

LLOYD'S INSURANCE COMPANY S.A. ("Lloyd's Brussels")

Guidance on Third Party Administrator (TPA) Agreement (LBS0065)

Introduction

The purpose of this note is to provide guidance on the form of Third Party Administrator ("TPA") Agreement that has been prepared for use in relation to business underwritten by an Appointed Coverholder on behalf of Lloyd's Brussels. The appointment of a TPA on behalf of Lloyd's Brussels is governed by the terms of the Outsourcing Agreement between Lloyd's Brussels and a managing agent ("MA"), in particular:

- the appointment of a TPA as a Claims Handler must be documented by way of a "Claims Handler Agreement" (clause 5.8), and accordingly a TPA Agreement will be a "Claims Handler Agreement" as defined in Schedule 1 of the Outsourcing Agreement;
- a "Claims Handler Agreement" must be in a form which complies with the "Claims Handler Agreement Requirements", as defined in Schedule 1 of the Outsourcing Agreement. For convenience this definition is also set out in Appendix 1 of this Guidance.

The form of TPA Agreement on the LWR complies with the "Claims Handler Agreement Requirements" as set out in Appendix 1 and can therefore be used to appoint a TPA on behalf of Lloyd's Brussels. Set out at Appendix 2 of this note is a comparison of the Lloyd's Brussels TPA Agreement against the LMA9008B, with the changes marked-up. The table below provides some further commentary on some of these changes.

Guidance on changes to the TPA Agreement

Paragraph	Comment
Preamble	<p>The revised wording at the beginning of the TPA Agreement reflects the requirements of part (ii) of the definition of "Claims Handler Agreement Requirements" (n.b. references to "Claims Handler" can be substituted with references to "the TPA"). In the same way as for the Coverholder Appointment Agreement ("CAA"), the functions of Lloyd's Brussels under the TPA Agreement will in practice be carried out by the Managing Agent on its behalf.</p> <p>In the case where the TPA is being appointed in relation to a CAA to which a table of security is attached, the third paragraph of the preamble records that the lead MA may appoint the TPA on behalf of all the MAs identified in the table. Section 21.1 of the Schedule to the CAA should make it clear that all participating MAs have entered into the CAA on this basis.</p>
1.1b	the wording has been revised to ensure that invoices are properly addressed (to Lloyd's Brussels) and record the amount of VAT payable on the services provided.

1.1j	This paragraph has been revised in order to reflect the requirements of part (v) of the definition of "Claims Handler Agreement Requirements". Again, it follows a similar approach taken in the CAA for the submission of claims information via DA SATS.
1.1l	This has been revised to allow any complaints handling authority to be specified in the Declarations.
1.1n	The additional wording is included to assist the MA to discharge its own reporting requirements to Lloyd's Brussels in respect of legal proceedings, as set out in the Outsourcing Agreement.
3	Revisions have been made to the provisions regarding Loss Funds, to clarify their operation (see paras 3.4 and 3.7 in particular).
3.8	This makes provision for how other insurance monies will be held, which is a requirement under paragraph 17B of the Requirements made under the Intermediaries Byelaw (see definition of "Claims Handler Agreement Requirements").
13.10	As the TPA is being appointed on behalf of Lloyd's Brussels, the several liability clause is not required and has been deleted.
Appendix	The MA will be required to set out here the data fields that the TPA is required to report on under paragraph 1.1j – see comments above.
Declarations	A list of items to be included in the Declarations has been added to the TPA Agreement, for inclusion as appropriate. The list cross-refers to the paragraphs in the TPA Agreement where the reference to Declarations appears.

CLAIMS HANDLER AGREEMENT REQUIREMENTS

Claims Handler Agreement Requirements means the requirements specifying the content of claims agreements set out in paragraph 17B of the Requirements made under the Intermediaries Byelaw, modified as follows:

- (i) any reference to “syndicate” or “syndicates” in paragraph 17B shall be interpreted as a reference to the Company;
- (ii) the parties to the Claims Handler Agreement shall be the Company and the Claims Handler, and the Managing Agent shall enter into the Claims Handler Agreement on behalf of the Company as its agent;
- (iii) the Claims Handler Agreement shall include a new section headed Introduction which sets out the following statement:

“The Managing Agent is authorised to act for and on behalf of the Company, and except where otherwise stated all functions to be performed by the Company under this Agreement will be performed by the Managing Agent on its behalf. All communications (including, without limitation, all notifications pursuant to this Agreement) and settlements between the Claims Handler and the Company shall be made to or by the Managing Agent for and on behalf of the Company. The Claims Handler therefore need only deal with the Managing Agent in order to discharge its obligations under this Agreement.”;
- (iv) if authority is to be given to the Claims Handler to operate a loss fund, the Claims Handler Agreement shall include terms substantially similar to those set out in the Loss Fund Agreement; and
- (v) an Appendix shall be added to the Claims Handler Agreement in which the Managing Agent shall list the relevant data fields in respect of the information to be reported by the Claims Handler.

