

# **Co-Lead Claims Agreement**

**LMA9157  
(15 October 2018)**

## 1 INTRODUCTION

- 1.1 This Co-Lead Claims Agreement (CLCA), and the attached schedule hereto is entered into by the parties (as defined below) to facilitate the efficient processing of claims across multiple co-insurance binding authorities.
- 1.2 The CLCA defines the order in which Insurer(s) become the Claims Agreement Parties and assume claims handling authority on behalf of all other Insurers. The order of Claims Agreement Parties is set according to the signing page of the schedule.
- 1.3 This CLCA only extends to those parties listed in the schedule. Where a claim arises on a risk and one or more of the co-insuring underwriters is not party to this agreement, those Insurers shall be responsible for agreeing their own proportion of the claims.
- 1.4 The CLCA requires every **Binding Authority Leader** to comply with and implement the principles and arrangements set out herein. When **Determining Claims**, the **Claims Agreement Party(ies)** must, in particular, act in accordance with applicable regulatory requirements and any other applicable local regulations.

## 2 DEFINITIONS

In this CLCA, the following words shall have the following meanings:

**Broker** means a broker or other intermediary engaged in the broking and placing of the **Binding Authority Agreements** and named on the signing page of the schedule.

**Binding Authority Agreement(s)** means the outsource agreements granting underwriting authority to the Coverholder listed in Sub Section 1.2 of the Schedule hereto.

**Binding Authority Leader(s)** means the lead insurers on each **Binding Authority Agreement**.

**Business Day** means any day (other than a Saturday or Sunday or public or bank holidays) when clearing banks in the City of London are generally open for business.

**Claims Agreement Party / Parties** means the **Lead Insurer** in respect of standard claims or the **Lead Insurer** and the second Lloyd's syndicate in respect of complex claims, as further defined under the Lloyd's Claims Scheme (Combined), or as amended or any successor thereto.

**Claims Information** means the information contained within a notification or provided by the Insured or its agent in relation to a claim.

**Determination/Determine** means all claims handling activities necessary in order to: (i) accept or deny a claim, in whole or in part; (ii) agree any amount payable and (iii) resolve finally any open matter by agreement or, if necessary, dispute resolution.

**Dispute Resolution Proceedings** means any litigation, arbitration, mediation, regulatory hearing or other contested proceeding relating to a claim on an **Insurance** and commenced by or against the **Insurers**.

**Following Insurer(s)** means all Insurers other than the **Lead Insurer** participating on the **Insurance**.

**In Scope Claim (ISC)** means any claim that which falls within the terms of this agreement.

**Insurance** means the (re)insurance contract(s) written pursuant to a **Binding Authority Agreement** against which the **Insured** is making a claim.

**Insured** means the person or entity that is insured or reinsured pursuant to the **Insurance**.

**Insurer(s)** means any insurers who subscribe to the **Binding Authority Agreements** listed in the schedule

**Lead Insurer** means the **Insurer** which is granted authority under this agreement to determine any individual claim.

**Out of Scope Claim (OSC)** means a claim that would fall outside the terms of this agreement.

**Notification** means the initial communication of the claim to the **Insurer(s)**.

**Parties** are **Insurers** that have agreed to the terms of the **CLCA**, the broker(s), and the TPA(s) (if applicable) executing the **CLCA** on the signing page.

**Professional Adviser** may include, but is not limited to, a lawyer, adjuster, surveyor, actuary or accountant.

**Receiving Party** is the **Lead Insurer** receiving **Notification** of a claim

**Reports** include reports prepared by a **Professional Adviser**, pleadings received, served or to be served, and other formal documents produced for the purposes of any **Dispute Resolution Proceedings**.

**Threshold Amount** means the amount and currency stated in section 3.1 of the schedule.

**Third Party Administrator (TPA)** means a third party appointed to manage claims **under an Insurance** on behalf of **Insurers** and to undertake the **Determination** of the claim, usually within defined limits.

### **3 WHEN DOES A CLAIM FALL WITHIN THE CLCA?**

3.1 A claim may be assigned by the **Lead Insurer** as an **In Scope Claim (ISC)** where the amount potentially claimed from all **Insurers** subscribing to the **Binding Authority Agreements** is equal to or less than the **Threshold Amount**.

