

## STANDARD CONDITIONS OF CONTRACT FOR SUPPLY OF LEGAL SERVICES BY LITTLETON CHAMBERS' BARRISTERS TO AUTHORISED PERSONS 2018

(to which Rule rC30.9.c of the Code of Conduct in the Bar Standards Board Handbook applies)

### 1. DEFINITIONS & INTERPRETATION

1.1 In these Conditions of Contract for the Supply of Services by Barristers to Authorised Persons (as defined below) ("the Conditions"):

1.1.1 Reference to a clause is to the relevant clause of these Conditions;

1.1.2 Headings are included for convenience only and do not affect the interpretation of these Conditions;

1.1.3 Reference to "parties" or a "party" are references to the parties or a party to the Agreement;

1.1.4 References to the masculine include the feminine and references to the singular include the plural and vice versa in each case;

1.1.5 References to a person include bodies corporate (including limited liability partnerships) and partnerships, in each case whether or not having a separate legal personality, except where the context requires otherwise;

1.1.6 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;

1.1.7 References to any provision of the Code include references to that provision as amended replaced or renumbered from time to time; and

1.1.8 References to a person or body include references to its successor.

1.2 In these Conditions, the following words have the following meanings, except where the context requires otherwise:-

"the Agreement" – the agreement between the Barrister and the Authorised Person for the Barrister to provide the Services on the terms set out in these Conditions;

"the Authorised Person" – the person who is an authorised person for the purposes of s.18(1)(a) of the Legal Services Act 2007 and whose approved regulator under that Act is the Law Society and/or the SRA, and all successors and assignees;

"the Barrister" – the barrister, practising as a member of the Bar of England & Wales, who is willing and able in that capacity to provide the Services in connection with the Case and in accordance with the Instructions from the Authorised Person on behalf of the Lay Client;

"the Case" – the particular legal dispute or matter, whether contentious or non-contentious, in respect of which the Barrister is Instructed to provide the Services;

"the Code" – the Code of Conduct in the BSB Handbook, as amended from time to time;

"Conditional Fee Agreement" – the meaning ascribed to those words by section 58 of the Courts and Legal Services Act 1990;

"the Instructions" – the briefs, instructions and requests for work to be done (and all accompanying materials) given by the Authorised Person to the Barrister in whatever manner to enable him to supply the Services, and "Instruct" and "Instructing" shall have corresponding meanings;

"Invoice" – includes a fee note not amounting to a VAT invoice;

"the Law Society" – the Law Society of England & Wales;

"the Lay Client" – the person for whose benefit or on behalf of whom the Barrister is Instructed by the Authorised Person to provide the Services (who may be the Authorised Person where the Case concerns the affairs of the Authorised Person);

“the Services” – the legal services provided by the Barrister in connection with the Case pursuant to the Instructions provided by the Authorised Person;  
“the SRA” – the Solicitors Regulation Authority; and  
“the SRA Code” – the part of the SRA Handbook published by the SRA on 16 September 2011 referred to as the “SRA Code of Conduct 2011” as amended from time to time.

## **2. APPLICATIONS OF THESE CONDITIONS**

- 2.1 The Barrister provides the Services requested by the Authorised Person on the terms set out in these Conditions and subject to his professional obligations under the Code.
- 2.2 These Conditions (other than this clause 2.2 which may not be varied) may be varied if, but only if, expressly agreed by the Parties in writing (including by exchange of emails).
- 2.3 By instructing the Barrister to provide further Services in relation to the Case, the Authorised Person accepts these Conditions in relation to those further Services, as well as in relation to the Services which the Barrister is initially instructed to provide.
- 2.4 These Conditions do not apply in the following circumstances:
- 2.4.1 the Barrister is paid directly (a) by the Legal Services Commission, through the Community Legal Service or the Criminal Defence Service or (b) by the Crown Prosecution Service; or
- 2.4.2 the Barrister has entered into a Conditional Fee Agreement in relation to the Case that does not specifically incorporate these Conditions.
- 2.5 Nothing in these Conditions nor any variation referred to in clause 2.2 shall operate so as to conflict with the Barrister’s duty under the Code or with the Authorised Person’s duty under the SRA Code.

