

**GUIDANCE NOTES APPLYING TO
LLOYD'S MODEL CONSORTIUM AGREEMENT LMA3145**

Introduction

The Lloyd's Market Association ("LMA") has issued a model **Consortium Agreement** ("Model Agreement"), dated 16 June 2017 for use with Consortium arrangements in the Lloyd's market. It is important to note that:

1. The Model Agreement has been produced by an LMA working party comprising of representatives from Managing Agents, Lloyd's, the LMA and the law firm, Clyde & Co. While issued as a Model Agreement by the LMA, it should be recognised that this document, as with all LMA documents, is purely illustrative and is established and distributed for the guidance of Managing Agents. Managing Agents are therefore free to use their own separate agreements subject to complying with any relevant Lloyd's requirements, including as set out in the Code of Practice for Delegated Underwriting (the 'Code'). In all cases Managing Agents are responsible for ensuring that the terms of every Consortium Agreement they write are appropriate.
2. The Model Agreement has been designed for use in the Lloyd's market only, for consortium arrangements entered into by Lloyd's managing agents. It is not intended for use by managing agent service companies. The Model Agreement also does not take into account territory-specific requirements that may arise for service companies, such as for Singapore Service Companies.
3. The Model Agreement has been designed for use where the consortium is processed through a 9000 series stamp or otherwise. Where the consortium is placed by a Lloyd's broker, additional fields may need to be added. Similarly, where there is no broker involved some fields may become redundant.
4. In publishing the Model Agreement the LMA is aware that the commercial terms of Consortium Agreements differ significantly from one arrangement to another. The LMA has therefore not attempted to produce a model agreement that would be suitable for all such arrangements. Instead, the Model Agreement is intended to highlight the main clauses that are likely to be relevant in most Consortium Arrangements and to suggest a 'default' wording that may be suitable. However, many of the terms in the Model Agreement are likely to be the subject of commercial negotiation between the parties and so may require amendment. Individual Consortium Arrangements may also require the inclusion of additional commercial terms, for example in relation to limits on the liability of the Consortium Manager, exclusivity clauses, broker remuneration etc. It is important in all cases that managing agents ensure that they obtain suitable legal advice.

These **Guidance Notes** are intended to assist Underwriters (and Brokers where appropriate) when using the Model Agreement, by providing:

- an overview of the Model Agreement and general drafting guidance;
- guidance on specific sections found in the Model Agreement.

Relevant requirements and guidance

All delegated authority practitioners should familiarise themselves with the following documents (both available on Lloyds.com) which set out the key requirements necessary to consider when preparing a Consortium Arrangement:

- Lloyd's Intermediaries Byelaw and the Requirements made under the Byelaw
- Lloyd's 'Code of Practice - Delegated Underwriting' which prescribes the content of a Consortium Arrangement and sets out what is regarded by Lloyd's as good practice;

Please note that nothing in these Guidance Notes is intended to, or should be construed as, superseding, amending or derogating in any way from the terms of the Model Agreement itself.

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| <p><u>Parties and Introduction</u></p> | <p>The ‘table of security’ in the first paragraph of the Introduction to the new Model Agreement refers to the page at the end of the document, following the Schedule. By inserting their details here and signing, the parties agree to be bound to the agreement. The proportions shown should always total 100%.</p> <p>The Consortium Agreement is an agreement between the managing agent of the lead syndicate (the ‘Consortium Manager’) and the members of the following syndicates (the ‘Following Underwriters’). In accordance with the terms of the Consortium Agreement, the Following Underwriters agree to delegate authority to the Consortium Manager to underwrite on their behalf and to administer the policies bound (including to handle claims).</p> <p>Note that the syndicate members of the lead syndicate (the ‘Lead Underwriters’) are not a party to the Consortium Agreement. This is because the Lead Underwriters delegate all necessary authority to the Consortium Manager by way of the managing agent’s agreement that all members enter into with their managing agents.</p> <p>This is explained in the Introduction to the Model Consortium Agreement.</p> |
| <p><u>Agreement Number</u></p> | <p>The Agreement Number is the number by which the Agreement can be identified.</p> |
| <p><u>Unique Market Reference Number</u></p> | <p>Consortia processed through a 9000 series number may not require a Unique Market Reference (UMR) for processing purposes as risks attaching will attach to the individual UMRs of those risks. If the method of processing requires a UMR (for example where an FDO needs to be signed to allow fees and/or commission to be processed via the bureau), please use the below guideline:</p> <p>The UMR will be in a standard format and will include the Lloyd’s Broker number, or Internal Broker Number of the Consortium Manager if the Consortium is to be processed directly by the Consortium Manager.</p> |
| <p><u>Section 1</u></p> <p><u>Establishment of Consortium; Effective date and registration of Agreement</u></p> | <p>The Consortium Manager is not authorised to act on behalf of the Following Underwriters until the Consortium Manager and the Following Underwriters have signed the Agreement. The Agreement should be executed by a person duly authorised by the Consortium Manager signing and dating the Table of Security. The document signed should, at the time it is signed, append any attachments identified in the Schedule.</p> <p>All Consortia must be registered with Lloyd’s Delegated Authorities team at consortia@lloyds.com prior to inception. If necessary, the Consortium manager or another party on their behalf should register the consortium with Xchanging to facilitate the processing of risks attaching.</p> <p>It will usually be the case that the Consortium Manager arranges for the agreement to be signed by the managing agents of the Following Underwriters. Once all parties have signed it, the Consortium Manager should take appropriate steps to ensure that the fully executed Agreement is made available to the Following</p> |