### **4 WHEN DOES A CLAIM FALL OUTSIDE THE CLCA?**

4.1 A claim shall be assigned as an **Out of Scope Claim (OSC)** if:

4.1.1 the amount claimed, or in the view of the **Lead Insurer** potentially claimed in the aggregate from all **Insurers** subscribing to the **Binding Authority Agreements** is more than the **Threshold Amount**;

4.1.2 in the **Lead Insurer's** view there are issues that may lead to the **Insurance** being voided;

4.1.3 ex gratia, without prejudice payments, or rescission of the **Insurance** are being considered by or on behalf of **Insurers**;

4.1.4 the claim relates to serious injury, including brain damage, resulting in physical or intellectual impairment; paralysis and/or spinal cord damage, paraplegia or quadriplegia;

4.1.5 a periodic payment order or structured settlement is proposed;

4.1.6 there are any pending **dispute resolution proceedings** between the **Insured** and the **Insurers** in relation to the claim or associated claims;

- 4.1.7 the **Lead Insurer** and the **Following Insurers** are unable to reach consensus regarding the **Determination** of the claim;
- 4.1.8 claims seeking extra contractual damages (including punitive damages), litigation, or claims seeking damages in excess of policy limits are made against the **Insured** or the **Insurers**;
- 4.1.9 any criminal proceedings are ongoing against the **Insured**;
- 4.1.10 fraud or financial crime is alleged against the **Insured** in respect of this claim;
- 4.1.11 any conflicts of interest are identified;
- 4.1.12 a notice of complaint from a regulatory body claiming improper handling of the claim has been received by or on behalf of the **Insurers**;
- 4.1.13 allegations of bad faith and /or potential breach of regulation are made against the **Insurer(s)** in connection with the claim,
- 4.2 Authority to agree to denial of coverage shall be as stated under sub section 4.2 of the schedule;
- 4.3 Any additional grounds or amended grounds on which a claim shall be assigned as an OSC should be stated in Sub Section 4.3 of the schedule.
- 4.4 A **Lead Insurer** may also assign a claim as an **OSC** if it, in its sole discretion, considers that this would be appropriate in all the circumstances and having due regard to the **Claims Information**.
- 4.5 Where a claim is assigned as an **OSC**, the **Determination** of the claim falls outside the terms of the **CLCA**. **OSCs** will be **Determined** in accordance with the terms of the **Insurance**, and where applicable in accordance with the Lloyd's Claims Scheme (Combined).

## **5 ROLE OF THE LEADING INSURER AND CLAIMS DETERMINATION**

- 5.1 A claim shall be **Determined** by the **Claims Agreement Parties** on behalf of themselves and the **Following Insurers**.
- 5.2 When **Determining** a claim the **Claims Agreement Parties** must always:
  - 5.2.1 act in good faith and exercise the care and technical proficiency of a reasonably competent insurer;
  - 5.2.2 have due regard to the reputation of the **Insurers** and the London Market;
  - 5.2.3 act in the best interest of all **Insurers** on whose behalf it acts.

5.3 If a **Claims Agreement Party** concludes that it cannot act in accordance with sub section 5.2, then it must notify the **Broker** and the **Following Insurers**, as soon as reasonably practicable, that it is no longer able to act in accordance with Sub Section 5.2. The next **Insurer** on the signing page of this **CLCA** shall take its place for the purposes of the claim (and the designation of **Claims Agreement Parties** and **Following Insurers** shall be adjusted accordingly).

## 6 REASSIGNING CLAIMS

6.1 The **Lead Insurer** may reassign a claim as an **OSC** if it, in its sole discretion, considers that this would be appropriate having due regard to all the circumstances relating to the claim.

6.2 Where a claim no longer satisfies the requirements of sub section 3.1, the **Lead Insurer** shall immediately:

6.2.1 reassign the claim as an **OSC**; and

6.2.2 notify the **Broker** accordingly, following which the provisions of sub section 6.4 shall apply.

6.3 Once a claim has been (re)assigned as an **OSC**, it may not, without the consent of all of the **Following Insurers**, be reassigned as an **ISC**.

6.4 Where a claim is reassigned as an **OSC**, the **Insurers** agree to transition its **Determination** to the applicable processes in line with the Lloyd's Claims Scheme (Combined).

## 7 DELEGATION OF DETERMINATION TO A THIRD PARTY

7.1 The **Claims Agreement Parties** may delegate their **Determination** of a claim to a **TPA** (to be included in sub section 7.1 of the schedule), provided that:

7.1.1 such delegation is properly documented and the **TPA** completes their details on the signing page;

7.1.2 where possible delegation occurs prior to receipt of a claim, or no later than 5 working days of **Notification** of the claim; and

7.1.3 the **Following Insurers** and **Broker** are notified and no objections are received within 2 working days.

7.2 Where the **Determination** of a claim is delegated to a **TPA** in accordance with sub section 7.1, the limits stated in sub section 7.2 of the schedule shall apply to each of the Co-Lead Binding Authority Agreements noted on the signing page:

7.2.1 Authority Limit granted to **TPA**

7.2.2 Loss Fund granted to **TPA**

- 7.3 The **Parties** agree that, solely for the purposes of the settlement of **ISC's** pursuant to this **CLCA**, the levels of authority and Loss Fund granted to a **TPA** by section 7.2 above, shall supersede the level of authority or Loss Fund contained in any other agreement between a **TPA** and any of the **Insurers** subscribing to this **CLCA**. Nothing in this agreement shall vary or impact upon the **TPA's** authority in respect of the settlement of a claim which is not within the scope this **CLCA**.
- 7.4 The **TPA** shall operate the same triggers for identifying **OSC's** as **described** in section 4 of this **CLCA**. Any triggers for the referral of claims from the **TPA** to the **Claims Agreement Parties**, other than those stated in section 4, shall be stated in sub section 7.3 of the schedule.

## **8 PROVISION OF INFORMATION TO FOLLOWING INSURERS**

- 8.1 The **Claims Agreement Parties** shall notify the **Following Insurers** (via the **Broker** where appropriate) of the following matters through established London market systems and processes (e.g. Electronic Claims File or Syndicate Claims Message) or events as soon as practicable:
- 8.1.1 any recommended reserve or reserves for a claim;
  - 8.1.2 any revision to the recommended reserve or reserves, including lead reserve;
  - 8.1.3 the receipt of notice of the commencement of any **Dispute Resolution Proceedings** relating to a claim;
  - 8.1.4 where the **Claims Agreement Parties** have delegated the claim to another entity under sub section 7, the identity of that entity;
  - 8.1.5 the final **Determination** of a claim.
- 8.2 A **Following Insurer** may request the **Claims Agreement Parties** to provide such further information (including copies of any Reports or correspondence prepared by a **Professional Adviser**) as it may reasonably require.

## **9 TERMINATION OF APPLICATION OF CLCA**

- 9.1 The **Determination** of a claim by a **Claims Agreement Party** shall cease immediately if a **Claims Agreement Party, Coverholder or TPA:**
- 9.1.1 becomes the subject of voluntary or involuntary rehabilitation or liquidation proceedings;
  - 9.1.2 becomes the subject of an action in bankruptcy;
  - 9.1.3 makes or proposes any composition with its creditors or makes any assignment for the benefit of its creditors or otherwise acknowledge its insolvency;
  - 9.1.4 has imposed by a court of competent jurisdiction the appointment of an administrator or administrative receiver or equivalent office holder;
  - 9.1.5 has a receiver or equivalent office holder appointed for the whole or any part of the Coverholder's business;

9.2 The **Determination** of a claim by the **Claims Agreement Parties** shall cease immediately if the Coverholder or **TPA**:

9.2.1 ceases, for whatever reason, to be regulated by their local regulatory body or has any relevant licence or authority to conduct business suspended, removed or impaired by any order or decree of any judicial authority or regulatory body having jurisdiction over the Coverholder or **TPA**;

9.3 Where any of the events as defined in Sub Section 9.1 occur, the process as laid out in Sub Section 6.2 & 6.3 shall apply. In the event that a **Claims Agreement Party** is incapable of performing this task the **Broker** shall notify the **Following Insurers**.

9.4 Where any of the events under Sub Section 9.1 take place, the **Claims Agreement Party** shall cease to be party to the **CLCA**. For the avoidance of doubt, all other parties remain bound by the terms of the **CLCA**.

## 10 FOLLOWING INSURERS RIGHT TO QUERY THE DETERMINATION:

10.1 If during the lifetime of the claim, a **Following Insurer** has material concerns around the **Claims Agreement Parties' Determination** of the claim, it shall notify the **Claims Agreement Parties** and all **Following Insurers** of its concern. The **Claims Agreement Parties** and **Following Insurer** who has raised the concern shall within 5 Business Days confer and use their best endeavours to resolve the concern. If any disagreement remains, the provisions of sub sections 10.2 and 10.3 shall apply.

10.2 The **Lead Insurer** shall convene a market meeting to which all **Following Insurers** shall be invited if the **Following Insurers** representing at least 50% in the aggregate of the **Insurance** against which the claim was made so request at any time.

10.3 The following procedures will apply to a market meeting:

10.3.1 the **Lead Insurer** shall set a reasonable time and location for the market meeting and invite all **Following Insurers**.

10.3.2 the **Lead Insurer** shall ensure that the relevant information required has been made available to those invited in good time in advance of the market meeting.

10.3.3 the market meeting shall be chaired by a senior representative of the **Lead Insurer** or someone nominated by it and that person shall facilitate a fair and open discussion of the matter.

10.3.4 the attendees shall use their best endeavours to reach a consensus and agree the next steps in the **Determination** of the claim

10.3.5 the quorum at a market meeting shall be Insurers representing at least 75% in the aggregate of the **Insurance** underwritten

10.3.6 where an agreement cannot be reached in accordance with Sub Section 10.3.4, the claim shall be reassigned as an **OSC** as per Sub Section 6.4.

## 11 LIMITATION OF LIABILITY

11.1 Each **Insurer** agrees to waive its rights to claim damages, either in contract, in tort, breach of fiduciary duty, breach of statutory duty or otherwise, from any **Lead Insurer**, or any servants or agents of a **Lead Insurer**, arising out of or in any way connected with the **Lead Insurer's Determination** of a claim pursuant to this agreement. In addition, and for the avoidance of doubt, the **Lead Insurer** will not be liable for loss of profit, loss of business, loss of use (in each case whether direct or indirect) or any other indirect, special or

consequential damages alleged to have been suffered by an **Insurer** arising out of a breach of the terms of this agreement.

**12 DISPUTE RESOLUTION PROCEDURES**

Legal dispute resolution procedures shall be as defined in the Lloyd's Claims Scheme (Combined).

**13 CHOICE OF LAW AND JURISDICTION**

Notwithstanding anything to the contrary contained in the Insurance, the provisions of this agreement shall be construed and governed in accordance with the laws of England and Wales and the Courts of England and Wales shall have exclusive jurisdiction to determine any dispute concerning the operation, meaning or construction of this CLCA t or any part thereof.

**14 OTHER CONDITIONS, REQUIREMENTS AND/OR AMENDMENTS RELATING TO THE OPERATION OF THE AGREEMENT**

The parties shall comply with any conditions, requirements and/or amendments to the Agreement as stated in Sub Section 14 of the Schedule or endorsed hereon.



## SCHEDULE

This Schedule forms part of and incorporates by reference LMAXXX (the 'CLCA'). For the purposes of interpretation, the contents of this Schedule shall have meaning only as provided for in the CLCA.

<b>SUB SECTION 1.1</b>	<b>COVERHOLDER(S):</b>
<b>SUB SECTION 3.1</b>	<b>THRESHOLD AMOUNT:</b>  <b>THRESHOLD CURRENCY:</b>
<b>SUB SECTION 4.2</b>	<b>AUTHORITY TO HANDLE DENIALS:</b>  In Scope / Out of Scope <i>(Delete as applicable)</i>
<b>SUB SECTION 4.3</b>	<b>AMENDMENTS TO GROUNDS FOR ALLOCATING CLAIMS AS AN OSC</b>
<b>SUB SECTION 7.1</b>	<b>NAME &amp; ADDRESS OF TPA</b>
<b>SUB SECTION 7.2.1</b>	<b>AUTHORITY LIMIT GRANTED TO TPA</b>
<b>SUB SECTION 7.2.2</b>	<b>LOSS FUND GRANTED TO TPA</b>
<b>SUB SECTION 7.3</b>	<b>OTHER REFERAL CRITERIA FROM THE TPA TO THE CLAIMS AGREEMENT PARTIES.</b>
<b>SUB SECTION 14</b>	<b>OTHER CONDITIONS, REQUIREMENTS AND/OR AMENDMENTS RELATING TO THE OPERATION OF THE AGREEMENT:</b>

**Signing Page:**

<b>Binding Authority UMR</b>	<b>Binding Authority Lead</b>	<b>Name &amp; Signature on behalf of Managing Agent</b>

**Broker(s):**

<b>Name of Broker</b>	<b>Name &amp; Signature on behalf of Broker</b>

**TPA(s) (if applicable):**

<b>Name of TPA</b>	<b>Name &amp; Signature on behalf of TPA</b>