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GENERAL TERMS AND CONDITIONS FOR THE SUPPLY OF EXPERT SERVICES TO SOLICITORS

2019

1. Definitions and Interpretation

1.1 These are the General Terms and Conditions for the supply of Expert Services by the Expert to Solicitors (the “**General Terms**”).

1.2 In these General Terms, the following words have the following meanings, except where the context requires otherwise:

the “**Appointment Letter**” means the accompanying appointment letter from the Expert to the Solicitor for the supply of Expert Services incorporating these General Terms and “**Appointment**” shall be construed accordingly

the “**Case**” means the particular legal dispute or matter, whether contentious or non-contentious, in respect of which the Expert is instructed to supply the Expert Services

the “**Code**” means the General Medical Council’s Members’ Code of Conduct, as amended from time to time

the “**Court**” means the court or tribunal in which the Case is heard or to be heard

the “**Expert**” means Dr Richard Trompeter FRCP FRCPCH

the “**Expert Services**” means the expert services supplied or to be supplied by the Expert in connection with the Case pursuant to the Instructions provided by the Solicitor and otherwise in accordance with the Appointment Letter

the “**Instructions**” means the instructions and requests for work to be done (and all accompanying materials), whether written or oral, given by the Solicitor to the Expert for the purposes of the supply of the Expert Services by the Expert

the “**Lay Client**” means the Solicitor’s client for whose benefit or on behalf of whom the Expert is instructed by the Solicitor to supply the Expert Services

the “**Solicitor**” means the sole practitioner, partnership, limited liability partnership or

company who instructs the Expert to supply the Expert Services, together with all successors

1.3 In these General Terms:

- (a) reference to a clause is to the relevant clause of these General Terms;
- (b) references to the singular include the plural and vice versa in each case;
- (c) references to a document includes anything in which information is recorded, whether on paper, electronically or otherwise;
- (d) references to a person or body include references to its successors and assigns.

2. Application of these General Terms

2.1 These General Terms apply, subject to any amendments set out in the Appointment Letter, to all Expert Services supplied by the Expert on the Instructions of the Solicitor in relation to the Case.

2.2 Where practicable, the Solicitor will send the Expert Instructions in writing, or will confirm in writing oral Instructions, retaining the Expert to provide the Expert Services.

2.3 In the event of any inconsistency between the Appointment Letter and these General Terms, the Appointment Letter shall prevail.

3. Providing the Expert Services

3.1 The Expert Services the Expert is to supply in relation to the Case will be described in the Instructions and as may subsequently be agreed between the Expert and the Solicitor.

3.2 The Expert shall exercise reasonable skill and care in supplying the Expert Services.

3.3 The Expert supplies the Expert Services on the basis set out in these General Terms and subject to the Expert’s professional obligations under the Code and to the Court.

3.4 The Expert will supply the Expert Services by or on such date or dates as may be agreed with the Solicitor or, where no

specific date has been agreed, will do so within a reasonable time having regard to the urgency and nature of the Instructions.

- 3.5 Instructions that are urgent shall be clearly marked as such if the Instructions are in writing or otherwise expressly stated to be urgent by the Solicitor.
- 3.6 Instructions will not be accepted on any contingent or conditional basis (which may compromise, or may be perceived to compromise, the Expert's independence).

4. Benefit of the Expert Services

- 4.1 Unless otherwise agreed in writing, the Expert Services are provided to the Solicitor as the Expert's client, acting for the benefit of the Lay Client.
- 4.2 The Expert acknowledges the existence of a duty of care owed to the Lay Client at common law, subject to his professional obligations under the Code and to the Court.
- 4.3 No one other than the Solicitor and the Expert has any rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any provision of this agreement.

5. The Solicitor's Responsibilities

- 5.1 In order to enable the Expert to supply the Expert Services in a prompt, efficient and professional manner, the Solicitor shall:
- (a) provide timely, full and clear Instructions (in writing where practicable), supported by good-quality copies of all relevant documents within his possession, including all Court orders and directions which may affect preparations of advice or reports, or arrange or ensure the provision of all these things;
 - (b) provide a timetable for the provision of the Expert Services and, at such time as the timetable is altered, promptly to notify the Expert in writing of such alterations;
 - (c) deal promptly with every reasonable request by the Expert for authority, information and documentation;
 - (d) update and/or vary without delay the Instructions as circumstances require;
 - (e) notify the Expert in writing if any order has been made which caps the amount of the Expert's fees and disbursements;
 - (f) declare at the outset of the Instructions whether any order has been made limiting

the amount of the Expert's fees and disbursements;

- (g) ascertain the availability of the Expert for hearings, meetings and appointments at which his presence is required, and give adequate notice of any such hearings, meetings and appointments; and
- (h) otherwise throughout the duration of the Appointment, co-operate with the Expert in all matters relating to the Services.

6. Fees and Disbursements

- 6.1 The Expert's fees will be calculated as agreed between the Expert and the Solicitor, whether prospectively or retrospectively.
- 6.2 The Expert may agree to provide the Expert Services for a fixed fee or may agree to provide the Expert Services on the basis of an agreed hourly rate or on such other basis as may from time to time be agreed.
- 6.3 If no fee or hourly rate is agreed, then the Expert is entitled to charge a reasonable fee for the Expert Services having regard to all relevant circumstances.
- 6.4 Unless otherwise agreed, the Expert's hourly rate may be reviewed from time to time, and the Expert will notify the Solicitor of any proposed increase in that rate. The Solicitor shall not unreasonably refuse to agree an increase in the Expert's rate. Any increase in the Expert's rate will take effect from the date when the Solicitor agrees to the increase or should reasonably have agreed to an increase.
- 6.5 The fee for the Expert Services is exclusive of any applicable Value Added Tax (or any tax of a similar nature), which shall if appropriate be added to the fee at the appropriate rate.
- 6.6 If requested to do so, the Expert shall provide the Solicitor with an estimate of the Expert's likely fees and disbursements in relation to any Expert Services or the Case. Any estimate of likely fees and disbursements does not amount to a promise or agreement that the Expert will perform those Expert Services within a fixed time or for a fixed fee, but represents the Expert's best estimate based on the information available to the Expert at the time.
- 6.7 In addition to fees, the Expert may charge the Solicitor for reasonable disbursements, which may include the following costs or

expenses (by way of non-limited example): printing, photocopying, postage, couriers, and all out-of-pocket expenses (such as travel costs, subsistence and hotel accommodation).

7. Payment and Billing

7.1 The Expert shall be entitled to deliver an invoice to the Solicitor in respect of the Expert Services or any completed part thereof and any disbursements at any time after supplying the Expert Services or any part thereof. The invoice will set out an itemised description of: (a) the Expert Services provided by the Expert and the fees charged; (b) any disbursements incurred and the cost thereof; and (c) VAT (or any tax of a similar nature) if any.

7.2 The Solicitor must pay the invoice within 28 days of delivery, whether or not the Solicitor has been put in funds by the Lay Client. If the invoice remains outstanding for more than 28 days from the date of delivery, the Expert is entitled:

- (a) to the fixed sum and interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998;
- (b) to sue the Solicitor for payment; and
- (c) subject to the Expert's obligations under the Code and to the Court, to refrain from doing any further work on the Case unless payment for that further work is made in advance.

7.3 All payments herein shall be made without any deduction, abatement, counterclaim or set off whatsoever (whether by reason of a complaint made against or dispute with the Expert or otherwise).

7.4 For the avoidance of doubt, the Solicitor is liable for and will pay the Expert's fees and disbursements in full in accordance with the terms of the Appointment Letter and these General Terms whether or not: (i) the Solicitor is or will be put in funds and/or paid by the Lay Client and/or any opposing party; and/or (ii) the Expert's fees and disbursements are or will be the subject of assessment by the Court.

8. Liability

8.1 The Expert is not liable for loss or damage suffered by any persons, firms or partnerships other than the Lay Client.

