

MARINE BINDING AUTHORITY AGREEMENT

LMA3005

GUIDANCE NOTES

22nd October 2004

Introduction

1. The aim of producing this model agreement is to provide Underwriters with a comprehensive pro forma document in line with current regulatory requirements and perceived good practice. It has been drafted with both the Lloyd's Delegated Underwriting Byelaw and Code and Underwriters' new FSA requirements in mind.
2. The document has been produced in conjunction with the Lloyd's Market Association. It is purely illustrative and distributed for the guidance of Members, who are free to agree different conditions.
3. The exact format and content of any individual binding authority contract will depend on the purpose for which that contract is established and is a matter for negotiation between the parties concerned.
4. These guidance notes are intended to assist Underwriters and Brokers when using the model wording as a basis for producing bespoke binding authority contracts and do not form part of the model agreement or any bespoke agreement.

Definitions and Abbreviations

5. A number of abbreviations are used in these notes as follows:

a.	BA	means	Binding Authority
b.	DUB	means	Delegated Underwriting Byelaw
c.	The Code	means	The Code for Managing Agents: Delegated Underwriting Arrangements
6. DUB and The Code were issued by the Corporation of Lloyd's, not by the LMA. "Binding Authority" is used in these notes and the model agreement in accordance with the definition contained in DUB and the Code and includes "Restricted Binding Authority" but not "Line Slip".

Regulation of Binding Authorities by Lloyd's

7. The conduct of BA business at Lloyd's is controlled by the Delegated Underwriting Byelaw Y3251, effective 1/3/2004. The key features of this regulatory framework may be found in the "*Code for Managing Agents: Managing and Controlling Binding Authority Arrangements*" (Appendix 3 of the Byelaw).
8. These guidelines are written in the context of this regulatory framework. The model wording has been drafted to comply with DUB and has been produced to be available for use for 1st January 2005 renewals.
9. The attention of Underwriters is drawn to the Code which both prescribes the content of BA agreements and, in other instances, lays down what is regarded by Lloyd's to be good practice. It is clear that there is a degree of flexibility in the application of the Code.
10. The model agreement aims to be consistent with the Code and this should be borne in mind by Underwriters when adapting the model from its original form.
11. The following guidelines refer to the Code when this is appropriate but not in every instance as this would be repetitive. Underwriters are encouraged always to refer to the Code when drafting BA documents.

Use and Application of the Model Agreement

12. **LMA3005** is designed for use in respect of BA contracts granted to Coverholders worldwide. It may however require slight alterations for specific jurisdictions. For example additional mandatory clauses are required for BA contracts granted to Australian Coverholders.

Agency and Broker Issues

13. The BA is a contract between Underwriters and the Coverholder. The Lloyd's Broker is not a party to the contract. For that reason the wording contains minimal reference to any Lloyd's Broker involvement and contains no terms or agreements between the Underwriters and the Lloyd's Broker or the Lloyd's Broker and the Coverholder. The former may, if appropriate, be contained in the LMP slip to be used in conjunction with the wording and is a matter for separate agreement between the Coverholder and the Lloyd's Broker. The latter is a matter for agreement between the Lloyd's Broker and the Coverholder and again does not belong in the model wording. For these reasons only one version of the model wording has been produced. It will apply equally whether the BA has been placed by a Lloyd's Broker or not.

14. BA contracts at Lloyd's may be negotiated on a Coverholder's behalf by a Lloyd's Broker who acts as the Coverholder's agent. Communications between the Coverholder and Underwriters are traditionally undertaken via that Lloyd's Broker acting as the agent of the Coverholder. However, direct communication between the Underwriter and its agent the Coverholder as well are not uncommon. This may include the transmission of monies between Coverholder and Underwriters. Alternatively, a Coverholder may negotiate a BA contract with a Managing Agent. This may be where the contract is written 100% by a Syndicate managed by that Managing Agent or where the contract is subscribed to by several Syndicates. In this latter situation, the Managing Agent of the leading Syndicate acts as the Coverholder's point of contact for all subscribing Syndicates.

15. Because the BA is a contract between the Underwriters and the Coverholder exclusively the terms of the BA regulate only the roles and responsibilities of those parties. Therefore, where for example, the model wording refers to the issue of certificates (eg in Section 13) it is only referring to certificates which are to be issued by the Coverholder. This is not a reference to certificates which may be issued under another arrangement such as a marine cargo open cover ("MCOC"). The certificates to be issued under a MCOC should be specified in that MCOC and their issue regulated by that MCOC. If, however, a MCOC was to be bound under a binding authority then the document evidencing that MCOC (including the clauses and terms of the MCOC) will require the Underwriters' approval in accordance with Section 13 of the model wording.

General Drafting Points

16. The new model wording has been specifically updated to take account of the new regulatory regime administered by Lloyd's and the FSA. The model agreement is an amended version of LSW1476 which was in turn based on the NMA 2922 and NMA 2923 wordings used by the non-marine market.

17. The model agreement is designed so that all 'variables' can be dealt with in the Schedule, thus maintaining the integrity of the wording. This in turn aims to enable speedier placement and finalisation of the agreement aiding early certainty of contract and a reduction in disputes with Coverholders. In practice, this speeds up placement and finalisation of the terms of the agreement.

18. It is intended that the wording be used for Coverholders in all jurisdictions. Underwriters will therefore have to ensure that where local law requires specific additional clauses then these clauses are incorporated into the wording. For example in the US, the US General Conditions must be incorporated into the wording. Similar considerations apply for other jurisdictions such as Australia. This can be achieved through referring to the additional clauses in Section 15 of the Schedule and attaching the additional clauses to the Agreement.

19. The use of word processors enables the Schedule to be adapted to cope with most situations. However, where this is not practical (such as when incorporating sizeable rating guides or pre-printed documents) the Schedule should state "*As agreed and attached hereto*". The material should then be physically attached to the agreement. Phrases such as "As held on the Coverholder's file" should be avoided. The experience of Lloyd's Risk Management Department shows that this point is a common source of dispute between Underwriters and Coverholders under BAs.

20. It is important to note that the model wording is drafted for use as a full BA or a Restricted BA under the new regulatory environment. To make it suitable for use as what is currently known as a “limited” BA involving a ‘held covered’ only arrangement, appropriate changes to the clauses granting the Coverholder authority to act as the Underwriters’ Agent would be required.

