

TERMS AND CONDITIONS GOVERNING THE PROVISION OF EXPERT SERVICES

Background

- (A) The Expert provides expert witness services and agrees to provide the Services that are requested by the Instructing Party solely on these terms and conditions.
- (B) The Instructing Party has identified itself to the Expert as seeking to appoint them to provide those Services requested in their Instructions, by accepting the offer of the Expert to carry out Services on these terms and conditions.

1. Interpretation

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions

Affiliate: in relation to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party at the date of this agreement.

Alternative Dispute Resolution: means any process in which the Expert participates to resolve a dispute or litigation, including mediation, expert determination and without prejudice meetings.

Applicable Data Protection Laws: means:

- a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Expert is subject, which relates to the protection of personal data.

Business Day: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Business Hours: the period from 9.00am to 5.00pm on any Business Day.

Client: the party on whose behalf the Instructing Party is acting.

Confidential Information: information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to (a) the case, affairs and finances of the Client; and (b) the trade secrets including, without limitation, technical data and know-how relating to the Expert which is created, developed, drafted or obtained in connection with the Services and the Report; and for both (a) and (b) whether or not such

information (if in anything other than oral form) is marked confidential.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.

Expert: the party to this agreement who has identified itself to the Instructing Party as the Expert, whether a natural person, corporate or unincorporated body (whether or not having separate legal personality) together with the Expert's employees, directors, officers and agents.

Fees: means the sums payable for the Services.

Instructing Party/Parties: each party to an agreement who is instructing the Expert, which may be a solicitor, an insurance company, a government department, a local authority, a corporate body, partnership or other firm or organisation and any individual requesting Services or a Report.

Instructions: all letters, documents, information, items and materials which are provided by the Instructing Party to the Expert requesting Services and/or a Report.

Personal Data: any personal data which the Expert processes in connection with this agreement, in the capacity of a processor on behalf of the Instructing Party.

EU GDPR: means the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, moral rights, trade and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Report: the document containing the Expert's opinion in response to Instructions.

Services: the services requested of the Expert defined by the scope and purpose of the Instructions and shall include any Report (and answers to questions); and any appearance in a court, enquiry, adjudication, arbitration or tribunal; and the giving of an opinion; and the Expert's participation in any Alternative Dispute Resolution.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

VAT: value added tax or any equivalent tax chargeable in the UK or elsewhere.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 This agreement shall be binding on, and ensure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

1.4 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made.

1.5 A reference to **writing** or **written** includes email but not text messages or other social media.

2. Commencement and application

2.1 These terms are binding and shall apply to govern the agreement to the exclusion of any terms of the Instructing Party over which, these terms shall prevail. Together with the accompanying email or letter sent by the Expert, they are the entire agreement and the only basis upon which the Expert shall accept Instructions.

2.2 These terms shall be deemed to be accepted by the Instructing Party upon their request for Services following the sending out of these terms by the Expert (electronically, by a PDF, by a hyperlink or by other media). In the event that the Instructing Party has already provided Instructions, these terms shall govern the Services, notwithstanding any contrary terms included in the Instructions.

2.3 This agreement shall commence upon the date that the Instructing Party sends, and the Expert receives, the request of the Instructing Party to commence the Services following the accompanying email or letter sent by the Expert (**Commencement Date**) and shall continue, unless terminated in accordance with clause 11 (Termination), until full payment of the Fees, when the agreement shall come to an end.

2.4 In the event of any conflict between these terms and the accompanying email or letter sent by the Expert, the accompanying email or letter shall take precedence.

3. Expert's responsibilities

3.1 The Expert shall use all reasonable endeavours to complete the Services, in accordance with this agreement in all material respects.

3.2 The Expert shall use all reasonable endeavours to meet any performance dates set out in the Instructions, but any such dates shall be estimates only and time for performance by the Expert shall not be of the essence.

3.3 The Expert shall comply with their duties to the court or tribunal.

3.4 The Expert shall not be obliged to act in circumstances of actual or potential conflict of interest and shall notify the Instructing Party of any known conflict

3.5 The Expert shall provide information as to their charges and the basis upon which their charges may be calculated.

4. Instructing Party's obligations

4.1 The Instructing Party shall:

(a) provide enough information about their Client and relevant third parties to enable the Expert to carry out a conflict check (If there are a large number of individuals their details should be set out in a table).

