



elliswhittam

Employment Law / HR / Health & Safety

FCA and Service Agreement Terms



Ellis Whittam Limited

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1. Introduction

This booklet sets out the Terms on which we will provide our Services to you.

It is an important document and should be read and understood by Clients because it will form part of the contract between us, together with the terms of the signed Service Agreement or order form.

Our packaged Employment Law & HR Support and Health & Safety Support services include optional legal expenses insurance.

A Policy Summary and details relating to those insurance services are set out in this booklet.

2. Policy Summary of Our Legal Expenses Insurance

Legal Expenses Insurance & Ellis Whittam

We offer *legal expenses insurance* as an *option* to clients that subscribe to our Employment Law & HR Support service. Subject to policy terms, *legal expenses insurance* covers the costs, settlements and awards incurred in pursuing or defending claims that arise from employment disputes.

We also offer *legal expenses insurance* as an *option* to clients that subscribe to our Health & Safety Support service. Subject to policy terms, that insurance covers the costs of defending a health & safety prosecution.

This document provides a summary of the policy cover contained within the legal expenses insurance. It does not include the full terms and conditions of the contract which can be found in the policy document.

Who Regulates Ellis Whittam?

We are authorised and regulated by the Financial Conduct Authority. Our Registration Number is 310779. You can check these details on the FCA's Register by visiting the FCA's website <http://www.fsa.gov.uk/register/firmSearchForm.do> or by contacting the FCA on 0800 111 6768.

Why Is Ellis Whittam Regulated By The FCA?

If an organisation offers insurance (or indemnity or guarantee), then it is a legal requirement that it is regulated by the FCA.

What Does The FCA Authorise Ellis Whittam To Do?

We are permitted to arrange, advise on, deal as agents of insurers and clients and assist in claims handling with respect to non-investment insurance policies with a single insurer for legal expenses.

Who Is The Insurer?

The insurer is Great Lakes Reinsurance (UK) PLC. Great Lakes Reinsurance (UK) PLC is registered in England and Wales No. 2189462. Registered office at Plantation Place, 30 Fenchurch Street, London, EC3M 3AJ. Great Lakes Reinsurance (UK) PLC is authorised and regulated by the Financial Conduct Authority. FCA Register No. is 202715.

The insurance policy is administered by Cigna Legal Protection of First Floor, Chancery House, St Nicholas Way, Sutton, Surrey SM1 1JB. Cigna Legal Protection is a trading style of Cigna Insurance Services (Europe) Limited which is registered in England and Wales No. 04617110. Cigna Insurance Services (Europe) Limited is authorised and regulated by the Financial Conduct Authority. FCA Register No. is 310671.

What are the Insurance Policy & Terms?

Legal expenses insurance is provided subject to the terms and conditions of the insurance policy. Please read the policy terms at <http://www.elliswhittam.com/insurance-legal-expenses-insurance/> (password = LEITerms11). The policy terms form part of our contract with you as well as the contract between you and the insurer.

How Much Does The Insurance Cost?

We charge a fixed fee per employee per insurance year. For current rates please ask your contact at Ellis Whittam or see your detailed proposal document.

Legal expenses insurance is charged for each insurance year annually in advance. When you first join us we will send you an invoice for legal expenses insurance to cover you for 12 months from date of joining.

Our Remuneration

Prior to the conclusion of each insurance contract, or upon renewal, we will remind you of your right to be advised of the level of commission which we receive from underwriters. You are entitled, at any time, to request information regarding any commission which we may have received as a result of placing your insurance business.

What Are The Insurance Limits?

Our standard individual claim limit is £150,000* in total for any one claim. For employment dispute insurance that is for representation costs, settlements and awards added together. For health & safety prosecutions cover is for defence legal costs.

There are inner limits to the health and safety insurance that provide additional cover for fees for intervention and initial representation. Cover for Fees for Intervention (FFI) is limited to £5,000 and cover for Initial Representation is limited to £2,500.

There is an aggregate limit (for all claims) of £1,000,000 in total in the policy year.

The territorial limits that apply to the insurance cover are the United Kingdom of Great Britain and Northern Ireland, the Isle of Man and the Channel Islands.

Is The Insurance Suitable For You?

