

## STANDARD TERMS OF BUSINESS

of

### WM. ELMSLIE & SON

a trading division of  
Charles Taylor Adjusting Limited

#### 1. THE SERVICES TO BE PROVIDED

##### 1.1 The Engagement and its Terms – In this document:

- the expression ‘the Client’ means the insurer or insured or other party(ies) named in the Acknowledgement of Instruction letter(s) (the "Acknowledgement") issued by WES, and
- the abbreviation “WES” means **WM. ELMSLIE & SON**, operating as a trading division of Charles Taylor Adjusting Limited ("CTA"), or other trading division or subsidiary of CTA instructed by the Client, including any WES personnel involved in the matter, loss, recovery or accident in relation to which WES is instructed to provide its services to the Client (“the Matter”) on the terms contained in this document and in the Acknowledgement from WES to the Client (together “the terms of engagement” and generally "the engagement").

Unless otherwise stated in the Acknowledgement these terms of engagement supersede any other agreement or arrangement (whether written or oral) previously agreed between WES and the Client in relation to the Matter. In the case of a conflict between the Acknowledgement and the terms in this document, the Acknowledgement will prevail.

- 1.2 **The WES Team** – WES will make every reasonable effort to ensure that its personnel named in the letter of acknowledgement or otherwise notified to the Client are available to work for the Client on the Matter. WES will endeavour to give the Client reasonable notice of any necessary change in such personnel and provide details of their proposed replacements.
- 1.3 **Timetable** – WES will make every reasonable effort to adhere to any timetable agreed either in the letter of acknowledgement or elsewhere in writing with the Client. For the avoidance of doubt, time is not of the essence to WES's performance of the engagement unless WES has expressly agreed otherwise in writing.
- 1.4 **Reporting** – WES will report to the Client with appropriate information on the progress of the Matter as regularly as may be appropriate for the Matter or as otherwise agreed with the Client. WES will send its reports to the Client at the address shown in the Acknowledgement.
- 1.5 **Authority** – The Client hereby expressly authorises and agrees that WES may engage or use contractors, sub-contractors or other persons to provide the services covered by the terms of engagement in relation to the Matter.

## 2. THE CLIENT'S RESPONSIBILITIES

- 2.1 **Support Facilities** – If WES is required to work at the Client's premises, the Client will ensure that WES's personnel are provided with the facilities reasonably necessary to enable them to do their work efficiently and in safety.
- 2.2 **Information** – The Client will give WES all information, instructions and assistance reasonably necessary to enable WES to perform the engagement and the Client will ensure that its appropriate personnel are available to WES for such purposes. The Client hereby acknowledges that WES will rely on such information, instructions and assistance when performing the engagement.
- 2.3 **Payment** – The Client will pay WES's fees, disbursements, expenses and applicable local taxes including Value Added Tax where appropriate (hereinafter "applicable taxes") in respect of the engagement in accordance with clause 3 below or as otherwise agreed with the Client.

## 3. FEES AND PAYMENT

- 3.1 **Method of Calculation** – Unless otherwise agreed in writing, WES's fees will be charged to the Client on the "no cure no pay basis" basis set out in the Acknowledgement plus applicable taxes. Where any of WES's fees have been calculated on a "Time & Trouble" basis according to the Acknowledgement, such fees will include time spent by WES personnel in connection with the engagement on travelling, attending meetings and interviews, research, investigation and forensics, working on and preparing reports and associated papers, correspondence and telephone calls.
- 3.2 **Disbursements** – WES's fees will exclude any fees payable to a third party expert by the Client for forensics or to other technicians or professional advisers instructed by or on behalf of the Client or otherwise associated with the engagement. All disbursements will be paid directly by the Client to the third party expert within 30 days of the third party expert presenting their invoice to the Client. WES will not pay any disbursements or any other fees or charges (including court fees and other associated charges for the bailiff, and the notarised and legalised process) on behalf of the Client unless there is a prior written agreement with the Client to do so in respect of such disbursements, fees or charges.

All out of pocket expenses incurred by WES in connection with the engagement including charges for travel, subsistence, accommodation, out of office or on site expenses, telephone calls, fax, postage, bank charges and photocopying will be invoiced to and payable by the Client on an at cost plus applicable taxes basis.

- 3.3 **Estimates** – Any estimate of fees or of the time likely to be involved in performing the engagement will be given by WES in good faith to the Client for planning or other purposes only and the estimate will not be contractually binding on either party.
- 3.4 **Payments on Account** – WES reserves the right to require the Client to pay WES funds in advance to enable WES to pay the disbursements and expenses described in clause 3.2 above (payable either in advance on account or periodically as they become due for payment). WES may apply such funds paid in advance generally to pay its disbursements and expenses for the engagement upon delivery of its invoice or other written notification of its disbursements and expenses to the Client.

- 3.5 **Taxes including VAT** – Insofar as any fees, disbursements and expenses are liable to any applicable taxes which WES may be liable under applicable local law to pay or collect in respect of the engagement, the Client agrees to pay all such taxes and reimburse WES accordingly upon receipt of WES's invoice in respect of such taxes.
- 3.6 **Fee Changes** – WES may vary its hourly rates or any hourly rates given in the letter of acknowledgement or as otherwise previously agreed in writing with the Client, such variations normally arising as a result of the promotion within WES of personnel engaged on the Matter or from WES's practice of reviewing its standard hourly rates from time to time.
- 3.7 **Billing** – WES normally renders interim invoices and a final invoice on completion of WES's engagement, or WES will render its invoices when appropriate as agreed in writing with the Client. Each invoice will attach details of the work undertaken and copies of any other invoices for significant disbursements and expenses described in clause 3.2 above. Unless otherwise stated in the letter of acknowledgement, all WES's invoices will be addressed to the Client.
- 3.8 **Payment** – Unless otherwise agreed in writing with the Client, all WES's invoices (whether interim or final) are due for payment in full on receipt by the Client and the Client is liable for their payment to WES. If payment in full is not received by WES within 30 (thirty) days of the Client's receipt of an invoice, WES will have the right to suspend the provision of its services, to charge interest on any amount overdue at a rate of 2% (two percent) per annum above the base rate of HSBC Bank plc from time to time, and to terminate its engagement in accordance with clause 4.3(a) below.
- 3.9 **Client Money** – Client Money is money which WES receives and holds for a third party in the course of WES's business activities. WES holds Client Money subject to a statutory trust in separately delineated accounts with banks meeting the FCA's criteria for approved banks. WES will retain any interest earned by such Client Money unless otherwise agreed with the Client.

#### 4. **TERMINATION**

- 4.1 **Duration** – Unless otherwise agreed in writing with the Client, the engagement will terminate when all amounts invoiced to the Client in connection with WES's final adjustment or report and any prior payment on account recommendation or adjustment or report on the Matter have been received by WES, unless the engagement is terminated earlier in accordance with clause 4.2 or 4.3 below.
- 4.2 **The Client's Right to Terminate** – The Client may terminate the Engagement at any time by giving not less than 5 (five) business days notice in writing to WES.

4.3 **WES's Right to Terminate** – WES may terminate the engagement forthwith by giving written notice to the Client if:–

- (a) the Client fails to pay any of WES's invoices when due or fails to advance to WES any funds requested by WES in accordance with clause 3.4 above;
- (b) the Client is unable to pay its debts or has a receiver, administrator or liquidator appointed;
- (c) any conflict of interest arises in accordance with clause 5 below; or
- (d) the Client is in breach of any of the other terms of engagement and having received written notice from WES to such effect requiring the Client to remedy such breach within a reasonable time the Client has failed to remedy such breach.

4.4 **Costs and Lien** – On termination of the engagement for any reason:

- (a) the Client shall pay to WES forthwith all fees, disbursements and expenses due to WES up to and including the day of termination incurred in connection with the engagement upon delivery of WES's invoice to the Client; and
- (b) until WES has received payment in full for such invoice, WES shall have a lien over and be entitled to retain all the Client's money, records, documents, deeds, storage media, books, papers and any other information in hard copy or stored electronically in WES's possession relating to the Matter, the engagement and services or otherwise in WES's control.

## 5 **CONFLICTS OF INTEREST**

5.1 **Possible Termination** – In circumstances where there is or may be a conflict of interest between WES and another party involved in the Matter WES may be precluded from acting or may have to cease acting for the Client unless all parties involved in the Matter agree in writing that WES shall continue acting in connection with the Matter. WES will make every reasonable effort to identify any such conflict and advise the Client accordingly prior to issuing the letter of acknowledgement or if identified subsequently, then immediately. In the event that WES subsequently discovers a conflict and is obliged to withdraw from acting for the Client, WES shall be entitled to invoice the Client and be paid in full by the Client for any fees, disbursements, expenses and applicable taxes incurred in the engagement prior to such withdrawal.

5.2 **Acting for Other Clients** – WES will not be prevented or restricted by anything contained in the terms of engagement from acting for other clients in connection with the Matter, unless otherwise agreed in writing with the Client.

## 6. **LIMITATION OF LIABILITY**

6.1 **Skill and care:** WES will exercise reasonable care and skill in the performance of the engagement for the Client. All other such warranties and representations, whether express or implied by law, are excluded to the extent permitted by law.

6.2 **Limit of liability:** WES's liability to the Client in respect of any claim for breach of contract, negligence, breach of trust or statutory duty or any other claim made against WES or its personnel in connection with the Matter and the engagement is limited as follows:

6.2.1 in respect of any claim for personal injury or death caused by WES's negligence, no limit shall apply;

6.2.2 in respect of any claim which results from any fraudulent act (including theft or conversion) by WES, no limit shall apply;

6.2.3 in respect of any other claim, WES's total liability respect of all liability arising in connection with the Matter shall be limited in the aggregate to the lesser of £1,000,000 (One Million Pounds) or 10 (ten) times the value of WES's fees excluding disbursements, charges, out of pocket expenses and applicable taxes incurred in respect of the engagement, and

6.2.4 in any claim made against WES where parties other than WES also share liability for such claim, WES's legal liability for such claim shall be limited to that proportion of any loss or damage so claimed for which it would be just and equitable for WES to contribute having regard to the extent of WES's factual responsibility for such loss or damage, on the basis that those parties shall be deemed to have provided an undertaking in terms no less onerous than this clause,

6.3 **Excluded liability:** Subject to the application of clauses 6.2.1 and 6.2.2 above, WES shall have no liability for:-

6.3.1 any indirect or consequential loss or damage including, without limitation, loss of profits, loss of revenue, loss of opportunity and loss of contracts;

6.3.2 for any claim for breach of contract, negligence, breach of trust or statutory duty or other claim in respect of any delay or failure by WES to perform any of its obligations under the engagement where such failure results directly or indirectly from any negligent or wilful act of the Client or a third party;

6.3.3 for any loss or damage arising from WES's reliance on any information, instruction or assistance given by the Client or resulting from the Client's failure to give any relevant information, instructions or assistance in connection with the Matter or the engagement

6.3.4 for any and all claims the Client may have against WES in respect of which proceedings are not brought within 12 (twelve) months of the date when the Client's cause of action arose.

6.4 **Liability for Third Party Experts:**

"Third party expert" includes but is not limited to lawyers, surveyors, consulting engineers and other experts and service providers and the fees of any third party shall be known as "disbursements".

WES will seek authorisation from the Client prior to instructing any third party expert on the Client's behalf and WES will have no liability to the Client or any third party either for instructing or the performance of any third party expert to assist with the Matter or in the engagement except as follows:

- 6.4.1 WES makes no representation or recommendation to the Client as to any third party expert's experience, suitability or competence for the purpose of any instructions given by or on behalf of the Client to the third party expert.
- 6.4.2 If agreed in the Acknowledgement or subsequently in writing with the Client, WES may act solely as the Client's agent for the purpose of:
- a) advising the Client on and instructing any third party expert chosen by the Client,
  - b) approving the scope and cost of work to be done by such expert, and
  - c) ensuring that such expert's costs are invoiced directly to the Client
  - d) instructing a third party expert immediately on the Client's behalf, without seeking prior authorisation from the Client if, in the sole discretion of WES such an instruction is necessary in order to protect the Client's interests.
- 6.5 **Employees** – The Client acknowledges that WES has an interest in limiting the liability of all its personnel involved in the Matter and the engagement. Accordingly, the Client agrees not to bring any claim of any kind in connection with the engagement against any individual employee of WES, any person seconded to WES or any agent, correspondent, subcontractor or self-employed consultant engaged by WES (together "personnel").
- 6.6 **Third Parties** – The terms of engagement set out the rights and obligations of the Client and WES only. For the purpose of the Contracts (Rights of Third Parties) Act 1999, nothing in the terms of engagement other than clause 6.5 above shall confer or purport to confer any benefit or right to enforce any of the terms of engagement on a third party.
- 6.7 **Force Majeure:** Neither WES nor the Client will be liable to the other for their failure to fulfil their respective obligations under the terms of engagement caused by circumstances outside their reasonable control.
- 6.8 **Reasonableness:** The Client agrees that the foregoing limitations and exclusions of WES's potential liability are reasonable based on:-
- a) the amount of any likely liability to the Client if a breach by WES occurs
  - b) the current and future availability and cost to WES of professional indemnity insurance
  - c) the amount of fees payable to WES, and
  - d) the level of risk assumed by WES in connection with its obligations

in connection with the Matter and the engagement unless otherwise stated in the letter of acknowledgement. Should any limitation or provision contained in this clause 6 be held to be invalid under any applicable statute or rule of law, it shall only to that extent be deemed omitted from the terms of engagement and all other limitations and provisions of such terms shall remain in force.

7. **Claims:** If a claim is made against the Client as a result of, or in connection with, a liability incurred to, or a dispute with, any third party, WES will give the Client all reasonable facilities and co-operation to investigate such claim and will provide the Client with such information and assistance as the Client may reasonably require in connection with such claim, liability or dispute.

8. **Indemnity:** Unless the subject matter of the indemnity provided for by this term has been caused by WES's breach of the terms of engagement, the Client undertakes to indemnify WES and keep it indemnified fully at all times against all liability that may arise from time to time, and against all claims, demands, actions, proceedings, damages, losses, costs and expenses which are made, brought or claimed against or incurred by WES, in connection with the Matter or WES's appointment by the Client or the engagement.
9. **Confidentiality:** WES will keep confidential all information obtained from the Client, except insofar as WES is required by law or other regulatory process to disclose details of the Client's dealings with WES. This clause does not apply to documents or information which WES obtains or develops independently of the engagement or other work done for the Client or which are already in the public domain.
10. **Waiver and Amendment:** No waiver of or amendment to any terms of engagement will be effective unless it is made or confirmed in writing and signed by both WES and the Client.
11. **Soliciting Personnel:** Without WES's approval the Client shall not, during the engagement or within six months after its termination or expiry, offer employment to or otherwise solicit any WES personnel involved in the Matter or the engagement.
12. **Old Files:** Unless the Client instructs otherwise in writing beforehand, WES will be at liberty to destroy all records, files and papers including electronic records but excluding title deeds relating to the Matter, following expiry of 6 (six) years from the end of the engagement or conclusion of the Matter whichever occurs later.
13. **E-mail and the Internet:** Both parties recognise that e-mail transmissions and the Internet cannot be guaranteed as a 100% secure or error-free communications medium, as information may be intercepted, corrupted, lost, destroyed, arrive late, be incomplete, or contain viruses. WES monitors the contents of e-mails sent and received via its network for viruses and unauthorised use of email is controlled through access and delegation controls. E-mail messages sent to or from WES's systems are not confidential to any named individual at WES and WES reserves the right to read them without prior notice. WES recommends that recipients should also check e-mail messages for viruses in accordance with good IT practice.
14. **Software:** The Client will not be entitled to retain any work product or copies of software programs which are the property of WES and which are used by WES in the performance of the engagement. WES will not be entitled to retain copies of any software programs provided by the Client to WES which remain at all times the property of the Client.
15. **Complaints Procedure:** If the Client has any complaint to make about WES's performance of the engagement the Client should first raise it with the WES signatory of the letter of acknowledgement for the Matter and, if the complaint is still not resolved to the Client's satisfaction, with CTA's Chief Executive Officer at Charles Taylor Adjusting Limited, 88 Leadenhall Street, London EC3A 3BA, United Kingdom (e-mail: [complaints@ctplc.com](mailto:complaints@ctplc.com)) who will investigate the complaint and seek to resolve it with the Client.

16. **Governing Law & Jurisdiction:** The terms of engagement will be governed by and interpreted in accordance with the laws of England & Wales and the parties to such terms agree that any unresolved dispute or difference arising in connection with the terms of engagement will be subject to the exclusive jurisdiction of the Courts of England & Wales.

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