(b) ensure that all of the Instructions are received by the Expert in sufficient time to enable the Expert to carry out the work before any set performance dates.

(c) provide to the Expert in a timely manner all documents, information, items and materials in any form reasonably requested or required by the Expert in connection with the Services.

(d) ensure that the Instructions and any further information are accurate and complete.

(e) co-operate with the Expert in all matters relating to the Services and the Report.

(f) so conduct themselves in their dealings with the Expert and the court or tribunal that they comply with their duties to the court or tribunal and pursuant to the applicable rules of procedure.

(g) ascertain and confirm the Expert's availability for court or tribunal appearances and participation in Alternative Dispute Resolution or meetings with

the Instructing Party, third parties or another Expert or otherwise relevant to the Services.

- (h) notify the Expert of any dates relevant to the Services and shall keep the Expert promptly informed of any changes to such dates.
- (i) make such applications to the court or tribunal or otherwise as required or requested by the Expert to enable the Expert to comply with its duties to the court or tribunal; or to minimise an adverse costs' order being made against the Expert by the Court, including warning the Expert in good time, making representations on their behalf and procuring representation by an advocate on behalf of the Expert.
- (j) in the case where the Expert is appointed as a Single Joint Expert, cooperate with all other instructing parties to facilitate the provision of any conflict check, Instructions, setting of performance dates, questions and appearance by the Expert in the court or tribunal.

4.2 If the Expert's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Instructing Party, then, without prejudice to any other right or remedy it may have, the Expert shall be allowed an extension of time to perform its obligations equal to the delay caused by the Instructing Party.

5. Changes to the Services

5.1 If the Instructing Party wishes to make a change to the Instructions or the Services:

- (a) it shall notify the Expert and provide as much detail as the Expert reasonably requires of the proposed changes, including any revisions to any performance dates;
- (b) it shall obtain the Expert's agreement to the proposed change; and
- (c) it shall provide the Expert with revised or further Instructions.

5.2 The Expert may charge for the time it spends carrying out the change at the rate of the Fees.

6. Fees and payment

6.1 In consideration of any request by the Instructing Party for the provision of the Services by the Expert, including bookings for hearings, meetings, or site visits, the Instructing Party shall pay the Fees. In the event that there is more than one Instructing Party, they shall each receive an invoice calculated pro-rata for their share, but they shall each be jointly and severally liable for the total amount of the Fees.

6.2 The Expert shall be entitled to charge an hourly fee rate for each hour or part thereof plus vat or by a fixed fee as notified to the Instructing Party before providing the Services and thereafter as communicated in writing, if changes are requested from time to time, by the Instructing Party.

6.3 The Fees exclude the following which shall be payable by the Instructing Party following submission of an appropriate invoice:

- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the Expert engages in connection with the Services; and
- (b) the cost to the Expert of any licences, consents, materials or services procured by the Expert from third parties for the provision of the Services (to be approved by the Instructing Party in advance).

6.4 The Expert shall invoice the Instructing Party for the Fees upon delivery of the Report, completion of the Services or the effluxion of any of the set performance dates. If no performance dates are set, the Expert shall invoice the Instructing Party at the end of a month for Services booked or performed during that month.

6.5 Unless otherwise agreed in writing or unless the agreement is terminated under clause 11, or unless clause 6.8 applies, the Instructing Party shall pay each invoice submitted to it by the Expert within 30 days of receipt, to a bank account nominated in writing by the Expert.

6.6 Without prejudice to any other right or remedy that it may have, if the Instructing Party fails to pay the Expert any sum due under this agreement on the due date:

- (a) The Instructing Party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- (b) The Expert may suspend all or part of the Services until payment has been made in full.
- (c) The Expert may write to the court or tribunal to explain the position and to notify the Court that they are unable to continue as an appointed Expert in the case.
- (d) The Expert may revoke or suspend the Instructing Party's licence to use Services or the Report for the purpose set out in the Instructions, by a notice in writing to the Instructing Party.