Please note that we are not providing you with a personal recommendation as to whether the insurance services provided are suitable for your specific needs. Our insurance meets the demands and needs of most organisations that wish to ensure that they have protection against the cost of defending Employment Tribunal claims and Health & Safety prosecutions. As such we believe that this insurance cover is suitable for an organisation of your size, situation and circumstances. However please note that the £150,000 cap on each claim, whilst considered suitable for the majority of employment claims, might not be suitable in the case of a discrimination claim (and limited other cases) where there is no cap on the compensation that an Employment Tribunal can award. In addition, if there are multiple claims in a year then the total cap of £1,000,000 could be exceeded. Similarly, the limits set for defence costs incurred in defending health & safety prosecutions might be exceeded in the event of a major incident and/or multiple incidents in one year.

Accordingly, if you wish to increase your insurance cover / limit of indemnity to allow for such possibility, you may be able to do so. In most cases, we can arrange this in return for a higher fee/premium.

*If you wish to obtain a quote for increased cover in this way please put that request in writing (by email or by post) to Insurance Services at Ellis Whittam: Email: cmt@elliswhittam.com.

Your Duty of Disclosure

Insurance is based upon information provided to the insurance company and Ellis Whittam - and you must therefore ensure that all such information is complete and accurate and that any facts that may influence the Insurer's decision are disclosed. Examples of circumstances which you must tell us about are given in clause 3.6 of the Service Agreement terms, below.

Cover

Subject to limits and the terms of the policy and the cover purchased, the Insurance applies in respect only of claims made during the period of insurance and covers legal expenses and awards of compensation arising from employment disputes and/or legal expenses arising from appeals against health and safety prohibition and improvement notices and/or defence to criminal prosecution and/or certain proceedings involving HMRC relating to taxation and/or certain data protection proceedings and/or claims for compensation for bodily injury suffered by an individual named client.

What is Excluded from Cover?

The insurance will not provide cover unless you notify us immediately you become aware of an event or circumstance that may give rise to a claim.

In all employment dispute cases, you must obtain our advice as to the procedure to be adopted and follow and act on that advice with due diligence and, in particular, you must obtain our specific authorisation before, amongst other things, dismissing an employee, initiating redundancies or altering contract terms.

If you do not seek and/or follow our advice in respect of an employment issue/problem/dispute then your defence to a claim is unlikely to have reasonable prospects of success. If a claim does not have reasonable prospects of being successfully defended the claim is excluded from insurance cover.

You must make full, frank and honest disclosure of all relevant and material facts to Ellis Whittam when seeking advice from us and in the process of defending any claims. Examples of circumstances which you must tell us about are given in clause 3.6 of the Service Agreement terms, below. The examples in clause 3.6 of the Service Agreement terms are examples only and are not exhaustive. There may be other matters which will invalidate the insurance policy if you fail to tell us about them. If you fail to make full, frank and honest disclosure (and if you withhold material information from us) then Insurance will not apply.

For full details of claims excluded from cover please see the terms of the policy. We draw your attention in particular to the fact that the Insurance does NOT cover claims connected with or arising from events that occurred before the policy commenced or that existed at that time and which in either case you knew or ought reasonably to have known might give rise to a claim by or against you. For example, the Insurance does not cover claims arising from dismissals or changes of contract terms before the policy commenced nor claims arising from previous accidents or existing prosecutions or disputes with employees or dismissals decided upon or planned before the policy commenced.

Awards and compensation which are covered by the Insurance in respect of an employment dispute exclude, in particular, arrears of pay, redundancy payments, money due or properly payable and arising from obligations under a contract of employment and awards under the equal pay legislation.

Also excluded are fines, exemplary and punitive damages or other penalties imposed by a court or tribunal whether in respect of employment disputes or health & safety or otherwise.

Claims Made

The Insurance works on a "Claims Made" basis. The definition of making a claim is Ellis Whittam being advised of the receipt of an Employment Tribunal Claim Form (ET1), enforcement notice or notice of prosecution. So long as this occurs prior to the expiry of the policy, cover continues for that claim. The policy therefore excludes any issues that are being dealt with but have not yet resulted in an ET1, enforcement notice or notice of prosecution before the expiry of the period of insurance.

What If You Have A Complaint?

We aim to provide a very high level of service at all times. However if you have reason to make a complaint about our service you should make a complaint in accordance with our complaints procedure which you can get a copy of by emailing cmt@elliswhittam.com or calling our Client Services Manager on 0845 226 8393

You may be entitled to refer the matter subsequently to the Financial Ombudsman Service. You can contact the Financial Ombudsman Service by telephone on 0800 0234567 and further information is available at <http://www.financialombudsman.org.uk/> If you do decide to refer the matter to the Financial Ombudsman Service your legal rights will not be affected.