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| | <p>Underwriters.</p> <p>The format of the stamp to be used by the Consortium Manager should be agreed by the Following Underwriters prior to its usage.</p> |
| <p><u>Section 2</u></p> <p><u>Period</u></p> | <p>The period of the Agreement will ordinarily be no more than 12 months from inception. For any consortium agreement using a 9000 series processing number please see separate processing guidance on Lloyds.com.</p> <p>In order to provide clarity on time zones the default wording in the Agreement states "the period is from [date] to [date], both days inclusive, any time zone". Alternatively, it is permissible to state a specific time zone and time if desired.</p> |
| <p><u>Section 3</u></p> <p><u>Person(s) responsible for operation and control</u></p> | <p>The Schedule must identify the following:</p> <ul style="list-style-type: none"> • Sub-section 3.1: name(s) of the individual(s) at the Consortium Manager who is(are) directly responsible, on behalf of the Consortium Manager, for the overall operation and control of the Agreement; • Sub-section 3.2: name(s) of the individual(s) who is(are) authorised to bind insurances under the Agreement; • Sub-section 3.3: name(s) of the individual(s) with overall responsibility to issue documents evidencing insurances bound under the Agreement. Where risks are to be written using the MRC format, and the MRC will be the only document issued evidencing insurance, then the Schedule should state "Not applicable in respect of risks where the document evidencing insurance is the MRC contract".); and • Sub-section 3.4: name(s) of the individual(s) authorised to exercise any claims authority. <p>Sub-section 3.5. In the case of temporary absence, the Consortium Manager only needs to notify the Following Underwriters if an absence is likely to impair performance of the Agreement. If there are suitably appointed alternative persons then the Consortium Manager does not need to make a notification.</p> |
| <p><u>Section 4</u></p> <p><u>Grant of Authority</u></p> | <p>This section is the key provision that delegates authority to the Consortium Manager to act on behalf of the Following Underwriters, to write business and perform activities, which are ancillary to underwriting (such as marketing the Consortium and entering into agreements on behalf of the Consortium, etc.).</p> <p><u>Sub-section 4.1.3</u></p> <p>The Consortium Manager should consider whether there may be additional authority required under the Consortium Arrangement, which should be set out in sub-section 4.1.3 of the Schedule. Examples of further authority which the Consortium Manager might require include the authority to enter into Non-Disclosure Agreements with third parties etc.</p> <p><u>Sub-section 4.2.4</u></p> <p>Where the Consortium Manager will be submitting regulatory returns, it should ensure that these are submitted within the required timeframes. Any specific regulatory returns, known to the Consortium Manager at the inception of the Agreement, which will need to be submitted should be referenced within the Schedule under sub-section 6.1.</p> |

