

TERMS AND CONDITIONS

1. DEFINITIONS

In this Agreement, the following definitions, words and expressions as set out below shall have the following meanings and shall apply to the Services provided by Dr Prem Mahendra pursuant to these Terms and Conditions.

Agency: an entity or organization that has been instructed directly by an Instructing Solicitor that subsequently, as a result of that instruction, becomes an Instructing Party.

Agreed Format: all Information and any other material deemed necessary to enable the Expert Witness to carry out her Services is to be provided in hard copy paper format and paginated lever arch files (or similar)

Agreement: the contract between the Instructing Party and the Expert Witness for the supply of Services in accordance with these Conditions.

Client: is a client of the Instructing Solicitor, Medical Referral Organisation or other entity that refers Instructions from time to time

Commencement Date: has the meaning given in Clause 3.4

Conditions: these Terms and Conditions as amended from time to time

Expert Witness: Dr Prem Mahendra of Bay Tree House, 6b Pritchatts Road, Edgbaston, Birmingham, B15 2QT

Fees: the charges payable by the Instructing Party to the Expert Witness for her Services as detailed in Clause 4

Information: Material that is provided as part of the Instruction or supplied additionally to assist the Expert Witness to carry out her Services

Instructing Party: An Instructing Solicitor, Medical Referral Organisation, Agency, or any other entity that provides an Instruction to the Expert Witness

Instructing Solicitor(s): a solicitor and/or a firm of solicitors regulated by the Solicitors Regulation Authority that provides an Instruction the Expert Witness

Instruction: a description or specification of the Services required in writing by the Instructing Party to the Expert Witness using the Expert Witness's skill and judgement.

Medical Referral Organisation: an entity that instructs the Expert Witness pursuant to the terms of this Agreement.

Report: a final document produced by the Expert Witness in accordance with the Instruction

Services: all the services carried out including the Report as supplied by the Expert Witness to the Instructing Party as set out in the Instruction.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

2. INTERPRETATION

- 2.1 Headings are for ease of reference and shall not affect the construction or interpretation of these Clauses.
- 2.2 Words in the singular shall include the plural and vice versa.
- 2.3 A reference to a statute or statutory provision is a reference to it as amended or re-enacted and includes all subordinate legislation made under that statute or statutory provision.
- 2.4 Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 2.5 A reference to 'writing' or 'written' includes fax but not email.

3. AGREEMENT

- 3.1 These Terms and Conditions constitute the entire Agreement and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter and may only be amended by the Expert Witness in writing.
- 3.2 These Terms and Conditions shall apply to all Instructions received from the Instructing Party and shall constitute the entire Agreement made between the Expert Witness and the Instructing Party in accordance with these Conditions.
- 3.3 The Instruction constitutes an offer by the Instructing Party to use the Services of the Expert Witness in accordance with these Conditions.
- 3.4 The Instruction shall only be deemed to be accepted when the Expert Witness has received all the information from the Instructing Party to be able to carry out her duties and subsequently issues a written acceptance of the Instruction to carry out her Service at which point and on which date this Agreement shall come into existence and will constitute a legally binding contract between the Expert Witness and the Instructing Party (the "Commencement Date").
 - 3.4.1 It is agreed that the Commencement Date may be set for any date in the future which must be in writing.

4. FEES

- 4.1 All payments due pursuant to these Terms and Conditions shall be due within 30 days from presentation of an invoice. Invoices shall be issued upon the completion of the Service carried out by the Expert Witness.
- 4.2 The Expert Witness reserves the right to issue Interim invoices to the Instructing Party on a monthly basis (at the discretion of the Expert Witness), subject to clause 4.6, in respect of matters funded by Legal Aid. Such invoices will become due for payment 30 days from presentation.

