

Richards Hogg Lindley

Average Adjusters and Marine Claims Consultants

STANDARD TERMS OF BUSINESS

of

RICHARDS HOGG LINDLEY

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 ship owner, ship manager, ship operator, insurer or other party(ies) named in the Acknowledgement of Instruction letter(s) (the "Acknowledgement") issued by RHL, and
- the abbreviation “RHL” means Richards Hogg Lindley, 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 RHL personnel involved in the matter, loss or accident in relation to which RHL is instructed to provide its services to the Client (“the Matter”) on the terms contained in this document and in the Acknowledgement from RHL 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 RHL 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 RHL Team** – RHL will make every reasonable effort to ensure that its personnel named in the Acknowledgement or otherwise notified to the Client are available to work for the Client on the Matter. RHL 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** – RHL will make every reasonable effort to adhere to any timetable agreed either in the Acknowledgement or elsewhere in writing with the Client. For the avoidance of doubt, time is not of the essence to RHL's performance of the engagement unless RHL has expressly agreed otherwise in writing.

1.4 **Reporting** – RHL 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. RHL 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 RHL 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 RHL is required to work at the Client's premises, the Client will ensure that RHL'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 RHL all information, instructions and assistance reasonably necessary to enable RHL to perform the engagement and the Client will ensure that its appropriate personnel are available to RHL for such purposes. The Client hereby acknowledges that RHL will rely on such information, instructions and assistance when performing the engagement.
- 2.3 **Payment** – The Client will pay RHL'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, RHL's fees will be charged to the Client on a time basis at the appropriate hourly rates plus applicable taxes for all personnel working on the engagement. Such fees will include time spent by such 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** – RHL's fees will exclude any fees payable 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 and expenses incurred by RHL in connection with the engagement including charges for travel, subsistence, accommodation and out of office or on site expenses such as telephone calls 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 RHL 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** – RHL reserves the right to require the Client to pay RHL funds in advance to enable RHL 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). RHL 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 RHL 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 RHL accordingly upon receipt of RHL's invoice in respect of such taxes.
- 3.6 **Fee Changes** – RHL 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 RHL of personnel engaged on the Matter or from RHL's practice of reviewing its standard hourly rates from time to time.
- 3.7 **Billing** – RHL normally renders interim invoices and a final invoice on completion of RHL's engagement, or RHL 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 Acknowledgement, all RHL's invoices will be addressed to the Client.
- 3.8 **Payment** – Unless otherwise agreed in writing with the Client, all RHL'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 RHL. If payment in full is not received by RHL within 30 (thirty) days of the Client's receipt of an invoice, RHL 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 RHL receives and holds in the course of carrying on insurance mediation activity, or which RHL holds as client money in accordance with the United Kingdom Financial Services Authority's ("FSA") client money rules. RHL holds Client Money subject to a statutory trust. All Client Money is held in separately delineated accounts with banks meeting the FSA criteria for approved banks. RHL will credit such Client Money with interest at the rate of interest earned by such Client Money in an Instant Access Business Reserve or Deposit Account.

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 RHL's final adjustment or report and any prior payment on account recommendation or adjustment or report on the Matter have been received by RHL, 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 RHL.
- 4.3 **RHL's Right to Terminate** – RHL may terminate the engagement forthwith by giving written notice to the Client if:–
- (a) the Client fails to pay any of RHL's invoices when due or fails to advance to RHL any funds requested by RHL 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 RHL 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 RHL forthwith all fees, disbursements and expenses due to RHL up to and including the day of termination incurred in connection with the engagement upon delivery of RHL's invoice to the Client; and
- (b) until RHL has received payment in full for such invoice, RHL 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 RHL's possession relating to the Matter, the engagement and services or otherwise in RHL's control.