TPA AGREEMENT – COMPARE v LMA9008B

THIRD PARTY ADMINISTRATOR AGREEMENT

(Hereinafter, “Agreement”)

Between

Lloyd’s Insurance Company S.A.

(“the Company”)

And

.....

(Hereinafter, the “Third Party Administrator (TPA)”)

Agreement Number –

This Agreement, the Declarations and any amendments, are made by the Company acting by its agent, [name] (“the Managing Agent”).

The Managing Agent is authorised to act for and on behalf of the Company, and except where otherwise stated all functions to be performed by the Company under this Agreement will be performed by the Managing Agent on its behalf. All communications (including, without limitation, all notifications pursuant to this Agreement) and settlements between the TPA and the Company shall be made to or by the Managing Agent for and on behalf of the Company. The TPA therefore need only deal with the Managing Agent in order to discharge its obligations under this Agreement.

This Agreement shall apply to claims under insurance policies issued pursuant to those Coverholder Appointment Agreements specified in the Declarations hereto (“CAAs”) that are incorporated by reference and form part of this Agreement. If a table of security is attached to a particular CAA, each managing agent identified in that table agrees that the lead managing agent (being “the Managing Agent” hereunder) may appoint the TPA on behalf of the Company pursuant to this Agreement to handle all claims written on behalf of the Company under the CAA.

This Agreement shall be effective as of the date(s) shown on the Declarations and shall continue in full force and effect until terminated in accordance with the terms hereof.

1. GENERAL DUTIES AND RESPONSIBILITIES OF TPA

- 1.1 The TPA agrees to perform all claims management services on behalf of the Company in respect of claims under those insurance policies issued pursuant to the CAAs in accordance with all applicable laws and regulations and accepted claims practices, and with all due care and skill reasonably expected of an experienced claims administrator. These services shall include the following:
- a. review and investigate all claims reported to TPA; and
 - b. appoint adjusters, appraisers, engineers, assessors, or other parties necessary to evaluate claims presented, and in making any such appointment the TPA shall require the appointee to submit its invoices to the TPA, addressed to the Company and including a clear statement of the VAT amount to be charged and rate applied; and
 - c. appoint defence counsel for insureds, where appropriate, in consultation with the Company; and
 - d. establish and maintain appropriately documented claim files for all claims and incident or suspense files for any incidents reported whether or not a formal claim is subsequently made; and
 - e. establish reserves that reflect the amounts expected to be ultimately payable in both indemnity and expenses, which reserves shall be periodically reviewed and adjusted in light of updated information, it being acknowledged that reserves may not necessarily take coverage defences into account. Initial reserves ordinarily should be established for straightforward claims within 30 days of a first report and within 90 days for complex claims; and
 - f. attempt to negotiate in good faith settlements of covered claims pursuant to the authority granted by the Company (if any) as set forth in the Declarations (“Settlement Authority”); and
 - g. unless otherwise directed by the Company, provide to the Company via the Appointed Coverholder and simultaneously to the London broker, appropriate reports as required on the status of each claim that exceeds the Settlement Authority for the Company’s instructions; and
 - h. submit all issues of coverage, including but not limited to proposed denials of coverage, proposed reservations of rights, requested ex gratia or proposed “without prejudice” payments, directly to the Company for instructions; and
 - i. maintain all applicable attorney-client and other legal privileges, as the TPA is the claims agent acting on the Company’s behalf; and
 - j. report (through the completion of the relevant data fields listed in the Appendix to this Agreement) paid claims and outstanding claims to the Company by:
 - i. preparing and submitting claims information, with supporting invoices for any fee collections in excess of the threshold specified in the Declarations, in a manner or format(s) agreed by the Company to the broker; and

- ii. ensuring that the paid claims and outstanding claims information is submitted through the Lloyd's delegated authority data submission, access and transformation service (and such other systems as may be specified by the Company from time to time);

Unless otherwise directed by the Company, this information is to be submitted on a monthly basis as soon as possible but in any event within ten (10) working days after the end of each month; and