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| <p><u>Section 5</u></p> <p><u>Delegation of Authority</u></p> | <p><u>Sub-section 5.1</u></p> <p>A Consortium Manager is not permitted to delegate its authority to any other person without the agreement of the Following Underwriters. This includes all forms of delegated authority (including binding authorities and line slips). The Following Underwriters should adopt an appropriate compliance regime, which should include consideration of Lloyd's requirements.</p> <p>If the consortium members wish to authorise the Consortium Manager to enter into contracts of delegated authority this should be stated expressly under section 6.1 with any limitations on the scope of authority and reporting requirements.</p> <p>See also guidance under section 8.</p> |
| <p><u>Section 6</u></p> <p><u>Other Conditions, Requirements and / or Amendments relating to the operation of the Agreement.</u></p> | <p><u>Sub-section 6.1</u></p> <p>This section of the Schedule SHOULD NOT be used to identify, add or amend terms and conditions of the individual insurances to be bound by the Consortium Manager. Instead, these items should be dealt with in section 19.</p> <p>Therefore, sub-section 6.1 of the Schedule SHOULD ONLY be used to identify any:</p> <p>Additional or supplementary terms, conditions and/or requirements that are not contained elsewhere within the Agreement (For example: consideration may be given in this section to any particular conditions relating to the purchase of reinsurance);</p> <p>OR</p> <p>any amendments to the Agreement (i.e. changes or amendments to the Model Agreement text). The section or sub-section numbers of the Agreement which are the subject of amendment(s) must be shown, together with the replacement text.</p> |
| <p><u>Section 7</u></p> <p><u>Authorised Class(es) of Business and Coverage(s)</u></p> | <p>The agreement should clearly specify the nature or types of risks which the Consortium Manager will be authorised to write under the agreement. Consideration should be given as to when risks may require that Following Underwriters review or confirm acceptance to the risk being bound, particularly where the scope of the agreement has been set quite broadly.</p> <p><u>Sub-section 7.1</u></p> <p>This section should:</p> <ul style="list-style-type: none"> • be considered in conjunction with section 8 which together allow flexibility to define the scope of the classes of business and coverages which may be bound under the Agreement; • contain a precise description of the nature or classification of the contracts of insurance that the Consortium Manager will be authorised to bind under the Agreement; • also make it clear whether the Agreement allows the Consortium Manager to accept insurance business or reinsurance business or both. <p>The phrase 'All Risks' should not be used without proper qualification e.g. 'All Risks of Physical Loss or Damage'.</p> <p>Any exclusions to the listed classes of business and coverages applicable to the whole Agreement must appear in sub-section</p> |

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| | <p>8.1.6.</p> <p>Underwriters should consider whether any specific business plan should be agreed prior to writing the Agreement and referenced within this section.</p> |
| <p><u>Section 8</u></p> <p><u>Excluded Class(es) of Business and Coverage(s)</u></p> | <p><u>Sub-section 8.1.5</u></p> <p>The authority to delegate authority to any other entity or through any other agreement is automatically excluded from the Agreement. If the consortium members wish to authorise the Consortium Manager to enter into contracts of delegated authority this should be stated expressly under section 6.1 with any limitations on the scope of authority and reporting requirements.</p> <p>See also guidance under section 5.</p> <p><u>Sub-section 8.1.6</u></p> <p>This part of the Schedule must show only those exclusions relevant to the Authorised Class(es) of Business and Coverage(s) specified within sub-section 7.1 of the Schedule.</p> <p>Underwriters and Brokers should note that sub-section 8.1.6 of the Schedule is not the appropriate place to list or attach exclusion clauses for the individual insurances bound. Specific exclusion clauses for the individual insurances bound should be referred to in sub-section 19.2 of the Schedule.</p> <p>Consideration should be given to classes subject to special approval as per Lloyd's 'Performance Management - Supplemental Requirements & Guidance'.</p> |
| <p><u>Section 9</u></p> <p><u>Territorial Limitations</u></p> | <p><u>Sub-section 9.1</u></p> <p>Identifies the geographical location of risks (as applicable) which are acceptable under the Agreement.</p> <p>Terms such as 'and contiguous...' should be avoided where possible (where this term is used, such contiguous areas should be listed for clarity).</p> <p><u>Sub-section 9.2</u></p> <p>This section is used to identify where insureds are domiciled. The location of an insured's domicile is the location in which the insured lives, if the insured is a private individual or, if the insured is a company or other corporate body, in which it is established.</p> <p>Only the territories from which risks or insureds may be accepted under the Agreement should be listed in sub-section(s) 9.1 and 9.2 respectively.</p> <p>For further guidance on location of risk definitions refer to the Crystal and the Risk Locator Tool on lloyds.com.</p> <p><u>Sub-section 9.3</u></p> <p>This deals with the geographical scope of the insurance coverage which may be granted under the individual insurances bound under the Agreement. This may be wider than the territories shown under sub-sections 9.1 and 9.2.</p> |
| <p><u>Section 10</u></p> <p><u>Maximum Limits of</u></p> | <p>The maximum limits of liability or sums insured in respect of insurances bound by the Consortium Manager must be shown in sub-section 10.1 of the Schedule.</p> <p>If there is more than one class and coverage under sub-section 7.1</p> |

