

## Agreement for the Supply of Legal Services by a Barrister in a Commercial Case

The Barrister and the Solicitor agree that the Barrister will supply the Services for the benefit of the Lay Client on the terms set out below and subject to the General Terms and Conditions of Business for the Supply of Legal Services by Barristers to Solicitors in Commercial Matters attached to this Agreement (the "General Terms").

1. The Barrister: «Barrister\_Name»
2. The Solicitor: «Company\_Name»
3. The Case: «Case\_ExternalTitle»
4. The Barrister's current standard hourly rate for paperwork (clause 7.3 of the General Terms): £«barrister\_hourlyRate»

# General Terms and Conditions for the Supply of Legal Services by Barristers to Solicitors in Commercial Matters

## 1. Definitions and Interpretation

1.1 These are the General Terms and Conditions for the Supply of Legal Services by Barristers to Solicitors in Commercial Matters (the "General Terms").

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

the "Agreement" means the agreement between the Barrister and the Solicitor for the supply of the Services incorporating these General Terms;

the "Barrister" means the barrister, practising as a member of the Bar of England and Wales, who is supplying the Services in accordance with the Agreement;

a "Business Day" means a day that is neither a weekend nor a public holiday in England;

the "Case" means the particular legal dispute or matter, whether contentious or non-contentious, in respect of which the Barrister is instructed to supply the Services;

the "BSB Handbook" means Part 2 of the Bar Standards Board Handbook, as amended from time to time;

the "Instructions" means the briefs, instructions and requests for work to be done (and all accompanying materials), whether written or oral, given by the Solicitor to the Barrister for the purposes of the supply of the Services by the Barrister;

the "Lay Client" means the Solicitor's client for whose benefit or on behalf of whom the Barrister is instructed by the Solicitor to supply the Services;

the "Services" means the legal services supplied or to be supplied by the Barrister in connection with the Case pursuant to the Instructions provided by the Solicitor and otherwise in accordance with the Agreement; and

the "Solicitor" means the sole practitioner, partnership, limited liability partnership or company who instructs the Barrister to supply the Services, together with all successors.

1.3 In these General Terms:

(a) an "invoice" includes a fee note not amounting to a VAT invoice;

(b) reference to a clause is to the relevant clause of these General Terms;

(c) references to the singular include the plural and vice versa in each case;

(d) reference to a document includes anything in which information is recorded, whether on paper, electronically or otherwise;

(e) references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it; and

(f) 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 Agreement, to all Services supplied by the Barrister on the Instructions of the Solicitor in relation to the Case.

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

2.3 The Agreement will normally indicate the person or persons who is/are to be the Barrister's Lay Client(s) in the Case).

2.4 In the event of any inconsistency between the Agreement and these General Terms, the Agreement shall prevail.

## 3. Providing the Services

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

3.2 The Barrister will exercise reasonable skill and care in supplying the Services.

3.3 The Barrister supplies the Services on the basis set out in these General Terms and subject to the Barrister's professional obligations under the BSB Handbook.

3.4 The Barrister will supply the 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. 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, and time shall be of the essence for the supply of those Services.

#### **4. Benefit of the Services**

4.1 Unless otherwise agreed in writing, the Barrister's Services are provided to the Solicitor as the Barrister's client, acting for the benefit of the Lay Client. Subject to the duties of the Barrister and the Solicitor to the court, the Barrister and the Solicitor acknowledge and agree that each owes a primary duty to the Lay Client.

4.2 The Barrister acknowledges the existence of a duty of care owed to the Lay Client at common law, subject to his professional obligations to the Court and under the BSB Handbook.

4.3 Subject to clause 4.4, no one other than the Solicitor and the Barrister has any rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any provision of the Agreement.

4.4 The Lay Client may enforce the Agreement subject to and in accordance with clause 20 and the provisions of the Contracts (Rights of Third Parties) Act 1999.

4.5 The Solicitor and the Barrister must obtain the consent of the Lay Client before they rescind by agreement the Agreement so as to extinguish the Lay Client's rights to enforce the Agreement or alter the Lay Client's entitlement under that right. This requirement applies instead of the circumstances set out in section 2(1)(a) to (c) of the Contracts (Rights of Third Parties) Act 1999.

