

STANDARD TERMS AND CONDITIONS FOR INSTRUCTING SOLICITORS

1. Interpretation

- 1.1 Definitions. In these Conditions, the following definitions apply:
- Acceptance Email:** an email from Clinical Partners to the Instructing Solicitor setting out the matters referred to in Appendix B.
- Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
- Charges:** the charges payable by the Instructing Solicitor for the supply of the Services in accordance with Condition 5.
- Client:** the Instructing Solicitor's client.
- Clinical Partners:** Clinical Partners Limited, a company registered in England and Wales with company number 07590254.
- Commencement Date:** has the meaning set out in Condition 2.2.
- Conditions:** these terms and conditions as amended from time to time in accordance with condition 11.9.
- Contract:** the contract between Clinical Partners and the Instructing Solicitor for the supply of Services in accordance with these Conditions and the Letter of Instruction.
- CPR:** the Civil Procedure Rules including without limitation CPR35, PD35 and PD Pre-Action Conduct.
- Deliverables:** the deliverables to be produced by Clinical Partners for the Instructing Solicitor as set out in the Letter of Instruction.
- Expert:** the expert provided by Clinical Partners to carry out the Services.
- Instructing Solicitor:** the person or firm who purchases Services from Clinical Partners.
- Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- Letter of Instruction:** a letter from the Instructing Solicitor to Clinical Partners setting out the Services and Deliverables it requires and which must incorporate the information set out in Appendix A to these Conditions.
- Protocol:** the protocol published by the Civil Justice Council.
- Request:** the Instructing Solicitor's request for Services either verbally by telephone, in writing or via the Clinical Partners website.
- Services:** the expert witness services, including the Deliverables, supplied by Clinical Partners to the Instructing Solicitor as set out in the Letter of Instruction.
- 1.2 Construction. In these Conditions, the following rules apply:
- a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
 - a reference to a party includes its personal representatives, successors or permitted assigns;
 - a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
 - any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
 - a reference to writing or written includes faxes and e-mails.

2. Basis of Contract

- 2.1 The Request and the Letter of Instruction constitutes an offer by the Instructing Solicitor to purchase Services in accordance with these Conditions.
- 2.2 The Request and the Letter of Instruction shall only be deemed to be accepted when Clinical Partners issues written acceptance of the Request by way of an Acceptance Email at which point and on which date the Contract shall come into existence (Commencement Date). The Contract constitutes the entire agreement between the parties.
- 2.3 The Instructing Solicitor acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Clinical Partners which is not set out in the Contract.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Instructing Solicitor seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by Clinical Partners shall not constitute an offer, is only valid for a period of 20 Business Days from its date of issue and is based solely on the information provided to it.

3. Supply of Services

- 3.1 Clinical Partners shall supply the Services to the Instructing Solicitor in accordance with the Letter of Instruction in all material respects.
- 3.2 Clinical Partners shall use all reasonable endeavours to meet any performance dates specified in the Letter of Instruction, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 Clinical Partners shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Clinical Partners shall notify the Instructing Solicitor in any such event.
- 3.4 Clinical Partners confirms that the Expert has read and will comply with the Protocol and the CPR and further confirms that whilst the Services will be carried out with reasonable skill and care, the Expert's primary duty as an expert witness is to provide independent and unbiased evidence to the Court.
- 3.5 Clinical Partners acknowledges that the Instructing Solicitor has notified Clinical Partners in writing of all parties who have some limited involvement in the subject matter of the Contract including Counsel and solicitors and other experts already instructed in the case. Clinical Partners confirms that on the basis of the information provided by Instructing Solicitors it, nor its Expert, does not have an actual or potential conflict of interest in entering into this Contract in respect of any parties so named and will notify the Instructing Solicitor without delay if it becomes aware of such a conflict.
- 3.6 Clinical Partners shall notify Instructing Solicitors promptly if:
- a. instructions are not acceptable, because, for example, they require work that falls outside the Experts' expertise, imposes unreasonable deadlines, or are insufficiently clear;
 - b. it considers that instructions are or have become insufficient to complete the Services;
 - c. it becomes aware that the Expert may not be able to fulfil any of the terms of the Contract;
 - d. it is not satisfied that the Expert can comply with any orders that have been made.
- Should any of the above occur the Instructing Solicitor shall forthwith provide further instructions. If such instructions are insufficient Clinical Partners shall be entitled to terminate the Contract or otherwise make adjustments to the Charges to reflect any increased work as a result.



4. Instructing Solicitor's Obligations

- 4.1 The Instructing Solicitor shall:
- a. notify Clinical Partners if the Charges are funded by the Legal Aid Board or any other third party prior to the Commencement Date;
 - b. procure that all invoices raised pursuant to these Conditions are promptly forwarded to the paying parties and settlement made in accordance with Condition 5 and that if settlement is not made it will settle the invoice directly;
 - c. give adequate instructions, obtain all relevant notes, records and investigations and shall check that all relevant matters are addressed in the reports produced by the Expert;
 - d. provide or procure the provision of all information which might reasonably be expected to be relevant in enabling Clinical Partners to fulfil its responsibilities under the Contract (Information) as and when it becomes available to the Client and/or the Instructing Solicitor;
 - e. ensure that all Information provided or prepared by the Client or on the Client's behalf is complete and accurate in all material aspects and not misleading and is updated as necessary;
 - f. inform Clinical Partners immediately if the Client discovers or has reason to believe any of the Information is, or becomes, untrue, incomplete, misleading or inaccurate in any material respect;
 - g. comply with and take all reasonable steps to assist Clinical Partners in complying with the Protocol and the CPR;
 - h. ensure that the terms of the Request and Letter of Instruction are complete and accurate;
 - i. co-operate with Clinical Partners in all matters relating to the Services.
- 4.2 The Instructing Solicitor hereby warrants they have full powers and authority to enter into the Contract for itself and as agent for the Client.
- 4.3 The Instructing Solicitor acknowledges that Clinical Partners shall, and are entitled to, rely upon Information provided to it, that Clinical Partners shall not be responsible for the accuracy or verification of any Information and that the Deliverables will be provided only on the Information disclosed by Instructing Solicitors.
- 4.4 The Instructing Solicitor confirms that the Charges are no higher than reasonably necessary for the purpose of litigation bearing in mind Clinical Partners' professional expertise and where necessary, that prior approval has been obtained from the Legal Aid Board or any other third party payer in respect of the Charges.
- 4.5 If Clinical Partners' performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Instructing Solicitor or failure by the Instructing Solicitor to perform any relevant obligation (Default):
- a. Clinical Partners shall, without limiting its other rights or remedies, have the right to suspend performance of the Services until the Instructing Solicitor remedies the Default, and to rely on the Default to relieve it from the performance of any of its obligations to the extent the Default prevents or delays Clinical Partners' performance of any of its obligations;
 - b. Clinical Partners shall not be liable for any costs or losses sustained or incurred by the Instructing Solicitor or the client arising directly or indirectly from Clinical Partners' failure or delay to perform any of its obligations as set out in this Condition 4.2; and
 - c. the Instructing Solicitor shall reimburse Clinical Partners on written demand for any costs or losses sustained or incurred by Clinical Partners arising directly or indirectly from the Default including without limitation all disbursements paid or incurred by Clinical Partners.

5. Charges and Payment

- 5.1 The Charges for the Services shall be as set out in the Acceptance Email and are calculated based on the information set out in the Letter of Instruction.
- 5.2 The Charges include up to one hour of an Expert's time to make amendments to any report provided but thereafter to the extent any further amendments are required such time shall be chargeable in accordance with Clinical Partners' standard fee rates in force from time to time
- 5.3 Clinical Partners reserves the right to increase the Charges where the required Deliverables are, in the opinion of Clinical Partners, in excess of what was stated in the Letter of Instruction or is otherwise of a more complex nature. Any increase will be based on the additional time that

