

Marsh – Terms of Engagement

Introduction

Marsh Ltd is an insurance intermediary and risk consultant.

These Terms of Engagement, together with any Letter of Engagement or Statement of Work we send to you will form the agreement between us and you, our client (the “Engagement”). If anything in this Terms of Engagement document is inconsistent with your Letter of Engagement or Statement of Work, then the relevant part of the Letter of Engagement or Statement of Work will apply.

When we provide reinsurance services, all references to ‘insurance’ or ‘insurers’ should be read as references to ‘reinsurance’ or ‘reinsurers’.

References to ‘you’ and ‘your’ include each of your affiliates (as defined in clause 11.1).

These Terms of Engagement contain important information. If there is anything you do not understand or accept, please talk to your regular Marsh contact. By instructing us, you are accepting the terms of the Engagement.

Our Services are set out in a schedule to your Letter of Engagement or in your Statement of Work or they will otherwise be agreed between you and us in writing.

You have the right to ask us for a copy of any personal data that we hold about you in our records, and to correct any inaccuracies or out-of-date information. Should you wish to do so or if you have any questions about our use of the personal data you provide please contact your regular Marsh contact or write to the Data Protection Officer:

Data Protection Officer
Marsh Ltd
Tower Place
London EC3R 5BU

Phone: 020 7357 1000
Email: dataprotection@marsh.com

Our information and/or documentation can be made available in a larger font, or an alternative format, on request. Please contact your Client Executive for further details.

ToE Combined

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1. Our Services

- 1.1 We will use the reasonable skill and care expected of a competent and professional insurance intermediary and risk consultant providing similar services.
- 1.2 Our Services may include advice or recommendations (or both) as set out in your Letter of Engagement or Statement of Work. However, it is for you to decide whether or not to accept our advice or recommendations.
- 1.3 We will be entitled to provide the Services ourselves or, where appropriate, through one or more of our affiliates or subcontractors.
- 1.4 Claims related Services will only be provided up to the time the Engagement ends, unless specifically agreed otherwise in writing.
- 1.5 Any information we provide on insurance regulatory and tax issues will be based on information available publicly and our experience from working on similar matters for other clients. We are not qualified to provide, and will not provide, legal, accounting, regulatory or tax advice. We recommend that you obtain your own advice on such matters from relevant professional advisers.
- 1.6 After assessing your needs, we will normally recommend an insurance solution for you. You will then need to decide how to proceed. When we receive your instructions, we will try to arrange insurance to meet the needs you have specified. If we cannot place your insurance policy, we may refer you to another insurance intermediary.
- 1.7 As part of our negotiations with insurers on your behalf, we may on occasion be able to obtain more favourable terms and conditions for your placement by providing insurers with certain types of information. Where we believe your interests would be advanced by doing so, you authorise us to do the following:
 - 1.7.1 at the outset of the negotiations, to provide insurers with the terms of the expiring policy, including pricing, and/or a pricing objective for your placement;
 - 1.7.2 during negotiations, to provide one or more insurers with the terms of a quote received from another insurer, where in our judgment doing so may lead to improved terms for you; and
 - 1.7.3 at the end of negotiations, to provide one or more insurers with an opportunity to submit an improved quote after all other quotes have been received.
- 1.8 In the event that you fail to perform any of your obligations in this Engagement, we reserve the right to suspend the provision of our services to you.
- 1.9 In the event that you have direct interaction within insurers, without our involvement as your appointed intermediary, we shall not be responsible for the outcome and consequences of such direct interactions.

2. How we are paid by you

- 2.1 We are either paid:
 - a percentage of the premium due to the insurer for your insurance policies (a commission or brokerage); or
 - a fee; or
 - a combination of both.
- 2.2 For insurance broking services, we will be considered to have fully earned our commission, brokerage, and/or fee from the inception of your policy. We will keep our commission, brokerage and/or fee even if an insurance policy is amended, terminated or cancelled. This does not affect any statutory cancellation rights you have. Our right to fee earnings is not conditional on the placement of an insurance policy.
- 2.3 Where appropriate we will charge reasonable expenses in connection with travel, accommodation and meals while working on your behalf away from any Marsh office.