8.2 Nothing in these General Terms limits or excludes the Expert's liability for: (a) death or personal injury caused by his negligence; (b) fraud or fraudulent misrepresentation; or (c) or any other liability which cannot be limited or excluded by applicable law.

8.3 Subject to Clauses 8.1 - 8.2, the Expert shall have no liability whether in contract, tort or otherwise, for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of or damage to goodwill;
- (e) loss of use or corruption of software, data or information;
- (f) any indirect or consequential loss.

8.4 Subject to Clauses 8.1 - 8.3, the Expert's total liability in contract, tort or otherwise, arising in connection with the performance or contemplated performance of these General Terms, unless otherwise agreed in writing, shall be limited to £500,000.

9. Copyright

9.1 All copyright and other intellectual property rights of whatever nature attaching to the Expert's work product, including all documents, reports, written advice or other materials provided by the Expert to the Solicitor or the Lay Client belong to and remain with the Expert.

9.2 The Solicitor and the Lay Client have the right and licence to use the Expert's work product for the particular Case and the particular purpose for which it is prepared.

9.3 If the Solicitor or the Lay Client wishes to use copies of the Expert's work product for purposes other than those for which it is prepared, this will require the express written permission of the Expert.

10. Retention and Storage of Documents

10.1 Subject to any agreement to the contrary, during the course of the Case, the Expert shall retain those documents as in the Expert's reasonable professional judgment it is proper to retain, and for this purpose the Expert may make or keep copies of documents.

10.2 Subject to any agreement to the contrary, at the completion of the Case, the Expert:

- (a) may, and shall at the Solicitor's request, return to the Solicitor all documents in the Expert's possession in connection with the Case, save that the Expert may retain personal notes, a copy of the Instructions and the Expert's work products; and
- (b) may otherwise retain such documents relating to the Case as in the Expert's reasonable professional judgment it is proper to retain.

11. Termination

- 11.1 The Solicitor may terminate the Appointment by giving notice in writing to the Expert at any time.
- 11.2 The Appointment will terminate automatically as soon as the Expert is under a professional obligation under the Code or to the Court to withdraw from the Case or cease to act.
- 11.3 The Expert may terminate the Appointment by giving notice in writing to the Solicitor if Fees properly due to the Expert have not been paid by their due date.
- 11.4 Termination of the Appointment, whether under this Clause or otherwise, does not prejudice any accrued liabilities, rights and/or remedies of the Expert or the Solicitor.

12. Miscellaneous

- 12.1 Except where expressly states, nothing done or not done by the Expert constitutes a waiver of that party's rights hereunder.
- 12.2 If any provision of these General Terms is found by a competent court or administrative body of competent jurisdiction to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect the other provisions of these General Terms which will remain in full force and effect.
- 12.3 If any provision of these General Terms is found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question will apply with such deletions as may be necessary to make it valid and enforceable.
- 12.4 The Appointment Letter, incorporating these General Conditions, comprises the entire agreement between the parties to the exclusion of all other terms and conditions

and prior or collateral agreements, negotiations, notices of intention and representations and the parties agree that they have not been induced to enter into this agreement on the basis of any representation.

- 12.5 These General Terms may be varied if, but only if, agreed in writing.

13. Governing Law and Jurisdiction

- 13.1 The Appointment Letter and these General Terms shall be governed by and construed in accordance with the law of England and Wales.
- 13.2 The parties agree to submit to the exclusive jurisdiction of the Courts of England and Wales in respect of any dispute claim or difference arising under or in connection with the Appointment and/or these General Terms (including any question regarding the existence and/or validity and/or termination of the Appointment) PROVIDED THAT at any point up to and including 28 days after the issue of Court proceedings, the Expert may notify the Solicitor in writing that he requires any such dispute claim or difference to be referred to arbitration, in which case the parties shall:
 - (i) refer the matter to arbitration by a barrister of not less than 15 years' standing to be nominated for this purpose by the Chairman of the Bar Council; and
 - (ii) if applicable, agree to the terms of a consent order dismissing any extent proceedings.The award of such arbitrator (assisted by such expert assessor(s) as may be necessary) shall be final and binding on the parties.