5 CONFLICTS OF INTEREST

5.1 Possible Termination – In circumstances where there is or may be a conflict of interest between RHL and another party involved in the Matter RHL 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 RHL shall continue acting in connection with the Matter. RHL 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 RHL subsequently discovers a conflict and is obliged to withdraw from acting for the Client, RHL 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 – RHL 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: RHL 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: RHL'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 RHL 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 RHL'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 RHL, no limit shall apply;
 - 6.2.3 in respect of any other claim, RHL'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 RHL's fees excluding disbursements, expenses and applicable taxes incurred in respect of the engagement, and
 - 6.2.4 in any claim made against RHL where parties other than RHL also share liability for such claim, RHL'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 RHL to contribute having regard to the extent of RHL'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 and of any duty or liability RHL may have under the FSA Insurance Conduct of Business (ICOB) requirements or other Regulators' similar requirements, RHL 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 RHL 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 RHL'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 RHL 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** - RHL 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 RHL 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, RHL 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.
- 6.5 **Employees** – The Client acknowledges that RHL 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 RHL, any person seconded to RHL or any agent, correspondent, subcontractor or self-employed consultant engaged by RHL (together "personnel").
- 6.6 **Third Parties** – The terms of engagement set out the rights and obligations of the Client and RHL 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 RHL 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 RHL's potential liability are reasonable based on:-
- a) the amount of any likely liability to the Client if a breach by RHL occurs
 - b) the current and future availability and cost to RHL of professional indemnity insurance
 - c) the amount of fees payable to RHL, and
 - d) the level of risk assumed by RHL in connection with its obligations

in connection with the Matter and the engagement unless otherwise stated in the 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, RHL 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 RHL's breach of the terms of engagement, the Client undertakes to indemnify RHL 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 RHL, in connection with the Matter or RHL's appointment by the Client or the engagement.

9. **Confidentiality** - RHL will keep confidential all information obtained from the Client, except insofar as RHL is required by law or other regulatory process to disclose details of the Client's dealings with RHL. This clause does not apply to documents or information which RHL 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 RHL and the Client.
11. **Soliciting Personnel** - Without RHL'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 RHL personnel involved in the Matter or the engagement.
12. **Old Files** - Unless the Client instructs otherwise in writing beforehand, RHL 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. RHL monitors the contents of e-mails sent and received via its network for viruses and unauthorised use. E-mail messages sent to or from RHL's systems are not confidential to any named individual at RHL and RHL reserves the right to read them without prior notice. RHL 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 RHL and which are used by RHL in the performance of the engagement. RHL will not be entitled to retain copies of any software programs provided by the Client to RHL which remain at all times the property of the Client.
15. **Regulation** - As a trading name of CTa (FRN 406514), RHL is regulated in the United Kingdom as an Appointed Representative of Charles Taylor Consulting plc under the Insurance Mediation Directive ("IMD") regulations. Charles Taylor Consulting plc (FRN 312290) is authorised and regulated by the FSA to perform 'Regulated Activities' under the IMD regulations.
16. **Compensation** - RHL is not covered by the United Kingdom Financial Services Compensation Scheme (FSCS).

17. **Complaints Procedure** - If the Client has any complaint to make about RHL's performance of the engagement the Client should first raise it with the RHL signatory of the letter of acknowledgement for the Matter and, if the complaint is still not resolved to the Client's satisfaction, the Chief Executive Officer of the Client is invited to write to CTA's Chief Executive Officer at Charles Taylor Adjusting Limited, 88 Leadenhall Street, London EC3A 3BA, United Kingdom (e-mail: complaints@ctcplc.com) who will investigate the complaint and seek to resolve it with the Client.
18. **Financial Ombudsman Service** - In respect of 'Regulated Activities' under the IMD regulations, if the Client is still not satisfied with the outcome of its complaint, the Client may have the right to refer the matter to the Financial Ombudsman Service at South Quay Plaza, 183 Marsh Wall, London E14 9SR, United Kingdom.
19. **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.

January 2010 © Richards Hogg Lindley
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