#### **5. The Solicitor's responsibilities**

5.1 In order to enable the Barrister to supply the Services in a prompt, effective and professional manner, the Solicitor shall co-operate with and assist the Barrister throughout the duration of the Agreement, including through the provision of Instructions that are adequate and in sufficient

time to enable the Barrister to supply the Services within the time required by clause 3.4 above.

#### **6. Responsibility for the Barrister's work**

6.1 The Barrister will be solely responsible for providing the Services under the Agreement. The Barrister may only involve another barrister or other third party in the performance of the Services under the Agreement if the Barrister obtains the Solicitor's prior consent, that consent not to be unreasonably withheld.

#### **7. Charges and expenses**

7.1 The Barrister's fees will be calculated as agreed between the Barrister and the Solicitor, whether prospectively or retrospectively.

7.2 Unless otherwise agreed, the Barrister's fees will be calculated by reference to the amount of time reasonably required to supply the Services and a reasonable hourly rate, taking into account all the circumstances of the Case.

7.3 The Barrister shall notify the Solicitor at the outset of the Case of the Barrister's current standard hourly rates. Such standard hourly rates are applicable, unless otherwise agreed, to paperwork only. Fees for hearings will be separately agreed. For the purposes of determining the reasonable hourly rate under clause 7.2 above, the circumstances of the Case include: the complexity of the issues; the speed at which the Services must be supplied; the expertise or specialist knowledge that the Services require; and the value of the property or subject matter involved.

7.4 Unless otherwise agreed, the Barrister's reasonable hourly rate may be reviewed from time to time, and the Barrister will notify the Solicitor of any proposed increase in that rate. The Solicitor shall not unreasonably refuse to agree an increase in the Barrister's rates. Any increase in the Barrister's rates- will take effect from the date when the Solicitor agrees to an increase or should reasonably have agreed to an increase.

7.5 The Barrister may agree to supply the Services for a fixed fee. If the Barrister is unable to supply Services for the fixed fee agreed, any additional fees over and above the fixed fee not expressly agreed by the Solicitor in writing are incurred at the Barrister's own risk.

7.6 Unless the contrary is agreed, a fee agreed for the Barrister's Services shall be exclusive of any applicable Value Added Tax (or any tax of a

similar nature), which shall be added to the Barrister's fee at the appropriate rate.

## **8. Estimate of costs/time**

8.1 If requested to do so, the Barrister shall provide the Solicitor with an estimate of the Barrister's likely fees and disbursements in relation to any Services or the Case. Any estimate of likely fees and disbursements does not, unless otherwise agreed, amount to a promise or agreement that the Barrister will perform those Services within a fixed time or for a fixed fee, but represents the Barrister's best estimate based on the information available to the Barrister at the time.

8.2 The Barrister shall notify the Solicitor promptly if any estimate of time and/or fees and disbursements that the Barrister has provided to the Solicitor needs to be revised for any reason.

8.3 If for any reason any Instructions or the Case do not proceed to completion, the Barrister shall only charge fees for work actually done and disbursements actually incurred, unless otherwise agreed (for example, where stage payments have been agreed and fallen due prior to termination of the Agreement).

## **9. Payment and billing arrangements**

9.1 In the event of late payment of sums properly due to the Barrister, the Barrister is entitled to interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 from the date upon which payment was due to the date of payment.

9.2 Any invoice setting out the Barrister's fees sent by the Barrister shall state (i) the period it covers, (ii) (where the fees are payable on an hourly rate) an itemised description of the time spent in supplying the Services, (iii) the fees charged, (iv) any disbursements incurred and the cost of those disbursements, and (v) Value Added Tax (or any tax of a similar nature).

9.3 If, in accordance with these General Terms, the Solicitor requests the Barrister to provide an invoice setting out the Barrister's fees, the Barrister shall provide that invoice promptly.

9.4 The Barrister shall send to the Solicitor an invoice setting out the Barrister's fees in respect of the Services or part of the Services in accordance with any payment schedule agreed with the Solicitor, promptly on request by the Solicitor or otherwise as may be appropriate given the nature and circumstances of the Case.