- k. perform all administrative and clerical work in connection with claims; and
 - l. subject to any complaints handling authority given to the TPA in respect of one or more CAAs (as set out in the Declarations), implement and maintain such procedures as may be required by the Company to ensure that complaints made to the TPA:
 - i. are promptly notified to the Company;
 - ii. can be dealt with in a prompt and reasonable way in compliance with all applicable laws and regulations; and
 - m. maintain a log of, and refer promptly to the Company for instructions, any inquiry, complaint or request received from any regulatory agency; and
 - n. advise the Company promptly of any lawsuits against the Company (or where any lawsuit has been threatened in writing) of which the TPA becomes aware relating to the business that is the subject of the CAAs specified in the Declarations or any other aspect of this Agreement, and instruct legal counsel to act for the Company in such lawsuits upon the Company's express prior authorisation. At the Managing Agent's request, the TPA shall provide such information as the Managing Agent shall require in order to discharge its reporting obligations to the Company; and
 - o. pursue all possibilities of subrogation, contribution, indemnity, recovery, and salvage on behalf of the Company or insureds; provided that, when the TPA believes the expense of such pursuit outweighs the potential recovery, it will consult with the Company prior to incurring such expenses; and
 - p. such other services as are agreed to in writing by the Company and the TPA during the period of this Agreement; and
 - q. comply with such service standards or conditions that the Company from time to time requires of the TPA (as specified in the Declarations where appropriate) including in respect of the proper, effective and timely handling of claims or complaints and in respect of providing accurate, suitable and timely reports and information to the Company and to ensure that the Company can meet its own regulatory obligations.
- 1.2 The TPA warrants that it holds all appropriate licences and that it will, without reliance upon the Company, keep informed of all current laws and regulations governing the conduct of the TPA's business and comply with all applicable laws and regulations at all times during its performance of this Agreement, including but not limited to all laws, regulations and ordinances pertaining to claims settling practices, complaints handling

and financial crimes and sanctions, and such other laws, regulations and ordinances as may be created and made applicable to the Parties.

- 1.3 Without prejudice to the generality of paragraph 1.2 above, each Party shall comply with, and co-operate in respect of the observance of, any applicable financial crime and international economic, financial or trade sanctions laws and regulations which bind the relevant customer, the TPA, the relevant London broker, the Managing Agent or the Company.
- 1.4 For the avoidance of doubt, the TPA shall not pay any claim or provide any benefit to the extent that the payment of such claim or provision of such benefit would expose the TPA or the Company to any sanction, prohibition or restriction under any applicable international economic, financial or trade sanctions laws or regulations.
- 1.5 The TPA shall not accept, offer or facilitate payment, consideration or other benefit which constitutes an illegal or corrupt practice contrary to any applicable anti-bribery law.
- 1.6 The TPA shall not undertake any activity which facilitates the evasion of taxes anywhere in the world or which would constitute a criminal act in the jurisdiction in which it is located or doing business, or which would expose the Company to any criminal sanction.
- 1.7 The TPA shall maintain on an ongoing basis appropriate systems, procedures and controls designed to prevent any breach of paragraphs 1.2 to 1.6 above.
- 1.8 Without limiting the TPA's other obligations under this Agreement, the TPA shall be responsible for the payment of any fees and for any penalties or monetary or non-monetary assessments that may result from TPA's violation of any regulatory or legal requirement, to the extent the imposition of such fees or penalties does not arise solely and/out of the actions of the Company.
- 1.9 The TPA acknowledges the right of the Company to withdraw or vary the TPA's authority in respect of any particular claim and in such circumstance the Company shall be entitled to take any decision or take any action with regard to the claim that the Company considers appropriate.
- 1.10 Unless otherwise expressly stated in the Declarations, the TPA and the Company acknowledge and agree that where the TPA or the Company processes personal data under or in connection with this Agreement it alone determines the purposes and means of processing as a controller;
- 1.11 In respect of the personal data the TPA or the Company processes under or in connection with this Agreement, it:
 - a. shall comply at all times with its obligations under the data protection law;
 - b. shall notify the other parties without undue delay after, and in any event within 24 hours of, becoming aware of a personal data breach; and

