Terms of Engagement

Single Joint Expert

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REFERENCE

Surrey Property Licensing

Terms of Engagement - Single Joint Expert

1. Recital of Appointment

The Appointors have appointed the Expert to provide services in accordance with these Terms of Engagement for such period as to allow the Expert to complete his Instructions, unless determined by either party in writing.

2. Definitions - Unless the context otherwise requires:

2.1 "**Appointors**" means the lawyers, insurers, government departments, local authorities, firms, companies or other bodies or person(s) (including, in the event of a direct appointment, the Clients) instructing the Expert to act as a Single Joint Expert. The Appointors shall be jointly and severally responsible for the obligations of the Appointors in these Terms of Engagement. In the event that the Appointors (or any of them) wish to discontinue the Expert's appointment on a Single Joint basis, the terms of Clause 9 shall apply. Where a Relevant Party purports to instruct or interact with the Expert on a several basis, during a period in which the Single Joint basis of appointment persists, the term "Appointor" when used in the singular shall be taken to refer to that Relevant Party.

2.2 "**Expert**" means the person appointed to give or prepare expert evidence for the purpose of Court proceedings

2.3 "**Client**" means the person(s), government department, local authority, firm, company or other body for whose benefit the Expert has been instructed to provide his services, this definition including, if appropriate, the Appointors.

2.4 "**Relevant Party**" shall have the same meaning as in the Civil Procedure Rules (CPR) Part 35.

2.5 "**Instructions**" includes, in addition to the Appointors' requirements, such services as may be required of the Expert to comply with an order, direction or rule of a Court.

2.6 "**Court**" means any court of law, tribunal or arbitral body.

2.7 "**Fees**" means the Expert's professional charges, Disbursements and Value Added Tax (VAT), or equivalent tax where applicable, for services provided for carrying out the Instructions.

2.8 "**Disbursements**" means all reasonable expenses incurred in carrying out the Instructions or obligations arising therefrom. By way of non-exclusive example, they include the costs of relevant photography, video recordings, computer software, reproduction of drawings and diagrams, printing and duplicating, the cost of obtaining published documents, as well as all appropriate out of pocket expenses including car mileage, first class rail travel, business class air fares, reasonable refreshments and four star hotel accommodation where an overnight stay is necessary. VAT or the equivalent tax will be charged where applicable.

2.9 "**Legal Aid Cases**" means those cases which are funded by an authority established by government power to fund a party in legal proceedings. Such cases are also described herein as "**Publicly Funded**".

2.10 "**Conflict of Interest**" means a conflict of interest between the interests of the Expert and any of the Appointors or Clients. In this regard, the Appointors agree that the Expert may work for a variety of clients, who may look to the Expert for advice and assistance in a variety of circumstances, including but not limited to the supply of expert witness or consultancy services. Because of the potential range of client engagements it is possible that there could be an adverse relationship between any of the Appointors or Clients and one of the current or future clients of the Expert. If the Expert is not advising an Appointor in the matter which is the subject of the Instructions, the Appointors agree that the Expert shall be free to represent the other client. The Expert may represent another client adverse to an Appointor in any matter unrelated to the matter which is the subject of these Instructions. The Expert's acceptance of the Instructions shall not include the acceptance of any instructions from or duty towards any individual or entities that are shareholders, officers, directors, joint venturers, partners, employees or members of an Appointor.

2.11 "**Data Protection Legislation**" means the Electronic Communications Data Protection Directive (2002/58/EC); the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003); the GDPR; any applicable legislation adopted by the United Kingdom pre or post the United Kingdom ceasing to be a Member State of the European Union (whichever is in force at the time of this Agreement); the Data Protection Act 2018; and all applicable laws and regulations relating to the processing of the personal data and privacy, including where applicable the guidance and codes of practice issued from time to time by the Information Commissioner's Office or the European Data Protection Board; and any statutory modification or re-enactment thereof and any applicable codes of conduct.

2.12 References to the masculine gender shall be deemed to include the feminine.

2.13 "New Directions" shall have the meaning set out in Clause 9.3.

3. The Appointors - The Appointors shall:

3.1 Save as otherwise expressly agreed, act in accordance with the appropriate procedural rules set out by the Court in relation to the matter in question.