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| <p><u>Liability/Sums Insured</u></p> | <p>the maximum limits must be clearly stated for each class and coverage.</p> <p>Consideration should be given to the limits being accepted under the agreement and the management of aggregation where applicable, including the potential referral of risks to the Following Underwriters for acceptance within a specified timeframe. For agreements with multiple sections, Managing Agents should have particular regard to any cross-class aggregation that may arise.</p> |
| <p><u>Section 11</u></p> <p><u>Premiums, Deductibles and Excesses</u></p> | <p><u>Sub-section 11.1</u></p> <p>This should state how the premium will be calculated for each individual insurance. If a rating schedule is to apply, it can either be set out here or referenced here and attached to the Agreement.</p> <p><u>Sub-section 11.2</u></p> <p>This should state any deductibles/excesses to apply to each individual insurance. If this information forms part of the rating schedule under 11.1, then it is acceptable to refer back to sub-section 11.1.</p> <p>In the event that the rating and/or any applicable deductibles and/or excesses are contained within a separate guide or manual or other document (including any electronic data), reference to such guide, manual or other document should be made within sub-sections 11.1 and/or 11.2 of the Schedule.</p> |
| <p><u>Section 12</u></p> <p><u>Gross Premium Income Limit</u></p> | <p><u>Sub-section 12.1</u></p> <p>The Agreement must contain a gross premium income limit as per sub-section 12.1 of the Schedule. The Consortium Manager must not bind any insurance(s) that would cause it to exceed the limit shown in sub-section 12.1.</p> <p><u>Sub-section 12.2</u></p> <p>The Consortium Manager is required to notify the Following Underwriters if the premium income reaches the percentage of the overall limit which is to be shown in sub-section 12.2 of the Schedule.</p> |
| <p><u>Section 13</u></p> <p><u>Period of Insurances Bound</u></p> | <p><u>Sub-section 13.1</u></p> <p>This part of the Schedule allows for the standard and the maximum period(s) for insurances bound allowed by Underwriters for the relevant classes of business.</p> <p>Sub-section 13.3 of the Schedule must state the maximum number of days an insurance is allowed to be bound in advance of its inception date. This should not exceed the Agreement's cancellation notice period under Section 33.</p> <p>As Lloyd's syndicates are annual ventures, Consortium Agreements must ensure that business is allocated correctly across different years of account. All business written under a Consortium Agreement must be allocated to the year of account of the syndicate that entered into the Consortium Agreement. This includes all long term policies unless other arrangements are made to cancel and rewrite them into subsequent years of account.</p> |
| <p><u>Section 14</u></p> <p><u>Automatic or Tacit Renewal</u></p> | <p>Unless agreed by the Following Underwriters or where it is mandatory by law or regulation, the Consortium Manager is not authorised to bind insurances which provide for automatic/tacit renewal.</p> |

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| <p><u>of</u> <u>Insurances Bound</u></p> | <p>If automatic / tacit renewal <u>is not</u> mandatory then express written permission from the Following Underwriters should be obtained and shown in sub-section 6.1 of the Schedule. Any reporting required by the Following Underwriters on automatic/tacit renewals should be referenced within sub-section 22.</p> <p>If automatic / tacit renewal <u>is</u> mandatory or the Following Underwriters grant permission, the Consortium Manager must comply with any applicable laws or regulation which relate to the review of each insurance bound prior to its individual renewal date in order to lapse the insurance or offer renewal terms.</p> |
| <p><u>Section 15</u> <u>Premium Finance</u> <u>Contracts</u></p> | <p>Premium finance transactions are not provided for by this Agreement and must not be entered into by the Consortium Manager or other entity on behalf of the Following Underwriters or in the Following Underwriters' name.</p> <p>The Consortium Manager and Insureds may have premium finance arrangements in place but these should form a separate contractual relationship between the applicable parties involved.</p> |
| <p><u>Section 16</u> <u>Commission(s) and Fees</u></p> | <p><u>Sub Section 16.1</u></p> <p>The maximum deductions allowable by the Consortium Manager in respect of insurances bound should be specified within this sub-section, encompassing any brokerage shared or fees or commissions paid by the Consortium Manager to others. The amounts stated should be exclusive of the Consortium Manager's own Commission(s) or Fees.</p> <p><u>Sub-section 16.2</u></p> <p>The Consortium Manager's Commission or Fees should be specified in sub-section 16.2 of the Schedule. This sub section is only in respect of commissions or fees paid by the Following Underwriters to the Consortium Manager for its services in operating the agreement.</p> <p>The parties may wish to separately agree the mechanics of processing, and should consider issues such as risk code splits.</p> <p>Where a Broker has been involved in the arrangement of the Consortium Agreement, any brokerage due to the Broker should be shown as a Non Schedule item and be set out separately in the Broker Remuneration and Deductions section.</p> <p><u>Sub-section 16.3</u></p> <p>In the event of the Agreement not being subject to Contingent or Profit Commission then "Not Applicable" should be shown in sub-section 16.3 of the Schedule.</p> <p>If there is a Contingent or Profit Commission applicable, sub-section 16.3 is to be completed with the full formula applicable to the calculation of any contingent or profit commission, including the date(s) on which it shall be calculated. If a separate Contingent or Profit Commission Clause is required then "as attached" should be stated in sub-section 16.3 of the Schedule and the full clause should be attached to the agreement.</p> <p>For Consortia using a 9000 number the Consortium Manager should consult Xchanging Market Communication 2014/001 with regards to how Profit Commissions should be processed.</p> |
| <p><u>Section 17</u></p> | <p>If Commission(s) and fees are not to be refunded to the following underwriters as provided for in sub sections 16.1 & 16.2 of the model agreement then this section will need to be amended under sub-</p> |