Compensation Arrangements

We are covered by the Financial Services Compensation Scheme. You may be entitled to compensation from the scheme if we cannot meet our obligations. This depends on the type of organisation and the circumstances of the claim. Insurance advising and arranging is covered for 90% of the whole claim, without upper limit. For compulsory classes of insurance, insurance advising and arranging is covered for 100% of the claim, without any upper limit. Further information about Compensation Scheme arrangements is available from the FSCS on 0800 678 1100 or by visiting <http://www.fscs.org.uk>.

Great Lakes Reinsurance (UK) PLC is also covered by the Financial Services Compensation Scheme.

Cancelling Your Insurance

If having examined your policy you decide not to proceed, you will have 14 days to cancel it starting on the day you receive the policy documentation.

You will also have 14 days to cancel the policy after every renewal date.

If you wish to cancel the insurance element of your service agreement with Ellis Whittam, you may not receive a pro rata refund of premium. We may also keep an amount that reflects the administrative costs of arranging and cancelling the policy.

Block Transfers

In respect of some classes of insurance we may operate block insurance arrangements in order to provide competitive terms. On occasions it will be necessary for us to transfer such blocks from one insurer to another where this is beneficial for our clients. By working with us you accept that we may do this.

Protecting Your Money

Prior to your premium being forwarded to the insurer, and for your protection, we either hold your money as an agent of the insurer (in which case your policy is treated as being paid for) or we hold it in a client bank account on trust for you. We reserve the right to retain interest earned on this account.

Underwriting Criteria

Two of the key underwriting criteria are the number of employees and the average annual salary of the workforce and these figures must include part-timers and home workers etc. If you wish cover to extend to directors then figures must include directors pay too.

3. Service Agreement Terms

We provide our Services subject to these Terms. These terms and conditions form part of your contract with Ellis Whittam Limited, together with the terms of your signed Service Agreement or order form.

1 Definitions and Interpretation

1.1 In these Terms the following expressions have the following meanings:

Additional Services

Any services to be provided by the Company to the Client which are specified in an Additional Services schedule issued by the Company to the Client and/or in the Service Agreement.

Associated Business

A subsidiary or holding company of the Client or a subsidiary of such holding company as listed in the Service Agreement or on a separate sheet annexed to it as being covered by these Terms.

Client

The company, person or other organisation which enters the Service Agreement with the Company and any Associated Business where appropriate.

Company

Ellis Whittam Limited whose registered office is at Woodhouse, Aldford, Chester, Cheshire CH3 6JD.

Service Agreement

The contract made between the Company and the Client for the provision of the Services comprising the Service Agreement form or other Company order form, the FCA & Service Agreement Terms booklet (including these Terms and any documents referred to herein for instance the terms of any insurance policy where insurance is to be provided) and any sections of the final proposal letter from the Company to the Client setting out details of the Services which the Client engages the Company to provide .

Employees

Employees of the Client and of any Associated Business excluding all directors and partners unless otherwise agreed. Directors and/or salaried partners (where they are employees at law) will only be included in the definition of Employees if they are specifically indicated as included in the Service Agreement.

Employment Claim

A claim made by an Employee in the Employment Tribunal or by the Client against an Employee in respect of which legal expenses insurance is claimed by the Client and accepted by the Insurer pursuant to the terms and conditions of the insurance policy referred to in clause 3.1 of these Terms.

Fee

The total fee stated in the Service Agreement or such other fee as is agreed between the Company and the Client for the provision of the Services or any part thereof from time to time.

Intellectual Property Rights

All patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-ups, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Transitional Period

The period between the Client agreeing to enter a Service Agreement with the Company upon the expiry of the Client's existing contract with a third party providing for the provision of services similar to or the same as those provided by the Company and the actual expiry of that third party contract, up to a maximum period of 12 months.

Insurance

The insurance policy which the Company agrees to seek to arrange or which is actually arranged by the Company for the Client.

Insurer

The insurer to whom the Company in its sole discretion decides to put a proposal on behalf of the Client for Insurance and where Insurance is arranged for a Client pursuant to such a proposal, the Insurer who provides that Insurance.

Service Period

In relation to any part of the Services that is to be supplied for a fixed term, the period stated in the Service Agreement plus any Transitional Period during which the Company agrees to provide the Services to the Client and such extension of that period as provided for by these Terms or otherwise agreed between the Company and the Client.

Services

Those services that the Company agrees to provide to or put in place for the Client from time to time including but not limited to those listed in the Service Agreement and more particularly described in the Company's proposal letter where one exists as annexed to the Service Agreement but excluding any Additional Services, which will be provided subject to the separate Additional Services terms. In relation to any Transitional Period the Services shall mean the limited services which the Company agrees to provide during that period.