21. In many instances, (for example in respect of Sub-sections 8.1, 8.3, 10.1, 17.1, 17.3, etc) the model wording permits the insertion of a particular time. The purpose of these time limitations is for the protection of Underwriters. The longer the period the less protection. In some instances (for example, the notice period in Sub-section 17.1 and the periods for provision of bordereaux in Section 25) the Code places requirements on Underwriters. In the former the Code requires no more than 30 days notice and in the latter the Code requires regular reporting (e.g. monthly). Underwriters should ensure that the times inserted in the Schedule meet all their regulatory requirements.

NB. – Variations to the standard terms and conditions of LMA 3005 should be avoided if at all possible. Any variations required for specific contracts should be made in Sub-section 15.1 **and not by physical alteration to the printed form.**

Notes on Specific Sections

<p><u>Agreement Number</u></p>	<p>The Unique Market Reference (UMR) is preferable, but if a different number is used, it should include, or be prefixed with, the Lloyd’s Broker number (where applicable).</p>
<p><u>The Coverholder/Address</u></p>	<p>The name and address should be <u>exactly</u> as recorded with the Lloyd’s Coverholders Department.</p>
<p><u>Section 1</u> <u>Effective Date of the Agreement</u></p>	<p>The Code states that:</p> <p><i>“There must be contractual certainty between the managing agent and the Coverholder to whom it is delegating authority. Before a Coverholder is authorised to act on behalf of Lloyd’s syndicates whether on new binding authorities or the renewal of these contracts, the lead managing agent must have received written confirmation from the Coverholder agreeing to the terms and conditions of the binding authority. The binding authority registration process cannot be finalised until this confirmation is received.”</i></p> <p><i>“Historically, XIS has checked contracts of delegation. This review has usually taken place after the Coverholder has been given authority to act by Lloyd’s managing agents. In future, XIS will not process a contract of delegation unless there is clear evidence of contractual certainty before the Coverholder is authorised to operate a binding authority. Additionally, XIS will not perform checking services after the agreement of the contract of delegation between the Coverholder and the lead syndicate. It is the lead managing agent’s responsibility to agree the contract of delegation with the Coverholder prior to the contract’s inception. In doing so, the lead managing agent may use any service provider it wishes (including XIS) to review the contract.”</i></p> <p>The current regulatory regime requires the wording to be approved and agreed by the Coverholder. The above therefore is not a significant change in regulatory requirements but does represent a significant change in practice as to the registration and operation of BAs.</p> <p>This subject has been treated robustly in the model agreement with the intention of providing Underwriters with protection against any assumption of the commencement of authority on the part of a Coverholder.</p> <p>The Code also states:</p> <p><i>“It is particularly important for the lead managing agent to define clearly and comprehensively the responsibilities of a new Coverholder and for the Coverholder to fully understand them. If the new Coverholder is clear about its responsibilities and the manner in which a binding authority operates, there is less room for misunderstanding.”</i></p> <p>The responsibilities of the Coverholder should be set out in the contract between the Underwriters and the Coverholder. In order to communicate the provisions contained in a proposed BA to a new Coverholder, it would be good practice for a copy of the model agreement, or a draft of the proposed contract, be sent to the new Coverholder by the Lloyd’s Broker or Underwriter at an early stage in the negotiation of the contract.</p>

<p><u>Section 2</u> <u>Period of the Agreement</u></p>	<p>The Code states that the BA should be for no more than 12 months from inception and must not exceed 18 months from inception in total.</p> <p>Completion of “From” and “To” dates is preferred to “12 months at” or similar. If specific times are required, rather than the “both days inclusive” default, then the words “both days inclusive” must be deleted.</p> <p>The period during which the BA is effective is made subject to Section 1 so that in the absence of the Coverholder’s proper acceptance, the authority delegated to the Coverholder does not commence. Again, it is important that the wording is signed by the parties as soon as possible.</p>
<p><u>Section 3</u> <u>Persons responsible for the overall operation and control of the Agreement</u></p>	<p>The names to be inserted are the relevant employees/directors/partners of the Coverholder, even if the authority given is “limited” or “restricted”. If claims authority is not granted to the Coverholder in Section 24, then Sub-section 3.4 should be completed as “NOT APPLICABLE”.</p> <p>The allocation of responsibility for exercising the authority granted by the BA is seen as a key control in managing Underwriters’ exposure under the BA and the Code states that the Director responsible for operating the BA must be named as must the individuals who will have authority to write risks or settle claims.</p> <p>Although the model agreement provides for more than one person to be named under each Sub-section, it is recommended that the authority is restricted to as few individuals as is necessary to allow for periods of absenteeism and then only to individuals considered by Underwriters to be qualified to hold the authority.</p> <p>The named individuals must be employees of the Coverholder. If they are not, there may have been sub-delegation of authority in breach of the Code.</p> <p>Underwriters and Brokers should note that the person to be named in Sub-section 3.1 of the Schedule, with overall responsibility for the operation of the binding authority should be a senior director or partner of the Coverholder.</p> <p>The names of Lloyd’s Underwriters and/or the Lloyd’s Broker must never appear in this Section unless the Coverholder is the Lloyd’s Broker.</p>
<p><u>Section 4</u> <u>Grant of Authority</u></p>	<p>This Section contains the delegation of authority. The wording is only appropriate for ‘full’ binding authorities and restricted binding authorities within the definition in the Code and prior submit agreements (as to which see the Guidance Note on Section 15). It is not appropriate for a BA where the Coverholder only has “held covered” authority. The model wording is not appropriate for use for lineslips unless suitably amended.</p> <p>The Code provides that “<i>the BA should require the Coverholder to act at all times in a prudent and professional manner with due care and skill</i>”. This requirement is now contained in Sub-section 4.2.4.</p> <p>Sub-section 4.3 confirms that a Coverholder only acts as agent for the Underwriters according to the terms of the model wording. They are not therefore a general agent for the Underwriters. This means for example, that the Coverholder has no authority to obtain reinsurance for the Underwriters unless such authority is specifically set out in the</p>