- 6.7 All sums payable to the Expert under this agreement:
- (a) are exclusive of VAT (or equivalent tax) and the Instructing Party shall, in addition, pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
 - (b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 6.8 In cases which are funded in whole or in part by the Legal Services Commission, the Instructing Party shall:
- (a) Notify the Expert of any prescribed fees for the Services and obtain the agreement of the Expert to those fees.
 - (b) Ensure that they have received the necessary approval of the Expert's fees from the Legal Services Commission through their legal aid franchise contract or equivalent basis of receipt of public funding and that they have complied with all of the formalities to enable payment to be made in accordance with the provisions of clause 6.8 below
 - (c) Provide a copy of the application made to the Legal Services Commission for the Expert's Fees and any response thereto.
 - (d) Regularly apply for payments on account for the Expert and notify the Expert of the outcome.
 - (e) If, on assessment by the Legal Services Commission, there is a reduction in the amount of the Expert's fees claimed, give written notice of any such reduction within three days of receiving notice and if requested to do so (and at no costs to the Expert) shall appeal any such reduction within seven days of being instructed to do so.
 - (f) Make the application for payment of the Fees immediately upon receipt of an Expert's invoice and shall advise the Expert of the response of the Legal Services Commission and the timescales for anticipated payment.
 - (g) In the event that they fail to procure the payment of the Expert's Fees from the Legal Services Commission, through their omission default, loss of their legal aid franchise contract or equivalent status to procure, receive or facilitate the payment, be responsible for paying the Fees. For the purposes of this clause, the timescale for the Instructing Party's omission is deemed to be 8 months from the date of the Expert's invoice, unless otherwise agreed in writing by the Instructing Party and the Expert.
- 6.9 Time is of the essence for payment of Fees by the Instructing Party to the Expert.
- 6.10 Payment of the Expert's fees is not contingent upon the outcome of the case nor upon any deductions as a result of costs' assessment or an agreement by the Instructing Party with a third party also involved in the case.
- ## 7. Intellectual property rights
- 7.1 In relation to the Report:
- (a) The Expert shall retain ownership of all Intellectual Property Rights in the Report, excluding the Instructing Party's Instructions, their documents and any of their materials.
 - (b) The Expert grants the Instructing Party, a worldwide, non-exclusive, royalty-free licence for the purpose of receiving and using the Services and the Report limited to the use by the Instructing Party unless otherwise as agreed in writing by the Expert and the Instructing Party.
 - (c) The Instructing Party may only assign the licence to a third party assignee subject to their entering into appropriate confidentiality undertakings, in identical terms to the obligations of clause 9.2 of this agreement.
- 7.2 In relation to the Instructing Party's Instructions, documents and any materials, the Instructing Party:
- (a) and their Client shall retain ownership of all Intellectual Property Rights; and
 - (b) grants the Expert a fully paid-up, non-exclusive, royalty-free, non-transferable licence for the term of this agreement for the purpose of providing the Services and the Report to the Instructing Party.
- ## 8. Data protection
- 8.1 For the purposes of clause 8, the terms **controller**, **processor**, **data subject**, **personal data**, **personal data**, **breach** and **processing** shall have the meaning given to them in the UK GDPR.
- 8.2 Both parties will comply with all applicable requirements of the Applicable Data Protection Laws. This clause is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 8.3 As data controller, the Instructing Party will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Expert to process for the duration and purposes of the Services.

9. Confidentiality

- 9.1 Each party undertakes that it shall not at any time during this agreement, and for a period of two years after termination or expiry of this agreement, disclose to any person any Confidential Information concerning the Instructions, the Services, and the Report, except as permitted by clause 9.2.
- 9.2 Each party may disclose the other party's Confidential Information:
- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause; or
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority; or
 - (c) which has become independently available as being in the public domain.
- 9.3 No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

10. Limitation of liability

- 10.1 The Instructing Party is responsible for making its own arrangements for insurance, including professional indemnity insurance to cover: the risks of the choice of the Expert, the purpose of the Instructions, the content and accuracy of the Instructions and the strategy for the case or matter in which the Expert is instructed.
- 10.2 References to liability in this clause include every kind of liability arising under or in connection with this agreement including but not limited to liability in contract, tort, breach of statutory duty, breach of the statutory warranties, negligence, misrepresentation, restitution or otherwise. Unless the Instructing Party notifies the Expert that it intends to make a claim in respect of an event within six months from the date of the Report, the Expert shall have no liability for that event.
- 10.3 Nothing in this clause shall limit the Instructing Party's payment obligations under this agreement.