Start Date

The date upon which the Company agrees to start providing Services to the Client.

Terms

These conditions.

- 1.2 Except where the context otherwise requires references to persons includes bodies corporate, unincorporated associations and partnerships and the masculine gender includes the feminine and neuter and references to the singular include the plural and vice versa.

2 Appointment

- 2.1 During any Transitional Period the Company will provide the Client with a limited level of Services. The Company shall at its sole discretion be entitled to decide upon the extent of the limited Services to be provided in the Transitional Period.
- 2.2 The Company hereby agrees to provide the Services to the Client and where expressly agreed in writing by the Company to any Associated Business subject to these Terms and if it is agreed that the Client wishes to take out Insurance the Company will put a proposal to the Insurer on the Client's behalf. For the avoidance of doubt these Terms shall apply as between the Company and the Client not only to the Services set out in this agreement but also to any other Services which the Company performs or arranges for the Client after the date of this agreement (but excluding any Additional Services).
- 2.3 The Service Agreement will commence on the Start Date and as regards those Services that are to be provided for a fixed period will continue for the Service Period unless terminated prior to the expiration of the Service Period or suspended in accordance with these Terms and in relation to those Services that are one-off Services or are otherwise not agreed to be provided over a fixed period the Services will be provided in a reasonable time by the Company unless or until the Service Agreement is terminated or the Company suspends the provision of the Services under these Terms.
- 2.4 The Company will carry out its obligations with reasonable care, skill and attention.
- 2.5 The Client shall provide all information and instructions reasonably requested by the Company within the timeframe requested by the Company.
- 2.6 In the event that the Insurer declines to insure the Client, the Company may elect either to terminate this Agreement in accordance with clause 6.3 below or to continue this Agreement on the basis that the services will be provided but without the benefit of insurance. The Services would be as set out herein or otherwise agreed between the Parties but excluding any obligation to seek to arrange insurance. The Client shall not be entitled to terminate if the Insurer declines to insure the Client.
- 2.7 The Client shall provide the Company and/or its agents, employees or subcontractors with such access to the Client's premises as the Company reasonably requires in connection with the provision of the Services.

3 Legal Expenses Insurance

- 3.1 If it is agreed that the Company will put forward a proposal for Insurance on behalf of the Client (in which regard the Service Agreement shall be definitive evidence as to whether such service has been requested or not) the Company will put such a proposal to the Insurer using the information provided by the Client. Any Insurance which the Insurer agrees to provide to the Client will be subject to the terms, conditions, exclusions and limitations of the Insurer's policy of insurance and the Company shall not be party to the insurance contract between the Client and the Insurer. The Company shall not be liable to the Client to the extent that the Insurer will not provide cover and the failure or refusal by the Insurer to provide cover shall not entitle the Client to terminate the Service Agreement. The Company is not obliged to seek Insurance for the Client from any insurer other than the Insurer.
- 3.2 The Client's rights under any Insurance which is put in place pursuant to the Service Agreement in relation to an Employment Claim, health and safety dispute or criminal prosecution (to the extent that the same are covered by the Insurance) are subject to and conditional on these Terms and the terms and conditions set out in the Insurer's insurance policy.
- 3.3 The sum specified in the Service Agreement for Insurance is the fee charged by the Insurer as at the date of this Service Agreement however the sum due in respect of Insurance might vary up or down, as specified by the Insurer from time to time. The Company will invoice the Client for the sum due in respect of any Insurance obtained for the Client plus Insurance Premium Tax and the Client shall pay that invoice within 14 days of the date of the invoice. In this regard time shall be of the essence. The Company will pay the Insurer the required amount for acquiring the Insurance but in the event that the Client does not pay the Company's invoice in respect of the Insurance strictly in accordance with this clause and continues to fail to do so after 45 days of date of invoice the Company shall be entitled to cancel the Insurance arranged for the Client.
- 3.4 Where Insurance is taken out by the Client the amount payable in respect of the same shall initially provide cover for a 12 month period from the date of payment. If in accordance with the Service Agreement the cover is to continue beyond this date the Company will invoice the Client for the premium and Insurance Premium Tax for the next 12 months upon expiry of the previous 12 month period. The Company's invoice in this regard shall be payable in accordance with clause 3.3 above and the provisions of clause 3.3 as regards cancellation of the Insurance shall apply in the event that the Company's invoice is not paid strictly in accordance with clause 3.3.
- 3.5 Insurance is purchased annually on the Client's behalf by the Company. The Client will be asked to complete an annual declaration form so that the Insurer can issue correct Insurance cover for the Client. It is important that significant changes (+/- 15%) to the number of staff the Client employs are notified promptly to the Company. If the Client is in any doubt about what constitutes a significant change it should ask the Company.
- 3.6 Examples of circumstances which the Client must tell the Company about prior to the Company putting forward a proposal for Insurance on its behalf or on the proposed renewal of any Insurance include: any recent or proposed dismissal; any recent redundancies or proposed redundancies; any worker at the final written warning stage of the disciplinary procedure; any worker that was made a complaint stating that a circumstance has arisen that has varied their terms and conditions of employment; any worker who has made a complaint relating to alleged non-payment of wages or holiday pay or any other sum; or any worker who has made a complaint relating to discrimination on the grounds of sex, race, age, religion, religious beliefs, sexual orientation or disability. This list is not exhaustive. If the Client is in doubt it should contact the Company.
- 3.7 If an insurance policy is issued it will only cover employees working in the UK and does not provide cover for staff employed outside the UK.
- 3.8 The Client's attention is drawn to the full terms and conditions of the insurance policy (a copy of which has been provided to it or is available at <http://www.elliswhittam.com/insurance-legal-expenses-insurance/> (password = LEITerms11) or on request and which are incorporated into the Service Agreement insofar as it relates to Insurance and in particular the conditions relating to claims. Using the Client's own legal advisers (other than the Company) may prejudice the policy cover. The Client must not incur any costs prior to receiving the Insurer's written consent. The Client must not discuss or make any offer of settlement without the Insurer's consent. The Client must always act to limit the effect of anything which may lead to a claim under the insurance policy to the extent that one is issued.
- 3.9 The extent of the cover provided under the Insurance is as set out in the terms of the insurance policy referred to in clause 3.8 above. The Insurance arranged pursuant to the Service Agreement will only cover those matters stated to be covered in the terms of the insurance policy. You are referred to Section 2 of this document for a non-exhaustive summary of what the Insurance Policy does and does not cover.