	Agreement negotiated by the parties.
<p><u>Section 5</u> <u>Delegation of Authority</u></p>	<p>Section 1 of DUB states that a Managing Agent shall not delegate its authority to enter into contracts of insurance to be underwritten by the members of a Syndicate to any other person except an Approved Coverholder or a Restricted Coverholder. Sub-delegation is therefore prohibited by Section 5 of the model wording unless with the agreement of the subscribing Underwriters. Even then, delegation will have to be to an Approved or Restricted Coverholder as defined.</p> <p>Where sub-delegation is to be allowed, the same requirements for approval by Lloyd's as a Coverholder, assessment of suitability by Managing Agents and the registration of the Binding Authority with the Secondary Coverholder with Lloyd's apply.</p> <p>Section 5 confirms that the writing of Marine Cargo Open Covers as defined by the Code, does not result in sub-delegation provided the cargo Coverholder has or is expected to acquire an insurable interest in the property declared.</p> <p>The Coverholder may delegate authority under the Agreement provided:</p> <p>The delegatee to whom the delegation is being made holds all the permissions, authorisations and approvals required to comply with the laws and regulations of the jurisdiction in which it operates;</p> <p>The delegation itself meets all applicable Lloyd's and/or FSA regulatory and compliance requirements; and</p> <p>Before the delegatee has authority to act as the Underwriters' agent, a signed written agreement between the Underwriters and the delegatee is entered into in similar form to the Agreement covering the matters to be delegated.</p>
<p><u>Section 6</u> <u>Authorised Classes of Business and Coverages</u></p>	<p>This Section should be considered in conjunction with Section 7 which together allow flexibility to define the scope of the business which may be bound under the Agreement.</p> <p>Clear, concise statement of the authority granted should appear. Any class exclusions applicable to the whole Agreement must appear in Section 7.</p>
<p><u>Section 7</u> <u>Excluded Classes of Business and Coverages</u></p>	<p>Under Sub-section 7.1, the model agreement excludes the acceptance of war and civil war risks unless specifically permitted in writing by the Underwriters. Underwriters' attention is drawn to the terms of Lloyd's War and Civil War Exclusion Agreement dated 1st April 1982 (and amendments) which lays down the basis on which such risks may be written.</p> <p>Exclusions are to the <u>classes</u> of business to be written under the Agreement, additional to those listed in the wording which may not be amended.</p> <p>Section 7 is primarily to detail excluded classes of business (e.g. Cargo if it is a hull binder). Underwriters and Brokers should note that Section 7.4 of the Schedule is not the appropriate place to list or attach exclusion clauses. Specific exclusion clauses should be referred to in Sub-section 13.1 of the Schedule.</p>

<p><u>Section 8</u> <u>Period of Insurances Bound</u></p>	<p>Traditionally, the period of insurances bound would be expressed as ‘x’ <i>months plus odd time not exceeding ‘y’ months in all</i>. There is no definition of the meaning of “<i>odd time</i>” and the important issue is clearly the maximum period which may be bound, i.e. ‘y’ <i>months</i>, whether including odd time or not. The situation would be clarified by entering the maximum permissible period which may be bound (in many instances, this will be 18 months).</p> <p>The period entered in Sub-section 8.3 (advanced binding) should not exceed the agreement’s cancellation notice under Sub-section 17.1.</p> <p>Enter the maximum period in advance of the inception date that a risk may be bound. The term entered should not exceed the Agreement cancellation period appearing in Sub-section 17.1.</p>
<p><u>Section 9</u> <u>Maximum Limits of Liability / Sums Insured</u></p>	<p>It would be good practice to always specify the maximum limits. These limits cannot be reduced by the Coverholder purchasing reinsurance to protect the subscribing Underwriters for two reasons. Firstly, contractually, if a risk is bound in breach of this Section it does not matter whether reinsurance reduces the Underwriters’ total liability. The risk bound would still be in breach of this provision. Secondly, a Coverholder has no authority under this model wording to purchase reinsurance to protect the subscribing Underwriters. If permission to do so is to be granted the parties have to agree and the model wording would need to be amended.</p> <p>Enter the maximum limit(s) that the Coverholder may accept <u>without reference to Underwriters</u>. If limits higher than those specified may be accepted <u>only after Underwriters’ written acceptance</u>, the procedure to be adopted should be stated.</p>
<p><u>Section 10</u> <u>Gross Premium Income Limit</u></p>	<p>The Code states that the BA must contain a gross premium income limit and recommends that the Coverholder be required to notify Underwriters if the BA premium income reaches a pre-determined percentage of the overall limit. The wording provides for the coverholder to notify Underwriters if the PremiumIncome exceeds the percentage stated in the Schedule of the amount shown in Section 10. The period for advising Underwriters of this occurrence should be stated here.</p> <p>The provision of regular accurate premium bordereaux is the mechanism for monitoring the premium. The Underwriters’ control this by ensuring that the requested premium is in relation to risks incepting in the relevant period.</p> <p>The figure to be inserted is the Gross, (as defined in Sub-section 10.3 of the Agreement), Premium Income permitted for the period of the contract.</p>
<p><u>Section 11</u> <u>Territorial Limitations</u></p>	<p>Sub-section 11.1 identifies the geographical location of risks or Assureds (as applicable) which are acceptable under the BA with the intention of providing a restriction on the business which may be bound.</p> <p>Enter the territories from which risks may be accepted. If the territories may be extended subject to Underwriters’ prior agreement, it should be noted here.</p> <p>Underwriters should take care to ensure that a Coverholder is</p>

