

# Model Terms of Engagement For The Employment of Experts

## ON BEHALF OF A PARTY INVOLVED IN A DISPUTE BEFORE A COURT

1. **Recital of Appointment** — The Appointor has appointed the Expert to provide services in accordance with these Terms of Engagement for such period as to allow the expert to complete his instructions or such further obligations imposed upon him by Court Order, unless determined by either party in writing.
  
2. **Definitions** — Unless the context otherwise requires:
  - (1) **“Appointor”** means the lawyer, insurer, Government department, local authority, firm, or other body or persons instructing the Expert.
  - (2) **“Expert”** means the person appointed to give or prepare expert evidence for the purpose of court proceedings
  - (3) **“Client”** means the person(s), Government department, local authority, firm or company for whom the Expert has been instructed to provide such services.
  - (4) **“Instructions”** means in addition to the Appointor’s requirements, such services as may be required of the Expert to comply with an Order or Rule(s) of a Court.
  - (5) **“Court”** means any Court of Law, Tribunal or Arbitral body.
  - (6) **“Fees”** means the Expert’s professional charges, disbursements and Value Added Tax (VAT), or equivalent tax where applicable, for services provided for carrying out the Appointor’s instructions.
  - (7) **“Disbursements”** means all reasonable expenses incurred in carrying out the instructions or obligations arising therefrom. (By way of non-exclusive example, they include the costs of relevant photography, video recordings, computer software, reproduction of drawings and diagrams, printing and duplicating, the cost of obtaining published documents including those withdrawn, as well as all appropriate out of pocket expenses including car mileage, first class rail travel, business class air fares, reasonable refreshments and four star hotel accommodation where an overnight stay is necessary.) VAT or the equivalent tax will be charged where applicable.
  - (8) **“Legal Aid”** means those cases which are funded by an authority established by government power to fund a party in legal proceedings.
  - (9) References to the masculine gender shall be deemed to include the feminine.
  
3. **The Appointor** — The Appointor will:
  - (1) Promptly deliver to the Expert full instructions in writing supported by legible copies of all relevant documents together with a timetable for the provision of the Expert’s services and at such times as the timetable is revised then such revision shall be notified promptly to the Expert.
  - (2) Deal promptly with every reasonable request by the Expert for authority, information and documents and further instructions that the Expert may from time to time require.
  - (3) As soon as is reasonably practicable notify the Expert in writing of those services which the Expert shall provide pursuant to any Court Order and shall promptly deliver to the Expert a copy of such Order.
  - (4) Neither personally, nor permit others to alter add to or remove any text of or document supporting a report delivered by the Expert nor by any act or omission compromise the Expert’s overriding duty to the Court.
  - (5) Ascertain the availability of the Expert for every hearing, meeting or other appointment at which the Expert’s attendance will or may be required and give the Expert immediate written notification together with adequate notice.
  - (6) **In Legal Aid cases:**
    - (a) inform the Expert at the outset if the case is or is expected to be legally aided;
    - (b) inform the Expert of the scope and any limitation on the Certificate or Order and any Amendments and use his best endeavours to secure and expedite remittance of the Expert’s fees save that the subsistence of a Legal Aid Certificate or Order shall not affect the Appointor’s personal responsibility for the Expert’s fees.
    - (c) not require the Expert to provide any services before the grant of authority by the Legal Aid Board (or its generic successor) for his fees and disbursements;
    - (d) apply to the Legal Aid Board for prior approval of the Expert’s anticipated fees and promptly inform the Expert of the outcome of the application;
    - (e) apply as above for additional fees required by any further work not originally authorised;
    - (f) make timely application to the Legal Aid Board or to the Court for interim and final payments for the Expert’s fees and disbursements as invoiced and promptly remit to the Expert all such payments upon receipt;
    - (g) use his best endeavours to ensure that the Expert’s fees and disbursements are recovered in full by way of the Legal Aid Fund and in the case of the Crown Court from the Lord Chancellor’s Department;
    - (h) advise the Expert if he is a Legal Aid Franchisee with devolved powers in the relevant category of work and ensure prompt remittance of interim and final payments as invoiced;
    - (i) use his best endeavours to ensure that the Expert’s fees and disbursements are promptly remitted in full in the event of termination or suspension of a Franchise Agreement or of a Legal Aid Certificate. Where assessment of costs is necessary he will apply for, pursue or defend (as applicable) the Expert’s fees in a timely manner.
  - (7) In privately funded cases ensure that he is at all times in funds promptly to discharge the fees of the Expert.
  - (8) Unless otherwise expressly agreed, pay in full the Expert’s fees irrespective of the outcome of any assessment of costs.