- c. shall assist and co-operate fully with the other parties to enable each of them to comply with its obligations under the data protection law, including but not limited to in respect of keeping personal data secure, dealing with personal data breaches, complying with the rights of data subjects and carrying out data protection impact assessments;
- 1.12 In respect of the personal data the TPA processes under or in connection with this Agreement, the TPA shall only process such personal data for the purposes of claims management services to the extent allowed in this Agreement;
- 1.13 The TPA and the Company shall work together to ensure that each of them is able to process the personal data it processes under or in connection with this Agreement for the purposes contemplated by this Agreement lawfully, fairly and in a transparent manner and in compliance with the data protection law. This shall include but not be limited to entering into such other written agreements as may be required from time to time to enable the TPA and/or the Company to comply with the data protection law;
- 1.14 The activities of the TPA under or in connection with this Agreement in respect of which the TPA processes personal data as a processor on behalf of the Company, together with the data protection particulars for such processing, are stated in the Declarations. In addition to paragraphs 1.11, 1.12 and 1.13, where, under or in connection with this Agreement, the TPA processes personal data as a processor on behalf of the Company, the TPA shall:
- a. subject to paragraph 1.14(e), only carry out such processing on the Company's instructions from time to time. The TPA shall immediately inform the Company if, in its opinion, an instruction infringes the data protection law;
 - b. where it is required by applicable law to carry out processing otherwise than in accordance with paragraph 1.14 (a), inform the Company of the legal requirement before carrying out such processing (unless prohibited from doing so by applicable law);
 - c. not disclose the personal data to any person except as required or permitted by this Agreement or with the Company's prior written consent;
 - d. without prejudice to paragraph 6.2, ensure that all persons authorised to process the personal data are under an appropriate contractual or other legal obligation to keep the personal data confidential;
 - e. taking account of the nature of the processing, implement appropriate technical and organisational measures (a) in a manner that ensures the processing meets the requirements of the data protection law and the protection of the rights of data subjects, (b) to keep the personal data secure and to protect against the risk of personal data breaches and (c) to assist the Company to comply with its obligations under the data protection law to respond to requests for exercising the rights of data subjects;
 - f. not process the personal data, or disclose the personal data to any party who carries on business outside of the European Economic Area except with the Company's prior written consent and, where such consent is given, the TPA shall take such actions and enter into such agreements as the Company may require to ensure that such processing or disclosure complies with the data protection law;

- g. not enter into an arrangement with any sub-contractor to process the personal data directly or indirectly on behalf of the Company without the prior written consent of the Company and, where such consent is given, the TPA shall enter into a written agreement with the sub-contractor that includes, as a minimum, provisions in favour of the Company which are equivalent to those in this paragraph 1.14. The TPA shall remain fully liable to the Company for any sub-contractors' processing of personal data; and
 - h. at the Company's option, delete or return to the Company all the personal data on termination of this Agreement and delete any existing copies of the personal data except to the extent that the TPA is required to retain such personal data by applicable law;
- 1.15 The TPA shall make available to the Company all information necessary to demonstrate its compliance with its obligations under these paragraphs 1.10 to 1.17 and the Company reserves the right to audit the TPA's compliance with its obligations under these paragraphs 1.10 to 1.17;
- 1.16 The TPA's obligations under these paragraphs 1.10 to 1.17 continue throughout this Agreement and for a period of seven (7) years thereafter or such other period as the Company may require or as may be required pursuant to any applicable law or regulation;
- 1.17 For the purposes of these paragraphs 1.10 to 1.17 and the Declarations:
- “controller” means the person which, alone or jointly with others, determines the purposes and means of the processing of personal data;
- “data protection law” means all applicable statutes and regulations in any jurisdiction pertaining to the processing of personal data, including but not limited to the privacy and security of personal data;
- "data protection particulars" means, in relation to any processing of personal data by the TPA under or in connection with this Agreement as a processor on behalf of the Company: (a) the subject matter and duration of the processing; (b) the nature and purpose of the processing; (c) the type of personal data being processed; and (d) the categories of data subjects;
- “data subject” means the identified or identifiable natural living person to whom the personal data relates;
- “personal data” means any information relating to the data subject;
- “personal data breach” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed; and
- “processor” means the person which processes personal data on behalf of the data controller.