	<p>knowledgeable of and able to comply with all regulations in territories in which they are to be permitted to accept business.</p> <p>Conversely, Sub-section 11.2 deals with the geographical scope of the insurance coverage which may be granted. Clearly, this concept will be more relevant to some coverages than to others e.g. transit or liability insurance.</p> <p>Enter the geographical areas in which the cover granted is to be operative, including any specific restrictions e.g. “Excluding transits to/from USA/Canada”.</p>
<p><u>Section 12</u> <u>Aggregates</u></p>	<p>For some classes of business it may not be appropriate to seek provision of aggregation information. For example on hull business it may be difficult to establish what risks are in any particular port at any give time.</p> <p>This Section is to be utilised where Underwriters require that the Coverholder report their aggregate exposure accruing from risks bound. It is not intended to be used for the regular reporting of other pertinent information which is covered by Sub-section 34.2.</p> <p>Sub-section 12.1 - The type of exposures to be monitored must be clearly stated. If this information is not applicable it should be completed “Not Required” or “Not Applicable”.</p> <p>Sub-section 12.2 - The interval would normally be the same as the bordereaux interval (Sub-section 25.2).</p> <p>Sub-section 12.3 - Any maximum permissible aggregate exposure should be shown here.</p> <p>Ensure that information shown under these Sub-sections is compatible e.g. if Sub-section 12.1 is ‘Not Required’, then Sub-section 12.2 must be amended to ‘Not Required’ also and the reporting intervals deleted.</p>
<p><u>Section 13</u> <u>Wordings, Conditions, Clauses etc.</u></p>	<p>Sub-section 13.1 - Full details of all Clauses, Conditions, Endorsements Warranties and Exclusions applicable to risks bound should be listed here. The identification of the clause etc. should be made by its unique reference number, but if ‘bespoke’ clauses are to be used they should be suffixed ‘as attached hereto’ and a full copy attached to the slip. The basic insuring wording to be attached to the certificate should be specified.</p> <p>The Code states:</p> <p><i>“It is absolutely essential for the lead managing agent to be satisfied with the format and content of the insurance documentation evidencing contracts of insurance which will be issued by the <u>Coverholder</u> under the contract of delegation. Good quality insurance documentation reflects well on managing agents and Lloyd’s.”</i></p> <p>The terms of the wordings or clauses applicable to the insurances being bound must be agreed by the Underwriters and specified in the Schedule. Underwriters should include the policy form as well. Where the wordings or clauses applicable to the insurances being bound are bespoke, they should be agreed and attached. The Schedule would in those circumstances state “As attached”.</p> <p>Sub-section 13.2.2 (including Sub-sub-sections 13.2.2.1 and 13.2.2.2) only applies where the insurances bound under the binding authority are</p>

	<p>regulated by the FSA.</p> <p>Based on current FSA consultation papers, certificates or other documents evidencing cover will only require the details of the complaints procedures or the FSA as regulator notice where:</p> <p>(a) The risk to be covered is not a ship (sea, lake, river or canal vessel), goods in transit or ship liability; or</p> <p>(b) If insurance is for a ship (sea, lake, river or canal vessel), goods in transit or ship liability then:</p> <p>(i) The Coverholder is situated in the EEA; and</p> <p>(ii) The risk is situated in the EEA; and</p> <p>(iii) the customer must be a consumer, defined as a natural person acting for purposes which are outside their trade, business or profession.</p> <p>It should also be noted that if the business is regulated by the FSA the current draft FSA Conduct of Business Rules will require important additional disclosure documentation to be issued by the Coverholder to the customer as from 1st January 2005.</p> <p>Sub-section 13.2.1 - It is anticipated that in the vast majority of contracts that the Coverholder's name will appear here. There are likely to be exceptions, particularly on liability contracts, where Underwriters may require that a legal firm be designated.</p> <p>Sub-section 13.4 - The full text of the clause applicable to the class(es) of business granted in Section 6 should appear here. If more than one version could apply, all should be stated indicating their applicability.</p>
<p><u>Section 14</u> <u>Premiums and Deductibles</u></p>	<p>Sub-section 14.1 - Show how premiums are to be calculated for each risk bound. If a rating schedule is to apply, it can either be set out here or attached as a numbered appendix e.g. "As rating schedule attached hereto and headed "Appendix 1".</p> <p>Sub-section 14.2 - Any deductibles/excesses to apply to risks bound should be specified. If this information forms part of the rating schedule appended, then it is possible to refer back to Sub-section 14.1.</p>
<p><u>Section 15</u> <u>Other Conditions, Requirements and Amendments</u></p>	<p>Additional conditions may be inserted into the Schedule or, if space does not allow, added in an attaching sheet with reference to that attachment in the Schedule.</p> <p>Sub-section 15.1 - This section is for conditions, restrictions and amendments etc. that are to apply to the Binding Authority Agreement but <u>not</u> to declarations (refer Section 13).</p> <p>An example may be a schedule of service standards (perhaps relating to quality and timeliness of documentation, response times, etc) which the Underwriters require the Coverholder to meet.</p> <p>Any deviations to the standard wording format should also be specified under Sub-section 15.1, prefixed by: 'Notwithstanding anything contained herein to the contrary (or "contained in Section to the contrary")</p> <p>Where the Coverholder is in another jurisdiction, any additional clauses required by local law may be incorporated into the Agreement in this manner. Examples of relevant jurisdictions are USA, Canada and</p>

	<p>Australia.</p> <p>For certain contracts in the EU, European Data Protection legislation must be considered. Further information about the UK Act may be found in NMA Circular 63/2000 of 7th July 2000. It may be necessary for the proposal and certificate wording to contain a Data Protection Notice (see the above mentioned circular). If so, this could be dealt with under Sub-section 13.1 or Section 19 as appropriate.</p> <p>This Section 15 as drafted also permits the Underwriters to require the Coverholder, as their agent, to comply with all reasonable requirements they may have. This may include, for example, ceasing to write any particular types of risks (e.g. cargo to or from one country) or to use a different rating schedule.</p> <p>Sub-section 15.2 is drafted to make it clear that the Coverholder must in all instances comply with any reasonable instruction received from the Underwriters pursuant to receipt by the Underwriters of any requirement imposed upon them by Lloyd's or by any relevant regulatory authority. This is broadly no more than the general law requires in any event and is added to ensure that a Coverholder is aware of its obligations.</p> <p>If the Agreement is to operate as a "prior submit" arrangement, the following could be used:</p> <p><i>'All risks must be submitted to the Underwriters for rating and binding. Until each individual risk has been rated and approved by the Underwriters, the Coverholder has no authority to bind the Underwriters or to act in any way which may result in the Underwriters becoming bound in any way to any risk'.</i></p>
<p>Section 16 Automatic Renewal</p>	<p>Having provided the information required by Sub-section 16.4.2, the Coverholder should continue to monitor, and report the progress of, all affected insurances. The information reported should be monitored by the Coverholder and updates supplied at the intervals to be specified in this Sub-section.</p>
<p><u>Section 17</u> <u>Cancellation and Termination</u></p>	<p>The model agreement allows for the notice period for cancellation to be negotiated at the time of placement. However, Underwriters should be aware that the Code states that the BA should be capable of cancellation at any time by Underwriters on no more than 30 days' notice or such longer period as required by local legislation. Underwriters should note that some local laws require notice of cancellation of a binding authority to be longer than 30 days. Underwriters should make enquiries to determine the position before serving any notice of cancellation.</p> <p>Sub-section 17.1 - Only information pertinent to the <u>cancellation of the Agreement</u> is to appear here.</p> <p>Risk cancellation should be part of the conditions in Sub-section 13.1.</p> <p>Sub-section 17.4 - Cancellation is permitted without notice if certain stated events occur as set out in Sub-sections 17.2 and 17.3. Notification is required by one party to the other of the happening of these events and the time scale for such notification is to be shown.</p>

<p><u>Section 18</u> <u>Post Cancellation/Termination Obligations</u></p>	<p>The Code suggests that the BA should contain provisions covering the duties of the Coverholder once notice of cancellation has been given. These are set out in this Section which includes in Sub-section 18.3 the ability for the Underwriters to suspend the Coverholder's ability to quote, renew or bind risks during the notice period. This is to protect Underwriters from the possibility of the Coverholder renewing the entire book of business during the notice period where, for example the BA is being terminated because of a misdemeanour by the Coverholder. The Underwriters will have to exercise their option and issue a letter or notice to this effect to the Coverholder for this provision to apply.</p>
<p><u>Section 19</u> <u>Proposal Forms</u></p>	<p>Where the proposal or application form carries a recognised reference number, this should be stated in the BA Schedule. Where the proposal or application is relevant to the class, it should be specified by reference number, or if 'bespoke' it should be attached and agreed.</p>
<p><u>Section 20</u> <u>Documents Issued</u></p>	<p>The procedures appropriate to the submission of copy documents (Sub-section 20.5) will differ in different circumstances. The model agreement cannot anticipate in a single document what might be appropriate in any particular case.</p> <p>Sub-section 20.5 - The standard wording requires that the Coverholder send a copy of all documents issued under authority of the Agreement to the Underwriters.</p> <p>Any variation to this procedure should be noted here.</p>
<p><u>Section 21</u> <u>Format and Approval of Certificates</u></p>	<p>The quoted parts of the Code in the comments on Section 13 above apply equally here. In many cases the form of the certificate will be as issued by Lloyd's. Where the certificate carries a recognised reference number, this should be stated in the BA Schedule. Where the certificate is bespoke, it should follow the format of any appropriate Standard Outline Certificate for the territory concerned and should be agreed and attached to the BA. Where no certificate is issued and an alternative document is issued, commonly a Cover Note, the format and contents of a model Cover Note should be approved by the Underwriters.</p> <p>The standard wording does not require that a specimen copy of the documents issued be attached to the Agreement, only that the 'format of any certificate, renewal certificate or other document ...' 'be as stated in the Schedule and agreed by the Underwriters'. If a standard Lloyd's certificate is being used, the reference should be completed. Any other format should be clearly identified, and preferably a copy appended to the wording.</p>
<p><u>Section 22</u> <u>Joint Certificates</u></p>	<p>This provision in the model agreement is more stringent than the rules set down in the Code as it excludes the issue of Joint Certificates in the U.S.</p>
<p><u>Section 24</u> <u>Claims Procedures</u></p>	<p>In view of the differences in Underwriters' business practices and possible variations in the permissible levels of delegation in different jurisdictions only minimum requirements have been included. There is provision for Underwriters to agree more appropriate claims authority. One important area not covered by Section 24 is the use of a Claims</p>

	<p>Fund. If the Coverholder is to manage a Claims Fund a detailed agreement will be required.</p> <p>Underwriters should note that Section 24 has provision for the appointment of a panel of adjusters or other third parties where appropriate. Underwriters should bear in mind the requirements of the Code that where third parties are appointed a separate agreement with those parties is necessary. Therefore when pre-approval to a panel is being agreed Underwriters should consider whether the members of the claims panel have agreed to terms of appointment by the Coverholder who is acting on Underwriters' behalf. Underwriters may wish to ensure their own standard terms of engagement are used.</p> <p>It should be noted that a Coverholder has no general power to appoint third parties on behalf of Underwriters (Sub-section 4.3). Therefore if no panel is agreed the Coverholder cannot appoint adjusters on an ad hoc basis.</p> <p>Sub-section 24.1.1 - Show the maximum claim amount which the Coverholder may adjust <u>without reference</u> to Underwriters.</p> <p>Sub-section 24.1.3 - Claims which exceed the amount shown in 24.1.1 must be advised to Underwriters promptly for their instructions within the period to be shown here.</p> <p>Sub-section 24.1.5 - Claims handling likely to cause a complaint being made to the authorities must be promptly advised to Underwriters for their instructions to be given. The maximum period allowed is to be shown.</p> <p>Sub-section 24.1.6 - If Underwriters agree that the Coverholder may appoint adjusters, surveyors or other specialist entities to assist in claims procedures, then 'No' should be deleted. Any preferred specialists may be listed or 'as appointed by the Coverholder' as appropriate to the agreement. If Underwriters wish to retain control of appointments of outside specialists, then 'YES' should be deleted.</p> <p>Sub-section 24.1.7 - The wording allows for the Coverholder to appoint local Lloyd's Representatives if they deem it necessary, without Underwriters' prior agreement. The Coverholder must, however, advise the Underwriters within the stated period.</p> <p>Sub-sections 24.1.1/3/6/7 should be marked 'NOT APPLICABLE' if claims authority is not given to the Coverholder. Sub-section 24.1 allows for a totally independent claims procedure to be adopted. In this instance, Sub-section 24.1.1 should be marked "NOT APPLICABLE – Refer Appendix" and the appendix should be headed 'Notwithstanding anything contained herein to the contrary, the following procedure for the handling and settlement of claims applies.....'</p>
<p><u>Section 25</u> <u>Bordereaux Accounts and Settlements</u></p>	<p>The failure to properly monitor and control BAs has in the past led to some of the most significant disputes in the market. Lloyd's has therefore sought to ensure that Underwriters control the business written under BAs by thorough and regular monitoring of the business written as well as the activities of the Coverholder. It is also a regulatory obligation for Managing Agents to accurately report to Lloyd's the business written by or on behalf of the Syndicates it manages. The first and most effective and cost efficient method of monitoring is to ensure regular reporting through detailed bordereaux.</p>

The Code provides:

“It is essential that the binding authority sets out clear provisions to require the Coverholder to report all premiums, paid claims, outstanding claims and expenses in respect of contracts of insurance entered into by class or category by the Coverholder under the binding authority. The reporting provisions enable the lead managing agent to ensure that the contract of delegation is performing in line with expectations.