#### 4. The Expert — The Expert will:

- (1) Undertake only those parts of a case in respect of which the Expert considers that he has adequate qualifications and experience.
- (2) Use reasonable skill and care in the performance of the instructions received.
- (3) Comply with the appropriate Codes of Practice and Guidelines.
- (4) Act with objectivity and independence with regard to his instructions and, in the event of a conflict between his duties to the Client and to the Court, will hold his duties to the Court paramount.
- (5) Promptly notify the Appointor of any matter including a conflict of interest or lack of suitable qualifications and experience which could disqualify the Expert or render it undesirable for him to have continued involvement in the case.
- (6) Endeavour to make himself available for all hearings, meetings and other appointments of which he has received adequate written notice.
- (7) Not without good cause discharge himself from the appointment as Expert.
- (8) Preserve confidentiality save as expressly or by necessary implication authorised to the contrary.
- (9) Not negotiate with an opposing party, expert or adviser unless specifically instructed by the Appointor so to do. For avoidance of doubt this clause does not apply to any Order of a Court.
- (10) Attend such Meetings of Experts as Ordered by the Court or as required by the Appointor. At any such Meeting adhere strictly to the terms of reference set down in writing.
- (11) Provide all relevant information to allow the Appointor to defend the Expert's fees or disbursements at any assessment of costs.
- (12) Promptly respond to any complaint of the Appointor and within a reasonable time provide a statement of explanation or a means of rectification.

#### 5. Intellectual Property Rights

- (1) The intellectual property rights of all original work created by the Expert shall remain vested in the Expert unless otherwise agreed in writing. The Expert asserts all his Moral Rights.
- (2) Upon settlement of all outstanding invoices presented by the Expert (subject only to such indulgence as the Expert may grant), the Expert shall be deemed to grant to the Appointor a Licence to use all the Expert's work covered by such fees, such Licence to extend to the purpose of carrying out the Client's instructions in the matter in which this Appointment has been made but for no other purpose nor for any other matter.

#### 6. Fees and Disbursements

- (1) The amount of the fees shall be that more particularly defined in the Expert's letter confirming the Appointment which shall form part of these terms.
- (2) The daily rate shall be applied to any day or part of any day of a hearing, including waiting time.
- (3) The Expert may present invoices at such intervals as he considers fit. Payment of each invoice is due on presentation, subject to any written waiver or indulgence

granted by the Expert, save that such indulgence shall apply only to the invoice in question.

- (4) The instruction and remuneration of the Expert is not made on any contingent or conditional basis and any payment sought to be made on such a basis will be unacceptable.

*Note: The Judicial Committee's Guidelines on Contingency Fees make the placing of pressure upon the Expert by the Appointor to provide extended credit terms or any other arrangement for inclusion in the Appointor's approved list of Experts improper, as they compromise the Expert's independence and impartiality.*

- (5) For the avoidance of doubt the charge rate is the same for all activities and includes but is not limited to the following:
  - (a) Inspection, consultation, preparation, advice, completion and engrossment of reports, attendance at meetings or hearings.
  - (b) Preparation of Answers pursuant to the Court Rules or Practice Directions.
  - (c) Travel and waiting.
  - (d) Time reserved by instruction, Witness Summons or Order of the Court for a hearing, meeting or other engagement.
  - (e) Where specific instructions have been given to the Expert for an inspection examination report or Court appearance and where, due to settlement of the dispute or any other reason not being the default of the Expert, the reservation of time has been cancelled or the Appointment has been terminated.
  - (f) Requests for Directions.
- (6) The Appointor and the Client shall be jointly and severally liable for payment of the Expert's fees and disbursements.
- (7) The Expert shall at his discretion be entitled to invoice and recover interest at 1.5% per month on all unpaid invoices after 30 days and shall be entitled to recover the full amount of his administrative and legal costs and expenses incurred in recovering unpaid invoices.

#### 7. Disputes

- (1) Unless otherwise stated this Appointment shall be subject to the laws of England and Wales.
- (2) If the Appointor fails to pay an Invoice within 30 days of the time stated for payment the Expert shall be entitled to issue proceedings immediately.
- (3) In the event of a dispute over the amount of the Expert's fees such sum as is not disputed shall be paid when due irrespective of any set off or counterclaim which may be alleged.
- (4) Any other dispute arising between the Appointor or the Client and the Expert shall be referred to Mediation in accordance with The Academy of Experts' Mediation Guidelines. Upon the application of any party the Faculty of Mediation & ADR of The Academy of Experts will appoint a Mediator.
- (5) Any dispute not resolved by Mediation as in (4) above within 30 days of the appointment of the Mediator shall be referred unless the parties agree to the contrary to a single arbitrator who, if not agreed upon by the parties within 14 days thereafter, shall be appointed upon the application of either party by the President of the Chartered Institute of Arbitrators.

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