4 On-line Absence / Holiday Management System

- 4.1 The following terms apply where the Client requests the provision of on-line absence / holiday management software ("EW Assist") provided by a third party on behalf of the Company.
- 4.1.1 The EW Assist absence / holiday software is an on-line system designed to assist employers in managing employee holiday and sickness absence. This software is currently provided to the Client by CMPCON Limited on behalf of the Company ("the EW Assist Service").
 - 4.1.2 The Company reserves the right to withdraw the EW Assist Service without liability if no separate Fee is charged by the Company in respect of the same and if the Client ends its contract with the Company for the provision of other Services as set out herein.
 - 4.1.3 The Client will make available to CMPCON Limited (or any replacement provider of this service) all necessary information facilities and data reasonably necessary and requested for such licensing, training, maintenance and configuration as is required in relation to this service.
 - 4.1.4 The Client agrees not to make unauthorised copies of the EW Assist software and only to use it for its own legitimate purpose in the course of its business, in accordance with the training provided, for the intended purposes and in accordance with these Terms.
 - 4.1.5 The Company will use its reasonable endeavours to procure the provision of the EW Assist Service to the Client for the fixed period which other Services are provided by the Company to the Client. The Company shall be entitled to terminate the provision of the EW Assist Service immediately and without liability if CMPCON Limited (or any replacement provider of this service) ceases to trade and shall otherwise be entitled to terminate the provision of the EW Assist Service upon giving not less than seven days written notice to the Client. The provision of the EW Assist Service shall terminate automatically if it has been provided free of charge to the Client and the provision of any of the other Services which are provided for a fixed period are terminated or not renewed for any reason. The provision of the EW Assist Service shall be suspended if the provision of any other Services is suspended for any reason.
 - 4.1.6 Subject to the other provisions of clause 4 the EW Assist Service shall automatically renew for a further period equivalent to the immediately preceding fixed period and on the same terms unless at least three months prior to the expiration of the current fixed period the Client gives the Company written notice that it does not wish to renew this service.
 - 4.1.7 All queries relating to the EW Assist Service should be addressed to the Company at Woodhouse Aldford Cheshire or via email to ewassist@elliswhittam.com.
 - 4.1.8 The Client will indemnify the Company against any losses, claims, costs, liabilities, damages or expenses incurred by or made against it by CMPCON Limited or any other third party in connection with the unauthorised use by the Client of the EW Assist software.
 - 4.1.9 The Company is not the provider of the EW Assist Service and the Company has no control over the provision of the same. Therefore, the Company's liability for any loss (including but not limited to direct loss, indirect loss, consequential loss, loss of profit, loss of business, loss of productivity or wasted time), liability, damages, costs, claims, fines or expenses incurred by or made against the Client arising from or in connection with the EW Assist Service, including but not limited to as a result of the service being poor or as a result of technological failure in relation to the service, shall be limited the greater of the annual fee paid by the Client to the Company for the EW Assist Service or to £100.
 - 4.1.10 The Company shall not be liable to the Client for any loss (including but not limited to direct loss, indirect loss, consequential loss, loss of profit, loss of business, loss of productivity or wasted time), liability, costs, claims, damages, fines or expenses incurred by or made against the Client as a result of CMPCON Limited failing to provide the EW Assist Service or any part thereof as a result of CMPCON Limited's insolvency.

