

## 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").

These terms may be accepted by email confirmation rather than manuscript signature. The continued instruction of the Barrister will constitute acceptance by conduct of these terms unless the Parties expressly agree to the contrary. For the avoidance of doubt, the liability that is limited under clauses 12.4(a) & (b) and 21.3 is the Barrister's liability to the Solicitor and/or to the Lay Client, and by this Agreement the Solicitor accepts those limitations as principal and on behalf of the Lay Client, having authority to do so.

1. **The Barrister:**<sup>1</sup>
2. **The Solicitor:**<sup>1</sup>
3. **The Lay Client:**<sup>1</sup>
4. **The Case:**<sup>1</sup>
5. **Payment Basis** (clause 9 of the General Terms):<sup>1</sup> Basis A
6. The Barrister's agreed hourly rate (clause 7.2 of the General Terms):<sup>3</sup> £
7. Optional clauses:<sup>4</sup>
  - (a) Limitation of liability arising solely under contract (clause 12.4 of the General Terms): £
  - (b) Minimum insurance cover (clause 21.2 of the General Terms): £
  - (c) Limitation of general liability (clause 21.3 of the General Terms): £
  - (d) Monies on account to be obtained by the Solicitor (clause 21.4 of the General Terms): £
  - (e) Barrister agrees to work product being stored on the Solicitor's internal know-how system (clause 21.5 of the General Terms): Yes
8. Amendments to the General Terms:<sup>3</sup>

### Signed

.....  
The Barrister

.....  
The Solicitor

**Date:**

**Date:**

**Notes:** <sup>1</sup> This must be completed. <sup>2</sup> If applicable, the basis of payment must be set out in paragraph 8. <sup>3</sup> This may be completed. <sup>4</sup> This may be completed. Where this is completed the relevant clauses in the General Terms will apply. Where nothing is stated the optional clauses shall not apply, but Clause 12 shall continue to apply.

## 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 (and, if payment is to be made on Basis C set out in clause 9, the Lay Client) for the supply of the Services incorporating these General Terms;

the "Applicable Data Protection Law" means all law relating to data protection, the processing of personal data and any privacy laws arising to which the Parties are subject in connection with the personal data in question, including where applicable: (a) UK Data Protection Law; (b) European Data Protection Law; and (c) any equivalent legislation in any jurisdiction in which a Party is established; in each case, as amended, consolidated, restated or re-enacted from time to time;

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

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 "Complaints Procedure" means the information the Barrister (or the Barrister's chambers) provides to comply with its obligations under rule rC99 of the BSB Handbook and which is available on the website of the Barrister or the Barrister's chambers;

"controller", "processor", "data subject", "personal data", "processing" (and "process") and "special categories of personal data" shall have, where applicable, the meanings given in Applicable Data Protection Law;

the "Data" shall mean personal data;

the "European Data Protection Law" means:

all EU regulations or other legislation applicable (in whole or in part) to the processing of personal data (including but not limited to Regulation (EU) 2016/679 (the GDPR)) 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 "Party" means any party to this Agreement, namely the Barrister, the Solicitor, and, if Basis C applies, the Lay Client, and "Parties" shall be interpreted accordingly;

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;

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

the "Sub-processor" means any other person or entity to whom a Party sub-contracts or outsources any processing of personal data; and

the "UK Data Protection Law" means:

the Data Protection Act 2018;

the GDPR, as it forms part of UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018 (UK GDPR);

the Privacy and Electronic Communications (EC Directive) Regulations 2003 as they continue to have effect by virtue of section 2 of the European Union (Withdrawal) Act 2018; and

any other laws in force in the UK from time to time applicable (in whole or in part) to the processing of personal data,

as amended from time to time in the UK.

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 If payment is to be made on Basis C set out in clause 9, this Agreement will not come into effect until it is signed or confirmed in writing by the Lay Client.

2.3 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.

2.4 The Agreement will indicate the person or persons who is/are to be the Barrister's Lay Client(s) in the Case. If payments are to be made on Basis C or Basis D, the Solicitor will also, to the extent required, provide contact details for the Lay Client.