## **3 THE INSTRUCTIONS TO THE BARRISTER**

- 3.1 The Authorised Person will use its best endeavours to ensure the Instructions delivered to the Barrister are adequate to supply him with the information and documents reasonably required and in reasonably sufficient time for him to provide the Services requested.
- 3.2 The Authorised Person will use its best endeavours to respond promptly to any requests for further information or instructions (including obtaining any such further information or instructions from the Lay Client) made by the Barrister.
- 3.3 The Barrister will not be liable for any loss or damage occasioned by the failure of the Authorised Person to supply instructions or information in accordance with clauses 3.1 and 3.2 above.
- 3.4 The Authorised Person must inform the Barrister immediately if there is reason to believe that any information or document provided to the Barrister is not true and accurate.
- 3.5 Where the Authorised Person requires the Barrister to perform all or any part of the Services urgently, the Authorised Person must ensure that:
- 3.5.1 all relevant Instructions are clearly marked “Urgent”; and
- 3.5.2 at the time that the Instructions are delivered the Barrister is informed in clear and unambiguous terms of the timescale within which the Services are required and the reason for the urgency.
- 3.6 The Authorised Person must inform the Barrister within a reasonable time if the Case is settled or otherwise concluded.

## **4 RECEIPT & ACCEPTANCE OF THE INSTRUCTIONS**

- 4.1 Upon receipt of the Instructions, the Barrister will within a reasonable time review the Instructions and inform the Authorised Person whether or not he accepts the Instructions.
- 4.2 The Barrister may accept or refuse the Instructions in the circumstances and for the reasons set out in the Code and the Barrister incurs no liability if he refuses any Instructions in accordance with the Code.

4.3 Notwithstanding acceptance of Instructions in accordance with Clause 4.1 above, the Barrister shall be entitled to carry out any customer due diligence required by the Money Laundering Regulations 2007. The Authorised Person may in its sole discretion provide the Barrister with all reasonable assistance to carry out any necessary customer due diligence including (if required to do so) consenting to the Barrister relying upon the Authorised Person under Regulation 17 of the Money Laundering Regulations 2007. Provided that (i) the Barrister shall not be liable for any delay, loss or damage occasioned by the failure of the Authorised Person to provide to the Barrister such reasonable assistance to carry out any necessary customer due diligence as the Barrister may have requested and (ii) the Authorised Person shall not be liable to the Barrister for any inaccuracies or deficiencies in any information supplied for the purpose of carrying out any customer due diligence required by the Money Laundering Regulations 2007.

4.4 In the event that the Barrister reasonably considers that the requirements of the Money Laundering Regulations have not been satisfied he may within a reasonable period after receipt of the Instructions withdraw any acceptance of those Instructions without incurring any liability.

4.5 Subject to the preceding provisions of this Clause 4, the Agreement comes into effect upon the Barrister accepting the Instructions.

## **5 CONFIDENTIAL INFORMATION & PUBLICITY**

5.1 The Barrister will keep confidential all information provided to him in connection with the Case unless:

5.1.1 he is authorised by the Authorised Person or Lay Client to disclose it;

5.1.2 the information is in or comes into the public domain without any breach of confidentiality on the part of the Barrister; or

5.1.3 he is required or permitted to disclose it by law, or by any regulatory or fiscal authorities, in which case, to the extent that he is permitted to do so, he will endeavour to give the Authorised Person and/or the Lay Client as much advance notice as possible and permitted of any such required disclosure.

5.2 The Barrister owes the same duty of confidentiality to other lay clients, and will therefore not disclose or make use of any information that might be given to him in confidence in relation to any other matter without the consent of his other lay client, even if it is material to providing the Services.

5.3 Unless the Authorised Person expressly informs the Barrister to the contrary in advance in writing, the Barrister may allow the Instructions to be reviewed or by a pupil (including a vacation pupil or mini-pupil) in chambers, on terms that the pupil complies with clause 5.1.

5.4 With the written consent of the Authorised Person, the Barrister may allow the Instructions to be reviewed by another barrister in Chambers on the terms that that other barrister complies with clause 5.1.

5.5 Subject to his obligation under clause 5.1 the Barrister may make and retain copies of the Instructions and of any written material produced by him.