- 2.4 If you ask us for a copy of your files, we may charge you for our time spent and costs reasonably incurred in dealing with such a request.
- 2.5 All fees and expenses we quote do not include VAT (which will be added if applicable).

3. Client money

- 3.1 If we hold money on a client's behalf, it will be held in a trust fund that is separate from our own cash assets. These separate trust fund arrangements are commonly known as "client money". If we were ever unable to pay our debts, then those to whom we owe money (our creditors) should not be able to make claims on our client money in the separate trust funds as it does not form part of our own cash assets.
- 3.2 The trust arrangement we use for client money is known as a non-statutory trust. Here, we may use premiums and claims monies we receive to cross-fund clients' premiums and claims; for example we may pay a premium on to an insurer before we have received it from the client if we believe it is in the best interests of that client.
- 3.3 We have agreements with some insurers (known as "risk transfer agreements"). Under these risk transfer agreements the insurers agree that they are responsible to you for any premium that you have already paid to us and that they remain responsible for any premium refunds or claims payments until the premium refund or claim payment is received by you. In this case we may hold client money due to or from the insurers in the same trust fund.
- 3.4 Where we do not have risk transfer agreements in place with insurers the client money we hold will still be protected within the non-statutory trust but will be known as "non risk transfer" client money. Non risk transfer clients have priority over insurers to the money in the trust fund as insurers granting risk transfer have agreed to subordinate their interests in the trust to those of Marsh's non risk transfer clients.
- 3.5 We do not use client money to pay ourselves commission before we receive your premium.
- 3.6 When we hold client money on trust for you this gives rise to fiduciary duties upon us that will not be discharged until the client money is deemed to have reached the insurer or product provider (as detailed above, this is when we receive premium in the case of risk transfer agreements).
- 3.7 Without affecting our fiduciary duties to you, in some cases we may:
 - hold client money in accounts which are outside of the United Kingdom and which may be subject to different legal and regulatory conditions and may treat money differently in the event of a bank failing. If you are a consumer (a person who buys products or services for personal use and not for business purposes) you can ask us not to put your client money in an account in a particular country.
 - pass client money to another intermediary, including ones outside of the United Kingdom where different legal and regulatory conditions apply and where money may be treated differently in the event of an intermediary failing. If you are a consumer, you can ask us not to pass your money to an intermediary outside of the United Kingdom or in a particular country.
 - arrange to hold certain investments with a value at least equal to the money that would otherwise have been paid into a separate client account. If we do this, we will be responsible for meeting any shortfall in the client money funds if the shortfall is due to a reduction in the market value of those investments.

3.8 If, in the process of handling client money, we earn interest or benefit from investment income or from foreign exchange rate movements, we will keep any such amounts.

4. Your obligations

4.1 Your attention is drawn to the accompanying Important Information document and Duty of Disclosure and Fair Presentation document which set out a number of your obligations. In addition, the below sets out further obligations which apply to all Services.

4.1.1 You shall provide us with all relevant information in relation to your business to enable us to provide the Services. Such information must be provided within the timeframe that we agree with you in a format which allows us to provide a clear presentation to insurers. We can rely on any information provided to us by you and/or your outgoing insurance broker.

4.1.2 You must pay our invoices within 14 days of receipt. Time for payment shall be of the essence of Engagement.

4.2 For consulting Services only:

- You must arrange for us to have access to all records, documents, files and other relevant information, personnel and/or management. If we need further information, or if we need to visit any of the project's premises, we will arrange this with you.
- Our Services are based on conditions observed by us and information provided by you.
- You agree to pay our invoices within 30 days of the invoice date. We may suspend or terminate the Services entirely until all invoices are paid.

5. Work product

5.1 We disclaim all responsibility for any consequence whatsoever should a third party rely upon any report, letter, information or advice we provide to you without our prior written consent that such third party may do so.