2. RECORDS

- 2.1 All information, materials and files, whether in written or electronic form, obtained or created by the TPA in the course of providing services covered by this Agreement (hereinafter “Records”) are and shall remain the sole property of the Company, and the TPA shall not subject such Records to any lien, charge or security interest, or allow such Records to become subject to any lien, charge or security interest.
- 2.2 Subject to paragraph 1.14(h), the TPA shall maintain Records containing all information required under all applicable laws and regulations for the time periods required by such laws and regulations. In addition, the TPA shall not destroy or otherwise dispose of any Records without the Company’s prior written consent.
- 2.3 The TPA shall keep or cause to be kept books of account and other financial information relating to the services provided under this Agreement, and this financial information shall be kept separate from all other books of account and financial information relating to any other business carried on by the TPA.
- 2.4 The TPA shall establish and maintain systems and procedures to monitor and record:
 - a. outstanding claims reserves, claims settlements, expenses, subrogation and salvage recoveries, and any other receipts and payments or amounts receivable or payable for the account of the Company; and
 - b. any moneys and assets of the Company held by or under the control of the TPA in connection with the services provided hereunder.
- 2.5 The TPA shall make all Records available for inspection and/or copying at all times by the Company or its representatives, or any regulatory authorities, during normal business hours and shall permit the Company or its representatives, or regulatory authorities to take copies of such Records, and will provide appropriate facilities at the TPA’s business premises or at such other location as may reasonably be required by the Company for any such review.
- 2.6 The Company or its representatives, or any regulatory authorities, shall be afforded reasonable access to relevant representatives of the TPA who shall be made available to assist the Company or its representatives, or regulatory authorities, in the examination of the Records.
- 2.7 The TPA will not, save as may be required by law or with the Company’s prior written consent, part with the possession or control of such Records or grant access to or permit copies to be taken of such Records to or by any third party; provided, however, that the TPA shall, with prior notice to the Company, cooperate with any authorised regulatory bodies requiring access to the Records. The TPA shall advise the Company immediately of any unauthorised access obtained to the Records.
- 2.8 The TPA shall maintain in place a disaster recovery plan for Records maintained on behalf of the Company under this Agreement which shall include all necessary steps relating to the storage and/or protection of the Records, and emergency back up procedures and facilities to avoid business interruption, or damage to or destruction of the Records. The TPA’s disaster recovery plan will be available to the Company upon request, and the TPA warrants that it will submit to the testing of its disaster recovery system from time to time as the Company may require, or if required by local law or

regulation, regularly test its disaster recovery system and report the results to the Company.

3. PAYMENT AUTHORITY AND LOSS FUND ADMINISTRATION (IF APPLICABLE AS SHOWN ON THE DECLARATIONS)

- 3.1 Funds in the amount set forth in the Declarations will be provided by the Company to the TPA for deposit into separate non-interest-bearing bank accounts, or, if appropriate, individual sub-accounts, for each CAA and each year of account as set out on the Declarations (hereinafter "Loss Funds").
- 3.2 All Loss Fund accounts shall require dual signatures.
- 3.3 The Loss Funds are to be established and maintained in trust by the TPA for the sole purpose of settling claims and related loss expenses on behalf of the Company and shall not be commingled with funds belonging to other parties including the TPA. The TPA may only make payments from the Loss Funds in accordance with the limits of its Settlement Authority or where expressly authorised by the Company. In addition, with the Company's prior written authorisation, the TPA may settle its own fees and expenses from the Loss Funds.
- 3.4 The Company and the TPA will keep the amount of the Loss Funds under review, and the Company will from time to time make further payment into the Loss Funds (including for the purposes of replenishment thereof) as appropriate. It is understood and agreed that the TPA will have no obligation to pay claims or loss expenses except from the Loss Funds.
- 3.5 Upon termination of this Agreement, or as otherwise reasonably requested by the Company, the TPA shall provide a full accounting of the Loss Funds and shall return the balance of all Loss Funds to the Company within thirty (30) days or forward them as otherwise instructed by the Company.
- 3.6 The TPA will acknowledge in writing its receipt of all such funds provided by the Company (or paid by any insured or any third-party on the Company's behalf), and it agrees to return any unused or excess funds to the Company from time to time, as requested by the Company, when the amount of funds in the Loss Fund is periodically reviewed in accordance with this Agreement.
- 3.7 All payments from the Company to the Loss Funds (and vice versa) will be made via the DXC and Central Settlement Systems.
- 3.8 Any other insurance monies held by the TPA on behalf of the Company will be subject to the same protections as apply to Loss Funds under this paragraph 3.

4. INDEMNIFICATION

- 4.1 The TPA agrees to defend, indemnify and hold harmless the Company and each of its employees, officers, directors and agents from and against any and all claims, causes of action, proceedings, penalties, fines, losses, damages, fees, costs, expenses or other liabilities of whatever nature, including, without limitation, settlement costs and reasonable attorney fees, court costs and other expenses incurred in investigating,

prosecuting or defending any claim or action, or any threatened claim or action, which is based upon or arises directly or indirectly out of or in connection with any of the following:

- a. any actual or alleged act or omission on the part of the TPA or its affiliates, or any of its employees, officers, directors, agents or independent contractors, unless the act or omission was at the express direction of the Company or involves solely allegations of acts or omissions committed by the Company; provided, however, that said claims, losses or other liabilities were not directly caused by instructions from the Company based upon erroneous advice given to the Company by the TPA; or
- b. the breach of any agreement, or representation made by the TPA in this Agreement.