5.6 To the extent such information is already in the public domain, the Barrister may disclose in his marketing and similar materials, and to prospective clients and publishers of legal directories and the like that he is or has been instructed by the Authorised Person and/or for the Lay Client and the nature of the Case. To the extent any such information is not already in the public domain, the Barrister may only refer to it for marketing purposes in a form which sufficiently preserves the Lay Client's privilege and confidentiality and with the Lay Client's consent.

## **6 ELECTRONIC COMMUNICATION**

6.1 Unless otherwise directed by the Authorised Person, the Barrister may correspond by means of email, the parties agreeing hereby:

6.1.1 to accept the risks of using email, including but not limited to the risks of viruses, interceptions and unauthorised access; and

6.1.2 to use commercially reasonable procedures to maintain security of email and to check for commonly known viruses in information sent and received electronically.

## **7 DATA PROTECTION**

7.1 In this clause, "Data Protection Law" means the Data Protection Act 2018, including as amended, extended or re-enacted 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 re-enacted 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.

## **8 PROVISION OF THE SERVICES**

8.1 The Barrister will exercise reasonable skill and care in providing the Services. 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 Code.

8.2 The Barrister will provide the Services by such date as may be agreed between the parties, and in any event will do so within a reasonable time having regard to the nature of the Instructions and his other pre-existing professional obligations as referred to in paragraphs CD7, rC18, rC21, and rC87 of the Code.

8.3 The Barrister may delegate the provision of any part of the Services but will remain responsible for the acts, omissions, defaults or negligence of any delegate as if they were the acts, omissions, defaults or negligence of the Barrister.

8.4 The Barrister will, in addition, provide all information reasonably required to enable the Lay Client and/or Authorised Person to assess what costs have been incurred and to obtain and enforce any order or agreement to pay costs against any third party.

## **9 INTELLECTUAL PROPERTY RIGHTS**

9.1 All copyright and other intellectual property rights of whatever nature in or attaching to the Barrister's work product, including (but not limited to) all documents, reports, written advice or other materials forming all or part of the Services and provided by the Barrister to the Authorised Person or the Lay Client, belong to and remain with the Barrister. The moral rights of the Barrister in his work product are asserted.

9.2 The Authorised Person and the Lay Client have the right and licence to use the Barrister's work product for:

9.2.1 the particular Case;

9.2.2 the particular purpose for which it is prepared; and

9.2.3 inclusion in the knowledge management system(s) of the Authorised Person's firm for internal purposes or use.

9.3 If the Authorised Person or the Lay Client wishes to use copies of the Barrister's work product for purposes other than those for which it is prepared or for inclusion in the knowledge management system(s) of the Authorised Person's firm for internal purposes or use, this will require the express written permission of the Barrister which is not to be unreasonably refused or delayed, but which may be subject to the payment of a fee.

9.4 The Barrister accepts no responsibility for the use of any work product otherwise than for the particular Case and for the particular purpose for which it was prepared.

## 10 LIABILITY

10.1 Subject to clauses 10.2 and 10.3 below, the Barrister is not liable:

10.1.1 for any loss or damage, however suffered, by any person other than the Lay Client;

10.1.2 for any loss or damage, however suffered, which is caused by inaccurate, incomplete or late Instructions;

10.1.3 for any consequential, special, indirect or exemplary damages, costs or losses, or any damages, costs or losses attributable to lost profits or opportunities.

10.2 Nothing in Clause 10.1 shall operate so as to exclude liability where such exclusion is prohibited by law.

10.3 For the avoidance of doubt nothing in this Agreement or this clause 10 is intended to prevent the Authorised Person from bringing any claim against the Barrister which he might have pursuant to the Civil Liability (Contribution) Act 1978.

10.4 The Barrister's liability in contract, whether to the Authorised Person, the Lay Client or any third party, shall in no circumstances exceed, whether in the type or extent or quantum of damage, the Barrister's liability at common law in tort were no such contract to exist.

## 11 FEES

11.1 The fee for the Services shall in all cases comply with paragraph rC9.7 of the Code and will be calculated as agreed between the Barrister (or his clerk on his behalf) and the Authorised Person, whether prospectively or retrospectively.