2.5 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 the Barrister's professional obligations to the Court and under the BSB Handbook.

4.3 Subject to clause 4.4, no third party to this Agreement has any rights (whether 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 21 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.

4.6 Clauses 4.4 and 4.5 do not apply if, pursuant to clause 9, payment is to be made on Basis C.

### **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.

5.2 Upon receipt of the Barrister's Complaints Procedure and upon request by the Barrister to do so, the Solicitor shall provide a copy of the Barrister's Complaints Procedure to the Lay Client.

### **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. In such circumstances, the Barrister remains responsible for the performance of the Services by that third party.

### **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. For the purposes of determining the reasonable hourly rate, 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 rate. Any increase in the Barrister's rate 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 (as, for example but without limitation, where stage payments have been agreed and have fallen due prior to termination of the Agreement).

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

9.1 The Barrister and the Solicitor shall agree the basis upon which payment is to be made to the Barrister for the Services, which, unless otherwise agreed, shall be one of Basis A (Solicitor Liability), Basis B (Solicitor Endeavours to Collect), Basis C (Lay Client Liability) or Basis D (Lay Client Sole Responsibility) as further described below.

9.2 In the event of late payment of sums properly due to the Barrister under Basis A or C, 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. In the event of late payment under Basis B, interest shall run from the date on which payment of the Barrister's fees became due from the Lay Client to the Solicitor at the same rate applicable to late payment of the Solicitor's own fees.

9.3 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).

### *Basis A (Solicitor Liability)*

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.

9.5 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.

### *Basis B (Solicitor Endeavours to Collect)*

9.6 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.

9.7 The Solicitor will send the Barrister's invoice to the Lay Client in accordance with the payment schedule agreed between the Barrister and the Solicitor, or otherwise with the next invoice that the Solicitor sends to the Lay Client for the Solicitor's own fees.

9.8 The Solicitor shall pay to the Barrister any sums properly due on the Barrister's invoice within five Business Days of receipt by the Solicitor from the Lay Client of payment in respect of the Barrister's fees. For the avoidance of doubt, the Solicitor shall not be liable to pay the Barrister's fees, or interest in respect of those fees, until they have received payment for those fees or interest from the Lay Client.

9.9 The Solicitor will use its reasonable endeavours to collect from the Lay Client the Barrister's fees properly due. Such endeavours will be not less than those used by the Solicitor to collect the Solicitor's own fees.

9.10 The Solicitor will advise the Barrister promptly if the Solicitor has reason to believe that the Lay Client will be unable or unwilling to pay the Barrister's fees, including (without limitation) if (a) the Lay Client refuses to pay the Solicitor's or Barrister's fees, (b) the Lay Client notifies the Solicitor of a possible claim against the Solicitor or Barrister or (c) the Solicitor becomes aware that the Lay Client is subject to any insolvency process.

9.11 If the Barrister requests, the Solicitor shall promptly assign any cause of action against the Lay Client in respect of the Barrister's fees to the Barrister without any further consideration and shall give the Barrister such additional assistance as the Barrister reasonably requests to assist the Barrister to take action to recover the Barrister's fees from the Lay Client (including, without limitation, the production of documents reasonably requested by the Barrister and the delivery by the Solicitor of a bill of costs in accordance with the requirements of section 69 of the Solicitors Act 1974).

9.12 If the Barrister's claim against the Lay Client to be paid the Barrister's fee fails in whole or in part, or would have failed in whole or in part if pursued by the Barrister, on account of a defence or cross-claim of the Lay Client, the Solicitor shall promptly pay any balance of the Barrister's fees outstanding to the extent that the defence or cross-claim arises from the negligence or other breach by the Solicitor of the Solicitor's obligations to the Lay Client and was not caused by any breach of duty by the Barrister.

### *Basis C (Lay Client Liability)*

9.13 The Solicitor, on behalf of the Lay Client, shall agree with the Barrister the fees to be paid for the Services (and any payment schedule in respect of those fees) but shall not be liable for payment of the Barrister's fees, which shall be the sole responsibility of the Lay Client.