5.2 The restrictions in this clause 5.2 apply to our consulting Services and Global Analytics Services only.

5.2.1 You must not use any materials that we create, utilise or develop in connection with the Engagement, and any intellectual property rights associated with them (the "Work Product"), for any purpose other than your internal risk management purposes (the "Purpose").

You must not:

- disclose the Work Product to any third party;
- use it for any other purpose; or
- reproduce, disseminate, quote from or refer to, in whole or in part at any time, nor shall any public references be made concerning Marsh or the Work Product or disclosure of Marsh's role in connection with this Engagement, or public reference to this Engagement without our prior written permission. However, subject always to Clause 9, we may refer to the fact that we have carried out work for you.

5.2.2 Notwithstanding the above obligation not to disclose the Work Product to any third parties and only use it for the Purpose, should a third party receive the Work Product and place reliance on it, you will indemnify, defend and hold harmless Marsh, its directors, officers, shareholders, affiliates and employees (collectively "Indemnified Persons") from and against any and all claims (including claims for reasonable legal fees) brought by such a third party in connection with the Work Product or the

Engagement. You will not be liable under this indemnity to the extent any such claim is determined, by way of a final judgment of a court of competent jurisdiction, not subject to further appeal, to have resulted from the fraud or wilful misconduct of any Indemnified Person.

- 5.2.3 Any oral or draft Work Product which we might provide will not constitute our final opinions and conclusions. These will be contained in our final written Work Product, which shall be expressed as such.
- 5.2.4 Provided that any relevant party (referred to below) to which you intend to disclose a Work Product agrees in writing that it cannot rely on the Work Product and that it will not disclose the Work Product to any third party, we agree that you may provide the Work Product to your regulators, your financing banks or proposed financing banks, insurers or proposed insurers for information only.
- 5.2.5 Where we permit a third party to place reliance on a Work Product and thereby agree to accept liability or responsibility to a third party it will be by means of a letter from us to the addressees as defined in such letter (the "Release Letter") where the addressees accept and agree:
- to enter into a contractual relationship with us;
 - that the report containing the Work Product was addressed to you and was prepared on your instructions only and will not necessarily address or reflect their interests or circumstances; and
 - that our liability to them is limited to, and aggregated with, our liability to you.

6. Period and termination

- 6.1 The Engagement starts on the date shown in your Letter of Engagement or Statement of Work. If there is no Letter of Engagement or Statement of Work then the Engagement starts when you receive these Terms of Engagement.
- 6.2 Either party may terminate the Engagement by giving the other not less than 90 days' notice in writing. We will still be entitled to the earnings referenced in clause 2 and/or a fee for any consulting Services and/or for any Global Analytics Services which we have provided based on the time we have spent providing the Services plus any reasonable expenses.
- 6.3 Either party may terminate the Engagement immediately in writing if the other party:
- commits a material breach including (but not limited to) any breach of clause 4 or clause 5 and, in the case of a breach capable of remedy, fails to do so within 30 days of receipt of a notice setting out particulars of the breach; or
 - becomes insolvent or bankrupt, goes into liquidation, enters into a voluntary arrangement with their creditors, becomes subject to an administration order or has a receiver appointed over their assets, or becomes subject to any equivalent foreign process.
- 6.4 When the Engagement terminates we will co-operate in the transfer of your business where necessary, in consideration of all amounts owed to us being paid.

7. Limit of our liability

- 7.1 The maximum aggregate liability of Marsh and our affiliates to you, howsoever arising, in connection with the Engagement shall be limited in total to either the amount set out in any Letter of Engagement or Statement of Work or, in the absence of any such amount being specified therein:
- 7.1.1 For insurance broking Services, £10,000,000.