5 Fees

- 5.1 In consideration of the provision by the Company of the Services the Client shall pay the Fee plus VAT strictly in accordance with those payment terms set out in the Service Agreement. Where there is an agreed Transitional Period the Fee shall not become due until the end of that period. In relation to any Services agreed to be provided after the date of the Service Agreement the fee agreed in respect of such Services shall be paid within 14 days of the Company's invoice in respect of the same.

- 5.2 If the Client fails to make any payment in respect of the Fee (whether due to the Company or to a lender if the Client pays the Fee by instalments and has entered a credit agreement with a third party lender for that purpose) on a due date or fails to pay any other sum claimed by the Company from the Client (including but not limited to sums that have been paid to third parties by the Company on the Client's behalf, whether as agent or otherwise) and fails to remedy the same within 14 days of being required by the Company to do so then in relation to Services to be provided over a fixed period (whether the initial fixed period or a subsequent fixed period following renewal) the balance of the total amount payable over all the years of the current fixed period will fall due to the Company immediately and in relation to any other Services any sum payable in respect of those Services whether the same has yet fallen due will fall due to the Company immediately. Further, without prejudice to any other rights or remedies available to it the Company shall be entitled :
- 5.2.1 to suspend the further provision of Services until all sums due to or claimed by the Company whether under the Service Agreement or otherwise have been paid to the Company; and/or
 - 5.2.2 to charge the Client interest before and after judgment on any unpaid part of the sums due to or claimed by the Company whether under the Service Agreement or otherwise at the rate of 2% per calendar month or part thereof until full payment is received by the Company; and/or
 - 5.2.3 to terminate the provision of the Services or any part thereof.
- 5.3 Time shall be of the essence in relation to the obligation on the Client to pay any sum due to or claimed by the Company whether under the Service Agreement or otherwise.
- 5.4 All amounts due from the Client to the Company shall be paid by the Client to the Company in full. The Client shall not be entitled to make any deduction or withholding (other than any deduction or withholding of tax as required by law) and the Client shall not be entitled to claim set-off against the Company in relation to the payment of the whole or part of any such amount or any amount claimed as payable by the Company.
- 5.5 The Company shall be entitled to set off against any sum due to or claimed by the Client any sum due to or claimed by the Company from the Client.
- 5.6 In the event that the Services or any part thereof are not provided as a result of any default on the part of the Client, the Company's charges shall nonetheless remain payable in full and in accordance with these Terms and where such charges have been paid in advance there shall be no refund in the circumstances to which this clause 5.6 applies.

6 Termination

- 6.1 Either party will have the right to terminate the Service Agreement immediately at any time by giving written notice to the other party if the other party commits a material breach of any of the terms of the Service Agreement and fails to remedy the same within 30 days of being required in writing by the terminating party to do so.
- 6.2 The Company shall be entitled to terminate the Service Agreement immediately by giving written notice to the Client and without liability to the Client if:
- 6.2.1 The Client repeats or continues after written warning any other breach of the Service Agreement;
 - 6.2.2 The Client is unable to pay its debts as and when they fall due or goes into liquidation or has a receiver or an administrator or an administrative receiver or a provisional liquidator appointed over all or any of its assets or is made bankrupt or enters into a voluntary arrangement or other scheme of arrangement or compromise with its creditors.
- 6.2 The termination of this Service Agreement for any reason will be without prejudice to the rights of the parties accrued at the date of termination and to any rights which are expressed or by implication intended to continue thereafter.
- 6.3 The Company shall be entitled to terminate the Service Agreement immediately upon providing written notice to the Client if the Insurer declines to provide Insurance or to renew the Insurance for the Client.
- 6.5 The Company shall be entitled to terminate the Service Agreement immediately upon providing written notice to the Client if any representation or warranty by the Client proves to be untrue or inaccurate in any material respect.
- 6.6 Without limiting its other rights or remedies, the Company shall have the right to suspend provision of the Services under the Service Agreement or any other contract between the Client and the Company if the Client becomes subject to any of the events listed in clause 6.2.2 or the Company reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Service Agreement on the due date for payment.