9.14 The Barrister shall send to the Lay Client, with a copy to the Solicitor, an invoice addressed to the Lay Client 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 on behalf of the Lay Client, promptly on request by the Solicitor or otherwise as may be appropriate given the nature and circumstances of the Case.



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

9.16 If Basis C applies, the Lay Client shall be a party to the agreement incorporating these General Terms between the Solicitor and the Barrister, and the Barrister, the Lay Client and the Solicitor shall accordingly each be entitled to enforce the agreement incorporating these General Terms.

*Basis D (Lay Client Sole Responsibility)*

9.17 The Lay Client shall agree with the Barrister the fees to be paid to the Barrister for the Services. The Solicitor shall not be liable to pay those fees or otherwise concerned with those fees, which shall be a matter solely between the Barrister and the Lay Client.

**10. Confidential information**

10.1 Subject to clause 10.2, the Barrister shall keep confidential all information provided to the Barrister in connection with the Case ("Information").

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 (including but not limited to disclosure to another barrister or third party pursuant to clause 6.1);
- (c) disclosure is required by the professional rules applicable to Barristers practising in England and Wales;
- (d) the Information is already in the public domain other than as a result of breach by the Barrister of the Barrister's obligations; or
- (e) disclosure is made to a pupil or mini-pupil of the Barrister.

10.3 If a pupil or mini-pupil of the Barrister to whom the Barrister has disclosed Information under clause 10.2(e) fails to keep that Information confidential in accordance with this clause 10, that failure shall constitute breach by the Barrister of this clause 10.

10.4 If the 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 immediately.

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 rule rC21.2, rC21.3 or rC21.4 of the BSB Handbook, that 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 or, if higher, to the level, if any, set out in the Agreement as provided in clause 21.2.

12.3 Save as otherwise expressly agreed by reference to optional clause 21.3 below, 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 paragraph 7(a) of the Agreement. If no such sum is stated, the limit of that liability will be £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 an irrevocable, royalty free, worldwide right and licence to use the Barrister's work product for the particular Case and the particular purpose for which it is prepared or connected with the particular Case or purpose and, where clause 21.5 applies, for know-how or equivalent purposes. If the Solicitor or the Lay Client wishes to use copies of the Barrister's work product for purposes other than as set out in this clause 13 or specifically agreed in the Agreement, this will require the express written permission of the Barrister. The moral rights of the Barrister in respect of the Barrister's 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.

### 14. Retention and storage of documents

14.1 Subject to any agreement to the contrary, during the course of the Case the Barrister shall retain those documents as in the Barrister's reasonable professional judgment 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 hard copy documents and/or use reasonable endeavours to delete electronic 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 judgment 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 judgment it is proper to retain.

### 15. Electronic communications and documents

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.

15.3 If the Solicitor makes a request pursuant to clause 14.2(a) for the deletion of electronic documents then the Solicitor and Barrister shall discuss how that can most efficiently be achieved, having regard to the nature of the documents and how they have been sent and saved.

### 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 rC26 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; or
- (b) there appears to the Barrister (acting reasonably) to be an unacceptable risk that fees properly due to the Barrister will not be paid by their due date, and no satisfactory proposals for managing that risk have been made (e.g. funds on account or payment in advance);  
and if either (a) or (b) applies:
- (c) the Barrister has given at least ten Business Days' notice in writing to the Solicitor or, if Basis D applies, to the Lay Client copied to the Solicitor, of the Barrister's intention to terminate the Agreement because of the non-payment or the risk of future non-payment; and
- (d) the fees have not been paid, or the risk of future non-payment satisfactorily managed, 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 If the Barrister and the Solicitor agree that payment is to be made to the Barrister on Basis B, the Solicitor warrants to the Barrister that the Solicitor has authority from the Lay Client to give Instructions to the Barrister to supply the Services in accordance with these General Terms and that the Lay Client is obliged to pay the Solicitor in respect of those Services in accordance with the terms (including the payment schedule) agreed between the Barrister and the Solicitor.

