

**STANDARD LMA AVIATION TERMS OF ENGAGEMENT 2015**  
**FOR SURVEYORS AND ADJUSTERS**

**1 GENERAL**

- 1.1 These standard terms of engagement shall be known as the LMA Aviation Terms of Engagement 2015 ("LATOE 2015") and shall be the terms applicable to the contract between Instructing Insurers and the Surveyor in respect of the Services to be provided by the Surveyor, where the appointment of the Surveyor has been made on the basis of LATOE 2015.
- 1.2 The purpose of LATOE 2015 is to define the Services which shall be provided by the Surveyor to the Instructing Insurers and the Service Standards applicable to those Services.
- 1.3 LATOE 2015 sets forth the terms under which the Instructing Insurers agree to pay for the Services. Surveyors providing the Services for or on behalf of the Instructing Insurers agree to provide the Services in accordance with these Terms of Engagement.
- 1.4 To the extent any of the terms of LATOE 2015 conflict with any other contract, terms of business or other agreement with the Surveyor, the terms of LATOE 2015 shall govern.

**2 DEFINITIONS**

- 2.1 "Broker" shall mean the broker(s) which have placed the Policy on behalf of the Insured.
- 2.2 "Claim" means the Insured's potential claim on the Policy.
- 2.3 "Claims Agreement Parties" shall mean the Instructing Insurers with authority to agree claims under the Policy in accordance with the Lloyd's Claims Scheme (Combined). In the case of a claim considered 'complex' in line with Lloyd's CTP triaging rules, this will mean the Lead Insurer and the Second Lead. In the case of a 'standard' claim this will mean the Lead Insurer only. The Lead Insurer will advise as and when a claim is made 'complex'.
- 2.4 "Days" shall mean calendar days.
- 2.5 "Instructing Insurers" shall mean the Lloyd's managing agents which manage the Lloyd's syndicates subscribing to the Policy and making the appointment of the Surveyor.
- 2.6 "Insured" shall mean the party or parties who have paid the premium on the Policy and who have a potential claim under the Policy.
- 2.7 "Lead Insurer" shall mean the leading Lloyd's syndicate on the Policy.

- 2.8 "Other Documentation" shall mean any documentation including but not limited to that in electronic form relating to the Claim or the Policy.
- 2.9 "Policy" shall mean the insurance under which the Insured may have a claim against Instructing Insurers, and includes the market reform contract where there is not a separate policy document.
- 2.10 "Services" shall mean those set out in paragraph 4 below and/or those agreed between the Instructing Insurers and the Surveyor to be undertaken by the Surveyor in respect of the Claim.
- 2.11 "Service Standards" shall mean those set out in paragraph 5 below.
- 2.12 "Surveyor" shall mean the surveying or loss adjusting firm which carries out the Services.

### 3 APPOINTMENT

- 3.1 The Lead Insurer will instruct the Surveyor through the Broker and will request the Broker to identify to the Surveyor all Lloyd's managing agents subscribing on behalf of Lloyd's syndicates to the Policy and the Claims Agreement Parties. The Lead Insurer will request the Broker to provide the Surveyor with any relevant documentation required to carry out the Services and, if necessary, with afterhours contact details for persons entitled to issue instructions on behalf of the Claims Agreement Parties in the case of an emergency.
- 3.2 Within 48 hours of receiving an instruction, the Surveyor must confirm receipt and advise whether it is free to accept the appointment without conflict. At the same time, the Surveyor should provide details of the individuals who it is proposed will undertake the Services, their hourly rates and other information relating to the Surveyor's fees. The Surveyor should advise the Lead Insurer if it is unwilling to act for any of the managing agents/subscribing syndicates and if any of the timescales set out in the Services are not achievable. Services should not be commenced without notice to the Claims Agreement Parties.
- 3.3 The Claims Agreement Parties shall confirm the appointment of the Surveyor by email (or other appropriate means). The Surveyor shall be deemed to be acting on behalf of all the Lloyd's managing agents/subscribing syndicates unless expressly agreed otherwise (Instructing Insurers).
- 3.4 Within 24 hours of confirmation of the appointment, the Surveyor should inform the Insured in writing of the information and documentation that it will require to commence the Services.
- 3.5 Should the Broker fail to provide the documentation detailed in paragraph 3.1 above within 7 Days of the confirmation of the appointment of the Surveyor, the Surveyor shall notify the Lead Insurer of that fact, and the Lead Insurer shall provide such documentation and information as it has within its own possession and request the Broker to provide the missing documentation and information forthwith.