4.2 The Company agrees to defend, indemnify and hold harmless the TPA and each of its employees, officers, directors and agents from and against any and all claims, causes of action, proceedings, penalties, fines, losses, damages, costs, expenses or other liabilities of whatever nature, including, without limitation, settlement costs and reasonable attorney fees, court costs and other expenses incurred in investigating, prosecuting or defending any claim or action, or any threatened claim or action, which is based solely upon or arises out of or in connection with any of the following:

- a. any actual or alleged act or omission by the TPA performed at the specific direction of the Company or any of its employees, officers, directors, other agents or independent contractors with respect to claims adjusting services under this Agreement; provided however, that said claims, losses or other liabilities were not directly caused by instructions from the Company based upon erroneous advice given to the Company by the TPA; or
- b. any litigation or proceeding naming the TPA or any of its employees, officers or directors as a defendant wherein the claimant in such litigation or proceedings does not allege specific negligent or wrongful acts on the part of the TPA or any of its employees, officers or directors.

4.3 Termination of this Agreement shall not relieve either party of its indemnification obligations.

5. INSURANCE

5.1 The TPA shall, at all times during the term of this Agreement and for three years after the settlement of the last claim handled per this agreement, maintain in force such insurances as are normal and customary in the industry or required by law or regulation, including the following:

- a. Errors and Omissions insurance providing coverage in the amount of not less than EUR1 million (or as otherwise stated in the Declarations) with a per claim deductible not to exceed EUR25,000 (or as otherwise stated in the Declarations); and
- b. a Fidelity bond providing coverage, including “money and securities” coverage, for all officers (except the shareholders) and other employees of the TPA in the amount not

less than EUR100,000 (or as otherwise stated in the Declarations) with a deductible not to exceed EUR25,000 (or as otherwise stated in the Declarations); and

- c. General Liability Insurance; and
 - d. appropriate Employers Liability/Workers Compensation insurance covering the TPA's employees.
- 5.2 The TPA shall forward annually to the Company copies of each of the policies and bonds required under paragraph 5.1.
- 5.3 In the event the TPA is unable, after using its best efforts, to obtain any of the above-mentioned coverages, it shall immediately notify the Company. In the event that any of the above mentioned coverages are cancelled or non-renewed either by the insurer, the TPA or any other entity, the TPA shall immediately notify the Company of such cancellation. The Company shall then have the opportunity to terminate this Agreement immediately or continue this Agreement upon the understanding that the TPA will continue to use its best efforts to obtain any or all such coverages when and if they become available or upon such terms and conditions as the Company may require.

6. CONFIDENTIALITY

- 6.1 For the purposes of this Agreement the following shall be treated as "Confidential Information":
- a. all information contained in the Records maintained by the TPA in connection with the services provided under this Agreement and statistical information derived therefrom; and
 - b. all information coming into the possession of the TPA in the course of providing the services or executing the duties required under this Agreement; and
 - c. the terms of this Agreement; and
 - d. all information subject to privacy and data protection statutes and regulations excluding any information which is in the public domain or comes into the public domain other than by breach of this clause.
- 6.2 The TPA undertakes to keep private and confidential and not to disclose to any person or entity whomsoever all Confidential Information except:
- a. as required for the proper performance of this Agreement, provided, however, that the TPA shall take all reasonable steps to maintain the confidentiality of any information so disclosed;
 - b. for enforcement of rights as may be required by law or by a court of competent jurisdiction;
 - c. as required by any governmental or regulatory body having jurisdiction; and

- d. for the purposes of taking professional advice from persons under a like duty of confidentiality.
- 6.3 The TPA shall, where practicable, consult with the Company before making any disclosure under paragraphs 6.2.b and 6.2.c above. It is understood and agreed that money damages will be insufficient to cover any breach of the confidentiality provisions of this Agreement, and the parties agree that any of them will be entitled to injunctive relief in the event of an actual or threatened breach of this clause.
- 6.4 The TPA shall advise the Company immediately of any unauthorised access obtained to, or breaches allowing unauthorised access to, Confidential Information.
- 6.5 The confidentiality provisions will survive the termination of this Agreement.

7. CONFLICTS OF INTEREST

- 7.1 Notwithstanding any other provision of this Agreement, if the TPA considers that it has a conflict of interest because of the differing interests of the Company and any other company or entity for which TPA also provides similar services, it shall immediately declare the existence of such conflict to the Company and shall, unless the parties agree otherwise, be required to act in respect of such matter solely in accordance with the Company's instructions.
- 7.2 The agreement of the TPA to provide Services to the Company shall not preclude the TPA from providing similar additional or other services to any person, firm or corporation.
- 7.3 The TPA shall have in place appropriate internal procedures for addressing all internal conflicts of interests that may arise (e.g., defences provided to insureds under reservations of rights in respect of coverage issues) consistent with all applicable laws and regulations.