18.2 If the Barrister and Solicitor agree that payment is to be made to the Barrister on Basis C, the Solicitor warrants to the Barrister that the Solicitor has authority from the Lay Client to agree that the Lay Client is obliged to pay the Barrister in accordance with these General Terms and that the Lay Client shall be a party to the agreement incorporating these General Terms as set out in clause 9.16.

18.3 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. Data Protection and Security**

19.1 The Parties acknowledge that the Solicitor is a controller of the Data it discloses to the Barrister, and that the Barrister will process the Data as a separate and independent controller strictly for the Permitted Purpose (as defined at clause 19.6 below).

19.2 Each Party shall be individually and separately responsible for complying with the obligations that apply to it as a controller under Applicable Data Protection Law.

19.3 The Barrister shall have an appropriate data retention and deletion policy in place in order to ensure that data, including the Information and the personal data processed under this agreement, is not retained for longer than is permitted by Applicable Data Protection Law. The Barrister shall ensure that appropriate measures are in place to give effect to the policy.'

19.4 The Barrister shall maintain such complete and accurate records as required by law to demonstrate compliance with the Barrister's obligations under the Applicable Data Protection Law (insofar as they apply to the Barrister) in relation to the personal data processed under this agreement.

19.5 In no event will the parties process the Data as joint controllers unless agreed in writing. In the unusual event that the parties agree to process Data as joint controllers (whether or not with anyone else) for the purposes of Applicable Data Protection Law, each shall, unless otherwise agreed, be individually responsible for ensuring that the processing each undertakes is in accordance with Applicable Data Protection Law.

19.6 Without prejudice to the other terms of this agreement, the Barrister is entitled to process in accordance with

Applicable 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 or any instructed experts 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 "Permitted Purpose").

19.7 In addition to the provisions of clause 15 regarding email security, the Barrister shall implement appropriate technical and organisational measures to protect against a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, the Data or confidential information of the Solicitor or Lay Client (a "Security Incident") in accordance with Article 32 of the UK GDPR. Such measures shall have regard to the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity of the rights and freedoms of natural persons.

19.8 Upon becoming aware of a Security Incident, the Barrister shall (a) inform the Solicitor and, provided that the Solicitor provides reasonable cooperation (including by providing relevant contact details for the Lay Client where required), the Lay Client without undue delay (and in any event within 72 hours of becoming aware where possible) and shall provide all such timely information and cooperation as each of them may require in order for them to fulfil their data breach reporting obligations under (and in accordance with the timescales required by) Applicable Data Protection Law; and (b) further take all such measures and actions as are reasonably necessary to investigate, remedy or mitigate the effects of the Security Incident and shall take all reasonable steps to keep the Solicitor and the Lay Client informed of all material developments in connection with the Security Incident. For the avoidance of doubt, nothing in this clause relieves the solicitor of such reporting obligations as they may have to the Barrister under Applicable Data Protection Law or otherwise (e.g. where an obligation to report arises as a result of a data breach in relation to which the Barrister is a data subject or where the Barrister is a controller in circumstances where the Solicitor is acting as a processor).

19.9 Where the Barrister appoints a third party processor to process Data or the confidential information of the Solicitor or the Lay Client (and such appointment is permissible under clause 6 or otherwise) they must do so in compliance with Applicable Data Protection Laws and take reasonable steps to satisfy themselves of compliance by that processor with such laws, in so far as they are applicable. Without prejudice to the generality of the foregoing, the Barrister will take reasonable steps to satisfy themselves: (a) that such processors implement appropriate technical and organisational security measures to protect the Data against a Security Incident in accordance with the terms of this agreement and (b) that there are appropriate measures in place to enable the Barrister to comply with its reporting obligations at clause 19.8.

19.10 In the event that the Barrister receives any correspondence, enquiry or complaint from a data subject, regulator or other third party related to (a) the disclosure of the Data provided pursuant to this Agreement by any Party for the Permitted Purpose; or (b) processing of such Data by any other Party (including, for the avoidance of doubt, any data subject rights request), the Barrister shall promptly inform each other Party of the existence of such correspondence, enquiry or complaint and provide details of the same, where permitted by law, before responding to the correspondence, enquiry or complaint in accordance with any requirements under Applicable Data Protection Law.