7 Liability

- 7.1 The provisions of this clause 7 shall apply except to the extent that express provision is made elsewhere in these Terms as regards the Company's liability.
- 7.2 The Company shall not be liable to the Client for any indirect, consequential or financial loss (including but not limited to loss of revenue, profit, savings, reputation or otherwise), which arises out of or in connection with the supply of Services by the Company.
- 7.3 In any event, except in respect to fraud and death or personal injury caused by the negligence of the Company, the entire liability of the Company for claims, liabilities, losses, expenses, costs, fines, damages and proceedings arising out of or in connection with the Service Agreement or the Services generally shall not exceed the greater of:
- 7.3.1 the insurance cover effected by the Company and actually available to meet the claim if any; or
 - 7.3.2 the price payable for that part of the Services in respect of which the claim is made.
- 7.4 If the Company, in breach of Service Agreement fails to provide Services or any part thereof, the Company's liability shall not in any event exceed the excess (if any) over the Fee (or relevant part of it) or the cost to the Client (in the cheapest available market) of similar services to replace those not provided.
- 7.5 The Client shall indemnify the Company against all claims, costs, liabilities, fines, damages or expenses (including loss of profit) however indirect or remote resulting from cancellation or other breach of the Service Agreement by the Client.
- 7.6 Nothing in clause 7 or elsewhere in the Service Agreement shall limit or exclude the Company's liability for fraud or for death or personal injury caused by the Company's negligence.
- 7.7 Except as expressly set out in the Service Agreement all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Service Agreement.
- 7.8 This clause 7 shall survive termination of the Service Agreement for any reason.
- 7.9 Where the Services or any part thereof are provided to the Client by the Company's Subcontractor on behalf of the Company, if the Subcontractor becomes unable to provide the Services or any part thereof for any reason the Company shall be entitled to terminate that part of the Service Agreement relating to the Services or the part thereof which will no longer be provided and shall not be liable to the Client in respect of the failure to provide the relevant part of the Services save that to the extent that the price for the relevant part of the Services that has not been or will not be performed has not yet been paid, that part of the charges shall not be payable by the Client. If the Client has already paid for the Services or the part thereof which will no longer be provided the Company will refund to the Client that part of those charges that relates to the relevant service or part thereof that will not be provided. There will be no refund for any Services or part thereof that have been provided. The failure to provide any part of the Services in the circumstances described in this clause 7.9 shall not affect the provision of any other part of the Services which will still be provided and the Service Agreement shall remain in force in relation to such Services.

8 Restriction on Recruitment of Staff

- 8.1 While any employee, associate or consultant of the Company is working with or on the instructions of the Client and for twelve months afterwards, the Client and/or any Associated Business will not (and will procure that no-one associated with it will) engage (whether as an employee, associate, consultant or otherwise whether directly or indirectly or with or through a third party) that employee, associate or consultant or agree to do so (other than through the Company). The Client will procure that any Associated Business complies with this clause.
- 8.2 If the event that clause 8.1 is breached the Client will pay the Company on demand a recruitment fee which in the case of an employee shall be equal to 33% of the employee's annual remuneration at the date of engagement by the Client plus VAT and in the case of an associate or consultant of the Company shall be equal to 33% of the total sum paid to the relevant person by the Company in the 12 months prior to the engagement of that person in breach of clause 8.1 plus VAT. This fee recognises the likely cost to the Company of recruiting and training a replacement for the relevant person and the benefit to the Client of obtaining the relevant person's services.