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| | section 6.1. |
| <p><u>Section 19</u></p> <p><u>Contract Documentation</u></p> | <p>The format of the contract documentation should be detailed and agreed in the Agreement prior to inception as this may vary due to the distribution channel. For example, where a London broker is present within the distribution chain the format will usually be the MRC. Conversely, where no London broker is present in the chain the consortium members may agree an alternative format for the contractual documentation.</p> <p><u>Sub-section 19.2</u></p> <p>The identification of the Application or Proposal forms, Wordings, Conditions, Clauses, Endorsements, Warranties and Exclusions should be made by unique reference number under sub-section 19.2 of the Schedule, but if ‘bespoke’ they should be attached to the Agreement. In the event that the class(es) of business and coverage(s) does/do not require an application or proposal form sub-section 19.2 of the Schedule should state “No Application Form or Proposal Form Applies”. The application forms, proposal forms or contractual wordings set out in sub-section 19.2 should be agreed by the Following Underwriters prior to their usage.</p> <p>It is the responsibility of the Consortium Manager to ensure that all contract documentation meets the legal and regulatory requirements that apply in the territory. For further details please see Crystal (available on Lloyd’s.com).</p> <p>Sub-section 19.2 of the Schedule SHOULD ONLY be used to identify Wordings, Conditions, Clauses, Endorsements, Warranties and Exclusions applicable to insurances bound and SHOULD NOT be used to identify, add, or amend terms and conditions of the Agreement itself, as these should be specified under sub-section 6.1.</p> |
| <p><u>Section 20</u></p> <p><u>Claims and Recoveries</u></p> | <p>The model Agreement has been prepared on the basis that the Consortium Manager will have authority to handle claims. If the parties have agreed any special arrangements for the handling of claims (for example, the circumstances in which the Consortium Manager must notify details of claims to the Following Underwriters) then this should be set out in the Schedule.</p> <p>Where the Lloyd’s Claim Scheme applies then the handling of the claim will need to be in accordance with the requirements of the Lloyd’s Claim Scheme. Lloyd’s has provided guidance on the determining of claims involving Consortia and this is outlined in Market Bulletin Y4846. It is important to ensure that any arrangements for the handling of claims agreed between the parties are consistent with the requirements of the Lloyd’s Claim Scheme.</p> <p>In general, if a policy is written by a single Consortium, and there is no other Lloyd’s participation then the claims authority of the Consortium Manager will be determined by the terms of the Consortium Agreement rather than the slip. However, in accordance with the Lloyd’s Claims Scheme principles, there should not be more than one Lloyd’s syndicate with a claims agreement role on standard claims and not more than two on complex claims.</p> <p>If the risk is written by more than one Consortium and/or there is additional Lloyd’s participation it is considered a subscription risk and claims would therefore be in scope for the Lloyd’s Claim Scheme (provided the scope criteria stated in Part 2, paragraph 1 of the Lloyd’s Claim Scheme (Combined) are fulfilled). The Consortium Manager will therefore not have a claims agreement role if it is not</p> |

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| | <p>identified as the first or second Lloyd’s lead on the slip. If the Consortium is slip lead or second lead then the Consortium Manager will have claims authority not only for the other Consortium members but also for other syndicates on the slip outside the Consortium (as per the Claims Scheme).</p> <p>For Complex claims it would be the first syndicate outside of the Consortium who fulfils the Second Lead role (or in the case of two Consortia on risk the delegated claims agreement party of the following Consortium should fulfil the Second Lead role for claims agreement).</p> |
| <p><u>Section 21</u></p> <p><u>Complaints or Proceedings</u></p> | <p>In respect of the day to day handling of complaints, it is not expected that the Consortium Manager will notify the Following Underwriters of all complaints received, and any reporting requirements to Lloyd’s will be the responsibility of the Consortium Manager.</p> <p>However, the Consortium Manager is required to promptly notify the Following Underwriters of all complaints made in relation to the insurances bound under the Agreement which might adversely affect the reputation of the Following Underwriters or Lloyd’s, give rise to litigation, or result in a complaint to any regulatory authority.</p> |
| <p><u>Section 22</u></p> <p><u>Risks Written Bordereau(x)/Reporting and Aggregate Exposures</u></p> | <p>This section is designed to offer the Following Underwriters the opportunity to state contractually their reporting requirements in respect of:</p> <ol style="list-style-type: none"> 1) Risks bound information 2) Aggregates reporting information 3) Summary statistical information <p>The Consortium Manager must provide or make information available to the Following Underwriters specified under sub-section 22. The premium reporting is dealt with under section 23.</p> <p><u>Risks Written Bordereaux:</u></p> <p>The Consortium Manager is responsible for ensuring that the Following Underwriters receive sufficiently detailed information regarding the risks being written on their behalf. The parties should consider whether any additional details should be included in the bordereaux, such as details regarding the source of the business and the distribution channels (including any brokers or other intermediaries). Where more granular information is available, then this information should be provided to the Following Underwriters wherever possible.</p> <p>The reporting frequency should clearly indicate which period is being reported on.</p> <p>The Following Underwriters are expected to monitor, measure and assess business written on their behalf accurately and on a timely basis. In this regard, Lloyd’s would expect that each declaration attaching to the Agreement be assessed using appropriate exposure and rating models with management information (both internal and external) updated accordingly.</p> <p><u>Aggregate Exposures reporting:</u></p> <p>For classes of business with the potential for aggregation of losses:</p> |

