

LILLEHAMMER TERMS OF ENGAGEMENT 2014
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 2014 ("LTOE 2014") and shall be the terms applicable to the contract between Instructing 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 2014.
- 1.2 The purpose of LTOE 2014 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, subject to the provisions of paragraph 3.3, shall apply and be incorporated herein.

2 DEFINITIONS

- 2.1 "Adjuster" shall mean the loss adjusting firm who accepts the appointment by Instructing Insurers to carry out the Services.
- 2.2 "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.
- 2.3 "Claims Agreement Parties" shall mean those of the Instructing Insurers vested with authority by the relevant Policy to agree claims.
- 2.4 "Instructing Insurers" shall mean the underwriters or insurers on whose behalf the appointment is made as more particularly defined in paragraph 4 below.
- 2.5 "Insured" shall mean the person firm or company with a potential claim under the Policy.
- 2.6 "Policy" shall mean the insurance under which the Insured may have a claim.
- 2.7 "Services" are defined in paragraph 5 below.
- 2.8 "Service Standards" are defined in paragraph 6 below.
- 2.9 "Terms of Engagement" shall mean these Terms of Engagement which shall be referred to as "LTOE 2014".

3 APPLICATION

- 3.1 LTOE 2014 shall apply when the appointment of the Adjuster to carry out the Services is stated to be made by Instructing Insurers upon the basis of LTOE 2014 or is accepted by the Adjuster on those terms.
- 3.2 Where the appointment by Instructing Insurers makes no reference to LTOE 2014, but LTOE 2014 is incorporated by the Adjuster's acceptance of the appointment, Instructing 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 to the Broker 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 2014, it shall be on terms that Appendix 2 hereto applies unless the application of Appendix 2 is expressly excluded in writing by the terms of the appointment by Instructing Insurers or the acceptance thereof by the Adjuster.

4 APPOINTMENT

- 4.1 The appointment by Instructing Insurers of the Adjuster requires the Adjuster to carry out the Services subject to LTOE 2014, 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 Instructing Insurers, Instructing 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 Claims Agreement Parties empowered by the Policy to handle and agree claims on behalf of all subscribing insurers.
- 4.4 The acceptance of any appointment by the Adjuster shall take effect as acceptance to provide the Services only on behalf of such subscribing insurers as the Adjuster agrees at the time of appointment or subsequently.
- 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 Claims Agreement Parties of that fact, and the Claims Agreement Parties 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 Adjuster undertakes that it shall carry out the Services as agent on behalf of Instructing Insurers in accordance with the Service Standards.

- 4.8 The Services carried out by the Adjuster are solely for the benefit of Instructing Insurers. They are not intended to be for the benefit or relied upon by others or for a different purpose other than the Services.

5 THE SERVICES

- 5.1 The Services to be carried out by the Adjuster on behalf of Instructing 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 insurers thereon.
 - (d) Investigating, if necessary with the assistance of third party experts, the cause of the loss and reporting to Insurers thereon.
 - (e) Providing as soon as conveniently possible an estimate of the insured claim to enable Instructing Insurers to establish a reserve.
 - (f) Providing periodic written reports to Instructing 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 interests of Instructing Insurers at all times when dealing with the Insured.
 - (i) Investigating and ascertaining whether any requirements for claims handling pursuant to applicable Insurance Code or other Regulation are applicable to Instructing Insurers' response to any claim by the Insured under the Policy in respect of the loss which is the subject of appointment, and advising Instructing Insurers of the same; also ensuring compliance therewith or notifying Instructing Insurers in the event that the Adjuster is unable to ensure compliance therewith.
 - (j) Investigating potential subrogation opportunities, advising Instructing Insurers thereof and reporting to Instructing Insurers in respect of any such action already undertaken by the Insured.
 - (k) Organising and conducting market meetings involving all Instructing Insurers provided that prior approval from the Claims Agreement Parties representing Instructing Insurers is obtained.

- (l) If so instructed, conducting settlement discussions with the Insured regarding the claim in order to report to Instructing Insurers the terms upon which the Insured will accept settlement of the claim under the Policy, but on no account shall the Adjuster agree with the Insured any element of quantum of the loss without prior approval of Instructing Insurers.