- the Expert will incur at Clinical Partners' standard fee rates in force from time to time
- 5.4 Clinical Partners shall be entitled to charge for any expenses reasonably incurred by the individuals including the Expert whom Clinical Partners engages in connection with the Services including, but not limited to, first class travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Clinical Partners for the performance of the Services, and for the cost of any materials. Car mileage will be charged at 0.40p per mile. Charges under this condition 5.4 will be invoiced on a monthly basis with receipts evidenced and are payable in accordance with condition 5.4.
- 5.5 Clinical Partners reserves the right to increase its standard daily fee rates, provided that such charges cannot be increased more than once in any 12 month period. Clinical Partners will give the Instructing Solicitor written notice of any such increase 4 weeks before the proposed date of the increase. Invoices shall be addressed to the Client but sent to the Instructing Solicitor's office. Unless specific payments terms are set out in the Acceptance Email the Instructing Solicitor shall procure invoices are paid:
- a. Within 14 days of the date of the invoice where the invoice relates to Services; and
 - b. Within 7 days of the date of the invoice where the invoice relates to expenses as referred to in Condition 5.2; and
 - c. in full and in cleared funds to a bank account nominated in writing by Clinical Partners, and time for payment shall be of the essence of the Contract.
- 5.6 If the Instructing Solicitor has any reason to believe the Client or other paying party may be unable to pay any Charges due to Clinical Partners, the Instructing Solicitor will notify Clinical Partners immediately. All amounts payable by the Instructing Solicitor under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by Clinical Partners to the Instructing Solicitor, the Instructing Solicitor shall, on receipt of a valid VAT invoice from Clinical Partners, pay to Clinical Partners such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.7 Without limiting any other right or remedy of Clinical Partners, if the Instructing Solicitor fails to pay or procure any payment due to Clinical Partners under the Contract by the due date for payment (Due Date), Clinical Partners shall have the right to charge interest on the overdue amount at the rate of 4 per cent per annum above the then current Bank of England's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 5.8 Where the Services include any Court appearance by the Expert and any Court appearance is cancelled, for whatever reason, the full fee in respect of such Court appearance shall be paid by the Instructing Solicitor unless Clinical Partners receive notification of the cancellation 7 days in advance. A cancellation charge of half the Court fee per day booked will be paid by the Instructing Solicitor where notification of cancellation is received by Clinical Partners between 6 and 21 days prior to the appearance date and a cancellation charge of 20% of the Court fee per day booked will be paid by the Instructing Solicitor if notification of cancellation is received by Clinical Partners between 22 and 60 days prior to the appearance date. In respect of notification of cancellation received in advance of 61 days, all Court fees will be waived by Clinical Partners.
- 5.9 No Charges will be payable in respect of a consultation or appointment with Instructing Solicitor and/or the Client where at least 48 hours notice of cancellation is given. If the consultation or appointment is cancelled less than 48 hours in advance, an administrative fee of £150 will be levied.
- 5.10 If the Client and/or the Instructing Solicitor fails to attend a consultation or appointment without notice, the Instructing Solicitor shall pay or procure the Client pays on demand the sum of £250 by way of liquidated damages. The parties confirm that this sum represents a genuine pre-estimate of the loss of earnings that Clinical Partners would suffer in the event that the Client and/or the Instructing Solicitor fails to attend a consultation or appointment without notice.
- 5.11 The Instructing Solicitor shall pay all amounts due under the Contract in full without any deduction or withholding except as required by



law and the Instructing Solicitor shall not be entitled to assert any credit, set-off or counterclaim against Clinical Partners in order to justify withholding payment of any such amount in whole or in part. Clinical Partners may, without limiting its other rights or remedies, set off any amount owing to it by the Instructing Solicitor against any amount payable by Clinical Partners to the Instructing Solicitor.

6. Intellectual Property Rights

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services and the Deliverables shall be owned by Clinical Partners. Title to all Deliverables shall not pass to the Instructing Solicitor and the Instructing Solicitor/the Client shall not be permitted to use or rely upon the Deliverables until Clinical Partners has received payment in full of all Charges.
- 6.2 The Instructing Solicitor acknowledges that, in respect of any third party Intellectual Property Rights, the Instructing Solicitor's use of any such Intellectual Property Rights is conditional on Clinical Partners obtaining a written licence from the relevant licensor on such terms as will entitle Clinical Partners to license such rights to the Instructing Solicitor.

7. Confidentiality

- 7.1 A party (Receiving Party) shall keep in strict confidence all personal data, technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain including where the Disclosing Party is the Instructing Solicitor, confidential information of the Client. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.
- 7.2 Nothing in Condition 7.1 shall prevent the Expert from referring to confidential information when setting out the substance of the Instructing Solicitor's instructions in the Deliverables or as otherwise required by law.
- 7.3 This condition 7 shall survive termination of the Contract.