## 4 THE SERVICES

4.1 The Surveyor shall carry out the Services as agent for and on behalf of Instructing Insurers in accordance with the Service Standards. The Services carried out by the Surveyor are solely for the benefit of Instructing Insurers. The Services shall include but not be limited to:

- (a) Communicating with the Insured and the Broker to enable the Surveyor to assemble all documentation and information relevant to the Claim.
- (b) Making site/aircraft visits as may be required.
- (c) Assessing the extent of the loss relevant to the Claim, investigating (if necessary with the assistance of third party experts) the cause of the loss and reporting to Claims Agreement Parties.
- (d) Providing an estimate of the loss relevant to the Claim to enable Claims Agreement Parties to establish a reserve.
- (e) Monitoring the Insured's negotiations with products/service providers to ensure as far as possible that insured repairs agreed by the Claims Agreement Parties are carried out in a timely manner and at an appropriate cost.
- (f) Assisting the Insured with tenders for repair works, or alternatively arranging for obtaining tenders on the Insured's behalf, after receiving the consent of Claims Agreement Parties, and suggesting repair alternatives, as applicable.
- (g) Protecting the interests of Instructing Insurers at all times when dealing with the Insured.
- (h) Ensuring compliance with any local laws and regulations.
- (i) Investigating potential subrogation claims, advising Claims Agreement Parties and, where instructions are received to proceed with any subrogation claim, reporting to Claims Agreement Parties.
- (j) Loss adjusting activities where required.

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

- (a) Instructing any third party expert or subcontractor on behalf of Instructing Insurers without prior consultation and prior written approval from Claims Agreement Parties.
- (b) Responding to complaints by the Insured or any other party without prior consultation with and prior written approval from Claims Agreement Parties, except in the case of a direct complaint being made against the Surveyor, in which case the Claims Agreement Parties should be informed.
- (c) Confirming or denying Policy coverage or liability, or formally agreeing any element of quantum of the Claim with the Insured and/or third parties in any circumstances save where expressly authorised in writing in advance by the Claims Agreement Parties so to do.

- 4.3 LATOE 2015 does not afford the Surveyor any complaints handling authority. Any complaints received should, in all cases, be referred to the Claims Agreement Parties.
- 4.4 The Surveyor shall pay due regard to, and co-operate in respect of the observance of, any applicable any applicable international economic, financial or trade sanctions legislation which bind the Insured, the Broker or the Instructing Insurers.

## 5 SERVICE STANDARDS

- 5.1 The Surveyor shall use reasonable care, skill and diligence to perform the Services in a professional and efficient manner in accordance with good surveying practice.
- 5.2 Unless otherwise agreed, the Surveyor shall prepare and send to the Claims Agreement Parties a comprehensive report within 30 Days of being instructed. The Surveyor may use its own standard report format, or a form agreed with the Claims Agreement Parties. The report should specifically address all items listed below:
- (a) Circumstances of loss;
  - (b) Aircraft recovery and search and rescue;
  - (c) Aircraft data;
  - (d) Crew data;
  - (e) Weight and balance;
  - (f) Weather conditions and terrain;
  - (g) Cause of loss;
  - (h) Damage including photographs;
  - (i) Salvage;
  - (j) Subrogation;
  - (k) Third party claims;
  - (l) Reserve for indemnity and fees.
- 5.3 The Surveyor should provide timely, concise, informative status reports on a minimum six monthly basis. Unless otherwise agreed in writing by the Claims Agreement Parties, the update reports should be provided even if there have not been any developments in that six month period. If there have not been any developments, the report should explain why that is the case and what is being done to move the case towards resolution.
- 5.4 Update reports should be provided more frequently where material developments affect the evaluation of the Claim. A material development includes, but is not limited to, the following list of events:
- (a) Client meetings and/or the results of document reviews;

- (b) Settlement demands;
- (c) Settlement opportunities/case resolution;
- (d) Dates of settlement conferences and their results;
- (e) Expert consultations;
- (f) Accident Investigation results/reports.

