

LONDON TERMS OF ENGAGEMENT 2013
FOR SURVEYORS

1 GENERAL

- 1.1 These Terms of Engagement shall be known as the London Terms of Engagement 2013 ("LONS TOE 2013") and shall be the terms applicable to the contract between Instructing Insurers and the Surveyor in respect of the Services to be provided by the Surveyor, where the appointment of the Surveyor has been made or accepted upon the basis of LONS TOE 2013.
- 1.2 The purpose of LONS TOE 2013 is to define the Services which shall be provided by the Surveyor and the Service Standards applicable to those Services.

2 DEFINITIONS

- 2.1 "Broker" shall mean the broker who has placed the Policy on behalf of the Insured.
- 2.2 "Claims Agreement Parties" shall mean the Instructing Insurers with authority to agree claims.
- 2.3 "Days" shall mean calendar days
- 2.4 "Instructing Insurers" shall mean the underwriters or insurers making the appointment.
- 2.5 "Insured" shall mean the party with a potential claim under the Policy.
- 2.6 "Other documentation" shall mean any documentation including but not limited to that in electronic form
- 2.7 "Policy" shall mean the insurance under which the Insured may have a claim.
- 2.8 "Services" are defined in paragraph 5 below.
- 2.9 "Service Standards" are defined in paragraph 6 below.
- 2.10 "Surveyor" shall mean the surveying firm who carries out the Services

3 APPLICATION

- 3.1 LONS TOE 2013 shall apply when the appointment of the Surveyor to carry out the Services is stated to be made by Instructing Insurers upon the basis of LONS TOE 2013 or the Surveyor proposes that LONS TOE 2013 applies and Instructing Insurers accept such proposal.

4 APPOINTMENT

- 4.1 Instructing Insurers will request the Broker to identify to the Surveyor all solvent insurers subscribing to the Policy and the Claims Agreement Parties and provide the Surveyor with any relevant documentation required to carry out the Services and with afterhours contact details for persons entitled to issue instructions on behalf of Instructing Insurers in the case of an emergency.
- 4.2 The acceptance of any appointment by the Surveyor shall be deemed to be on behalf of all solvent insurers subscribing to the Policy, however, subject to prompt notice to and acceptance by the Claims Agreement Parties the Surveyor may exclude individual insurers from the instruction. Such notice shall be given by the Surveyor within a reasonable period of his appointment and his having been provided with all relevant documentation (as identified in 4.1. above).The Services carried out by the Surveyor are as agent of the Instructing Insurers.
- 4.3 Should the Broker fail to provide the relevant documentation within 14 days of the acceptance by the Surveyor of the appointment, the Surveyor 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.
- 4.4 The Surveyor undertakes that it shall carry out the Services as agent on behalf of Instructing Insurers in accordance with the Service Standards.
- 4.5 The Services carried out by the Surveyor are solely for the benefit of Instructing Insurers. They are not intended to be relied upon by others.

5 THE SERVICES

- 5.1 The Services to be carried out by the Surveyor on behalf of Instructing Insurers shall include, but not be limited to:
- (a) Communicating with the Insured in order to assemble all documentation and information relevant to the loss.
 - (b) Making site/vessel visits as may be required.
 - (c) Assessing the extent of the insured damage and reporting to Instructing Insurers. Investigating (if necessary with the assistance of third party experts) the cause of the loss and reporting to Instructing Insurers.
 - (d) Providing an estimate of the insured damage to enable Instructing Insurers to establish a reserve.
 - (e) Monitoring the Insured's negotiations with products/service providers to ensure as far as possible that insured repairs are carried out in a timely manner and at an appropriate cost.
 - (f) Assisting the Insured with tenders for repair works, or alternatively arranging for obtaining tenders on his behalf, after receiving the

consent of Claims Agreement Parties, and suggesting repair alternatives, as applicable

- (g) Protecting the interests of Instructing Insurers at all times when dealing with the Insured.
- (h) Ensuring compliance with any local laws and regulations.
- (i) Investigating potential subrogation opportunities, advising Instructing Insurers and reporting to Instructing Insurers

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

- (a) Instructing any third party expert or subcontractor on behalf of Instructing Insurers without prior consultation and approval from Instructing Insurers.
- (b) Responding to complaints by the Insured or any other party without prior consultation with and approval from Instructing Insurers.
- (c) Confirming or denying Policy coverage or liability, or agreeing any element of quantum of a claim to the Insured and/or third parties in any circumstances, save where expressly authorised in writing in advance by Instructing Insurers so to do.
- (d) Performing any warranty survey activity. In the event that the Surveyor is requested by any insurers to perform such activity, such request shall take effect as a separate appointment and LONS TOE 2013 shall not be applicable to it.