The Solicitor shall pay to the Barrister any sums properly due on the Barrister's invoice in accordance with any payment schedule agreed by the Solicitor and the Barrister or otherwise within 30 days of receipt by the Solicitor of the invoice.

## **10. Confidential information**

10.1 Subject to clause 10.2, the Barrister will keep confidential all information provided to the Barrister in connection with the Case.

10.2 The Barrister may only disclose Information if and to the extent that:

(a) disclosure is required by law;

(b) disclosure is authorised by the Solicitor or Lay Client;

(c) disclosure is required by the professional rules applicable to Barristers practising in England and Wales; or

(d) the Information is already in the public domain other than as a result of breach by the Barrister of the Barrister's obligations.

10.3 Unless otherwise expressly stated by the Solicitor or Lay Client, the Solicitor and Lay Client will be taken to have authorised the disclosure of information to mini-pupils, work-experience students, interns and secondees where such disclosure is reasonably necessary to explain and illustrate the Barrister's practice and provided that the person to whom disclosure is made has agreed in writing to keep the information confidential.

10.4 If a Barrister receives a request for the disclosure of Information and the Barrister considers that the Barrister is obliged, whether under clause 10.2(a), clause 10.2(c) or otherwise, to comply with that request, the Barrister will inform the Solicitor of the request as soon as the Barrister is lawfully able to do so.

## **11. Conflicts of interest**

11.1 The Barrister's entering into the Agreement shall constitute the Barrister's confirmation that, to the best of the Barrister's knowledge based on the information available to the Barrister at the time of entering into the Agreement, the Barrister has at the time of entering into the Agreement no conflict of interest or other professional impediment that would render it professionally inappropriate for the Barrister to act for the Solicitor or the Lay Client on the Case.

11.2 If, in the course of the Agreement, information emerges that leads the Barrister to consider that it is or may be professionally inappropriate for the Barrister to continue to act for the Solicitor or the Lay Client, the Barrister shall inform the Solicitor forthwith.

11.3 Neither the Solicitor nor the Lay Client shall have any claim in damages against the Barrister for breach of this clause 11 unless:

(a) the Barrister has admitted in writing that the Barrister has acted in breach of this clause 11; or

(b) the Lay Client or the Solicitor has made a complaint to the Bar Standards Board or the Legal Ombudsman that the Barrister has acted in breach of rC21 of the BSB Handbook, that the complaint has been upheld, no appeal or review has been or is being made of that decision and any time limit for appeal or review has expired.

11.4 Clause 11.3 does not prevent the Solicitor or Lay Client from seeking relief other than damages (including, without limitation, an interim or final injunction) in respect of any breach by the Barrister of clause 11.

## **12. Liability**

12.1 The Barrister is not liable for any loss or damage suffered by any persons, firms or partnerships other than the Lay Client and the Solicitor.

12.2 The Barrister shall arrange and maintain professional indemnity insurance as required by the BSB Handbook.

12.3 Nothing in these General Terms excludes or limits any liability (whether at common law, (including in negligence), in equity or otherwise):

(a) that the Barrister would have had to the Solicitor,

(b) that the Barrister would have had to the Lay Client or

(c) that the Solicitor would have had to the Barrister had there been no contract (whether or not incorporating these General Terms) with regard to the Case between the Barrister and the Solicitor or between the Barrister, the Solicitor and the Lay Client.

12.4 However, if:

(a) the Barrister is liable to the Solicitor,

(b) the Barrister is liable to the Lay Client or

(c) the Solicitor is liable to the Barrister (save in relation to fees) solely as a result of breach of these General Terms or of any other contractual provision of the Agreement and would not otherwise have been liable (whether at common law, (including in negligence). in equity or otherwise), that liability shall be limited to the sum stated in the Agreement. If no such sum is stated, the limit of that liability shall be limited to £100,000, being the highest limit of cover for such liabilities provided to Barristers by the Bar Mutual Indemnity Fund.