- 4.3.3 In relation to the Services, the Expert Witness will charge the following:
- 4.3.1 £350.00 per hour to include, (but not limited to):
travel;
conference/meeting with counsel and/or Instructing Party;
all investigations; preparing reports; and
telephone or written attendance on the Client and/or Instructing Party.
- 4.3.2 £1400.00 for a half day's attendance/appearance (up to a period of 4 hours) in Court; and
- 4.3.3 £2800.00 per day (or for a period exceeding 4 hours) for her attendance/appearance in Court
- 4.4 All disbursements are to be reimbursed by the Instructing Party. Disbursements will include travel, photocopying, and reasonable accommodation and subsistence costs (as required). Any travel will only be within the United Kingdom; rail and plane travel will be first class and car mileage charged at 45p per mile. Receipted invoices in respect of all disbursements claimed will be provided by the Expert Witness.
- 4.4 If any payment due under this Agreement remains unpaid after 30 days from the date of invoice, then the Expert Witness shall have the right to claim compensation and interest pursuant to The Late Payment of Commercial Debts (Interest) Act 1998.
- 4.5 If the Instruction is as a Single Joint Expert by the Instructing Party then all Instructing Parties will be jointly and severally liable for the Fees and Disbursements.
- 4.6 The Instructing Party will notify the Expert Witness of any Legal Aid or other third-party funding prior to the Instruction.
- 4.7.1 The Expert Witness reserves the right to charge VAT on the Fee where applicable.
- 4.8 **For the avoidance of doubt, the Instructing Party will be liable for all the Fees payable under this Agreement.**

5. NOTICE

- 5.1 The Expert Witness shall endeavour to assist with dates for court appearances and any other meetings/conferences required to carry out her Service. It is a condition under this Agreement that a minimum of 6 weeks written notice is required before such meeting and/or a court appearance can be confirmed by the Expert Witness.

6. OBLIGATIONS OF THE EXPERT WITNESS

- 6.1 It is accepted and agreed by the Instructing Party that the primary duty of the Expert Witness is to provide independent and unbiased evidence to the Court.
- 6.2 The Expert Witness shall:

- 6.2.1 carry out her duties to the best of her abilities provided the Instruction has all the necessary and relevant information and there is sufficient time allocated to carry out such duties;
- 6.2.2 use her best endeavours to provide the Report within a given timeframe but cannot be held responsible in any way should it fail to be delivered by any given date;
- 6.2.3 comply with the Protocols published by the Civil Justice Council Civil Procedure Rule 35, Practise Direction 35 and the Practise Direction on Pre-Action Conduct;
- 6.2.4 comply with all UK Data Protection Legislation; and
- 6.2.5 endeavour to complete her Report within 30-days of the agreed Commencement Date.

7. INSTRUCTING PARTY'S OBLIGATIONS

- 7.1 The Instructing Party shall:
 - 7.1.1 ensure that all the Information that the Expert Witness shall receive shall be supplied in the Agreed Format;
 - 7.1.2 be responsible for giving adequate Instructions and obtaining all relevant notes, records and investigations, and shall check that all relevant matters are addressed in the Instruction;
 - 7.1.3 provide or procure the provision of all the information contained within the Instruction which might reasonably be expected to be relevant in enabling the Expert Witness to fulfil her responsibilities under the Instruction as and when it becomes available to the Client and/or to the Instructing Party;
 - 7.1.4 ensure that the Information contained within the Instruction provided is complete and accurate in all material aspects, not misleading and is updated as necessary (informing the Expert Witness immediately if it discovers, or has reason to believe, that any of the Information is, or becomes, untrue, incomplete, misleading or inaccurate in any material respect); and
 - 7.1.5 acknowledge that the Expert Witness shall be entitled to rely upon all the Information provided within the Instruction and that she shall not be responsible for the accuracy, omission or verification of any such Information and that her Report will be provided only on the basis of the Instruction.

8. INSURANCE

- 8.1 The Expert Witness is insured by MDDUS in respect of her Services, policy number is M193089.