6 **SERVICE STANDARDS**

6.1 The Surveyor shall use reasonable care, skill and due diligence to perform the Services in a professional and efficient manner in accordance with good surveying practice.

6.2 Unless otherwise agreed, the Surveyor will comply with the following timetable:

- (a) Within 24 hours of receiving an instruction, the Surveyor must confirm receipt and advise whether he is free to accept the appointment without conflict.
- (b) Within 24 hours of acceptance of appointment at the latest, the Surveyor should inform the Insured in writing of the information and documentation that will be required to commence the Services.
- (c) Within 48 hours of the first site/vessel visit, the Surveyor shall provide to Instructing Insurers an initial advice.
- (d) Within 30 days of attendance on board, the Surveyor 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 and amount of the loss.

- (e) Where developments warrant, the Surveyor should provide to Instructing Insurers a written report reviewing the claim status, 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.
 - (f) The Surveyor should provide a final report to Instructing Insurers, within 30 days from completion of repairs, where applicable.
 - (g) Surveyor to acknowledge all correspondence including account approvals within 24hrs and fully respond within 14 days, if this is not possible the instructing insurer should be notified as to why this is not possible and to provide a timeline for response.
- 6.3 All reports and advices referred to in paragraph 6.2 shall include as appropriate the following:
- (a) A full account of the circumstances of the loss and the facts giving rise to the claim under the Policy.
 - (b) The date of loss.
 - (c) An estimate of the total cost of repairs for the purpose of establishing a reserve.
 - (d) A budget for surveying and expert costs which should reflect the proposed work plan and strategy for handling the claim.
 - (e) Details of the proposed repairs.
 - (f) An outline of subrogation opportunities.
- 6.4 The Surveyor may use his own standard report format, unless otherwise agreed with the Claims Agreement Parties.

7 COMMUNICATION WITH INSTRUCTING INSURERS

- 7.1 The Surveyor shall communicate directly with the Claims Agreement Parties concerning conduct of the Services and issue reports to the broker with a copy to Instructing Insurers, unless there are any contentious issues (including potential fraud) that should be drawn to the attention of Instructing Insurers, in which case they will seek instructions direct from Instructing Insurers prior to submitting a written report via the Broker.
- 7.2 Instructing Insurers will provide specific instructions if alternative reporting procedures are required.

8 CONFLICT OF INTEREST

- 8.1 The Surveyor will identify any conflict of interest and immediately advise Instructing Insurers. Instructing Insurers at their sole discretion shall determine what subsequent action should be taken.

- 8.2 In the event that the Surveyor is unable to act or to continue to act because of a conflict of interest, the Surveyor shall return all files and Other Documentation supplied to him in their original form without copying any of them and the Surveyor will keep confidential any information supplied and not disclose such information to any other party.
- 8.3 The Surveyor will not act for other principals in connection with the Services, unless otherwise agreed in writing with Instructing Insurers.

9 BILLING

- 9.1 Invoices shall be submitted by the Surveyor via the broker or collection agency, unless agreed otherwise. Instructing Insurers shall be responsible for payment of their respective several proportions of the instructing/solvent market share within a reasonable period of time. The invoices 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).
- 9.2 Except by the prior consent of the Instructing Insurer, the Surveyor may bill a maximum of ten hours in one day while travelling. The Surveyor should only bill time when actually travelling or performing the Services or when waiting to board a vessel and delayed by other parties. The Surveyor should reduce the time and cost charged to Instructing Insurers if the Surveyor performs other work during the travel time or if the Surveyor will be undertaking other assignments at the destination or along the route.

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 six hours. In excess of six 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 Incidental disbursements are to be charged at cost.

11 LIMITATION OF LIABILITY

- 11.1 Unless otherwise agreed, the Surveyor's liability to all Instructing Insurers arising out of any one instruction, however that liability arises, shall be limited to £3,000,000 (three million pounds sterling) provided that this clause 11.1 shall not exclude or limit any liability of the Surveyor to any party for:

- (a) Death or personal injury;
- (b) Loss or damage arising from fraud or wilful conduct;
- (c) Any other situation in which the limitation of liability is prohibited by a law.

12 **INSURANCE**

- 12.1 The Surveyor shall (unless Instructing Insurers agree otherwise) have in place professional liability insurance of not less than £5,000,000 per claim (or the equivalent in the currency of the country in which the Surveyor is located) with an insurer or insurers rated at least B+ by A.M. Best Company. The Surveyor shall maintain such policy in force for the duration of the Services. The insurance should respond to any breach of any legal or regulatory duty by the Surveyor and/or any breach of duty and/or care in the exercise of the Surveyor's obligations under this Agreement.
- 12.2 Upon written request from Instructing Insurers, the Surveyor shall provide evidence that the policy is in force.