## **13. Copyright**

13.1 All copyright and other intellectual property rights of whatever nature in or attaching to the Barrister's work product, including all documents, reports, written advice or other materials provided by the Barrister to the Solicitor or the Lay Client belong to and remain with the Barrister. The Solicitor and the Lay Client have the right and licence to use the Barrister's work product for the particular Case and the particular purpose for which it is prepared. If the Solicitor or the Lay Client wishes to use copies of the Barrister's work product for purposes other than those for which it is prepared, this will require the express written permission of the Barrister. The moral rights of the Barrister in respect of his work product are asserted.

13.2 All copyright and other intellectual property rights attaching to the material provided by the Solicitor to the Barrister in or with any Instructions ("Material") belong to the Solicitor, the Lay Client or a third party, as the case may be. The Barrister is permitted to make use of the Material in order to provide the Services. If the Barrister wishes to use the Material for any other purpose, the Barrister must obtain the prior written consent of the Solicitor and/or the Lay Client.

13.3 Where the Barrister has agreed that the Solicitor may store the Barrister's work product in the Solicitor's internal know-how system or equivalent ("KH System"):

(a) that work product must be stored and managed in accordance with "Use of Counsel's opinions – copyright and confidentiality" published by The Law Society;

(b) the Barrister accepts no duty of care, whether to the Solicitor or anyone else, in relation to the use of the Barrister's work product as a result of its storage on the Solicitor's KH System;

(c) the Solicitor agrees that the Barrister shall have no liability of any kind (whether to the Solicitor or anyone else) arising out of or connected with the use of the Barrister's work product as a result of its storage on the Solicitor's KH System;

(d) the Solicitor agrees to indemnify the Barrister against any loss which the Barrister may suffer arising out of or connected with the use of the Barrister's work product as a result of its storage on the Solicitor's KH System.

#### **14. Retention and storage of documents**

14.1 Subject to any agreement to the contrary the Barrister shall retain those documents as in the Barrister's reasonable professional judgement it is proper to retain, and for this purpose the Barrister may make or keep copies of documents.

14.2 Subject to any agreement to the contrary, at the completion of the Case the Barrister:

(a) may, and shall at the Solicitor's request, return to the Solicitor all documents in the Barrister's possession in connection with the Case, save that the Barrister may retain personal notes, a copy of the instructions and the Barrister's work products;

(b) may otherwise retain such documents relating to the Case as in the Barrister's reasonable professional judgement it is proper to retain, and for this purpose the Barrister may make or keep copies of such documents and, after obtaining the Solicitor's consent, destroy the documents originally supplied; and

(c) may, and shall at the Solicitor's request, return to the Solicitor any property (such as exhibits and models) to which the Solicitor, the Lay Client or any third party is entitled, and otherwise retain such property as in the Barrister's reasonable professional judgement it is proper to retain.

#### **15. Electronic communications**

15.1 Subject to any agreement to the contrary, the Barrister may communicate with the Solicitor by e-mail. Documents sent to the Solicitor by e-mail need not be encrypted. If the Solicitor requires a greater level of security in electronic communications, the Solicitor shall notify the Barrister of this, and the Solicitor and the Barrister shall use their best endeavours to agree and implement an e-mail protocol, incorporating encryption standards, on the basis of best commercial practice at the time.

15.2 The Solicitor and the Barrister shall use industry standard firewall and anti-virus protection.

#### **16. Termination**

16.1 The Solicitor or, if a party to the agreement incorporating these General Terms, the Lay Client may at any time terminate the Agreement with immediate effect by giving notice to the Barrister.

16.2 The Agreement will terminate automatically as soon as the Barrister is professionally obliged pursuant to rule rC25 of the BSB Handbook to cease to act and has complied with any requirements in the BSB Handbook for doing so. The Barrister shall inform the Solicitor immediately the Barrister becomes aware of such an obligation.

16.3 The Barrister may terminate the Agreement when the Barrister is entitled to cease to act pursuant to rule C26 of the BSB Handbook and has complied with any requirements in the BSB Handbook for doing so.