9. CANCELLATION/POSTPONEMENT/DELAY

- 9.1 In the event of any court appearance being cancelled or postponed for any reason by the court or the Instructing Party, the Fee for each day cancelled or postponed shall become due pursuant to Clause 4.3.3 unless 6 weeks written notice is received ahead of such cancellation.
- 9.2 In the event of any pre-arranged meeting/conference being cancelled or postponed for any reason by the Instructing Party or any third party, a Fee shall become due equivalent to 4 hours charged at the hourly rate pursuant to Clause 4.3.1 unless 3 clear working days' notice by telephone followed by written notice, is received ahead of such cancellation.
- 9.3 The Expert Witness shall not be liable for any delay in the performance of her carrying out her Service for any reason.

10. RIGHT TO TERMINATE

- 10.1 The Expert Witness will Terminate her Service and notify the Instructing Party as soon as reasonably practical if:
- 10.1.1 the Instruction is not acceptable to her for any reason, for example it requires work that falls outside her expertise, impose unrealistic deadlines, or is insufficiently clear;
 - 10.1.2 the Instruction is or has become insufficient to complete the Service;
 - 10.1.3 it becomes apparent that the Service cannot be fulfilled; and/or
 - 10.1.4 she is not satisfied that she can comply with any orders that have been made.
- 10.2 The Instruction may be terminated by the Instructing Party at any time by written notice in accordance with the relevant Protocol pursuant to clause 6.2.3. Where the Instruction was made jointly, termination will be effective when written notice is received from all the Instructing Parties. Termination will not affect such entitlement under this Agreement in relation to payment of any Fees for Services conducted or invoiced before the date of the termination.
- 10.3 Upon termination, all documents and materials provided for the purpose of this Instruction shall be confidentially destroyed after a period of 2 months unless the Expert Witness receives a request in writing from the Instructing Solicitors to return such documents. The Expert Witness may securely retain for her records one copy of each document returned. All costs associated with the return or destruction of the documents are to be borne by the Instructing Party.

11. CONFIDENTIALITY

- 11.1 All Information, facts, matters, documents and all other materials of a confidential nature which is received or created as a result of this Instruction will remain confidential.

- 11.2 All documents, save for a copy securely retained by the Expert Witness, shall be confidentially destroyed after a period of 6 months from when the Expert Witness has discharged her duties unless instructed otherwise by the Instructing Party. The costs for such destruction is to be paid for by the Instructing Party.

12. LIMITATION OF LIABILITY

- 12.1 Nothing in this Agreement shall limit or exclude the liability of the Expert Witness for death or personal injury resulting from its negligence or fraudulent misrepresentation.
- 12.2 Neither party to this Agreement shall be liable to the other in connection with this Agreement for any indirect or consequential loss of any kind.
- 12.3 In the event that the Expert Witness shall be found liable to the Instructing Party or the Instructing Party's Client for any reason whatsoever, the liability shall be limited to an amount equal to the Fee paid by the Instructing Party.

13. SEVERABILITY

- 13.1 The provisions contained within these Terms and Conditions are severable and distinct from one another. If at any time any of the provisions is or becomes invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions shall not in any way be affected or impaired.

14. WAIVER

- 14.1 No amendment to, or waiver of, any provision of this Agreement shall be effective unless in writing and signed by both parties.

15. NOTICES

- 15.1 All notices should be sent by Royal Mail Special Delivery to Dr P Mahendra Bay Tree House, 6b Pritchatts Road, Edgbaston, Birmingham, B15 2QT or at such other address that may be nominated as an address for service from time to time. The deemed service of such notice shall be the next working day after its sent.

16. THIRD PARTY EXCLUSIONS

- 16.1 Except as expressly provided elsewhere in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

17. FORCE MAJEURE

- 17.1 The Expert Witness shall not be liable for any delay in the performance of any her obligations under the Instruction for any reason, including but not limited to, ill health, acts of God, or of the public enemy, fires, floods, epidemics, riots, quarantine restrictions, strikes, freight embargoes, earthquakes, electrical outages, computer or communications failures, severe weather, and acts or omissions of subcontractors or third parties.

18. GOVERNING LAW

- 18.1 This Agreement is subject to the law of England and Wales and the parties hereto submit to the exclusive jurisdiction of the English courts.