11.2 The Barrister may agree to provide the Services for a fixed fee or may agree to provide the Services on the basis of an agreed hourly rate or on such other basis as may from time to time be agreed. If an hourly rate is agreed:

11.2.1 the agreed hourly rate will be subject to reasonable periodic review by the Barrister, and in addition may be reviewed by the Barrister to reflect any reasonably significant changes in his status or seniority;

11.2.2 any variation of the agreed hourly rate and the date on which it shall take effect shall be subject to the consent of the Authorised Person such consent not to be unreasonably withheld or delayed, but if such consent is unreasonably withheld or delayed the Barrister shall be entitled to treat the Agreement as having been terminated by the Authorised Person, subject the Barrister's obligations under paragraphs rC25–rC27 of the Code.

11.3 If no fee or hourly rate is agreed, then the Barrister is entitled to charge a reasonable fee for the Services having regard to all relevant circumstances.

11.4 Where a charging rate and an estimated time for the work have been agreed, the Barrister shall notify the Authorised Person promptly if more work than had been estimated is required, and shall give the firm a reasonable opportunity, taking into account the urgency of the matter, to accept or refuse the performance of such additional work. To the extent that the parameters of the work and the documentation

delivered to counsel have not changed, the Authorised Person is entitled to require the Barrister to complete the work within the fee estimate provided.

11.5 The fee for the Barrister's Services is exclusive of any applicable Value Added Tax (or any tax of a similar nature), which shall be added to the fee at the appropriate rate.

## **12 BILLING, PAYMENT & INTEREST**

12.1 The Barrister shall be entitled to deliver an Invoice to the Authorised Person in respect of the Services or any completed part thereof and any disbursements at any time after supplying the Services or the relevant part thereof.

12.2 The Barrister shall deliver an Invoice to the Authorised Person in respect of the Services or any part thereof and any disbursements as soon as reasonably practicable after and not more than 3 months from the earliest of: (a) a request by the Authorised Person; (b) notification by the Authorised Person that the Case has settled or otherwise concluded; or (c) termination of the Agreement.

12.3 The Invoice must set out an itemised description of:

12.3.1 the Services provided by the Barrister and the fees charged;

12.3.2 any disbursements incurred and the cost thereof, and

12.3.3 VAT (or any tax of a similar nature), if any.

12.4 The Authorised Person must notify the Barrister as soon as reasonably practicable that it has been put in funds to pay the Barrister's fees by the Lay Client.

12.5 The Authorised Person must pay the Invoice within 10 working days after the Authorised Person has been put in funds by the Lay Client time being of the essence, provided that the Authorised Person must pay the Barrister within 30 days of the date of the delivery of the Invoice whether or not he has been put in funds by the Lay Client to pay the Invoice.

12.6 The Invoice must be paid without any set-off in relation to any other matter (whether by reason of a complaint or dispute with the Barrister or otherwise), and without any deduction or withholding on account of any taxes or other charges.

12.7 Where the Barrister has delivered a fee note, on request by the Authorised Person the Barrister will deliver a VAT invoice following receipt of payment.

12.8 If the Invoice remains outstanding more than 10 working days from the date when the Authorised Person has been put in funds by the Lay Client to pay the Invoice or has not been paid by the Authorised Person within 30 days of the date of the delivery of the Invoice, the Barrister is entitled:

12.8.1 to the fixed sum and interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998;

12.8.2 to sue the Authorised Person for payment; and

12.8.3 subject to the Barrister's obligations to the Court and under paragraphs rC25–rC27 of the Code, to refrain from doing any further work on the Case unless payment for that further work is made in advance.

12.9 The Barrister shall not be entitled under any circumstances to exercise any lien over all or part of his Instructions.

12.10 Where the Lay Client has made a complaint to the Legal Ombudsman or any other regulatory body or has indicated that he will be issuing proceedings against the Barrister in respect of all or part of the service that is the subject of this Agreement, the fees charged in the Invoice in respect of that service shall not be payable to the Barrister until the complaint, proceedings or pre-action process have been resolved by agreement, disciplinary proceedings, arbitration award, or court order, have been withdrawn or confirmed by the Authorised Person to have been abandoned, or, following the giving of a formal written notice by the Barrister, the Lay Client or the Authorised Person, the pre-action process, complaint, or proceedings have not been brought or commenced within 4 (four) months after the date of such notice, whichever is the earlier.