9 General

- 9.1 The Client represents warrants and undertakes to the Company that all information supplied by the Client to the Company and by the Client to the Insurer and/or any third party provider of any Service or part thereof is and will be true and accurate.
- 9.2 All Fees unless otherwise stated are exclusive of Value Added Tax or Insurance Premium Tax. Where a charge for Value Added Tax or Insurance Premium Tax is stated herein the Company reserves the right to amend that charge if there is any change in the rate of the same.
- 9.3 The Service Agreement shall not constitute a partnership between the parties.
- 9.4 The Client warrants that it has not relied on any representation or warranty which does not form part of the Service Agreement in entering into it.
- 9.5 The Company shall be entitled to instruct such professional advisers or other persons to act for the Company in relation to the provision of the Services on behalf of the Client as the Company thinks fit. Any fees and expenses incurred by the Company under this clause shall be passed on to and payable by the Client and paid within 30 days of invoice.
- 9.6 The Company shall be entitled to subcontract the provision of the Services where it considers appropriate and for the avoidance of doubt where it does so the Company's liability in respect of the relevant Services shall be as provided for in these Terms including but not limited to clause 7.
- 9.7 All notices to be given under this agreement will be in writing and will be delivered personally or by signed attachment to an email addressed to cmt@elliswhittam.com or sent by first class post to the address of the recipient set out in this agreement or to any other address that the recipient may notify to the other party from time to time for the purpose of receiving notices and will be deemed duly served in the case of a notice delivered personally or by email at the time of delivery and in the case of a notice sent by post two business days after the date of dispatch.
- 9.7 In consideration of the Company providing the Services to the Client at the Associated Business's request, the Associated Business (if any) guarantees the payment of all sums due to or claimed by the Company from the Client whether under the Service Agreement or otherwise and further the Associated Business (if any) indemnifies the Company in respect of any loss, damages, fees, costs, claims, expenses, fines or liabilities incurred by or made against the Company in connection with the Client's breach of the Service Agreement. The Company and the Client shall be entitled to vary the terms of the Service Agreement without consulting the Associated Business and such a variation of the terms of the Service Agreement between the Company and the Client shall not discharge the guarantee given by the Associated Business in this clause.
- 9.8 The Company shall not be under any liability of any kind for non-performance or defective performance in whole or in part of its obligations under the Service Agreement as a result of any circumstances beyond the practicable control of the Company.
- 9.9 The Service Agreement and any dispute arising in relation to it shall be governed by and construed in accordance with English law and any dispute between the parties whether in relation to the Service Agreement or otherwise shall be subject to the exclusive jurisdiction of the Courts of England and Wales.
- 9.10 The Company shall be entitled to assign the benefit of this Agreement to any third party. The Client shall not assign its rights or liabilities under the Agreement.
- 9.11 The Company shall have a general lien over any property of the Client in its possession in respect of any sum due to or claimed by the Company from the Client whether under the Service Agreement or otherwise.
- 9.12 A waiver of any right under the Service Agreement is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Service Agreement or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 9.14 If a court or any other competent authority finds that any provision of the Service Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Service Agreement shall not be affected.

- 9.15 If any invalid, unenforceable or illegal provision of the Service Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 9.16 The Client shall not act as agent for the Company and shall not have authority to and shall not purport to bind the Company.
- 9.17 A person who is not a party to the Service Agreement shall not have any rights under or in connection with it except as expressly agreed in relation to Associated Businesses.
- 9.18 Any clause which is expressly stated to or which by implication is intended to survive termination of the Service Agreement shall so survive.

10 Data Protection

- 10.1 Calls to and from Ellis Whittam may be recorded for training, quality, and service delivery purposes.
- 10.2 The Company may store the Client's information on a computer and use it for administration, risk assessment, research and statistical purposes, marketing purposes and for crime prevention (see further details below). The Company will only disclose the Client's personal details to third parties if it is necessary for the performance of your Service Agreement with the Company or as required by law.
- 10.3 In order to assess the terms of the insurance contract or administer claims that arise, the Company or the Insurer may need to collect data that the Data Protection Act defines as sensitive, such as medical history or criminal convictions. By proceeding with this Service Agreement the Client signifies its consent to such information being processed by the Company, the Insurer or our agents and subcontractors.
- 10.4 The Company will keep the Client's information secure at all times. In certain circumstances, for example for systems administration purposes, the Company may have to transfer the Client's information to another country, which may be a country outside the European Economic Area (EEA). By proceeding with the Service Agreement, the Client confirms it is agreeable to the Company transferring the Client's information to a country outside the EEA.

11 Confidentiality

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Service Agreement, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 11 shall survive termination of the Contract. Information will not be confidential to the extent that it is in the public domain other than by virtue of a breach of this or any other confidentiality provision. Nothing in this clause shall prevent disclosure to the Receiving Party's accountants or lawyers if necessary or as required by law.

12 Intellectual Property Rights

- 12.1 All Intellectual Property Rights in or arising out of or in connection with the Additional Services shall be owned by the Company and the Client is only permitted to use any Intellectual Property Rights of the Company as required for the discharge of its obligations under the Service Agreement.
- 12.2 The Client acknowledges that, in respect of any third party Intellectual Property Rights, the Client's use of any such Intellectual Property Rights is conditional on the Company obtaining a written licence from the relevant licensor on such terms as will entitle the Company to license such rights to the Client.