3.2 Promptly deliver to the Expert full instructions in writing supported by legible copies of all relevant documents together with a timetable for the provision of the Expert's services and at such times as the timetable is revised then such revision shall be notified promptly to the Expert.

3.3 Deal promptly with every reasonable request by the Expert for authority, information or documents and such further instructions as the Expert may from time to time require.

3.4 As soon as is reasonably practicable notify the Expert in writing of those services which the Expert shall provide pursuant to any Court order and shall promptly deliver to the Expert a copy of such order. The Appointors shall advise the Expert of any change or correction to any information as soon as it occurs or is discovered.

3.5 Neither personally, nor permit others to, alter add to or remove any text of or document supporting a report delivered by the Expert nor by any act or omission compromise or otherwise seek to influence the Expert's overriding duty to the Court. In particular but without limitation, the Appointors shall not seek to induce the Expert to provide extended credit terms or other indulgences or arrangements in return for promises or potential opportunities for future work, or inclusion of the Expert on an Appointor's list or panel of approved experts.

3.6 Consult and confer with the Expert so as to ascertain the availability of the Expert for every hearing, meeting or other appointment at which the Expert's attendance will or may be required and give the Expert immediate written notification together with adequate notice of such matters or any alteration thereto.

3.7 Disclose to the Expert in writing at or before the Appointment, whether or not any other expert has been appointed to act as an expert in the matter, and in particular whether any expert has resigned or been dismissed from such an appointment.

3.8 Inform the Expert at the earliest opportunity if the case is or is expected to be Publicly Funded.

3.9 Ensure that they are at all times in funds promptly to discharge the Fees of the Expert.

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3.10 Unless otherwise expressly agreed, pay in full the Expert's Fees irrespective of the outcome of any assessment of costs or any claim that may be made against or in relation to the Expert or his services.

4. The Expert - The Expert shall:

4.1 Undertake only those parts of a case in respect of which the Expert considers that he has adequate qualifications and experience.

4.2 Use reasonable skill and care in the performance of the Instructions received, giving due consideration to all material facts and documentation disclosed to him by the Appointors, and taking care to ensure that such report in its final form as may be issued by him shall accurately represent the Expert's opinion, honestly held, as to the matters in issue.

4.3 Comply with the appropriate codes of practice and guidelines.

4.4 Act with objectivity and independence with regard to his Instructions and, in the event of a conflict between his duties to the Clients and to the Court, shall hold his duties to the Court paramount.

4.5 Promptly notify the Appointors of any matter including a Conflict of Interest or lack of suitable qualifications and experience which could disqualify the Expert or render it undesirable for him to have continued involvement in the case.

4.6 Endeavour to make himself available for all hearings, meetings and other appointments of which he has received adequate written notice.

4.7 Not without good cause discharge himself from the appointment as Expert.

4.8 Preserve confidentiality save as expressly or by necessary implication authorised to the contrary. The Expert shall be entitled to comply with any legislation, order or rule of Court or of law that may oblige him to disclose information to third parties and to grant thereby to authorities such as the police, tax, customs, regulatory or judicial authorities, rights of inspection and copying of documentation. If practicable and permitted, the Expert shall use reasonable endeavours to notify the Appointors of any request for such access to information or documentation. The Expert shall be entitled to charge for his reasonable costs of dealing with such requests as a result of having accepted the Instructions.

4.9 The Expert may wish to disclose that he has advised the Appointors for the purposes of marketing, publicising or selling his services. The Expert shall be entitled to identify the Appointors by name and indicate the general nature of the Instructions and any details which have properly become publicly known.

4.10 The Expert may disclose any information to his liability underwriters, brokers, advisers, regulators and auditors pursuant to his duties to provide information to such persons.

4.11 In the interests of efficiency and cost, the Expert shall be entitled, at his sole discretion and upon notice to the Appointors, to engage the services of outsourced assistance and service providers. The Expert shall utilise only such parties as have agreed to preserve the confidentiality of the Instructions.

4.12 Process personal data received pursuant to and for the purposes of performing the Instructions in accordance with the relevant law. If an individual requests in writing access to personal data relating to them which is processed by the Expert, such data as is not privileged may be provided by the Expert to them, and the work and costs involved in providing that data shall be treated as part of the Instructions.