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| | <ul style="list-style-type: none"> • Sub-section 22.2.1 of the Schedule should clearly detail the basis of monitoring aggregate exposures (for example the perils of wind, earthquake, etc.); • Sub-section 22.2.2 of the Schedule should specify such aggregate exposure reporting intervals; • Sub-section 22.2.3 of the Schedule should specify the total aggregate limits the Consortium Manager is permitted to bind. <p>For some classes of business aggregate reporting will not apply and the above sub-sections of the Schedule should show “Not Applicable”.</p> <p><u>Sub-section 22.3: Summary Statistical information:</u></p> <p>This section is for details of the provision of regular information to the Following Underwriters not covered elsewhere in the Agreement. The type of information to be supplied should be precisely specified and should not duplicate other sections of the Agreement.</p> |
| <p><u>Section 23</u></p> <p><u>Accounting Bordereau(x)/Reporting and Settlements</u></p> | <p>In some specific cases, the Following Underwriters may take the view that there is no need for separate premium bordereaux or data as the Risks Written Bordereaux or 9000 number transactional data already provided to the Following Underwriters contains all of the information needed at the required times, or the information is received by the Following Underwriters through other means.</p> <p>In this case both the 'reporting interval' and the 'maximum number of days for reporting' under 23.2 or 23.4 of the Schedule can be marked “Not applicable” in respect of premium information.</p> <p><u>Sub-section 23.2</u></p> <p>The provisions in the model wording permit the Following Underwriters to specify (under sub-section 23.2) the intervals at which the paid premium bordereaux or accounting information is provided or made available to the Following Underwriters. The method and/or format for reporting should specify the data required or provide a template in a format agreed by the Following Underwriters.</p> <p><u>Sub-section 23.3</u></p> <p>The Consortium Manager should provide or make available claims information in a format specified within sub-section 23.3 of the Schedule.</p> <p>The reporting interval for the information to be provided to the Following Underwriters should also be specified within sub-section 23.3.</p> <p><u>Sub-section 23.4</u></p> <p>This should state the maximum number of days at the end of the bordereaux period that the Following Underwriters expect the premium/accounting bordereaux/claims information or data to be submitted, or made available, to them.</p> <p><u>Sub-section 23.5</u></p> <p>The settlement of monies to the Following Underwriters will be determined by the settlement terms agreed for each insurance bound. Where the Consortium Manger will receive premiums on behalf of the Following Underwriters, the model agreement should be reviewed to ensure that this remains appropriate.</p> |