- 7.1.2 For consulting Services (other than Global Analytics Services as described below) the greater of £500,000 or ten times the fee paid to Marsh for the consulting Services. In the event that we agree to make the Work Product available to third party(ies) in accordance with clause 5.2 above, the aggregate liability described in this clause 7.1.2 shall be the aggregate liability to you and/or all of the third parties.
- 7.1.3 For Global Analytics Services (including risk financing optimisation, fund reserving, catastrophe modelling, financial modelling and structured/legacy solutions) one times the fee or where no fee is charged for Global Analytics Services, then £500,000.
- 7.2 Marsh and our affiliates shall not be liable to you in any circumstances, for any loss of profit or any special, indirect or consequential loss howsoever arising under or in connection with the Engagement.
- 7.3 We are not liable for any actions or failures arising before the date you enter into the Engagement
- 7.4 These provisions shall not apply to any liability for:
- Death or personal injury
 - Fraud or fraudulent misrepresentation; and
 - any client defined as a consumer (i.e. a person acting for purposes outside his trade, business or profession).
- 7.5 This limitation of liability clause shall survive termination of the Engagement.
- 7.6 Our obligations to you are solely contractual in nature. We act as a fiduciary for you to the extent required under English law but do not have any enhanced fiduciary or other duty to you.
- 8. Data protection and intellectual property**
- 8.1 We shall retain all intellectual property rights in all materials developed, designed or created by us (or any of our affiliates) before or during the Engagement, however we grant you a perpetual and royalty free licence to use these materials, but only for the purposes for which they were created under the Engagement.
- 8.2 The parties both warrant that they will comply with the provisions of the applicable UK law (including the General Data Protection regulation (Regulation EU 2016/679), as incorporated into UK law by section 3 of the European Union (withdrawal) Act 2018, as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 and 2020 and its successor laws (together the "UK GDPR"), Data Protection Act 2018 and any other data protections laws, applicable to the Engagement.
- 8.3 To provide our Services, we will collect and use information about individuals, such as their name and contact details, which may also include special categories of personal data (e.g. health information) and information relating to criminal convictions and offences. The purpose for which we use personal data may include arranging insurance cover, handling claims and for crime prevention and detection. We may also use personal data on a de-identified and/or aggregate basis for benchmarking, modelling and other analytics offerings as described in clause 9. More information about our use of personal data is set out in the Marsh Privacy Notice available at <https://www.marsh.com/uk/privacy-notice.html>. You or the data subjects whose data you provide to us can also request a copy of the Marsh Privacy Notice by email or writing to the Data Protection Officer, Marsh Ltd, Tower Place, London EC3R 5BU or dataprotection@marsh.com. We recommend that you review this notice.
- 8.4 Providing the Services may involve the disclosure of personal data to third parties such as insurers, reinsurers, loss adjusters, sub-contractors, our affiliates and to

certain regulatory bodies who may require your personal data themselves for the purposes described in the Marsh Privacy Notice.

- 8.5 Depending on the circumstances, the use of personal data described in this notice may involve a transfer of data to countries outside of the UK and the European Economic Area that have less robust data protection laws. Any such transfer will be done with appropriate safeguards in place.
- 8.6 Use of personal data based on consent: in some circumstances, we may need to collect and use special categories of personal data. Where your consent to this processing is necessary for us to provide you with the relevant services, this consent may be withdrawn at any time, but if it is, we may be unable to continue to provide our Services and this may mean that we are unable to process an enquiry or claim and it may impact (re)insurers' ability to provide (re)insurance. We will explain the consequences of withdrawing consent at the relevant time.
- 8.7 Where you are providing us with personal data about a person other than yourself, you agree to notify them of our use of their personal data and, where necessary, obtain their consent to our use of certain special categories of personal data. You agree that our provision of the Services to you is conditional on you providing such notices and obtaining such consents. Where the consent of such third party is required, they may withdraw any such consent at any time but if consent is withdrawn then we may be unable to continue to provide services to them (and possibly you), and this may mean that we are unable to process enquiries and it may impact (re)insurers' ability to provide (re)insurance. We will explain the consequences of withdrawing consent at the relevant time.
- 8.8 We will maintain appropriate data security procedures designed to protect against loss or compromise of personal data.