8. NOTICES

- 8.1 Any notices permitted or required to be given relating to this Agreement shall be sent via email and also by facsimile or first class mail (or airmail if overseas).
- 8.2 If to the Company: to the Managing Agent signatory hereto.
- 8.3 If to TPA: to the signatory hereto or such other authorised persons in writing.
- 8.4 Copies of all notices shall be sent simultaneously to the relevant London broker and the Appointed Coverholder as shown in the Declarations, unless otherwise agreed by the parties. However, any failure by the Company to provide a copy of a notice of termination to the London broker or Appointed Coverholder shall not invalidate that notice of termination where it has been properly served on the TPA.

9. TERMINATION

- 9.1 This Agreement may be terminated by the Company or the TPA as follows:
- a. upon thirty (30) days' prior written notice to the other party, for any reason;
 - b. upon ten (10) days' prior written notice to the other party in the event of a default or material change in circumstances under this Agreement by the TPA or the Company; or
 - c. immediately upon written notice to the other party in the event of dissolution, loss of license, abandonment, actual, alleged or suspected fraud, gross or wilful misconduct, insolvency or lack of legal capacity to act on the part of the TPA or the Company.
- 9.2 The following are events of default or material change in circumstances under this Agreement:
- a. any material breach of a term of this Agreement which is not cured by the breaching party within ten (10) days after receipt of notice of such breach from the other party;
 - b. by the discovery by the Company of the falsity of any representation or warranty made to the Company by the TPA;
 - c. the levying of any attachment, execution or any process against the TPA which is not promptly removed or the filing of any petition under any bankruptcy statute against the TPA or the appointment of any receiver or equivalent to take possession of the TPA's properties which is not set aside or terminated within ten (10) days from the occurrence thereof;
 - d. the TPA being merged with, acquired by, or otherwise absorbed by any individual, corporation or other business entity; or
 - e. the TPA undergoing significant changes of personnel or other circumstance or development that may materially impact upon the TPA's ability to perform its functions under this Agreement and in compliance with applicable laws and regulations.
- 9.3 The relevant party shall inform the other party immediately upon becoming aware of the occurrence of any of the events set out in paragraph 9.2 above.
- 9.4 Each party shall immediately acknowledge in writing receipt of any notice of cancellation given by the other party.
- 9.5 The failure of a party to declare a default upon the occurrence of an event constituting a default shall not waive that party's right to declare a default for such occurrence or for any subsequent occurrence.
- 9.6 Notwithstanding the termination of this Agreement as provided herein, the provisions of this Agreement shall continue to apply to the extent needed for all obligations and liabilities incurred by each party hereunder prior to such termination to be fully performed and discharged by such parties up to the date of termination. In addition, the TPA shall continue to perform its obligations pursuant to this Agreement post termination, at the request of the Company, in order to effect the orderly transfer of files subject to compensation and reimbursement of expenses on the same basis as

provided for in the Declarations.

10. CHOICE OF LAW AND FORUM

- 10.1 This Agreement shall be interpreted in accordance with the internal laws of England and Wales, without reference to choice of law principles, unless otherwise stated in the Declarations.
- 10.2 Any lawsuit by the TPA against the Company (including any action to enforce an arbitration award under Section 12 hereof, if applicable) shall be subject to the exclusive jurisdiction of the High Court of Justice in London, England unless otherwise stated in the Declarations.
- 10.3 Any lawsuit by the Company against the TPA (including any action to enforce an arbitration award under Section 12 hereof, if applicable) may be brought in the High Court of Justice in London, England, and by entering into this Agreement the TPA submits to the jurisdiction of such court. In addition, the Company, at its sole option, may bring a lawsuit against the TPA in any other court of competent jurisdiction.

11. DISPUTE RESOLUTION

- 11.1 The TPA and the Company agree in the first instance to try to resolve any disputes concerning this Agreement by good faith negotiations.
- 11.2 If the TPA and the Company fail to resolve any disputes concerning this Agreement within thirty (30) days after one party seeks negotiation, then the parties shall mediate such dispute before a single, neutral mediator to be mutually agreed.
- 11.3 The negotiation and mediation provisions in paragraphs 11.1 and 11.2 hereof shall not preclude any party hereto from seeking immediate injunctive or similar relief, if appropriate.
- 11.4 For the avoidance of doubt (a) while the parties attempt to resolve any dispute, all services and obligations shall be provided and satisfied as agreed to herein and (b) nothing in this Section 11 shall operate to limit the operation, scope or effect of this Agreement including but not limited to the right to terminate this Agreement under Section 9.