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| <p><u>Section 24</u></p> <p><u>Records, Statistical Information and Audit/Inspection</u></p> | <p>The Code requires that the Consortium Manager maintains complete records relating to all insurances bound, and the Agreement requires that the Consortium Manager retain all such records for a minimum of 7 years or such longer period as required by the law. The Agreement provides that the Consortium Manager shall own all such records, however the Consortium Manager must provide or otherwise make available to the Following Underwriters any information or copies of records reasonably required by the Following Underwriters.</p> <p>The Consortium Manager must promptly inform the Following Underwriters (unless prohibited by law) of any result of an audit or inspection which indicates that the Consortium Manager is no longer able to fulfil their obligations under the Agreement.</p> |
| <p><u>Section 25</u></p> <p><u>Advertising and Promotional Material</u></p> | <p>The Consortium Manager must agree with the Following Underwriters any specific marketing or promotional material to be used in connection with the consortium. No party should use the name or corporate branding of any other party to the Agreement in connection with the Consortium without the approval of that party. Guidance on Lloyd's brand guidelines can be found on lloyds.com</p> <p>For more information on country specific legal and regulatory requirements relating to advertising see Crystal (available on Lloyds.com) or contact Lloyd's International Trading Advice at lita@lloyds.com.</p> |
| <p><u>Section 26</u></p> <p><u>Licences and Taxes</u></p> | <p>Note that Section 26 imposes an obligation on the Consortium Manager to ensure that the amount of any taxes due from the insured(s) is correct. While the tax calculation is often initially prepared by the broker, it remains the obligation of the consortium manager to ensure that this is accurate.</p> <p>For information regarding the regulatory and tax requirements that apply in each territory where Lloyd's is licensed see Crystal (available on Lloyds.com) or contact Lloyd's International Trading Advice at lita@lloyds.com.</p> |
| <p><u>Section 27</u></p> <p><u>Fees and Charges</u></p> | <p>This section makes it clear that any fees or charges added by the Consortium Manager to the premium (i.e. policy, service or other charges) are to be disclosed to the Insured(s) and the Following Underwriters and shown on the documentation issued. This should not be confused with commission and fees under section 16.</p> |
| <p><u>Section 28</u></p> <p><u>Business Continuity Plan</u></p> | <p>The Consortium Manager is required to maintain an adequate business continuity plan and disaster recovery plan; however it is not expected that the Following Underwriters should review such plans or be notified of any changes to the plans.</p> |
| <p><u>Section 29</u></p> <p><u>Confidentiality</u></p> | <p>This section ensures that each party keeps confidential any information it obtains as a result of entering into or performing its duties under the Agreement. However nothing in this section is intended to prevent each party disclosing confidential information where they are legally obliged to do so e.g. under any "whistleblowing" laws.</p> <p>Within this sub-section, reference to external auditors should not be interpreted as an external auditor appointed by the Following Underwriters to audit the Consortium Manager. Reference here to an external auditor is in relation to any statutory auditors, Lloyd's, other regulatory bodies or external auditors employed by the Consortium Manager to audit their internal financial or other records.</p> |

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| <p><u>Section 30</u></p> <p><u>Conflicts of Interest</u></p> | <p>A key concern will be to ensure that the Consortium Manager has no actual or perceived conflicts of interest which may impair the Consortium Manager’s performance of its obligations under the Agreement. It is however understood that there may be instances where the Consortium Manager is shown business which the Consortium Manager may wish to write outside of the Consortium. The Following Underwriters and the Consortium Manager should consider making this clause more bespoke to address instances such as this. For example, the parties may wish to consider addressing exclusivity/non-exclusivity, participants competing against the Consortium, etc.</p> |
| <p><u>Section 31</u></p> <p><u>Compliance with the Law and Financial Crime</u></p> | <p>This section takes into account bribery implications, money laundering and international sanctions. Although this section represents a model wording, any amendments to it that make it materially less robust are unlikely to be acceptable.</p> <p>Lloyd’s guidance for Managing Agents regarding financial crime risks can be found on lloyds.com.</p> |
| <p><u>Section 32</u></p> <p><u>Data Protection</u></p> | <p>Under the Consortium, the Consortium Manager will act as a data processor of the Managing Agents of the Following Underwriters. This clause has been drafted to comply with the Data Protection Act 1998 and in particular the requirements for data processing, which data controllers must comply with. Consideration should be given to strengthening this clause, in particular where data may be transferred outside of the EEA.</p> <p>This clause includes reference to the managing agents of the Following Underwriters (rather than the Following Underwriters) as the data controller will be the managing agent of the Following Underwriters rather than the Following Underwriters themselves.</p> <p>As this is an area of law where there are changes from time to time, Managing Agents should give due consideration to whether the clause requires amendments to take into account any changes to the law. (The clause has not been drafted in a manner designed to be compliant with the EU General Data Protection Regulation.)</p> <p>Reference to an external auditor within this section is intended to have the same definition as that within Section 29.</p> |
| <p><u>Section 33</u></p> <p><u>Termination</u></p> | <p>This section identifies the circumstances and the ways in which the Agreement may be terminated. In general, where a party wishes to terminate the Agreement, a notice should be given and the Agreement will terminate at the end of the notice period. In certain circumstances, set out in sub-section 33.4, the Following Underwriters can terminate immediately by delivering a notice to the Consortium Manager. Sub-section 33.5 sets out the circumstances when the Agreement will terminate automatically without the need for a notice to be delivered.</p> <p>A notice period for termination must be negotiated at the time of placement and such period inserted in sub-section 33.1 of the Schedule.</p> <p>The Model Agreement requires the inclusion of an address for the delivery of notices to the Consortium Manager and the Following Underwriters and the addresses for these are included within the ‘table of security’. Notices should be sent directly to the Consortium Manager or the Following Underwriter (as appropriate) at the addresses shown.</p> <p>A list of addresses for Lloyd's Managing Agents can be found on</p> |