13 **DOCUMENTS AND ACCESS TO RECORDS**

- 13.1 All files and materials prepared or obtained by the Surveyor in the course of performing its obligations under LONS TOE 2013 shall be and remain the property of Instructing Insurers.
- 13.2 The Surveyor may only disclose files and records (i) in order to comply with any legal or regulatory requirement or (ii) where Instructing Insurers have provided written consent.
- 13.3 The Surveyor will keep confidential all information obtained in the course of carrying out these Services, except when the Surveyor is required by law or other regulatory process to disclose such information or otherwise authorised in writing to disclose such information by Instructing Insurers. This provision shall not apply to information which the Surveyor obtains or develops independently of the Services or which is already in the public domain.
- 13.4 The Surveyor shall retain and keep in safe storage all files and Other Documentation relating to the Services for a minimum period of six years from the date of loss or six from the date that the claim relating to the loss was finally settled, whichever period expires later.
- 13.5 The Surveyor will make available to Instructing Insurers or their nominated representative upon their request, all files and Other Documentation in the Surveyor's possession relating to any instruction given to the Surveyor by Instructing Insurers within 28 days of the request

14 **AUDIT**

- 14.1 At Instructing Insurers' discretion and with reasonable notice, periodic audits may be conducted. The Surveyor 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.

- 14.2 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.

15 **TERMINATION OR MODIFICATION**

- 15.1 Instructing Insurers may terminate the Surveyor's appointment at any time, or otherwise modify the scope of the Surveyor's instruction in relation to the handling of a particular matter. In the event of such termination or modification, the Surveyor will assist in the immediate transfer of the files and Other Documentation to Instructing Insurers or their representatives.
- 15.2 Instructing Insurers will remain liable for the proper fees and disbursements of the Surveyor prior to termination and to any fees and disbursements associated with the Surveyor returning to his base location if appropriate.
- 15.3 The Surveyor may terminate the appointment at any time by giving notice to Instructing Insurers and will immediately deliver up any files and Other Documentation to Instructing Insurers or as they may direct.

16 **ANTI BRIBERY PROVISIONS**

- 16.1 The Surveyor shall comply at all times with all applicable laws related to bribery, corruption and related matters.
- 16.2 The Surveyor shall not on behalf of Instructing Insurers or otherwise offer, promise, pay, give or authorise (tacitly or otherwise) or receive any financial or other advantage:
- (i) where it is intended to induce or reward the improper performance of a function or activity; or
 - (ii) where it is intended to influence any official or employee of any government or any instrumentality of government, including any government-controlled commercial enterprise, political party or party official or any candidate for political office in connection with obtaining business or a business advantage.
- 16.3 The Surveyor shall promptly report any apparent breach of clauses 16.1 or 16.2, or any investigation by any regulatory or public authorities relating to bribery or corruption, to the Instructing Insurers, together with details of the alleged breach or reasons for the investigation.
- 16.4 The Surveyor shall co-operate with the Instructing Insurers and/or its authorised agent and/or any regulatory or public authorities in relation to any enquiry or investigation in respect of matters relating to bribery or corruption.
- 16.5 The Instructing Insurers shall have the right to terminate this Agreement on no notice, without liability, for breach of clauses 16.1 or 16.2.

17 FORCE MAJEURE

- 17.1 The Surveyor and the Instructing Insurers shall not be liable to the other for any failure to perform its obligations under the contract caused by acts, events, omissions or accidents beyond their reasonable control.

18 THIRD PARTY RIGHTS

A person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

19 GOVERNING LAW AND ARBITRATION

- 19.1 All disputes and differences arising under or in connection with this contract which cannot be settled by mutual agreement shall be referred to binding arbitration.
- 19.2 The Arbitration Tribunal shall consist of three arbitrators, one to be appointed by the Claimant, one to be appointed by the Respondent and the third to be appointed by the two appointed arbitrators.
- 19.3 The third member of the Tribunal shall be appointed as soon as practicable (and no later than 28 days) after the appointment of the two party-appointed arbitrators. The Tribunal shall be constituted upon the appointment of the third arbitrator.
- 19.4 Where a party fails to appoint an arbitrator within 14 days of being called upon to do so or where the two party-appointed arbitrators fail to appoint a third within 28 days of their appointment, then upon application the chair of the LCIA will appoint an arbitrator to fill the vacancy. At any time prior to the appointment by LCIA the party or arbitrators in default may make such appointment.
- 19.5 The Tribunal may in its sole discretion make such orders and directions as it considers to be necessary for the final determination of the matters in dispute. The Tribunal shall have the widest discretion permitted under the law governing the arbitral procedure when making such orders or directions.
- 19.6 The seat of arbitration shall be London, UK.
- 19.7 The proper law of this contract shall be the law of England.