

## THIRD PARTY ADMINISTRATOR AGREEMENT

(Hereinafter, "Agreement")

Between

Those underwriting members of Lloyd's, and those other insurers (if any),  
individually and severally subscribing to the Contract(s) led by

....., that are referenced on the attached Declarations

(Hereinafter, collectively, "Underwriters")

And

.....

(Hereinafter, the "Third Party Administrator (TPA)")

Agreement Number - .....

This Agreement shall apply to claims under insurance policies issued pursuant to those binding authority contracts set forth in the Declarations hereto that are incorporated by reference and form part of this Agreement.

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 Underwriters in respect of claims under those insurance policies issued pursuant to those contracts specified in the Declarations 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
  - c. appoint defence counsel for insureds, where appropriate, in consultation with Underwriters; 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 Underwriters (if any) as set forth in the Declarations ("Settlement Authority"); and
- g. unless otherwise directed by Underwriters, provide to Underwriters via the coverholder and simultaneously to the London broker, appropriate reports as required on the status of each claim that exceeds the Settlement Authority for Underwriters' 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 Underwriters for instructions; and
- i. maintain all applicable attorney-client and other legal privileges, as the TPA is the claims agent acting on Underwriters' behalf; and
- j. provide a bordereau on a monthly basis (or as may otherwise stated in the Declarations) in an agreed format listing all outstanding claims, paid claims and expenses or noting there has been no claims activity. These bordereaux are to be forwarded to the relevant coverholder and simultaneously to the relevant London Broker as set forth in the Declarations 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. implement and maintain such procedures as may be required by Underwriters to ensure that complaints made to the TPA:
  - a. are promptly notified to Underwriters;
  - b. 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 Underwriters for instructions, any inquiry, complaint or request received from any regulatory agency; and
- n. advise Underwriters promptly of any lawsuits against them (or where any lawsuit has been threatened in writing) of which the TPA becomes aware relating to the business that is the subject of this Agreement, and instruct legal counsel to act for Underwriters in such lawsuits upon Underwriters' express prior authorization; and
- o. pursue all possibilities of subrogation, contribution, indemnity, recovery, and salvage on behalf of Underwriters or insureds; provided that, when the TPA believes the expense of such pursuit outweighs the potential recovery, it will consult with Underwriters prior to incurring such expenses; and
- p. such other services as are agreed to in writing by Underwriters and the TPA during the period of this Agreement; and
- q. comply with such service standards or conditions that Underwriters may from time to time require of the TPA 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 Underwriters and to ensure that Underwriters' can meet their own regulatory obligations.

- 1.2 The TPA warrants that it holds all appropriate licences and that it will, without reliance upon Underwriters, 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 section 1.2, each Party shall comply with, and co-operate in respect of the observance of, any applicable anti money laundering or international economic, financial or trade sanctions legislation which bind the relevant customer, the TPA, the Broker or the Managing Agent. 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 Underwriters to any sanction, prohibition or restriction under any applicable international economic, financial or trade sanctions legislation. 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 legislation or undertake any activity that would expose Underwriters to any criminal sanction. 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 Underwriters.
- 1.4 The TPA acknowledges the right of Underwriters to withdraw or vary the TPA's authority in respect of any particular claim and in such circumstance the Underwriters shall be entitled to take any decision or take any action with regard to the claim that Underwriters consider appropriate.

## 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 Underwriters, 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 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 Underwriters' 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 Underwriters; and
  - b. any moneys and assets of Underwriters 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 Underwriters or their representatives, or any regulatory authorities, during normal business hours and shall permit Underwriters or their 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 Underwriters for any such review.
- 2.6 Underwriters or their representatives, or any regulatory authorities, shall be afforded reasonable access to relevant representatives of the TPA who shall be made available to assist Underwriters or their 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 Underwriters' 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 Underwriters, cooperate with any authorised regulatory bodies requiring access to the Records. The TPA shall advise Underwriters immediately of any unauthorized access obtained to the Records.
- 2.8 The TPA shall maintain in place a disaster recovery plan for Records maintained on behalf of Underwriters 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 Underwriters upon request, and the TPA warrants that it will submit to the testing of its disaster recovery system from time to time as Underwriters may require, or if required by local law or regulation, regularly test its disaster recovery system and report the results to Underwriters.
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 Underwriters to the TPA for deposit into separate non-interest-bearing bank accounts, or, if appropriate, individual sub-accounts, for each contract 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 Underwriters 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 Underwriters. In addition, with Underwriters' prior written authorisation, the TPA may settle its own fees and expenses from the Loss Funds.
- 3.4 Underwriters will, from time to time, replenish the loss funds as appropriate. Underwriters and the TPA shall adjust the amount of the Loss Funds from time to time, as required. 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 Underwriters, the TPA shall provide a full accounting of the Loss Funds and shall return the balance of all Loss Funds to Underwriters within thirty (30) days or forward them as otherwise instructed by Underwriters.
- 3.6 The TPA will acknowledge in writing its receipt of all such funds provided by Underwriters (or paid by any insured or any third-party on Underwriters' behalf), and it agrees to return any unused or excess funds to Underwriters from time to time, as requested by Underwriters, when the amount of funds in the Loss Fund is periodically reviewed in accordance with this Agreement.