It is essential that the lead managing agent clearly defines the Coverholder’s responsibilities and sets out appropriate service standards in relation to reporting.

The reports which a lead managing agent may use to monitor a binding authority include:

- *risk report, which will provide details of all contracts of insurance entered into by the Coverholder;*
- *claims report, which will provide details of all settled and advised claims under the contract;*
- *earned to incurred report, which will provide details of the Coverholder’s profitability;*
- *claims fund report, which will provide details of all movements on the claims fund held by the Coverholder;*
- *aggregate exposure report, which will allow underwriters to monitor the accumulation of risks assumed by the Coverholder in a particular territory or zone;*
- *other reports to demonstrate adherence to key service standards by the Coverholder.”*

The provisions in the model wording permit Underwriters to specify the intervals at which bordereaux are provided and the format of the bordereaux and thus the content and information to be provided. Where bordereaux are not required, (for example where the Coverholder has not been granted any claims authority), the words “not applicable”, or similar can be used.

Sub-section 25.2 - Frequent/regular reporting of both premium and claims is essential for Underwriters to effectively monitor the conduct of a Binding Authority.

Sub-section 25.3 - Underwriters should either state all the information headings required on premium/claims bordereaux or attach specimen bordereaux as appendices to the wording.

If claims handling authority has not been granted under Section 24 then ‘Format for Claims Bordereaux’ should be completed ‘NOT APPLICABLE’. Underwriters and the Coverholder may agree that Bordereaux are to be supplied electronically rather than the traditional paper method. If so, this should be stated in Sub-section 25.3.

Sub-section 25.5 - The maximum period allowed for Underwriters to receive the relevant bordereaux from the end of the bordereaux interval is to be stated.

Sub-section 25.7 - The maximum period allowed for the settlement of accounts from the end of the bordereaux interval is to be shown.

<p>Section 26 Commissions</p>	<p>Section 26 of the Schedule is to detail commissions payable to the Coverholder.</p> <p>Sub-section 26.1 - This Sub-section is for the commission amount to be retained by the Coverholder.</p> <p>Sub-section 26.2 - This Sub-section is for the total commissions allowed by Underwriters to the Coverholder, and will include any brokerage shared or fees or commissions paid by the Coverholder to others in connection with the acquisition of business. It is not to include the Lloyd's Broker's commission/brokerage. Any brokerage due to the placing broker is to be set out separately in the appropriate section of the LMP slip.</p> <p>Sub-section 26.3 - To be completed with the full formula applicable to the calculation of any profit commission, including the date(s) on which it shall be calculated. It is for profit commission payable to the Coverholder and should be adjusted if necessary to allow for any profit commission share allowed to the Lloyd's Broker.</p>
<p><u>Section 28</u> <u>Electronic and Internet Trading</u></p>	<p>Under the model wording, a Coverholder must obtain Underwriters' approval if it intends to sell insurances through any internet site or web portal.</p> <p>Lloyd's regulatory stance on internet and electronic trading may be found in Lloyd's Regulatory Bulletins 046/1999 - 'Internet Sites: Issues arising from Business Conduct Reviews' and 032/2001 - 'Internet Sites'.</p>
<p><u>Section 29</u> <u>Fees and Charges</u></p>	<p>The model agreement promotes good practice in that the policyholder should be aware of any charges being made by the Coverholder in addition to the premium agreed by the Underwriters (including the agreed level of commissions). In a number of jurisdictions it is illegal to charge more than the premium. Under English law, if an additional charge is made and the Assured is not informed, this may amount to a secret commission. It may also amount to a secret commission if the Coverholder is earning more income from the business than the Underwriters have agreed. Section 29 is designed to ensure all parties have awareness of the charges being made and their purpose so as to avoid any potential disputes or issues.</p>
<p><u>Section 31</u> <u>Taxes</u></p>	<p>Being non-specific, this model agreement cannot anticipate all the various tax situations around the world in territories where the agreement may be used. For this reason, this section of the model agreement provides a general treatment of taxes only and Underwriters should adapt the agreement if they deem this to be necessary in particular circumstances.</p>
<p><u>Section 33</u> <u>Separate Bank Accounts</u></p>	<p>There are banking arrangements other than those described in the model agreement which provide greater protection for Underwriters by requiring the Coverholder to place all insurance transactions monies in a separate account from their own office account. It is not intended that this account will be a special account for monies relating to insurances bound only under the BA but will in effect be an account into which the Coverholder would normally pay all insurance transaction monies it receives.</p>

	<p>The imposition of trust status on those funds may assist in protecting Underwriters in the event of the insolvency of a Coverholder. It will not however always be the perfect solution.</p>
<p><u>Section 34</u> <u>Records</u></p>	<p>The Code provides:</p> <p><i>“It is essential that the binding authority requires the Coverholder to establish and maintain on behalf of managing agents, complete records relating to all related business which will be held by the Coverholder on behalf of Underwriters. It should also make clear that managing agents retain full title to and ownership of all such records.</i></p> <p><i>Additionally, it is essential for managing agents, their representatives and regulators to have the right at any time, without restriction or limitation, to inspect, audit and copy any records relating to contracts of insurance accepted by the Coverholder.”</i></p> <p>Section 34 complies with the requirements of the Code. It is recognised that in some circumstances a Coverholder may also act as the agent of the Assured. This is not seen as best practice. Where this occurs however, the Coverholder may maintain records, such as a placing file (as opposed to the Underwriting file) on behalf of the Assured. To avoid any confusion or dispute any records maintained by a Coverholder on behalf of an Assured should be maintained and identified separately to the records maintained on behalf of the Underwriters.</p> <p>If Underwriters do not require statistics from a Coverholder, Sub-section 34.2 of the Schedule should be completed with “Not Required” or “Not Applicable”.</p> <p>Sub-section 34.2 - This Sub-section is for details of the provision of regular information to Underwriters, <u>not covered elsewhere in the Agreement</u> (e.g. Section 12 caters for aggregate monitoring and Section 25 for bordereaux production). The type of information to be supplied should be precisely specified.</p>
<p><u>Sub-section 35.2</u> <u>Promotional Material</u></p>	<p>Sub-section 35.1 deals specifically with the ways in which “Lloyd’s” may be referred to by the Coverholder.</p> <p>Sub-section 35.2 is concerned with the use of the individual participating Underwriters’ names, logos etc in connection with the Agreement.</p> <p>Although completion of these sub-sections only requires the deletion of “is/is not” in 2 places, the Underwriters should ensure that where “is” applies, that very precise instructions are given to the Coverholder as to what is permitted.</p>
<p><u>Section 36</u> <u>Indemnity Insurance</u></p>	<p>The Code provides that one of the matters which the Franchise Board will consider when reviewing an application for approval of a Coverholder is whether the Coverholder’s E&O insurance is “adequate”. Clearly, what is adequate will depend on the individual circumstances of the BA, such as the type of business to be written.</p> <p>Commonly, where there has been a breach of a BA by a Coverholder, the Underwriters’ only prospect of recovery is under the Coverholder’s E & O policy. It is therefore important that Underwriters consider carefully the cover available to the Coverholder. For this reason, the terms of Section 36 are quite stringent as to the information which the Coverholder must make available in relation to its E & O insurances.</p>