4.13 Not negotiate with an opposing party, expert or adviser unless specifically instructed by the Appointors so to do. For avoidance of doubt this clause does not apply to any order or direction of a Court.

4.14 Attend such meetings of experts as ordered by the Court or as required by the Appointors; and at any such meeting adhere strictly to any terms of reference set down in writing.

4.15 Provide as part of the Instructions all relevant information to allow the Appointors to defend or recover the Expert's Fees at any assessment of costs.

4.16 Promptly respond to any complaint of the Appointors.

4.17 Be entitled to rely on the completeness and accuracy of all materials supplied to him by the Appointors, save to the extent otherwise advised by the Appointors in writing at the time of supply thereof, or within a reasonable time such as to allow the Expert to review and if necessary revise his opinion in relation thereto.

4.18 Be entitled to send documents and communicate by email unless otherwise expressly requested or directed by the Appointors.

5. Third Parties

5.1 Save for those persons for whom the Expert may be responsible as listed in Clause 6.1this Agreement does not confer on a third party any rights under the Contracts (Rights of Third Parties) Act 1999.

5.2 This Agreement may be varied or rescinded without the consent of any third party.

5.3 For the purpose of this clause an Appointor is not to be treated as a third party.

6. Liability and Indemnity

6.1 To the extent permitted by law, the Expert's liability (and any liability of any employee, agent, sub-contractor or consultant of the Expert) to the Appointors or Clients in respect of the Instructions, whether in contract, tort (including negligence) or otherwise, is limited to an amount of 3 times the amount of the Expert's professional fees charged and paid in respect of the Instructions. For this purpose, fees shall not include disbursements or VAT or any equivalent tax.

6.2 In the event that a loss is caused to an Appointor which is caused partly by the Expert and partly by the contributory acts or omissions of others acting on an Appointor's behalf, the Expert's liability (subject always to any other provisions of this Agreement) shall not exceed the Expert's proportionate responsibility for such loss, having regard to the proportionate responsibility for that loss of the others acting for the Appointor, as agreed, or as may be decided by a court or other competent tribunal.

6.3 The Expert's overriding duty is to the Court. Subject thereto, the Expert owes his duty to the Appointors and to no other party. The Appointors shall make it clear to any person to whom the Expert's work product is disseminated that no liability is accepted by the Expert to anyone other than the Court and the Appointors.

6.4 No liability is accepted and no reliance shall be placed on any advice not given in writing, or any draft version of any report prepared by the Expert.

6.5 Subject to Clause 6.7, the Appointors shall indemnify the Expert on demand against any claim, loss, damages, liability or expense ("Loss") which may be suffered by the Expert (i) relating to or arising out of any breach by the Appointors of their obligations under this Agreement or (ii) arising from claims against the Expert brought by third parties relating to the performance of the Expert's obligations under this Agreement.

6.6 The term "expense" shall mean any and all reasonable and actual cost and expense incurred by the Expert and/or any person for whom the Expert is responsible, in the investigation, defence or settlement of any claim, action, allegation, suit or proceeding.

6.7 If it were finally determined by a court or other competent tribunal that a Loss has been suffered as a result of recklessness, bad faith,

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fraud, or wilful misconduct by the Expert, such Loss shall not be covered by the indemnity in Clause 6.5. For the avoidance of doubt, nothing in this Clause shall relieve the Appointors of their obligations to make payment pursuant to Clauses 3.10 and 7.2 respectively unless and until such final determination is made.

7. Intellectual Property Rights

7.1 The intellectual property rights in all original work created by the Expert shall remain vested in the Expert unless otherwise agreed in writing. The Expert asserts all his moral rights.

7.2 Upon settlement of all outstanding invoices presented by the Expert (subject only to such indulgence as the Expert may grant), the Expert shall be deemed to grant to the Appointors a non-exclusive licence to use all the Expert's work covered by such Fees, such licence to extend to the purpose of carrying out the Clients' instructions in the matter in which this Appointment has been made, and such parallel or related matters in other tribunals and jurisdictions as may arise, but for no other purpose nor for any other matter, subject to a Court order to the contrary.

8. Fees and Disbursements

8.1 The amount of the Fees shall be that more particularly defined in the Expert's letter confirming the Appointment which shall form part of these terms.