12. ARBITRATION CLAUSE (IF AGREED AS SHOWN ON THE DECLARATIONS)

- 12.1 Any disputes between the parties relating to the interpretation of this Agreement not resolved by mediation shall be resolved by arbitration before a panel of three arbitrators. The TPA will appoint one arbitrator and the Company will appoint one arbitrator. These two arbitrators will then select the third arbitrator. If the two party-appointed arbitrators are unable to agree on the third arbitrator, each party-appointed arbitrator will propose three candidates of whom the other will decline two and the third arbitrator will be selected by drawing lots. All three arbitrators will be active or retired insurance claims

personnel or loss adjusters not affiliated with either party and with a minimum of 15 years prior experience in the industry.

- 12.2 The Company and the TPA will each bear the full costs of the arbitrator each appoints and the parties will share equally the expense of the third arbitrator and the arbitration proceeding itself.
- 12.3 The arbitration proceeding will take place in London, England and will be subject to English law governing commercial arbitrations. Judgment upon the arbitration award may be entered in any court of competent jurisdiction as provided in Section 10.
- 12.4. The party demanding arbitration will submit a written statement of its case together with all supporting documents within thirty (30) days after all three arbitrators have been appointed. The other party will submit its response within thirty (30) days after the service of the written statement by the party demanding arbitration. These deadlines may be extended by agreement of the parties or by order of the arbitration panel, and the arbitration panel may then conduct any other proceedings as it deems appropriate. A decision by a majority of the arbitrators shall be final and binding on the parties.
- 12.5 This arbitration clause will survive the termination of this Agreement.
- 12.6 Any disputes between the TPA and the Company that do not concern the interpretation of this Agreement may be brought in any court of competent jurisdiction as provided in Section 10.

13. GENERAL PROVISIONS

- 13.1 If either the TPA or the Company fails to insist on strict compliance with this Agreement, or to exercise any right or remedy hereunder, neither party shall be deemed to have waived any rights or remedies such party may have against the other party. Both parties may demand full and complete compliance with all provisions of this Agreement.
- 13.2 If any provision of this Agreement shall be held to be invalid or in conflict with any applicable law, the other provisions of this Agreement shall remain in full force and effect.
- 13.3 Neither party shall assign any of its rights under this Agreement, including the right to receive any payment of money, nor delegate any of its duties hereunder, without prior written approval of the other party. However, the Company acknowledges and agrees that some or all of the services to be provided hereunder may be provided by affiliated companies of the TPA.
- 13.4 This Agreement together with the accompanying Declarations and any attached exhibits constitutes the entire agreement between the parties and supersedes all previous agreements, representations and understandings, whether oral or written, between the parties with respect to the subject matter hereof.
- 13.5 The provisions of this Agreement are for the sole benefit of the TPA and the Company, and neither the TPA nor the Company will be liable under this Agreement to any other

person for any loss, liability, damage or expense. There are no third-party beneficiaries to this Agreement.

- 13.6 As the wording of this Agreement has been the subject of negotiation and mutual agreement by the parties, with each party having had the opportunity to consult with counsel and other learned advisors, any ambiguity herein will not be construed for or against any party.
- 13.7 No modification or amendment of this Agreement shall be effective unless made in writing and executed by all parties.
- 13.8 This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall be one and the same instrument.
- 13.9 The persons executing this Agreement on behalf of the TPA and the Company, respectively, represent and warrant that they are fully authorised to execute this Agreement on behalf of the respective party(ies).

14. FEES

14.1 See Declarations.

Lloyd's Insurance Company S.A.

TPA
(as defined herein)

Address:

By: [name of MA].....

By:

Name:

Name:

Title:

Title:

Date

Date:

Lead Managing Agent on the
Contracts Shown on the Declarations

LBS0065
1 January 2019

APPENDIX

Managing Agent to list relevant data fields for the purposes of reporting under paragraph 1.1j.

DECLARATIONS

To include (as appropriate):

TPA Agreement No:

Effective date:

Contracts (CAAs) covered:

Contact details for the following parties:

TPA

Appointed Coverholder

Managing Agent

London broker

CAA period:

Broker ref:

Underwriting year:

Settlement Authority level (para 1.1f):

Threshold of fees requiring supporting invoice (para 1.1j):

CAAs for which complaints handling authority given (para 1.1l):

Service standards (para 1.1q):

Data Protection status (if applicable) (para 1.10):

Data Protection particulars (if applicable) (para 1.14):

Loss Fund amount(s) (para 3.1):

Choice of law (paras 10.1/10.2):

Arbitration clause agreed (para 12): Y/N