8. Limitation of Liability

- 8.1 Nothing in these Conditions shall limit or exclude Clinical Partners' liability for:
- death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - fraud or fraudulent misrepresentation; or
 - breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 8.2 Subject to Condition 8.1:
- Clinical Partners shall under no circumstances whatever be liable to the Instructing Solicitor and/or the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - Clinical Partners' total liability to the Instructing Solicitor and/or the Client in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Charges.
- 8.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 8.4 This Condition 8 shall survive termination of the Contract.

9. Termination

- 9.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach.
- 9.2 Without limiting its other rights or remedies, Clinical Partners may terminate the Contract with immediate effect by giving written notice to the Instructing Solicitor if the Instructing Solicitor fails to pay any amount due under this Contract on the due date for payment.
- 9.3 Without limiting its other rights or remedies, each party shall have the right to terminate the Contract by giving the other party one month's written notice. Without limiting its other rights or remedies, Clinical Partners shall have the right to suspend provision of the Services under the Contract or any other contract between the Instructing Solicitor and Clinical Partners if the Instructing Solicitor fails to pay any amount due under this Contract on the due date for payment.

10. Consequences of Termination

On termination of the Contract for any reason:

- the Instructing Solicitor shall immediately pay to Clinical Partners all of Clinical Partners' outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Clinical Partners shall submit an invoice, which shall be payable by the Instructing Solicitor immediately on receipt;
- the Instructing Solicitor shall return all of the Deliverables which have not been fully paid for. Until they have been returned, the Instructing Solicitor shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- Clinical Partners will promptly return all documents and material provided to it pursuant to the Contract to the Instructing Solicitor save for one copy that Clinical Partners may retain for its own records;
- the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- clauses which expressly or by implication have effect after termination shall continue in full force and effect.

11. General

- 11.1 Joint Instructions:
- in circumstances where Clinical Partners are jointly instructed by two or more Instructing Solicitors, both sets of Instructing Solicitors must sign and return a copy of the Letter of Instruction within 7 days of the date of such letter and procure it is copied to all Instructing Solicitors. Instructing Solicitors shall be jointly and severally liable in respect of their obligations hereunder. Instructing Solicitors are responsible for the resolution of matters between them and their respective Clients in relation to the Services and they must clearly identify to Clinical Partners any areas of disagreement. Paragraph 17 of the Protocol shall apply.
- 11.2 Force majeure:
- For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of Clinical Partners including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Clinical Partners or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
 - Clinical Partners shall not be liable to the Instructing Solicitor as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
 - If the Force Majeure Event prevents Clinical Partners from providing any of the Services for more than 3 weeks, Clinical Partners shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Instructing Solicitor.



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- 11.3 Assignment and subcontracting:
- a. Clinical Partners may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
 - b. The Instructing Solicitor shall not, without the prior written consent of Clinical Partners, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 11.4 Notices:
- a. Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number or sent by email.
 - b. Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission or if sent by email upon receipt of a "read receipt".
- 11.5 Waiver:
- a. A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
 - b. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 11.6 Severance:
- a. If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
 - b. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 11.7 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 11.8 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 11.9 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by Clinical Partners.
- 11.10 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

Appendix A

Information which must be provided by the Instructing Solicitor to Clinical Partners in the Letter of Instruction:

1. Are you / your client in apposition to comply with our payment terms, ie payment upon receipt of invoice?
2. Please confirm how the case is funded (private, legal aid, insurance);
3. The number of lever arch files which will need to be reviewed by the Expert;
4. Where the Client is located (ideally Instructing Solicitors will provide a home address for their Client);
5. The Client's availability for appointments;
6. The details of what you need the report cover;
7. What type of expert you require (Psychiatrist / Psychologist / Other);
8. The date by which the report will need to be completed;
9. Your estimate of the percentage chance that the case will go to Court (for our information only, this is only your guess);
10. The number of hours/days you expect our expert may be required to attend the Court hearing for, if it occurs.
11. When the case is expected to be heard
12. Where the case is expected to be heard

Appendix B

Information to be included in the Acceptance Email to be sent by Clinical Partners to the instructing solicitor:

1. Clinical Partners Charges
2. Clinical Partners Payment Terms (to the extent different payment terms have been agreed from those in the standard Conditions)
3. Confirmation the Conditions apply (and annexing a copy).

I have read and understood and agree to be bound by the Terms and Conditions set out in this document.

Signed: _____

Print Name: _____

Company: _____

Position: _____

Date: _____