5.5 Claims Agreement Parties will provide specific instructions if alternative reporting procedures are required.

5.6 Settlement:

- (a) The Surveyor must obtain written authorisation from the Claims Agreement Parties before making any payment in respect of the Claim. Such authorisation should be requested as soon as practicable and, in any event, the Surveyor should allow a period of at least seven (7) Days for the Claims Agreement Parties' written authorisation.
- (b) The Surveyor must obtain a fully executed release (or other similar agreement) from the Insured before making any settlement and, in relation to a final settlement, where there are any court, arbitration or other proceedings relevant to the Claim, a final order in conclusion of such proceedings (or other similar document) prior to distributing the settlement proceeds to the Insured.

## 6 COMMUNICATION WITH INSTRUCTING INSURERS

6.1 Although the Surveyor shall communicate directly with the Claims Agreement Parties, it may (subject to paragraph 6.2 below) issue reports and other substantive correspondence via the Broker with a copy to the Claims Agreement Parties.

6.2 The Surveyor should seek instructions directly from the Claims Agreement Parties prior to submitting a written report, correspondence or other material via the Broker where:

- (a) the Claim is likely to become contentious for any reason;
- (b) any report, correspondence or other material is likely to be covered by legal privilege;
- (c) other particular matters arise, for example, a suspicion of fraud, money laundering, breach of sanctions or other breach of law or regulation, which should be drawn to the attention of Instructing Insurers; or
- (d) the Broker informs the Surveyor that it has an actual or potential conflict of interest which the Broker cannot manage or if the Surveyor becomes aware of such a conflict.

## **7 CONFLICT OF INTEREST**

- 7.1 If the Surveyor becomes aware after it accepts appointment that it has an actual or potential conflict of interest, it will advise the Claims Agreement Parties as soon as it is practicable.
- 7.2 In the event that the Surveyor is unable to act or to continue to act because of an actual or potential conflict of interest, the Surveyor shall return all files and Other Documentation supplied to it in original form without copying any such material and shall delete all electronic records, except those required for its own regulatory compliance purposes or otherwise required to be kept by law. The Surveyor will keep confidential all such material and information contained therein and not disclose such material or information to any other party, unless required to do so by reason of law of regulation (in which case it must give advanced notice of such requirement to the Claims Agreement Parties).
- 7.3 The Surveyor will not act for other principals in connection with the Claim, unless otherwise agreed in writing with the Claims Agreement Parties.

## **8 BILLING**

- 8.1 In most cases, it will be appropriate for the Surveyor to provide a fee reserve with its preliminary report outlining all costs and expenses expected to be incurred in the handling of the Claim. Where the Surveyor is unable to provide a detailed costs budget with its preliminary report, it should advise the Claims Agreement Parties as soon as possible and provided a detailed fee reserve at the earliest possible date. Instructing Insurers shall be responsible for payment of their respective several proportions of fees and expenses due to the Surveyor within a reasonable period of time.
- 8.2 Whilst it is appreciated that circumstances may change and develop that will necessitate re-evaluations of the fee reserve, Instructing Insurers are mindful of the need for early recognition of fees and expenses relating to the Claim and the need to reserve accordingly.
- 8.3 Where fees are to be split between hull all risks and deductible policies, the Lead Insurer will agree a split for fees with the Claims Agreement Parties and advise the Surveyor accordingly.
- 8.4 The fees and expenses reserve should, where possible, take into account the activities and costs associated with handling all aspects of the Claim, including but not limited to the following:
- (a) Client meeting(s) and travel;
  - (b) Document review;
  - (c) Claim investigation;
  - (d) Research and instructing legal and other experts;
  - (e) VAT or other taxes, if applicable;
  - (f) Report preparation to Instructing Insurers.
- 8.5 Unless otherwise agreed in writing by the Claims Agreement Parties, fees should be invoiced at the rates agreed between the Claims Agreement

Parties and the Surveyor. The rates should not be increased without the Claims Agreement Parties' prior written approval.

