

**LILLEHAMMER TERMS OF ENGAGEMENT 2010**  
**FOR ENERGY LOSS ADJUSTERS**

**1 GENERAL**

- 1.1 These Terms of Engagement and the Appendices thereto shall be known as the Lillehammer Terms of Engagement 2010 ("LTOE 2010") and shall be the terms applicable to the contract between Instructing Insurers and the Adjuster in respect of the Services to be provided by the Adjuster, where the appointment of the Adjuster has been made or accepted upon the basis of LTOE 2010.
- 1.2 The purpose of LTOE 2010 is to define the Services which shall be provided by the Adjuster and the Service Standards which shall apply to those Services, together with the additional liability and indemnity provisions as set out in Appendix 2 which, subject to the provisions of paragraph 3.3, shall apply and be incorporated herein.

**2 DEFINITIONS**

- 2.1 "Adjuster" shall mean the loss adjusting firm who accepts the appointment by Instructing Insurers to carry out the Services.
- 2.2 "Broker" shall mean the broker who has placed the Policy on behalf of The Insured or who has the conduct of the claim on behalf of the Insured.
- 2.3 "Claims Agreement Parties" shall mean those of the Instructing Insurers vested with authority by the relevant Policy to agree claims.
- 2.4 "Instructing Insurers" shall mean the underwriters or insurers on whose behalf the appointment is made as more particularly defined in paragraph 4 below.
- 2.5 "Insured" shall mean the person firm or company with a potential claim under the Policy.
- 2.6 "Policy" shall mean the insurance under which the Insured may have a claim.
- 2.7 "Services" are defined in paragraph 5 below.
- 2.8 "Service Standards" are defined in paragraph 6 below.
- 2.9 "Terms of Engagement" shall mean these Terms of Engagement which shall be referred to as "LTOE 2010".

### **3 APPLICATION**

- 3.1 LTOE 2010 shall apply when the appointment of the Adjuster to carry out the Services is stated to be made by Instructing Insurers upon the basis of LTOE 2010 or is accepted by the Adjuster on those terms.
- 3.2 Where the appointment by Instructing Insurers makes no reference to LTOE 2010, but LTOE 2010 is incorporated by the Adjuster's acceptance of the appointment, Instructing Insurers shall be deemed to have accepted the application thereof unless they shall repudiate the same in writing to the Adjuster within two weeks of the receipt of the acceptance, but where the Adjuster's acceptance is communicated to the Broker then this shall mean two weeks from notification by the Broker to the Instructing Insurers that acceptance of the appointment is made on that basis.
- 3.3 Where an appointment is made or accepted on LTOE 2010, it shall be on terms that Appendix 2 thereto applies unless the application of Appendix 2 is expressly excluded in writing by the terms of the appointment by Instructing Insurers or the acceptance thereof by the Adjuster.

### **4 APPOINTMENT**

- 4.1 The appointment by Instructing Insurers of the Adjuster requires the Adjuster to carry out the Services subject to LTOE 2010, which shall take effect from the date on which the Adjuster accepts the appointment on such terms.
- 4.2 Where the appointment is made by the Broker on behalf of Instructing Insurers, Instructing Insurers will authorise the Broker to provide to the Adjuster the complete policy wording, the placing slip and all endorsements, the policy itself and (where relevant) similar details of any underlying cover.
- 4.3 Instructing Insurers will request the Broker to identify all solvent insurers subscribing to the policy and the Claims Agreement Parties empowered by the Policy to handle and agree claims on behalf of subscribing insurers.
- 4.4 The acceptance of any appointment by the Adjuster shall take effect as acceptance to provide the Services only on behalf of such subscribing insurers as the Adjuster agrees at the time of appointment or subsequently.
- 4.5 When the appointment is made by Instructing Insurers directly to the Adjuster, the Instructing Insurers shall immediately request the Broker to provide all the information and documentation as specified in paragraph 4.2 to 4.4.
- 4.6 Should the Broker fail to provide the relevant documentation within 14 days of the acceptance by the Adjuster of the appointment, the Adjuster shall notify the Claims Agreement Parties of that fact, and the Claims Agreement Parties shall provide such documentation and information as they have within their own possession and instruct the Broker to provide the missing documentation and information forthwith.
- 4.7 The Adjuster undertakes that it shall carry out the Services as agent on behalf of Instructing Insurers in accordance with the Service Standards.

- 4.8 The Services carried out by the Adjuster are solely for the benefit of Instructing Insurers. They are not intended to be for the benefit or relied upon by others or for a different purpose other than the Services.

## 5 THE SERVICES

- 5.1 The Services to be carried out by the Adjuster on behalf of Instructing Insurers shall include:

- (a) Communicating with the Insured in order to assemble all documentation and information relevant to the loss in respect of which the appointment is made.
- (b) Effecting site visits as may be required.
- (c) Assessing the extent of the insured loss or damage and reporting to insurers thereon.
- (d) Investigating, if necessary with the assistance of third party experts, the cause of the loss and reporting to Insurers thereon.
- (e) Providing as soon as conveniently possible an estimate of the insured claim to enable Instructing Insurers to establish a reserve.
- (f) Providing periodic written reports to Instructing Insurers detailing and substantiating each aspect of the claim including the extent of loss or damage, the cause of loss, an estimate of the likely amount for the insured's loss, the conduct and timing of any repair or remedial works and all other information relevant to the adjustment of the claim including a budget for the Adjuster's costs, a proposed work plan and strategy for adjusting the loss.
- (g) Monitoring the Insured's negotiations with products/service providers to ensure as far as possible that repairs are carried out in a timely manner and at an appropriate cost.
- (h) Protecting the interests of Instructing Insurers at all times when dealing with the Insured.
- (i) Investigating and ascertaining whether any requirements for claims handling pursuant to applicable Insurance Code or other Regulation are applicable to Instructing Insurers' response to any claim by the Insured under the Policy in respect of the loss which is the subject of appointment, and advising Instructing Insurers of the same; also ensuring compliance therewith or notifying Instructing Insurers in the event that the Adjuster is unable to ensure compliance therewith.
- (j) Investigating potential subrogation opportunities, advising Instructing Insurers thereof and reporting to Instructing Insurers in respect of any such action already undertaken by the Insured.
- (k) Organising and conducting market meetings involving all Instructing Insurers provided that prior approval from the Claims Agreement Parties representing Instructing Insurers is obtained.

- (l) If so instructed, conducting settlement discussions with the Insured regarding the claim in order to report to Instructing Insurers the terms upon which the Insured will accept settlement of the claim under the Policy, but on no account shall the Adjuster agree with the Insured any element of quantum of the loss without prior approval of Instructing Insurers.

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

- (a) Instructing any third party expert on behalf of Instructing Insurers without prior consultation with and approval from Instructing Insurers. For the avoidance of doubt, any subcontractor of the Adjuster engaged by the Adjuster to assist him in the carrying out of the Services shall not constitute a third party expert.
- (b) Responding to complaints by the Insured or any other party without prior consultation with and approval from Instructing Insurers.
- (c) Providing to the insured a representative name for the Instructing Insurers for the purpose of legal proceedings, unless specifically requested and authorised by Instructing Insurers to provide such information to the Insured.
- (d) Agreeing any element of the quantum of the Insured's claim without prior approval of Instructing Insurers.
- (e) Confirming or denying Policy coverage or liability to the Insured and/or third parties in any circumstances, save where expressly authorised in writing by Instructing Insurers so to do.
- (f) Performing any warranty survey activity. In the event that the Adjuster is requested by any insurers to perform such activity, such request shall take effect as a separate appointment and LTOE 2010 shall not be applicable to it.

5.3 The Services shall be further defined and may be varied by the terms of the Loss Adjuster's Scope of Work Form as set out in Appendix 1 hereto, save that it shall be understood and agreed that the Adjuster shall have no apparent authority to conduct on behalf of Instructing Insurers any of the activities excluded by paragraph 5.2 above. In the event that the Adjuster is requested and authorised by Instructing Insurers to carry out any such excluded activity, the Adjuster will be so authorised in writing and is also hereby required to produce to the Insured and any other relevant party written evidence of Instructing Insurers' authority, failing which he shall have no authority to act on behalf of Instructing Insurers or to bind Instructing Insurers in respect of such activity.

## 6 SERVICE STANDARDS

6.1 Unless otherwise agreed, the Adjuster will comply with the following timetable and advise Instructing Insurers if the Adjuster cannot comply to a material extent:

- (a) Within 48 hours of receiving an instruction, the Adjuster must confirm receipt and advise whether he is free to accept the appointment without conflict.
- (b) Within 15 days of acceptance of appointment at the latest, the Adjuster should inform the Insured in writing of the information and documentation that will be required to commence the Services.
- (c) Within 30 days of acceptance of the appointment, the Adjuster shall provide to Instructing Insurers an initial advice which should include as far as possible comments on the considerations listed in paragraph 5.1(f). The Adjuster should provide with this first advice a Loss Adjuster's Scope of Work Form as per the pro-forma set out in Appendix 1.
- (d) Within 90 days of acceptance of the appointment, the Adjuster shall provide to Instructing Insurers a preliminary/first report which should include a full and detailed discussion of all considerations listed in paragraph 5.1 as appropriate and relevant. This report should as far as possible establish the facts surrounding the loss and the Insured's claim, comment on the quantification and notification of an appropriate reserve level for Instructing Insurers and up-date the content of the Loss Adjuster's Scope of Work Form, in particular the anticipated and actual "Milestones".
- (e) Every 6 months thereafter or sooner if developments warrant, the Adjuster should provide to Instructing Insurers a written report reviewing the claim status and including comments on all relevant matters listed in paragraph 5.1 including comments on the progress of repairs, confirmation of the reserve and information on when the next substantive development is likely to occur. Every such periodic written report should also confirm any changes in the cost budget and should update the content of the Loss Adjuster's Scope of Work Form.
- (f) Before the end of every calendar year, the Adjuster should also provide a short status report indicating any change or development since the last periodic written report.

6.2 Without prejudice to the generality of paragraph 5 above, all reports referred to in paragraph 6.1 shall include as appropriate and where applicable, the following:

- (a) A full account of the circumstances of the loss and the facts giving rise to the claim under the policy.
- (b) A summary of the policy terms and conditions relevant to the claim and details of any relevant contracts relating to third parties or otherwise.
- (c) A statement on the date of loss (with the "spud" date where applicable).
- (d) An estimate of the claim for the purpose of establishing a reserve.
- (e) A budget for adjusting and expert costs which should reflect the proposed work plan and strategy for handling the claim.