<p><u>Section 37</u> <u>Compliance</u></p>	<p>The compliance clause requires the Coverholder to comply with all legal and regulatory requirements applying to business being undertaken under the Agreement. In addition to the general requirements the clause also contains two specific sections. The first (Sub-section 37.2) of these deals in some detail with compliance with the UK Data Protection Act and sets out specific requirements for the Coverholder in order to protect Underwriters.</p> <p>The second section (Sub-section 37.3) deals with Underwriters' obligations under the FSA's Insurance Conduct of Business Rules which come into force for intermediaries on 15th January 2005.</p> <p>These provisions only apply where the FSA's rules apply to the business in question. The provisions are to protect Underwriters by requiring the Coverholder to comply with the Underwriters' obligations under the new Insurance Conduct of Business Rules. The provisions will not however protect Underwriters in the event that the Coverholder acts in breach of these rules. Managing Agents are regulated by the FSA through Lloyd's and are primarily responsible to ensure compliance with the rules. If therefore a Coverholder is in breach of the rules the Managing Agent may be held responsible for the conduct of its agent by the FSA (and/or Lloyd's).</p> <p>Briefly the provisions deal with the following:</p> <p>(a) Sub-section. 37.3.1 requires the Coverholder to inform the Underwriters whether the Assured is a retail customer or a commercial customer. As the ICOB rules distinguish between the two this is designed to ensure that the Managing Agent is aware as to how each Assured should be treated.</p> <p>(b) Sub-section. 37.3.2: The ICOB rules require that any financial promotion (advertisements, statements made on web pages etc.) are approved by an FSA regulated body. In the event that a Coverholder is advertising any products this section is designed to ensure that Underwriters approve them in advance to ensure that they comply with the ICOB rules as to fairness of the statements made etc.</p> <p>(c) Sub-section. 37.3.3: The ICOB rules require Underwriters to issue Assureds with certain documents, for example a policy summary, at appropriate times. This section passes that obligation to the Coverholder although it will be for Underwriters to provide the Coverholder with the appropriate forms in order to comply.</p> <p>(d) Sub-section. 37.3.4: Chapter 6 of the ICOB rules requires Underwriters to issue to retail customers a notice informing them that they are entitled to a cooling off period of 14 days and may cancel during that period if they wish. This section requires the Coverholder to give that notice.</p> <p>(e) Sub-section. 37.3.5: It is illegal for an Underwriter or Coverholder to deal with any person, not the Assured who is conducting activities regulated by the FSA but who is not authorised to do so by the FSA. This section requires the Coverholder to ensure that it deals only with authorised third parties.</p>
<p><u>Section 38</u> <u>Complaints and Proceedings</u></p>	<p>The Coverholder is required to immediately notify Underwriters of any matter which might give rise to litigation or result in a complaint to any regulatory authority. This Section ties in neatly with the new provisions in Section 13 dealing with the notification to Assureds of any applicable complaints procedures. Both have been incorporated to comply with</p>

	<p>FSA regulatory obligations.</p> <p>Managing Agents will each have different procedures for the handling of complaints. In some jurisdictions there may be the additional requirement that Lloyd’s local agent be informed of any complaints. Underwriters should ensure that the Coverholder is aware of their complaints procedures and that the Coverholder is aware of any local requirements.</p>			
<p><u>Section 39</u> <u>Jurisdiction and Governing Law</u></p>	<p>The model agreement does not include an arbitration provision, thus allowing Underwriters and Coverholders the opportunity to seek resolution of any disputes in a court of law immediately. Given the nature of some disputes that might arise under a BA, equitable relief from the courts, e.g. injunction, is quick and may be more efficient.</p> <p>The absence of an arbitration provision does not impair the ability of Underwriters or Coverholders to pursue their legal rights, although it does mean that disputes may be resolved by a court rather than by industry professionals. There is, of course, nothing to prevent Underwriters and Coverholders including an arbitration provision should they so wish or in the event of a dispute arising, agreeing an alternative dispute resolution process.</p> <p>The choice of law clause provides for English law to apply. This permits Underwriters to be certain of their contractual rights in the event of a dispute with the Coverholder and can apply wherever the Coverholder is situated. The choice of jurisdiction clause is non-proscriptive (i.e. non-exclusive) so that Underwriters may bring proceedings in the jurisdiction in which the Coverholder carries on business if necessary.</p>			
<p><u>Section 41</u> <u>Several Liability</u></p>	<p>The purpose of this Section is to confirm that each of the Underwriters has a separate and distinct contract with the Coverholder in accordance with usual practice. It should be noted however that where the Underwriters adopt the use of a Leading Underwriter Clause, the following market, while continuing to have a separate contract with the Coverholder, are delegating some of their roles and responsibilities (but not their liabilities) to the Leading Underwriter(s).</p> <p>Section 41 of the Schedule should be completed by adding details of each Syndicate’s line and underwriting reference. There is a separate section on the LMP slip for Underwriters to put down their stamp and mark their scratch.</p> <p>Section 41 - It will not, of course, be possible to complete this Section at the time of slip preparation. Once all Underwriters’ lines have been subscribed and written lines converted to signed lines, then they should be listed in the format:</p> <table border="0" data-bbox="603 1646 1276 1680"> <tr> <td style="padding-right: 40px;">Signed Line %</td> <td style="padding-right: 40px;">Syndicate Number</td> <td>Reference</td> </tr> </table> <p>Care must be taken where more than one slip section, or risk code, causes more than one version of the market to apply, that the separation is clearly shown. If necessary Section 41 may be completed “As appendix(ces) number(s) ... attached” and each appendix clearly showing its application.</p> <p><i>The slip Schedule will then be complete and can be copied to the Coverholder, if required, for acceptance.</i></p>	Signed Line %	Syndicate Number	Reference
Signed Line %	Syndicate Number	Reference		