- 8.6 Invoices shall be submitted on a monthly or quarterly basis by the Surveyor via the broker/collection agency or directly to the Lead Insurer if the Claims Agreement Parties so request, or as otherwise agreed. Instructing Insurers shall be responsible for payment of their respective several proportions of invoices agreed by the Claims Agreement Parties. The invoices or supporting documentation should include an analysis showing the total charge of each fee earner, with details of their status and a detailed activity breakdown of the number of hours expended. A summary of disbursements listed in detail and invoices from any third party expert can be provided on request. Any third party invoice including a time element should comply so far as possible with this paragraph 8 and 9 below.
- 8.7 Unless otherwise agreed in writing with the Claims Agreement Parties, the Surveyor may bill a maximum of 8 hours per day while travelling at the Surveyor's standard rate as agreed with the Instructing Insurers. Travel time should be reflected in the Surveyor's itemised billing statements.
- 8.8 Time spent working on the matter while travelling should be invoiced in the ordinary manner. However, the travel time should be reduced accordingly such that Instructing Insurers are not invoiced for the same period of time both for travel and for substantive work.
- 8.9 The Surveyor should only bill for time spent actually travelling (subject to the 8 hour per day limit above) or time spent undertaking the Services.
- 8.10 If the Surveyor undertakes work on other matters during the travel time or if the Surveyor will be undertaking other assignments at the destination or along the route, the Surveyor should reduce the time and costs charged to the Instructing Insurers accordingly. For the avoidance of doubt, travel time incurred in relation to more than one matter, should not be double billed.
- 8.11 If the Surveyor is also instructed on the same loss to which the claim relates, by a non-Lloyd's insurer, then in the event of insolvency (or similar) of that non-Lloyd's insurer, Instructing Insurers shall not be liable for any fees due from that insolvent insurer.

## **9 INCIDENTAL DISBURSEMENTS**

- 9.1 The Surveyor should limit the costs of travel as far as possible. In all cases of overseas travel where the flight time is more than 1 hour, the Surveyor must obtain the prior approval of the Claims Agreement Parties. Approval will be based on the following guidelines:
  - (a) For air travel of less than six hours, the Surveyor should book the lowest available flexible economy fare.
  - (b) For air travel of six hours or more, the Surveyor may book the lowest available flexible premium economy fare or, if not available on the applicable route or if more economical than a premium economy fare, the Surveyor may book the lowest available flexible business class fare.

- (c) For any other form of travel, for example train travel, the Surveyor should book the most economical fare.
- (d) The costs of hotel accommodation and incidental disbursements should be the most economical choice available taking into account the surveyor's safety.

## 10 INSURANCE

- 10.1 The Surveyor shall maintain in full force and effect, sufficient professional indemnity/errors and omissions insurance cover with reputable insurance carriers to ensure that its aggregate potential exposure for all clients and third parties is protected. The surveyor shall maintain such policy in full force for the duration of the Services. The insurance should cover any breach of any legal or regulatory duty by the Surveyor or its staff and/or any breach of contract and/or duty of care in the exercise of the Surveyor's obligations under this agreement.
- 10.2 Instructing Insurers reserve the right to request details and proof of the insurance cover at any time, such details and proof to be furnished within seven (7) Days of any request.

## 11 DOCUMENTS AND ACCESS TO RECORDS

- 11.1 All files and materials prepared or obtained by the Surveyor in the course of undertaking the Services shall be, and shall remain, the property of Instructing Insurers.
- 11.2 The Surveyor will keep confidential all information and Other Documents obtained in the course of carrying out these Services, except when the Surveyor is required by law or other regulatory process to disclose such information or is otherwise authorised in writing to disclose such information by all of the Instructing Insurers. This provision shall not apply to information that the Surveyor obtains or develops independently of the Services or that is already in the public domain.
- 11.3 The Surveyor shall retain and keep in safe storage all files and Other Documents relating to the Services for a minimum period of ten years from the date of loss to which the Claim relates or six years from the date that the Claim was finally settled, whichever period expires later.
- 11.4 The Surveyor will make available to Instructing Insurers or their nominated representative upon Instructing Insurers' request, all files and Other Documentation in the Surveyor's possession relating to the Services within 28 Days of the request without charge.