- 10.4 Nothing in this agreement limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and/or
 - (c) a breach of duty to the Court by either the Expert, the Instructing Party or by the Client.

- 10.5 Subject to 10.4 the Expert's total liability to the Instructing Party, shall not exceed the total Fees payable to the Expert in relation to the Instructions, the Services and the Report.

11. Termination

- 11.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving 7 calendar days written notice to the other party if:
- (a) the other party commits a material breach of any term of this agreement (including non-payment of any invoices) and (if such breach is remediable) fails to remedy that breach within a period of 28 days after being notified in writing to do so;
 - (b) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
 - (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
 - (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
 - (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company);
 - (f) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);

- (g) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
 - (h) the other party's financial position deteriorates so far as to reasonably justify the opinion that their ability to give effect to the terms of this agreement is in jeopardy; or
 - (i) there is a change of Control of one of the parties and the other does not agree to the novation of this agreement.
- 13.2 Provided it has complied with clause 13.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

12. Obligations on termination and survival

12.1 On termination or expiry of this agreement:

- (a) the Instructing Party shall immediately pay to the Expert all of the Expert's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, the Expert may submit an invoice, which shall be payable immediately on receipt.
- (b) the Expert shall on request return any of the Instructing Party's materials not used up in the provision of the Services.

12.2 On termination or expiry of this agreement, the following clauses shall continue in force: clause 1 (Interpretation), clause 7 (Intellectual property rights), clause 9 (Confidentiality), clause 10 (Limitation of liability), clause 11 (Termination), clause 16 (Waiver), clause 17 (Severance), clause (Conflict), clause 24 (Dispute resolution procedure), clause 25 (Governing law and jurisdiction).

13. Force majeure

13.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic, including Coronavirus;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority which prevents or impedes the Expert from completing the Services or the Report; and
- (f) fire, explosion, major incident or accident.

13.3 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than 14 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

13.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of their obligations for a continuous period of more than 12 weeks the party not affected by the Force Majeure Event may terminate this agreement by giving 4 weeks' written notice to the Affected Party.

14. Assignment and other dealings

Either party may assign this agreement upon terms that preserve the accrued and future rights and obligations of either party in relation to the other and by written agreement of the other party.

15. Variation

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16. Waiver

A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy.

- 17. Severance**
- 17.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 17.2 If any provision or part-provision of this agreement is deemed deleted under clause 17.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 18. Entire agreement**
- 18.1 This agreement, and the accompanying email or letter from the Expert, constitutes the entire agreement and extinguishes any other terms. The parties have not relied upon any, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to the subject matter of this agreement.
- 18.2 Each party agrees that it shall have a claim for fraudulent misrepresentation or deceit.
- 19. Conflict and Precedence**
- If there is an inconsistency between any of the provisions of these terms and the Instructions, materials or documents provided by the Instructing Party, the provisions of these terms shall always prevail.
- 20. No partnership or agency**
- Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 21. Third party rights**
- This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 22. Notices**
- 21.1 Any notice or other communication given to a party under or in connection with this agreement shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (b) sent by email to the address specified or used by the Instructing Party and the Expert, respectively.
- 22.2 Any notice or communication shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;
 - (b) if sent by pre-paid first-class post or a courier for the next working day delivery service, at 9.00am on the second Business Day after posting;
 - (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 22.3 This clause does not apply to the service of any proceedings or any documents in any legal action.
- 23. Counterparts**
- 23.1 This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 23.2 No counterpart shall be effective until each party has executed at least one counterpart.
- 24. Dispute resolution procedure**
- If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then either party may serve a notice and both parties shall then meet (remotely or in person) in good faith and within 14 days to resolve the Dispute by alternative dispute resolution.
- 25. Governing law and jurisdiction**
- 25.1 This agreement and any dispute or claim (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 25.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation.