

# Aticus Law Standard Terms of Engagement of Experts and Third Parties

**These Terms of engagement apply to the instruction of any expert or third party by Aticus Law (hereinafter called the Expert) and all instructions are governed by the terms and conditions contained herein: -**

## 1. Recital of Appointment

Aticus Law has appointed the Expert to render advice and services in accordance with these Standard Terms of Engagement.

## 2. Definitions

Unless the context requires otherwise:

- (a) 'Appointor' means the solicitor instructing the Expert or Third Party.
- (b) 'Expert' means the person or third-party company appointed to provide advice and services, which may include the giving of expert evidence.
- (c) 'Client' means the person(s), firm, company or public body on whose behalf the Expert is being instructed.
- (d) 'Assignment' means the matter(s) referred to the Expert for advice to which these Terms of Engagement apply.
- (e) 'Fees' mean (in the absence of written agreement to the contrary) the reasonable charges of the Expert based on his or her normal hourly/daily rate for work of the type instructed and including VAT where applicable.
- (f) 'Disbursements' mean all reasonable and appropriate costs and out-of-pocket expenses incurred by the Expert in carrying out the Assignment, including travel, refreshments and, should an overnight stay become necessary, hotel accommodation. VAT will be charged where applicable.

## 3. The Instructions

The Appointor will:

- (a) provide the Expert with full and timely written instructions which clearly state:
  - (i) whether the Expert is being instructed on the Appointor's own behalf or that of one of the parties to the dispute or as a Single Joint Expert pursuant to Civil Procedure Rule 35.7
  - (ii) the purpose for which the Expert's advice and services are needed, including a description of the matter on which they are being sought
  - (iii) which factual aspects of the matter may be in dispute (iv) whether the advice and services are to be provided in accordance solely with information supplied or will require independent investigation by the Expert
  - (v) the precise kind of expertise called for
  - (vi) the particular questions that are to be addressed
  - (vii) whether the Expert will be expected to confer with experts instructed on behalf of other parties with a view to reaching agreement on the issues or narrowing those in dispute
  - (viii) whether the Expert is to prepare a report for the advice of the Appointor and/or his Client or for use in court, and, if the latter, whether a draft version needs to be submitted first of all
  - (ix) any time constraints for the provision of the advice, the production of the report, etc.

(b) provide the Expert with such basic additional information as names, addresses, telephone numbers and dates of incidents.

(c) supply the Expert with good-quality copies of all relevant documents.

(d) in the case of medical records, specify their location and identifying numbers and state whether consents for their disclosure have been given or are being obtained.

#### 4. Obligations of the Appointor

The Appointor will:

(a) provide instructions for and on behalf of the 'Client' and hereby confirm that all fees are to be paid by them and therefore the Appointor will need to obtain authority from the Client to incur the estimated fees and disbursements before confirming the Expert's instructions.

(b) in privately funded cases ensure that the Expert's fees and disbursements are paid within the agreed time scale, this is wholly dependent however on the Appointor having been placed in funds by the Client.

(c) respond promptly to any reasonable request from the Expert for, i.a.:

- (i) clarification of instructions already given
- (ii) further information or documents
- (iii) permission to incur expense additional to that initially estimated
- (iv) authority to engage others to undertake part of the assignment.

(d) not alter, or allow others to alter, the text of the Expert's report(s) in any way without the Expert's permission.

(e) give prompt written warning of every meeting or hearing that the Expert is, or may be, required to attend and immediate notification should they be cancelled.

(f) keep the Expert informed as to the progress of the case and its outcome.

(g) not use, or allow others to use, the Expert's report(s) for any purpose other than litigation in the matter on which the Appointor has sought the Expert's advice and services. The Appointor's instructions are accepted by the Expert only upon the basis that the Appointor gives to the Expert full, timely and proper instructions, authority and information which will enable the Expert to lawfully and properly carry out the assignment and comply with the Expert's duty to the court, and that the Appointor will indemnify the Expert accordingly.

#### 5. Obligations of the Expert

If the Expert is required to provide expert evidence, he or she becomes subject to the provisions of the [Civil Procedure Rules][Criminal Procedure Rules] that relate to experts. In such circumstances the Expert's primary duty would be to the Court and his or her evidence must be seen to be independent, objective and having no bias towards the party responsible for paying his or her fees. Subject to these overriding considerations, the Expert will:

(a) at all times, both during and after completion of the Assignment, adhere to professional boundaries of confidentiality, and raise with the Appointor any conflict between professional boundaries and Appointor instructions, if it becomes apparent.

(b) perform only those tasks for which he or she has the requisite qualifications and experience to undertake, and the resources needed to adequately fulfil them within the allotted time span.

(c) keep detailed time-sheets and records of tasks undertaken.

(d) promptly notify the Appointor of:

- (i) any conflict of interest that would disqualify the Expert or render it undesirable for the Expert to have continued involvement with the case
- (ii) any requirement the Expert perceives for the Appointor to employ additional expertise.

(e) endeavour to make him or herself available for all hearings, meetings or other necessary engagements for which he or she has received adequate notice.

(f) not negotiate with the opposing party or their advisers unless specifically authorised to do so by the Appointor or instructed to do so by order of the Court.

(g) if requested by the Appointor, provide before the hearing full and complete details of his or her costs to trial

(h) not without good cause discharge himself or herself from the appointment as Expert and not to discharge themselves without good cause before the conclusion of the case/matter upon which they are providing services/expert opinion.

(i) at all times, both during and after completion of the Assignment, treat all aspects of it as confidential unless authorised by the Appointor to the contrary.

## 6. Intellectual Property Rights

(a) Unless otherwise agreed in writing, all legal and beneficial interest in intellectual property rights and rights of ownership in written reports, photographs, recordings, models and other original work created by the Expert relating to or developed by him or her in connection with the assignment given by the Appointor shall belong to the Expert.

(b) The Expert grants to the Appointor a non-exclusive, non-transferable licence to use the said intellectual property solely in connection with the assignment to which the instructions relate and for the duration of these terms of engagement but subject to clause 7(f) below.

## 7. Fees and Disbursements

In the absence of any written agreement to the contrary:

(a) the Appointor who instructs the Expert does so on the instructions of the Client who is the principal and shall therefore not be personally responsible for the payment of the Expert's fees and disbursements and the Appointor shall only pay such sum, subject to the provisions of the [Civil Procedure Rules][Criminal Procedure Rules] with regard to their amount, which is recoverable or otherwise, and in any event not in excess of the amount allowed for in any assessment of the costs of the case.

(b) Fees will be charged on a time costed basis at the Expert's hourly rate from time to time applicable and notified in writing by the Expert to the Appointor unless a fixed fee or some other basis of charging is agreed in advance and in writing between the Expert and the Appointor.

(c) The Expert may present interim invoices only if agreed in writing at the outset of the instruction and invoices are only rendered payable in accordance with 4a, 4b and 7a above.

(d) The Expert has no right to charge the Appointor the costs and expenses (including legal costs) of recovering late payments and to charge interest at the rate then in force pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

(e) In the absence of payment in full by the Appointor or Client, the Expert shall not be entitled to retain all books, papers, reports, documents and other materials, whether or not these are the property of the Appointor and whether or not they relate to the assignment in respect of which the Expert has been instructed.

## 8. Cancellation Fees

The Expert shall not be entitled to charge fees whenever:

- (a) the Expert's time has been reserved for a specific hearing, meeting or other engagement, or
- (b) specific instructions have been given to the Expert for an investigation and report and due to settlement of the matter, or for any other reason not the fault of the Expert, the reservation of time has been cancelled or the instructions withdrawn.

## 9. Disputed Fees

In the event that the dispute is not resolved by means of negotiation or mediation, the Courts of England and Wales will have exclusive jurisdiction in relation to the dispute and its resolution.

## 10. Third Parties

These terms of engagement set out the rights and obligations of the Appointor and the Expert only. For the purposes of the Contracts (Rights of Third Parties) Act 1999, nothing in these terms shall be taken to confer or purport to confer any right or benefit on any third party and a third party shall have no right to the enforcement of any term contained herein.

## Jurisdiction

This Contract shall be governed and construed in accordance with the laws of England and Wales, and both parties agree that subject to Clause 9 hereof the Courts of England and Wales shall have exclusive jurisdiction in determining any dispute arising herefrom.