adjuster that they wish to appoint to carry out the Services. Should Instructing Insurers not name an Appointed Adjuster then the Adjuster may choose the individual they deem to be most appropriate for the Services, and that individual shall become the Appointed Adjuster.

When deciding the Appointed Adjuster to utilise, Instructing Insurers and/or the Adjuster should consider the relevant experience, both insurance and otherwise, of the individual in question.

4.9 (c) If the Appointed Adjuster deems it beneficial for a second fee earner to be used on a file then this fee earner should have the relevant experience as per 4.1 above. If the second fee earner is to act in a support role, then a more junior fee earner should be used unless deemed otherwise (e.g. use of an overseas office). This decision shall be at the discretion of the Appointed Adjuster.

4.10 If additional fee earners are required, then it shall be for the Adjuster to justify why this is the case, however the Lead Agreement Party shall not unreasonably refuse additional fee earners. No more than two fee earners (including the Appointed Adjuster) globally shall be appointed to any one file without written consent from the Lead Agreement Party.

4.11 Fee earners at the Adjuster who need to get experience of conducting site visits/ meetings with insureds may accompany the Appointed Adjuster (subject to agreement). This should be agreed in writing in advance.

5 THE SERVICES

5.1 The scope of the Services to be carried out by the Adjuster should be to the extent deemed prudent by the Adjuster, however should significant expense be likely to be incurred then prior approval from the Lead Agreement Party. Examples of potential expenses include but are not limited to:

- (a) Overseas Travel;
- (b) Appointment of third party experts.

It is especially important that the Adjuster reviews and adheres to all local applicable Insurance Codes and other Regulations, especially with regards to be licensed in the territory where the loss occurs.

6 SERVICE STANDARDS

6.1 (c) When the Appointed Adjuster is providing the Loss Adjuster's Scope of Work Form they should advise their billing department (or fee collection agency / broker) of their fee budget. An entry should then be set up on the relevant market system by the fee collector indicating this fee reserve.

8 CONFLICT OF INTEREST

There are a number of ways in which a conflict might arise, a few of the following serve as examples, but should not be deemed as an extensive list:

- (a) The Adjuster has consulted on a risk assessment basis on the project prior to the loss (e.g. as a Marine Warranty Surveyor)
- (b) The Appointed Adjuster or any fee earner performing the Services has a personal relationship with someone at the Insured
- (c) The Adjuster has been appointed by a third party involved in the incident which brought about the loss.

9 BILLING

9.1 An example of how an hour would be broken down in to one tenth of an hour increments can be seen below:

Billing Increments	Corresponding Time Spent
0.1	1-6 minutes
0.2	7-12 minutes
0.3	13-18 minutes
0.4	19-24 minutes
0.5	25-30 minutes
0.6	31-36 minutes
0.7	37-42 minutes

0.8	43-48 minutes
0.9	49-54 minutes
1.0	55-60 minutes

- 9.3 Block billing should be avoided all together, especially of increments of 3 hours or more. If a task does exceed this then provide further details such as; name of technical data being reviewed or section of report being written, etc.
- 9.4 Where the travel time might exceed 24 hours, or in exceptional circumstances, then the Adjuster may bill for more than 10 hours if agreed in writing by the Lead Agreement Party prior to travel. 'Exceptional circumstances' would not extend to normal travel which exceeds 10 hours.
- 9.6 (a) Other work could include marketing trips or visiting the Adjuster's local offices unrelated to the performance of the Services. The decision whether to apportion to the file shall be at the discretion of the Adjuster acting in good faith.
- 9.6 (b) Multiple interests include, but are not limited to, attending a meeting to discuss several claims with the same Insured, drafting sections of a report to be utilised on multiple claims, or meeting multiple insureds in the region. Note that this is not just relating to travel and expense.
- 9.7 Where time is apportioned per paragraph 9.6, no more than ten hours in a day (not including travel time) may be billed by the Adjuster across all files without prior agreement from the Lead Agreement Party on each file.
- 9.8 An example of how to display this would be: *Travel to Insured's Office (apportioned x3)*.
- 9.9 Each invoice shall erode the fee reserve set up at the time of acknowledgement (see 4.10).

Please see Appendix 1 to these User Guidelines for a detailed example of an adjuster's invoice.

- (c) If flights have been booked the class of travel should be stated in the expense breakdown, as should the name of the hotel stayed in.
- (d) Attachment of the third party invoice to the collection would suffice as a detailed list.
- (e) The reasonableness of any third party expert invoices should be commented on in the report which accompanies the collection.

11 **AUDIT AND ACCESS TO RECORDS**

- 11.1 Other documentation may include access to the fee earner's timesheets for all files that the fee earner was working on over the timeframe of the Services.