16.4 The Barrister may terminate the Agreement if:

(a) fees properly due to the Barrister have not been paid by their due date;

(b) the Barrister has given at least ten Business Days' notice in writing to the Solicitor of the Barrister's intention to terminate the Agreement because of the non-payment; and

(c) the fees have not been paid by the expiry of the time given by that notice.

16.5 Termination of the Agreement, whether under this clause or otherwise, does not prejudice any accrued liabilities, rights and/or remedies of the Barrister, the Lay Client or the Solicitor under the Agreement.

#### **17. Publicity**

17.1 The Barrister may not disclose to third parties that the Lay Client is or has been a client of the Barrister, or that the Barrister is acting on a Case, unless the contrary is agreed or these matters are in the public domain other than as a result of breach by the Barrister of the Barrister's obligations.

#### **18. Authority to give and receive Instructions**

18.1 Unless the Solicitor is informed otherwise by the Barrister, the Barrister's clerk or clerks have full authority to bind the Barrister on all matters in

relation to fees and the acceptance and return of instructions in relation to a Case.

## **19. Miscellaneous**

19.1 None of the Solicitor, the Barrister or the Lay Client may assign or transfer the benefit or burden of the Agreement or any rights arising from or in connection with the Agreement (including, without limitation, rights under the Contracts (Rights of Third Parties) Act 1999) without the prior written consent of all other parties.

19.2 Except where expressly stated, nothing done or not done by the Barrister, the Lay Client or the Solicitor constitutes a waiver of that party's rights under or arising from the Agreement.

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

19.4 If any term of these General Terms is or becomes illegal, invalid or unenforceable, whether in whole or in part, the remainder of the General Terms will remain valid and enforceable.

19.5 In this clause, "Data Protection Law" means the Data Protection Act 2018, including as amended, extended or reenacted from time to time (the "Act"), Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data so far as this Regulation is applicable in England and Wales and including as amended, extended or reenacted from time to time in England and Wales (the "GDPR"), and all rules, regulations and orders made under the Act or the GDPR. The Barrister is a data controller for the purposes of Data Protection Law, and is bound, amongst other things, to implement appropriate technical and organisational measures against unauthorised processing of personal data and against accidental loss or destruction of, or damage to, personal data. The Barrister is entitled to process in accordance with Data Protection Law personal data of the Lay Client, the Solicitor and others to enable the Barrister to provide the Services, to liaise with the Solicitor in respect of the Case or on the Lay Client's behalf, to maintain and update client records, to produce management data, to prevent crime, to comply with regulatory requirements and as permitted or required by law. The Lay Client and the Solicitor each have a right of access and a right of correction in respect of their personal data which the Barrister holds about them, in accordance with Data Protection Law. If and to the extent that the Barrister and the

Solicitor are joint controllers (whether or not with anyone else) for the purposes of Data Protection Law, each shall, unless otherwise agreed, be individually responsible for ensuring that the processing each undertakes is in accordance with Data Protection Law, for ensuring so far as each is able the implementation of appropriate technical and organisational measures in accordance with Data Protection Law, and as regards the exercising of the rights of the data subject, but the Solicitor shall be responsible for the provision of information referred to in articles 13 and 14 of the GDPR if and to the extent that this provision of information is required by Data Protection Law. In the event that the Barrister is required in accordance with article 33 of the GDPR to notify to a supervisory authority a personal data breach affecting personal data of the Lay Client, the Solicitor or others referred to in data supplied with the Instructions, the Barrister shall notify the Solicitor as soon as practicable after notifying the supervisory authority.

19.6 The Contractual General Terms for the Supply of Legal Services by Barristers to Authorised Persons 2012, published on the Bar Standards Board's website, are excluded in their entirety.

## **20. Law and Jurisdiction**

20.1 These General Terms and the Agreement shall be governed by the law of England and Wales. The law applicable to any non-contractual obligations owed by the Barrister or the Solicitor arising out of or in connection with the Agreement or the Barrister's Services shall also be the law of England and Wales.

20.2 Any dispute arising out of or in connection with the Agreement or the Services shall be subject to the exclusive jurisdiction of the courts of England and Wales, to which the parties irrevocably submit.