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| | <p>lloyds.com</p> <p>This section provides for service by physical delivery of the notice. If the parties wish to allow for electronic delivery then the wording should be amended (and it is recommended that the Consortium Manager and the Following Underwriters seek their own legal advice in this regard).</p> <p>It is good practice when sending the termination notice to make reference to the UMR or agreement number so that there is no misunderstanding as to which Agreement is being terminated.</p> <p>It is recommended that all parties provide specific names and addresses for the receipt of notices.</p> <p>This section SHOULD NOT be used for the termination terms of the insurances bound by the Consortium Manager. This is dealt with in accordance with the policies issued by the Consortium Manager.</p> <p>The term “Termination” in section 33 is used to cover all forms of termination, including cancellation by notice, automatic termination and non-renewal.</p> |
| <p><u>Section 34</u></p> <p><u>Effect of Termination or Non Renewal</u></p> | <p>Termination (including non-renewal) of the Agreement has the effect of placing the business into run-off and the Consortium Manager continues to be responsible for managing the run-off in accordance with the terms of the Agreement.</p> <p>Section 34 sets out various restrictions that apply to the Consortium Manager’s authority to conduct the run-off following termination of the Agreement. The section also gives the Following Underwriters additional rights to remove authority from the Consortium Manager.</p> <p>The term “Termination” in section 34 is used to cover all forms of termination, including cancellation by notice, automatic termination and non-renewal.</p> <p>When the parties agree the termination provisions, they may wish to consider whether the agreement should include any restrictive covenants in relation to seeking to take business from the Consortium using knowledge acquired from the Consortium. Any legal advice the Parties seek on this issue or restrictive covenant clauses included in the agreement should give due consideration to the impact that this might have having regard to competition law.</p> |
| <p><u>Section 39</u></p> <p><u>Rights of Third Parties</u></p> | <p>This section makes clear that the terms of the Agreement can only be enforced by the parties to the Agreement (i.e. the Following Underwriters and the Consortium Manager), and that third parties whom the Agreement may benefit in some way do not have the right to enforce the contract.</p> |
| <p><u>Section 40</u></p> <p><u>Several Liability</u></p> | <p>This section relates to the several liability of the Underwriters (both the Lead Underwriters and the Following Underwriters) under the Agreement and is concerned with the obligations of the Underwriters. It makes it clear that the Underwriters are not responsible for the individual subscription of any co-subscribing underwriter or any other insurer or co-insurer who for any reason does not satisfy all or part of its obligations. Any insurance bound under the Agreement must include its own several liability clause.</p> |
| <p><u>Section 41</u></p> <p><u>Jurisdiction and Governing</u></p> | <p>This section governs the applicable law and jurisdiction of the Agreement. It provides that any disputes shall be resolved in accordance with English law and that, as a default, the Courts of England and Wales shall have exclusive jurisdiction. Changing the law and jurisdiction could materially alter the enforceability of the</p> |

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| <p><u>Law</u></p> | <p>Agreement so care should be taken when amending the law and jurisdiction.</p> <p>This section SHOULD NOT be used for the Law and Jurisdiction of the insurances bound by the Consortium Manager which will be determined by the insurances bound by the Consortium Manager.</p> |
| <p><u>Table of Security</u></p> | <p>Within the Table of Security the Consortium Manager should enter the name of its Managing Agent under the header “Managing Agent of the Lead Underwriters”. The address of the Consortium Manager and a primary email address of a contact at the Consortium Manager should also be entered into this section. (The email address is for reporting purposes and Managing Agents should consider ensuring that this is a centralised inbox).</p> <p>The stamp of the syndicate for which the Consortium Manager is binding risks should be placed in the stamp section and the signature of the person(s) who is(are) authorised by the Managing Agent to enter into the Agreement should be applied, along with the date upon which they have signed the Agreement. Where the Consortium Manager requires variable references for each risk to be written than this should be selected as “Y” within the table of security.</p> <p>The Following Underwriters should enter their own details in line with the above guidance but in respect of their own Managing Agents, stamps and signatures.</p> <p>Where a 9000 number is to be used, Xchanging’s system can accommodate variable references for any syndicate thereon (not just the leader) but where a Following Underwriter requests one it does present a number of challenges: (a) the stamp needs to be designed to make clear what reference applies to which syndicate(s), and (b) a mechanism has to be put in place to ensure that the Following Underwriter notifies their variable reference to whoever puts the stamp down. Any arrangements regarding variable references for a Following Underwriter should be noted under section 6.1.</p> |