9. Confidentiality

- 9.1 We will keep your information confidential. However, in the normal course of business and in acting on your behalf we may disclose your information to our employees, agents, outsourcers, premium finance providers, affiliates or sub-contractors or to insurers and their agents. We may also have to disclose your information pursuant to legal or regulatory requirements including, but not limited to, requests meeting the requirements under the Third Parties (Rights Against Insurers) Act 2010. Any disclosure to any other third party will only be made with your prior written consent.
- 9.2 We will be entitled to use information in relation to your insurance, on a de-identified and/or aggregate basis, when dealing with insurers on other risks on behalf of policyholders other than yourself.
- 9.3 We may:
- 9.3.1 provide databases to insurers which may include confidential information relating to your insurance; and
 - 9.3.2 include, on a de-identified and/or aggregate basis, information relating to your insurance programme and risk management in benchmarking, modelling, and other analytics offerings; and
 - 9.3.3 share with prospective insurers information about your upcoming insurance renewals to help insurers identify opportunities to compete for risk. Marsh shares the information as part of its insurer consulting offering, which is designed to help insurers expand their own offerings and create superior solutions for Marsh clients.
- 9.4 More information regarding the databases, benchmarking, modelling and analytics referenced in clause 9.3 is available at: <https://www.marsh.com/uk/about-marsh/leading-the-way-in-transparency.html>

9.5 This confidentiality commitment to you does not apply to information lawfully in our possession or in the public domain.

10. Bribery and Corruption

Each party shall comply with all applicable laws, statutes and/or regulations relating to bribery and corruption, including but not limited to the Bribery Act 2010.

11. Affiliates

11.1 You accept the Engagement on your own behalf and on behalf of each of your affiliates (where they are receiving, or are a beneficiary of the Services). You shall ensure that each of your affiliates will act on the basis that they are a party to and bound by the Engagement. All references in the Engagement to “you” (and derivatives of it) shall mean you and each of your affiliates.

11.2 For the purpose of this Engagement “affiliates” means, in relation to a company, its subsidiaries and subsidiary undertakings and any holding company it may have and all other subsidiaries and subsidiary undertakings of any such holding company (as such terms are defined in the Companies Act 2006). In addition to the foregoing, in reference to Marsh the term “affiliates” shall include Marsh & McLennan Companies, Inc. and all of its subsidiaries. As the term applies to you, “affiliate” shall also include your partners, co-venturers and/or other co-insureds to whom we or any of our affiliates may assume a responsibility as a consequence of the provision of the Services or any additional services.

12. General

12.1 The Engagement may only be amended by written agreement signed by each party.

12.2 Except as set out in the Engagement, a person who is not a party to the Engagement, has no rights to enforce or to enjoy the benefit of any term of the Engagement by virtue of the Contracts (Rights of Third Parties) Act 1999.

12.3 Neither party will have any liability for any failure or delay in performing their obligations because of a force majeure event. Force majeure means an event beyond the reasonable control of a party.

12.4 Notwithstanding clauses 6 and 12.3, Marsh reserves the right to suspend or terminate the Engagement (in whole or in part) where it believes performance could be a breach of applicable economic or trade sanctions. Marsh shall not provide insurance or reinsurance broking, risk consulting, claims or other services or provide any benefit to the extent that the provision of such services or benefit would violate applicable law or expose Marsh or its affiliates to any sanction, prohibition or restriction under UN Security Council Resolutions or under other trade or economic sanctions, laws or regulations.

12.5 If any provision of the Engagement is prohibited or unenforceable or is found to be invalid, illegal or unenforceable by a court or any other competent authority, that provision shall, to the extent required, be deemed deleted and the validity and enforceability of the other provisions of the Engagement shall not be affected.

12.6 The Engagement sets out the entire understanding of the parties in relation to the matters that it deals with and supersedes and invalidates all previous letters, agreements and understandings (oral or written) in relation to those matters.

12.7 Any failure or delay in exercising any rights under the Engagement shall not constitute a waiver of such rights.

13. Governing law and jurisdiction

The Engagement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law and any disputes related thereto shall be subject to the exclusive jurisdiction of the English courts.