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Model Terms and Conditions of Engagement

Introduction:

1.1 The Appointor(s) has/have engaged the Expert to advise or report in accordance with these Terms and Conditions of Engagement

1.2 The Civil Procedure Rules 1998 (the CPR) including any protocol approved thereunder, shall prevail over any part of this document which is inconsistent with the CPR.

Definitions:

2.1 Appointor(s) - means the party or parties 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 who seeks advice or the provision of an expert report from the expert.

2.2 Instructions - means the written statement of services required by the appointor of the expert including sufficient details of the relevant issue to enable the expert to comply with the Civil Procedure Rules 1998 and any order of the Court.

2.3 Court - means any Court of Law, Tribunal or body concerned with the process of arbitration or dispute resolution.

2.4 Advisor - means any expert who is retained to give advice on an issue before it becomes a matter for litigation under the CPR.

2.5 Party's Expert - means an expert who is instructed to provide advice or a report by one or other of the parties to a dispute (claimant or defendant).

2.6 Single Joint Expert (SJE) - means an expert who is appointed under the CPR Part 35.7 to submit expert evidence on a particular issue on behalf of all litigating parties.

2.7 The Client(s) - means the parties, person(s) Government department, local authority, firm or company on whose behalf the appointor(s) has instructed the expert to advise or prepare a report for the court.

2.8 Advice - means the expert's opinion on an issue which lies within his field of competence or expertise to assist the instructing solicitor in deciding whether or not to initiate court proceedings on behalf of the client.

2.9 Report - means the written report prepared by the expert for the assistance of the Court in accordance with the CPR Part 35.10.

2.10 Fees & Disbursements - means the expert's professional charges for carrying out the appointor's instructions together with all reasonable expenses incurred in discharging these obligations such as relevant out of pocket expenses including car mileage, second class rail travel, standard class air fares, reasonable refreshments and hotel accommodation where an overnight stay is necessary, together with the cost of photocopying, reproduction of diagrams and drawings and other similar expenses incurred in the production of the report, as set out in more detail in Clause 5.

2.11 Legal Aid - means cases where the Legal Services Commission or such other governmental authority as may be involved is funding a party in legal proceedings.

The Appointor's/Appointors' obligations:

- 3.1 To provide clear written instructions and copies of all relevant documents.
- 3.2 Where an SJE is appointed, all appointors shall either issue joint instructions or agree to a single set of instructions. The SJE shall not start work until such instructions have been received. Any appointor may issue separate additional instructions to the SJE, in which instance he must send a copy to every other appointor.
- 3.3 To keep the expert informed of and ascertain his availability for all relevant court dates. Where there is more than one appointor, the appointors should agree as to who is to accept that obligation.
- 3.4 In legal aid cases not to instruct the expert to start work until the Legal Services Commission has granted prior authority, or the appointor is a contracted supplier with devolved powers in the relevant category of work.
- 3.5 To deal promptly with the Expert's requests for information and/or further instructions.
- 3.6 To promptly inform the Expert of the making of any Court Order affecting the Expert and supply the Expert with a copy thereof.

The Expert's obligations:

- 4.1 The expert's over-riding duty is to the Court and he must act with objectivity and independence in carrying out his instructions.
- 4.2 Only to accept appointments where he has relevant qualifications and experience.
- 4.3 To advise the appointor(s) of any conflict of interest (actual or perceived).
- 4.4 To use skill and care when carrying out his instructions.
- 4.5 When instructed to report to the Court, to do so in compliance with the relevant requirements of the CPR (including Practice Directions and any approved protocols) and within any agreed time limit.
- 4.6 When ordered to meet with an expert for an opposing party, to conduct such meeting in accordance with the CPR as defined immediately above.
- 4.7 To deal with written questions from an opposing party on his report within any time limit set by the Court, such replies to form part of the expert's report.
- 4.8 To deal with all other matters promptly and where appropriate, within any time limits agreed by the appointor or set by the court.
- 4.9 Unless otherwise agreed, to prepare an advice and/or report at a cost proportionate to the sums in issue. If in doubt, the expert should seek advice from his appointor(s) as to what is proportionate.
Where the expert becomes aware that his costs are likely to exceed any estimate or quotation given at an earlier date, he must inform the appointor(s) immediately.
- 4.10 To make himself available for court hearings, conferences and other meetings.
- 4.11 To preserve confidentiality.
- 4.12 To remain objective and impartial.
- 4.13 When acting as an SJE, to conduct himself consistent with the principles of fairness and transparency.

Fees and Disbursements:

5.1 For the avoidance of doubt, no instructions can be accepted where payment is contingent on the outcome of the case. Where deferred terms have been agreed, that fact, together with a statement of interest or enhanced rates applicable to the appointment will be specified in Section 1.

5.2 The basis of fees and estimated date for delivery of advice/report are specified in the expert's terms.

5.3 Wherever possible, the fee shall be agreed in advance, or an estimate provided to the appointor(s), in which case details will appear in the expert terms.

5.4 The charging basis for attendance at a hearing (e.g. fixed fee or hourly/daily (and half daily) rate) is specified in Section 1.

5.5 If value added tax (VAT) is to be added that fact and the applicable rate will be specified in section 1.

5.6 The point(s) at which invoices will be presented, and any period of credit granted are specified in Section 1.

5.7 Where the expert is appointed as an SJE unless otherwise provided for the appointors will be jointly and severally liable for the expert's fees.

5.8 The Expert's fees shall be paid in full regardless of the outcome of any assessment by the court.

5.9 Disbursements including travel and accommodation costs shall be charged at the cost incurred. They shall include, but not be limited to those listed at clause 2.10.

5.10 Where travel time is chargeable, that fact and the hourly rate is specified in Section 1.

5.11 Where a cancellation fee may be charged, that fact and the basis of charge are specified in Section 1.

5.12 Where questions are posed to an expert under CPR Part 35.6(1)(a) by a party other than his appointor the party posing the questions will bear the cost of the time and any disbursements incurred in replying.

5.13 Where a fee note has been rendered, payment must be received in full before any additional instructions will be accepted.

5.14 Interim fees may be charged at any reasonable point, e.g., (but not limited to) on production of a draft advice or report. Where the expert reserves the right to seek payments on account, that fact is specified in Section 1.

Disputes:

6.1 In the event of a dispute over fees, such part as is not disputed shall be paid within the agreed credit period.

6.2 Any dispute arising between the expert and appointor shall, if not resolved, be referred to a mediator appointed by EWI.

6.3 In the event that mediation does not resolve the dispute, it shall be referred to an arbitrator appointed by EWI. The arbitrator shall deal with costs in his award.

Miscellaneous:

7.1 The expert shall retain all intellectual property rights over his advice and/or report.

7.2 The expert should be identified by name.

7.3 These terms are not intended to cover the appointment of the expert as assessor to the court under CPR Part 35.15.