

STANDARD TERMS OF BUSINESS

of

WM. ELMSLIE & SON

a trading division of Charles Taylor Adjusting Limited

(April 2018)

1. THE ENGAGEMENT

1.1 The Engagement Terms – In these terms of business:

(a) the expression "the Client" means the insurer or insured or other parties) specified in the acceptance of instruction correspondence issued by WES in relation to its engagement by the Client or with whom CTA has otherwise contracted to provide its services ("the Engagement") in respect of the relevant matter, incident, loss or accident (the "Matter");

(b) 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, or on behalf of, the Client, including any WES personnel (as defined in clause 6.5) involved in the Engagement.

Unless otherwise agreed, these terms of business 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 these terms of business and any other terms agreed with the Client, these terms of business will prevail.

1.2 The WES Team – WES will make reasonable efforts to ensure that those of its personnel notified to the Client are available to work for the Client on the Engagement. 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 reasonable efforts to adhere to any timetable agreed 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 Engagement as regularly as may be appropriate for the Engagement or as otherwise agreed with the Client. WES will send its reports to the Client at the address notified to WES by the Client from time to time or, where clause 1.5 applies, to the relevant third party.

1.5 Instructions via third parties – Unless otherwise instructed by the Client, where WES is instructed by a third party on behalf of the Client, WES shall be entitled to accept and rely on instructions from such third party as if those instructions were given by the Client and the Client hereby expressly authorises WES to liaise and share information (including any of its reports relating to the Matter) with any such third party.

For the avoidance of doubt, where WES provides a report to a third party pursuant to this clause, it shall be deemed to have provided such report to the Client.

- 1.6 **CTA Sub-Contractors** – The Client hereby expressly agrees that WES may engage or use contractors, sub-contractors or other persons to provide the services for which it has been engaged by the Client.
- 1.7 **Third Party Experts** – Where the Client appoints third party experts in connection with the Engagement (a “Third Party Expert”), or requests WES to appoint such a Third Party Expert on its behalf, the Client hereby expressly authorises WES to instruct, liaise and share information with any such Third Party Expert to the extent WES considers it reasonably necessary in connection with the Engagement.

2. THE CLIENT’S RESPONSIBILITIES

- 2.1 **Support** – If WES is required to work at the Client or any third party premises, the Client will obtain all consents and / or approvals required for WES personnel to access such premises and shall ensure that WES’s personnel are provided with such facilities and equipment as are reasonably necessary to enable them to perform the Engagement 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 (VAT) 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 a “no cure no pay” basis plus applicable taxes. Where any of WES’s fees have been calculated on a “time and trouble” basis, such fees may include, without limitation, 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** – CTA’s fees will exclude any fees payable by the Client for any Third Party Experts which the Client agrees will, unless otherwise agreed, be payable directly by the Client to the relevant Third Party Expert. 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 on account of its fees and 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 fees, disbursements and expenses for the Engagement upon delivery of its invoice or other written notification of its fees, disbursements and expenses to the Client. Further, WES may apply any such funds to the settlement of any fees due to WES in respect of the Engagement which remain outstanding beyond the due date for payment of such fees.
- 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 as applicable from time to time including, without limitation, in the event of promotion of WES personnel or as a result of any periodic review of such rates by WES.
- 3.7 **Billing** – Unless otherwise agreed, if:
- (a) WES charges on a “no cure no pay” basis, an invoice will be issued at the end of the Engagement and only when recovery has been received; or
 - (b) WES charges on “time and trouble” basis then WES normally renders interim invoices on a quarterly basis and a final invoice on completion of the 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. Notwithstanding the foregoing, WES reserves the right to issue interim invoices on a more frequent basis for work performed to date. Unless otherwise agreed, all WES's invoices will be addressed to the Client.

- 3.8 **Payment** – 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, in addition to any statutory rights available to it, to suspend the provision of its services and / or to terminate its Engagement in accordance with clause 4.3(a) below and / or to exercise a lien in accordance with clause 4.4(b) below, regardless of whether the Engagement has been terminated or not.

If arrangements are made for a third party to pay any of WES's fees or disbursements, the Client shall remain primarily responsible for the payment of any remaining fees or disbursements and any charges that WES may incur to the extent that the third party does not pay WES's bill in full, or WES is unable to accept payment from it.

3.9 **Client Funds**

Where WES receives funds from or for a Client, it shall hold such funds as agent of the Client. WES will retain any interest earned on such funds held on the Client's behalf, unless otherwise agreed with the Client.

4. **TERMINATION**

4.1 **Duration** – The Engagement will terminate when all amounts invoiced to the Client in connection with WES's Engagement 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 30 (thirty) days' notice in writing to WES.

4.3 **WES's Right to Terminate** – WES may terminate the Engagement immediately 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;
- (d) WES is prohibited from performing the Engagement due to applicable laws and regulations, including sanctions; or
- (e) the Client is in breach of any of these terms of business and having received written notice from WES to such effect requiring the Client to remedy such breach within the time reasonably specified in such notice, the Client has failed to remedy such breach in such time.

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 and the Engagement 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 accepting an Engagement 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 these terms of business 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. 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 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 in respect of all liability arising in connection with the Engagement 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, 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 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 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 these terms of business or 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 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 Engagement;
 - 6.3.4 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** – WES will have no liability to the Client or any third party either for the instructing or performance of, or any opinions, statements, acts or omissions of, any Third Party Expert, nor in respect of its own opinions, statements, acts or omissions insofar as these depend upon, are based upon, are derived from or are a consequence of opinions, statements, acts or omissions of any such Third Party Expert. Further, WES makes no representation or recommendation to the Client as to any Third Party Expert's experience, suitability or competence.
- 6.5 **Liability of WES Personnel** – The Client acknowledges that WES has an interest in limiting the liability of all its personnel involved in 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").
- 6.7 **Force Majeure** – Neither WES nor the Client will be liable to the other for their failure to fulfil their respective obligations under these terms of business or the Engagement caused by circumstances outside their reasonable control.
- 6.8 **Reasonableness** – The Client agrees that the foregoing limitations and exclusions of CTA'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 Engagement. 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 business and all other limitations and provisions of such terms shall remain in force.

6.9 **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.

6.10 **Indemnity** – Unless the subject matter of the indemnity provided for by this clause 6.10 has been caused by WES’s breach of these terms of business, 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 Engagement.

7. MISCELLANEOUS

7.1 **Compliance with Applicable Laws** – Both parties will comply with all legal and regulatory requirements applicable to them and/or their activities in the jurisdictions in which they operate, including without limitation, any laws or regulations relating to financial crime, bribery and corruption, sanctions and anti-trust. Further, both parties shall maintain adequate policies and procedures to prevent breaches of any such applicable laws or regulations by their employees, representatives and agents.

7.2 **Third Parties** – The terms of business set out the rights and obligations of the Client and CTA 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 business on a third party.

7.3 **Confidentiality** – WES will keep confidential all information obtained from the Client, except insofar as WES is required by law, regulation, a court of competent jurisdiction or any regulatory or governmental authority to disclose such information. 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, which it receives from a third party which as far as it is aware is not under a duty of confidentiality to the Client or which are already in the public domain.

7.4 **Waiver and Amendment** – No waiver of or amendment to any of these terms of business will be effective unless it is made or confirmed in writing and signed by both WES and the Client.

- 7.5 **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.
- 7.6 **Record Retention** – 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 and/or the Engagement, following expiry of 6 (six) years from the end of the Engagement.
- 7.7 **E-mail and the Internet** - WES and the Client 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 or other malware. WES monitors the contents of e-mails sent and received via its network for viruses or other malware 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 or other malware in accordance with good IT practice.
- 7.8 **Data** – It is acknowledged that at the time of entering into these terms and conditions, the European General Data Protection Regulation (GDPR) has been published but does not come into force until 25 May 2018. The GDPR is prescriptive in relation to Data Processing provisions and therefore this clause of the terms and conditions will require renegotiation prior to 25 May 2018. In the interim, and to the extent that WES receives any personal data in the course of the Engagement, it shall be deemed to be a data processor in respect of such data. The Client confirms that it has obtained all necessary consents to allow WES to process any such data so received by WES and consents to the transfer of such data outside of the EEA where necessary for the performance by WES of the Engagement. WES shall maintain appropriate technical and organisational measures to protect any such data it receives in the course of the Engagement.
- 7.9 **Software** – All software programs used by WES, or made available to the Client by WES, in the course of the Engagement (including any modifications, enhancements or upgrades thereto) shall remain at all times the property of WES. To the extent that Client provides WES with access to any of its software programs in the course of the Engagement, these shall remain at all times the property of the Client.
- 7.10 **Complaints Procedure** – If the Client has any complaint to make about WES’s performance of the Engagement, the Client should first raise it with its primary WES contact 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 (e-mail: complaints@ctplc.com) who will investigate the complaint and seek to resolve it with the Client.

- 7.11 **Governing Law and Jurisdiction** - These terms of business (and any non-contractual obligations arising out of or in connection with them) will be governed by and interpreted in accordance with the laws of England and Wales and the parties to such terms agree that any unresolved dispute or difference arising in connection with these terms of business (and any non-contractual obligations arising out of or in connection with them) will be subject to the exclusive jurisdiction of the Courts of England and Wales.

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