#### 4. INDEMNIFICATION

- 4.1 The TPA agrees to defend, indemnify and hold harmless Underwriters and each of their respective 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 Underwriters or involves solely allegations of acts or omissions committed by Underwriters; provided, however, that said claims, losses or other liabilities were not directly caused by instructions from Underwriters based upon erroneous advice given to Underwriters by the TPA; or
  - b. The breach of any agreement, or representation made by the TPA in this Agreement.
- 4.2 Underwriters agree 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 Underwriters or any of their 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 Underwriters based upon erroneous advice given to Underwriters 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 USD1 million (or equivalent) (or as otherwise stated in the Declarations) with a per claim deductible not to exceed USD25,000 (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 USD100,000 (or equivalent) (or as otherwise stated in the Declarations) with a deductible not to exceed USD25,000 (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 Underwriters 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 Underwriters. 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 Underwriters of such cancellation. Underwriters shall then have the opportunity to terminate this Agreement immediately or continue the 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 Underwriters 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 Underwriters 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 Underwriters immediately of any unauthorized access obtained to, or breaches allowing unauthorized 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 Underwriters and any other company or entity for which TPA also provides similar services, it shall immediately declare the existence of such conflict to Underwriters and shall, unless the parties agree otherwise, be required to act in respect of such matter solely in accordance with Underwriters' instructions.
- 7.2 The agreement of the TPA to provide Services to Underwriters 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 Underwriters: to the Leading Underwriter 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 coverholder as shown in the Declarations, unless otherwise agreed by the parties. However, any failure by Underwriters to provide a copy of a notice of termination to the London broker or 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 Underwriters or the TPA as follows:
- a. Upon thirty (30) days, prior written notice, for any reason;
  - b. Upon ten (10) days prior written notice in the event of a default or material change in circumstances under this Agreement by the TPA or Underwriters; or
  - c. Immediately upon written notice 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 Underwriters.
- 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 Underwriters of the falsity of any representation or warranty made to Underwriters 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 the Agreement post termination, at the request of Underwriters, 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 Underwriters (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 Underwriters 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, Underwriters, at their sole option, may bring a lawsuit against the TPA in any other court of competent jurisdiction.

## **11. DISPUTE RESOLUTION**

- 11.1 The TPA and Underwriters agree in the first instance to try to resolve any disputes concerning this Agreement by good faith negotiations.
- 11.2 If the TPA and Underwriters 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 Underwriters 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 Underwriters 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 Underwriters 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 Underwriters fail 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, Underwriters acknowledge and agree 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 Underwriters, and neither the TPA nor Underwriters 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 obligations of the individual Underwriter under this Agreement are several and not joint and each Underwriter is responsible only for his or its several share of any sums due hereunder commensurate with the shares each has severally assumed under the Contract(s) set forth in

the Declarations and not for the share of any other Underwriter that for any reason fails to pay its obligations.

- 13.10 The persons executing this Agreement on behalf of the TPA and Underwriters, respectively, represent and warrant that they are fully authorized to execute the Agreement on behalf of the respective party(ies).

**14. FEES**

- 14.1 See Declarations.

**UNDERWRITERS**  
(as defined herein)

By: .....

Name: .....

Title: .....

Date .....

Leading Underwriter on the  
Contracts Shown on the  
Declarations

**TPA**  
(as defined herein)

Address: .....

By: .....

Name: .....

Title: .....

Date .....

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16 April 2014