## 12 AUDIT

- 12.1 At Instructing Insurers' discretion and with reasonable notice, periodic audits may be conducted. The Surveyor will provide any assistance required without charge, including making staff available and producing files and



Other Documentation. Instructing Insurers' representatives or a professional adviser may carry out the audit.

- 12.2 Payment of any fees, disbursements or other costs will not constitute a waiver of Instructing Insurers' right to be reimbursed for any overpayment discovered during an audit or at any other time.

### **13 TERMINATION OR MODIFICATION**

- 13.1 The Claims Agreement Parties may terminate the Surveyor's appointment relating to the Services at any time in writing, or otherwise vary the scope of the Surveyor's instructions in relation to the handling of the Services. In the event of such termination or variation, the Surveyor will assist as required in the immediate transfer of the files and Other Documentation to Instructing Insurers or their representatives.
- 13.2 Instructing Insurers will remain liable for their several proportions of the proper fees and disbursements of the Surveyor prior to termination and to any fees and disbursements associated with the Surveyor's staff returning to their base location if appropriate.
- 13.3 The Surveyor may terminate the appointment at any time by giving 30 day's written notice to the Claims Agreement Parties and will immediately deliver up any files and Other Documentation to Instructing Insurers or as they may direct.

### **14 ANTI BRIBERY PROVISIONS**

- 14.1 The Surveyor shall comply at all times with all applicable laws and, in particular, with those relating to bribery, corruption and related matters.
- 14.2 The Surveyor shall not, whether on behalf of Instructing Insurers or otherwise, offer, promise, pay, give or authorise (tacitly or otherwise) or receive any financial or other advantage:
- (a) where it is intended to induce or reward the improper performance of a function or activity; or
  - (b) where it is intended to influence any official or employee of any government or any instrument of government, including any government-controlled commercial enterprise, political party or party official or any candidate for political office in connection with obtaining business or a business advantage.
- 14.3 The Surveyor shall promptly report any apparent breach of clauses 14.1 or 14.2, or any investigation by any regulatory or public authority relating to bribery or corruption or otherwise, to the Claims Agreement Parties, together with details of the alleged breach or reasons for the investigation.
- 14.4 The Surveyor shall co-operate with Instructing Insurers and/or their authorised agents and/or any regulatory or public authorities in relation to any enquiry or investigation in respect of matters relating to bribery or corruption or other matters which are properly subject of an enquiry or investigation by a recognised authority.

14.5 The Instructing Insurers shall have the right to terminate this Agreement on no notice, without liability, for breach of clauses 14.1 or 14.2.

**15 FORCE MAJEURE**

15.1 The Surveyor and the Instructing Insurers shall not be liable to the others for any failure to perform their respective obligations under this contract caused by acts, events, omissions or accidents beyond their reasonable control.

**16 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

16.1 Unless expressly agreed in writing between the Instructing Insurers and the Surveyor, none of the terms of LATOE 2015 shall be enforceable by any person other than Instructing Insurers and the Surveyor. Where, the Instructing Insurers and the Surveyor have agreed in writing to a third party having rights under LATOE 2015, that person's right to enforce such term is subject to the provisions of paragraph 17 below. The parties to LATOE 2015 may, by agreement, terminate or vary LATOE 2015 without requiring the consent of any other person who, being a third party, may have any right to enforce any term hereof.

**17 GOVERNING LAW AND ARBITRATION**

17.1 All disputes and differences arising under or in connection with this contract that cannot be settled by mutual agreement/mediation shall be referred to binding arbitration.

17.2 The arbitration tribunal shall consist of one mutually agreed arbitrator.

17.3 The arbitrator may, in his/her sole discretion make such orders and directions as he/she considers to be necessary for the final determination of the matters in dispute. The arbitrator shall have the widest discretion permitted under the law of England and Wales when making such orders or directions.

17.4 The seat of arbitration shall be London, United Kingdom and the applicable law of this contract shall be the laws of England and Wales.

THIS AGREEMENT SHALL BE REFERRED TO AS LATOE 2015