## 20. Miscellaneous

20.1 Subject to clause 9.11, 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.

20.2 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.

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

20.4 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.

20.5 The Standard Contractual Terms for the Supply of Legal Services by Barristers to Authorised Persons 2020 published on the Bar Council's website are excluded in their entirety.

20.6 In connection with the Sanctions and Anti-Money Laundering Act 2018, the Solicitor shall notify the Barrister and the Barrister's clerk or clerks in writing if the Solicitor knows, or has reasonable cause to suspect, that a person designated under any power contained in regulations mentioned in section 3(1)(a) of the Sanctions and Anti-Money Laundering Act 2018 ("P"):

- a) would (if P chose to) be able, in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of the Lay Client are conducted in accordance with P's wishes; and/or
- b) holds (a) directly or indirectly more than 50% of the shares in the Lay Client, (b) directly or indirectly more than 50% of the voting rights in the Lay Client, or (c) the right directly or indirectly to appoint or remove a majority of the board of directors of the Lay Client.

20.7

- (a) Subject to clause 20.7(b), the Barrister shall not be liable to pay any sum hereunder (whether by way of damages or otherwise) to the extent that the payment would expose the Barrister (or, if the

Barrister is insured in respect of that payment, would expose the Barrister's insurer(s) to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America (subject at all times to compliance with UK Protection of Trading Interests legislation).

- (b) If the Barrister is unable to pay sums due by way of damages or otherwise, the Barrister shall notify the Lay Client and Solicitor in writing immediately. Following receipt of the notice, the Lay Client and Solicitor may request the Barrister to seek a licence from the relevant authorities to enable payment to be made and the Barrister will use its best endeavours to seek such a licence.

## 21. Optional clauses

21.1 None of clauses 21.2 to 21.5 below have effect unless the Barrister and the Solicitor specifically agree in paragraph 7 on the front sheet of the Agreement that one or more of them should do so.

21.2 If a minimum sum is stated in paragraph 7(b) of the front sheet of the Agreement the Barrister shall arrange and maintain professional indemnity insurance in at least that sum.

21.3 In respect of

- (a) any breach of the Barrister's obligations in providing the Services, and/or
- (b) all breaches of the Barrister's obligations in providing the Services arising from or which are attributable to (i) the same act or omission, (ii) a series or group of related acts or omissions, (iii) a series or group of similar acts or omissions or (iv) the same originating cause

the Barrister's liability shall be limited to either:

- (i) the sum stated in clause 12.4, if the Barrister is solely liable as a result of breach of these General Terms as set out in clause 12.4; or
- (ii) notwithstanding clause 12, the sum stated in paragraph 7(c) of the front sheet of this Agreement, if the Barrister is otherwise liable (whether at common law (including in negligence), in equity or otherwise). If no sum is stated in paragraph 7(c), the Barrister's liability shall be unlimited.

21.3A For the purposes of clause 21.3 of this Agreement, the Barrister's liability shall include all and any liability for damages, interest and adverse costs.

21.4 If the Solicitor and the Barrister agree that the Solicitor will obtain from the Lay Client and hold in the Solicitor's client account monies on account of the Barrister's fees but the Solicitor does not receive in full those monies by the date agreed between the Solicitor and the Barrister for their receipt:

- (a) the Solicitor shall promptly advise the Barrister that the Solicitor has not received in full those monies on account; and



- (b) the Barrister shall have no further obligation to perform the Services; but
- (c) if the Solicitor fails to advise the Barrister that the Solicitor has not received in full those monies on account, the Solicitor shall be personally liable to pay the Barrister's fees up to a sum equal to the monies on account that the Solicitor should have received but did not receive, whether or not the Solicitor is paid by the Lay Client.

21.5 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.

## **22. Law and jurisdiction**

22.1 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.

22.2 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.