Non-Schedule Sections

Guidance Notes for completion of the Non-Schedule Sections of the LMP slip

NB. These pages are concerned with information relevant to the placing and administration of the Agreement and DO NOT form part of the documentation forwarded to the Coverholder. They fall into 4 categories:

- 1) Non-Schedule Agreements
- 2) Subscription Agreement
- 3) Information
- 4) Fiscal and Regulatory

[] indicates that this heading is optional

1 Non -Schedule Agreements

Heading	Information to be completed
BROKERAGE	The brokerage allowed to the Lloyd's Broker, in addition to the Coverholder's commission shown in Sub-section 26.1 of the LMA 3005 Schedule.
OTHER DEDUCTIONS FROM PREMIUM	Survey Fees, Administration Fees, Certificate printing costs etc. and allowed by Underwriters.
[RECORDING, TRANSMITTING AND STORING INFORMATION]	Show details of any specific procedures to be adopted, e.g. if premium/loss statistics are to be forwarded by e-mail to Underwriters.

2. Subscription Agreement (Internal arrangements)

SLIP LEADER	To be completed by the Slip Leader when subscribing line.
BASIS OF AGREEMENT TO BINDING AUTHORITY CHANGES	Clearly show the basis of agreement to changes required to the contract. Where different levels of agreement are needed to various categories of change, they should be differentiated.
BINDING AUTHORITY ADMINISTRATION	Detail any arrangements agreed between the Lloyd's Broker and Underwriters relevant to ongoing administration of the Agreement, e.g. guidance from underwriters when requested by coverholder relating to individual declarations attaching to the contract, reporting after the contract year has expired; amalgamation of premium bordereaux until they reach an agreed figure to trigger bureaux signing.
BINDING AUTHORITY AGREEMENT PRODUCTION	Detail the type of documentation to be produced, by whom, and when The intention of the LMP Slip Schedule is to produce a completed agreement, on the LMA 3005 format, at the time of placing, thus enabling the completed wording to be sent to the Coverholder much sooner than

	previously possible.
CLAIMS AGREEMENT PARTIES	Show the 'parties' to agree claims — identify by syndicate number or name of organization if sub-delegated to T.P.A.s
BASIS OF CLAIMS AGREEMENT	State claims agreement procedure with Underwriters.
[RULES AND EXTENT OF DELEGATED CLAIMS AUTHORITY]	Any claims authority delegated should be detailed here. To include maximum amount to be settled/adjusted without notification to Underwriters; fee limitations.
EXPERT(S) FEES COLLECTION	The party(ies) responsible for the collection of experts fees to be shown here. The 8 options available under the fees collection arrangements are shown on the attached list. If none of the 8 options are appropriate then enter "No agreed procedure".
BUREAU(X) ARRANGEMENTS	Record any special arrangements with bureau(x) e.g. to process premium bordereaux without Underwriters' agreement; delinked accounting etc.
[SIGNING PROVISIONS]	Only to be completed if there are any special arrangements relating to Underwriters' participations e.g. disproportionate signings or variations to standard market practice.
SPECIAL ARRANGEMENTS	Any other (internal) arrangements affecting the contract which cannot be more specifically accommodated in the preceding headings.

3. Information

	Information provided to Underwriters in support of the proposed contract at the time of placement e.g. estimated premium income; previous premium/claims history etc. Where the amount of information or its format (spread-sheets; computer disks etc) preclude physical inclusion in the LMP slip, the location of the information, its date and any other detail which will clearly identify the information should be stated here. The stated information should be made available to all Underwriters during the placing process.
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4. Fiscal and Regulatory

<p>TAX(ES) PAYABLE BY UNDERWRITERS</p>	<p>Show any premium taxes/other charges payable by Underwriters from their net premium.</p> <p><i>To be read in conjunction with Sec. 31 of the LMA 3005. Taxes payable by the Assured and accounted between Assured, Coverholder and the relevant authorities are NOT to be recorded here.</i></p> <p>Expressions such as “As applicable” should be avoided, although, “In accordance with Underwriters’ fiscal and legal responsibilities within the applicable territory(ies)” is acceptable where the actual figures cannot be listed.</p>
<p>US CLASSIFICATION</p>	<p>To be completed by the Slip Leader, as appropriate</p>
<p>NAIC CODES</p>	<p>To be completed when appropriate to the contract</p>
<p>ALLOCATION OF PREMIUM TO CODING</p>	<p>Show the allocation, when appropriate, of premiums over multiple risk codes when they will always be in a fixed proportion.</p>

Expert(s) Fees Collection

1 Context

The LMP Slip includes a slip heading of “Expert Fees Collection” within the “Subscription Agreement” section where the particular option chosen from the list below should be recorded.

2 Options

The options should be selected from and agreed upon by the Lloyd’s Broker and Underwriters at the time of placement along with any other qualifications or provisions deemed necessary by any of the affected parties.

1. Ins-sure “Experts Fees Service” to be service provider for London market share only.
2. Ins-sure “Experts Fees Service” to be service provider for all slip security, including overseas.
3. Alternative named service provider to collect London market share only.
4. Alternative named service provider to collect all slip security, including overseas.
5. Alternative named service provider to collect only overseas percentages in conjunction with Option One above.
6. The Lloyd’s Broker to collect fees.
7. The Lloyd’s Broker to collect experts’ fees, to be remunerated on a financial basis agreed between the Underwriters and the Lloyd’s Broker at time of placement.
8. Any other agreement that can be determined between affected parties at time of slip placement.

However if it is impossible to determine an appropriate procedure for the collection of experts’ fees at the time of placement then ‘No agreed procedure’ should be entered.

NB. The Slip Leader must ensure that any special fee bill collection arrangements with third party service providers which the expert in question has in place are not prohibited or adversely affected by the selection process above.

3 Scope

The options for fee collection recorded in this document may be used with all London market slips. If an LMP slip is used, then the slip heading will be available to record the necessary information.