12.11 If an Invoice or part of it is the subject of a challenge, the Authorised Person shall be under no obligation to pay to the Barrister all or any of the fees specified (save for those fees not the subject of the challenge) or all or any interest on such fees until payment is ordered by a tribunal or the challenge is

withdrawn, abandoned or compromised by the Authorised Person or, following the giving of a formal written notice by the Authorised Person or the Barrister, submission to alternative dispute resolution (including any reference to the Voluntary Joint Tribunal) or proceedings have not been brought or commenced within 4 (four) months after the date of such notice, whichever is the earlier.

### **13 TERMINATION**

13.1 The Authorised Person may terminate the Agreement by giving notice to the Barrister in writing at any time.

13.2 The Agreement will terminate automatically as soon as the Barrister is under an obligation pursuant to paragraphs rC21–rC30 and related guidance of the Code or otherwise to withdraw from the Case or to cease to act and has complied with any requirement of the Code in so doing.

13.3 The Barrister may terminate the Agreement by written notice when he is entitled pursuant to paragraphs rC25–rC27 of the Code or otherwise to withdraw from the Case or to cease to act and has complied with any requirements of the Code in so doing.

13.4 For the avoidance of doubt, termination of the Agreement, whether under this clause 13 or otherwise, does not affect or prejudice any accrued liabilities, rights or remedies of the parties under the Agreement.

### **14 WAIVER**

14.1 Except where expressly stated, nothing done or not done by the Barrister or the Authorised Person constitutes a waiver of that party's rights under the Agreement.

### **15 SEVERABILITY**

15.1 If any provision of these Conditions 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 Conditions which will remain in full force and effect.

15.2 If any provision of these Conditions 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 such invalidity or unenforceability shall not affect the other provisions of these Conditions which will remain in full force and effect.

### **16 EXCLUSIONS OF RIGHTS OF THIRD PARTIES**

16.1 This Agreement governs the rights and obligations of the Barrister and the Authorised Person towards each other and confers no benefit upon any third party (including the Lay Client). The ability of third parties to enforce any rights under the Contracts (Rights of Third Parties) Act 1999 is hereby excluded.

### **17 ENTIRE AGREEMENT**

17.1 Subject to clauses 2.2 and 11.1, the Agreement supersedes all prior representations, arrangements, understandings and agreements between the parties (whether written or oral) relating to the subject matter hereof and sets forth the entire complete and exclusive agreement and understanding between the parties hereto relating to the subject matter hereof to the exclusion of all other terms and conditions (whether express or implied) and prior or collateral agreements, negotiations, arrangements, understandings, notices of intention and representations.

17.2 Each party warrants to and agrees with the other:

17.2.1 that it has not relied on any representation, arrangement, understanding or agreement (whether written or oral) not expressly set out or referred to in this Agreement; and

17.2.2 that it has not been induced to enter into the Agreement by any representation, arrangement, understanding or agreement (whether written or oral) not expressly set out or referred to in this Agreement.

17.3 Nothing in clause 17 shall operate so as to exclude liability where such exclusion is prohibited by law.

## **18 NOTICES & DELIVERY**

18.1 Any notice or other written communication to be given or delivered under this Agreement may be despatched in hard copy or in electronic form (including, fax and email) and shall in the case of a notice to be given to the Barrister be given to him at his last known Chambers' address, fax number or email address and shall in the case of a notice to be given to the Authorised Person be given to him at his last known place of business, fax number or email address.

18.2 Notices and other written communications under this Agreement shall be deemed to have been received:-

18.2.1 in the case of hard copy documents despatched by first class post, on the second working day next following the day of posting;

18.2.2 in the case of documents despatched by second class post, on the fourth working day next following the day of posting;

18.2.3 in the case of documents in electronic form, on the working day next following the date of despatch.

## **19 GOVERNING LAW, JURISDICTION & DISPUTE RESOLUTION**

19.1 The Agreement and these Conditions shall be governed by and construed in accordance with the law of England & Wales.

19.2 Unless any alternative dispute resolution procedure is agreed between the parties, the parties agree to submit to the exclusive jurisdiction of the Courts of England & Wales in respect of any dispute which arises out of or under this Agreement.

19.3 Without prejudice to clause 19.2 the parties may agree to alternative methods of dispute resolution, including submission of any dispute regarding fees to the Voluntary Joint Tribunal on Barristers' Fees where the Authorised Person is a solicitor.