8.2 A daily rate shall be applied to any day or part of any day of a hearing, including waiting time.

8.3 The Expert may present invoices at such intervals as he considers fit. Payment of each invoice is due on presentation, subject to any written waiver or indulgence granted by the Expert, save that such indulgence shall apply only to the invoice in question.

8.4 The instruction and remuneration of the Expert shall not be made on any contingent or conditional basis.

8.5 For the avoidance of doubt the rate of Fees charged is the same for all activities and includes but is not limited to the following:

a) Inspection, analysis and study of documents, data or sites, consultation, preparation, advice, completion and engrossment of reports, attendance at meetings or hearings.

b) Preparation of reports and answers pursuant to Court rules, orders or practice directions.

c) Travel and waiting.

d) Time reserved by instruction, witness summons or order of the Court for a hearing, meeting or other engagement, even if the Expert's services are not in the event called upon.

e) Where specific instructions have been given to the Expert for an inspection, examination, meeting, visit, report or Court appearance and where, due to settlement of the dispute or any other reason not being the default of the Expert, the reservation of time has been cancelled or the Appointment has been terminated.

f) Requests by the Expert for directions from the Court.

8.6 The Appointors and the Clients shall be jointly and severally liable for payment of the Expert's Fees.

8.7 The Expert shall at his discretion be entitled to invoice and recover interest at 1.5% per month on all unpaid invoices after 30 days and shall be entitled to recover the full amount of his administrative and legal costs and expenses incurred in recovering unpaid Fees.

9. Single Joint Appointment

9.1 The Expert's appointment is on a Single Joint basis, in accordance with CPR Part 35 and PD35. The parties to this Agreement shall act in accordance with CPR and, to the extent that a matter is not expressly regulated thereby, in accordance with the obligations expressly provided in this Agreement.

9.2 In the event that an Appointor, by express election or necessary inference based on his conduct purports to discontinue the Single Joint basis of the Instructions, the Appointors shall take all reasonable steps, including but not limited to the issuance of fresh instructions to the Expert, or by application at their own expense to the Court, to supply to the Expert such directions and documentation as shall, in the reasonable opinion of the Expert, be sufficient to resolve any practical, ethical, financial, or other difficulties arising naturally from the discontinuance of the Single Joint nature of the appointment ("New Directions").

9.3 If, in the reasonable opinion of the Expert, the Appointors fail to supply to the expert New Directions in accordance with Clause 9.2, the Expert may require any or all of the Appointors to seek directions from the Court to protect the interests of the Expert in accordance with the reasonable requirements of the Expert, as communicated to the Appointors in writing by him.

9.4 Notwithstanding the discontinuance of the Single Joint basis of the Instructions, the Appointors shall remain jointly and severally responsible towards the Expert for all matters relating to the Instructions as set out in this Agreement, in particular, as regards Indemnity and Fees.

10. Disputes

10.1 Unless otherwise stated this Appointment shall be subject to the laws of England and Wales, and to the jurisdiction of the courts of England and Wales.

10.2 If the Appointors fail to pay an invoice within 30 days of the time stated for payment the Expert shall be entitled to issue proceedings immediately.

10.3 In the event of a dispute over the amount of the Fees such sum as is not disputed shall be paid when due irrespective of any set off or counterclaim which may be alleged.

10.4 Any other dispute arising between the Appointors or the Clients and the Expert shall be referred to mediation in accordance with The Academy of Experts' Mediation Guidelines. Upon the application of any party the Faculty of Mediation & ADR of The Academy of Experts will appoint a mediator.

10.5 Any dispute not resolved by mediation as in Clause 10.4 above within 30 days of the appointment of the mediator shall be referred unless the parties agree to the contrary to a single arbitrator who, if not agreed upon by the parties within 14 days thereafter, shall be appointed upon the application of either party by the President of the Chartered Institute of Arbitrators.

11.0 Data Protection

11.1 For the purposes of the Data Protection Legislation, the Expert shall be a data controller of any information it receives from the Client or the Appointer and shall process this information in accordance with the Data Protection Legislation and the Expert's own Privacy Notice.

11.2 The Appointer warrants to the Expert that where they are sharing information about an identifiable individual, that the Appointer has authority to share this information with the Expert.

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