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

- (a) Instructing any third party expert on behalf of Instructing 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 Instructing Insurers for the purpose of legal proceedings, unless specifically requested and authorised by Instructing Insurers to provide such information to the Insured.
- (d) Agreeing 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 2014 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 Instructing 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 he shall have no authority to act on behalf of Instructing Insurers or to bind Instructing Insurers in respect of such activity.

6 SERVICE STANDARDS

6.1 Unless otherwise agreed, the Adjuster will comply with the following timetable and advise Instructing 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 he is 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 will be required to commence the Services.
- (c) Within 30 days of acceptance of the appointment, the Adjuster shall provide to Instructing 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 as per the pro-forma set out in Appendix 1.
- (d) Within 90 days of acceptance of the appointment, the Adjuster shall provide to Instructing 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 Instructing 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 Instructing 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.

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 Instructing 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, an 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 2014, 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 Adjuster's Scope of Work Form.

7 COMMUNICATION WITH INSTRUCTING INSURERS

7.1 The Adjuster shall communicate directly with the Claims Agreement Parties concerning conduct of the Services. However, formal periodic written reports from the Adjuster to Instructing Insurers should normally be submitted via the Broker.

7.2 Instructing Insurers will provide specific instructions if alternative reporting procedures are required. Instructing Insurers may require budgeting and reserving details to be kept confidential and not to be disclosed to the Broker or to the Insured.

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 Instructing 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 Instructing 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 Adjusters 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 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

Instructing Insurers and to be paid in full by the Instructing 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 2014 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 Invoices shall be submitted by the Adjuster via the Broker or directly on to ECF unless instructed otherwise. Instructing Insurers shall be responsible for their respective several proportions of the instructing/solvent market share. The invoices should have been approved and signed by an officer of the Adjuster and should include the following:

- (a) A table showing the total charge of each fee earner, with details of their status, hourly rate and a detailed activity breakdown of the number of hours expended.
- (b) 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 paragraph 9.1(a).
- (c) The Adjuster should comment on the reasonableness of any invoices rendered by third party experts.

- 9.2 The Adjuster may bill a maximum of ten hours in one day while travelling. Any additional billing requirements should be referred to Insurers for approval. The Adjuster should only bill time when actually travelling or performing the Services. The Adjuster should reduce the time and cost charged to Instructing Insurers if the Adjuster performs other work during the travel time or if the Adjuster will be undertaking other assignments at the destination or along the route.

- 9.3 Unless otherwise agreed in writing, the Adjuster is permitted to 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.

- 9.4 Invoices may be issued providing for payment terms within 30 days of presentation.

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 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 Instructing 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. Instructing 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 Instructing 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 Instructing 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 Instructing 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 Instructing Insurers.
- 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 Instructing 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 his best endeavours to maintain privilege in respect of any such document, subject to all laws and regulations and to the order or

mandatory instruction or any Court, regulator or authority to release any documents or information. The Adjuster will (to the extent permitted) inform the Instructing 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 Instructing 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 Adjusters 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, Instructing Insurers or third parties (where the information is proprietary to the third party), the Adjuster's file is his own property, but information upon the Adjuster's file may not be disclosed to any party other than the insured, Instructing Insurers, the broker or experts (including coverage lawyers) appointed in the case 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 Instructing 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 files and documents 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.

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 Instructing 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 Instructing Insurers and will deliver up any papers 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 Instructing Insurers shall not be liable to the other for any failure to perform its obligations under LTOE 2014 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 2014) and the Loss Adjuster shall insofar as required to do so, and whether or not the Loss Adjuster is an associated person of underwriters for the purposes of the Bribery Act 2014, maintain on an ongoing basis its own anti-corruption/bribery policies and procedures, including but not limited to adequate procedures under the Bribery Act 2014, 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 Underwriters in order to promote and secure compliance at all times (in any applicable jurisdiction) under any legislation or regulations governing the collection, storage, use and dissemination of personal data and privacy. It is the responsibility of the service provider to ensure they have knowledge and understand the requirements of any applicable regulations concerning data protection. Underwriters agrees to comply with its obligations under any data protection regulations.
- 16.2 If applicable in the relevant jurisdiction, the Adjuster agrees that it shall:

- 16.2.1 comply with the data protection legislation and any subordinate legislation relating thereto as it applies to the Adjuster including:
- 16.2.1.1 to maintain technical and organisational security measures sufficient to comply at least with the obligations imposed on Underwriters; and
 - 16.2.1.2 only to process personal data for and on behalf of Underwriters for the purpose of performing the obligations imposed on it by this Agreement;
 - 16.2.1.3 use all reasonable efforts to assist Underwriters to comply with all obligations imposed on Underwriters by any data protection legislation. For the avoidance of doubt, this includes the obligation to (subject to law and jurisdiction):
 - 16.2.1.4 provide Underwriters with reasonable assistance in complying with any subject access request served on Underwriters;
 - 16.2.1.5 promptly inform Underwriters about the receipt of any subject access request received by the Adjuster;
 - 16.2.1.6 not disclose or release any personal data in response to a subject access request without first consulting with and obtaining the consent of Underwriters; and
 - 16.2.1.7 not disclose personal data to 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;
- 16.2.2 not transfer personal data outside the jurisdiction without first obtaining the prior written consent of Underwriters.

17 **GOVERNING LAW AND ARBITRATION**

- 17.1 Any appointment under LTOE 2014 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 2014 includes a reference this arbitration and governing law provision.
- 17.2 Where a dispute is referred to arbitration under LTOE 2014, 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.
 - (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 2014.
- 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 2014 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 2014, 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 2014 or not) other than those expressly set out in these LTOE 2014.
- 18.3 This paragraph 18 shall not exclude any liability for (or remedy in respect of) fraudulent misrepresentation.

Adjuster's Scope of Work Form – Guidance Notes

1. INTRODUCTION

The Adjuster's Scope of Work (LASW) form is to be attached to the Preliminary Report and all subsequent reports, revised as required. The purpose of the LASW is to assist Instructing Insurers to plan and monitor the handling of a claim. The LASW form also assists Instructing Insurers to budget 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 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 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 Instructing Insurers.

1.3 Cost Estimates

This section is to record the 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 Underwriters, 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 Assured
- All site visits
- All Meetings
- Teleconferences

- Third Party Expert's deliverables
- Advices and Reports

1.5 Payments

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

LTOE 2014

APPENDIX 2

LIABILITY AND INDEMNITY PROVISIONS

1 LIMITATION OF LIABILITY

- 1.1 The Adjuster's liability to Instructing Insurers for any loss or damage the Instructing Insurers may suffer arising out of breach of LTOE 2014 or inadequate performance of the Services shall be determined in accordance with English law and subject to the arbitration provision in paragraph 15 of LTOE 2014.
- 1.2 The Instructing Insurers agree that the limitation and exclusions of the Adjusters' potential liability are reasonable based on:-
- (a) The amount of any likely liability to Instructing 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.
- 1.3 Without affecting any other provision in LTOE 2014, the Adjuster's liability to Instructing Insurers under or in connection with LTOE 2014, 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 a law.
- 1.4 For the avoidance of doubt, the limit in clause 1.3 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.
- 1.5 In no circumstances shall the Adjuster be liable in any way to Instructing Insurers under LTOE 2014 after the later of (i) the second anniversary of the termination of an appointment accepted pursuant to LTOE 2014 for

whatever reason and (ii) the second anniversary of the Adjuster's final adjustment of any claim under LTOE 2014.

- 1.6 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.
- 1.7 The express terms and conditions of LTOE 2014 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.
- 1.8 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 2014 for whatever reason.

2 INDEMNITY

- 2.1 In this clause, a reference to the Adjuster shall include the Adjuster's subsidiaries, officers, directors, employees 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 Instructing Insurers even if appointed by the Adjuster pursuant to the terms of paragraph 5.2(a) LTOE 2014.
- 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 Instructing 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 Instructing 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 Instructing 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 Instructing Insurers (such consent not to be unreasonably conditioned, withheld or delayed);
 - (c) Give Instructing 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 Instructing Insurers and their professional advisers to examine them and to take copies (as Instructing Insurers' expense) for the purpose of assessing the Claim;
 - (d) Subject to Instructing 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 Instructing 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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