

# Forensic Resources Limited's Standard Terms and Conditions for Solicitors

## 1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.
- Addendum Report:** means where the Expert is acting as a Single Joint Expert, the addendum report to the Report in response to additional queries or points of clarification raised by the Court, the Client or other connected third parties.
- Appropriate Paying Authority:** the Legal Services Commission (LSC) or the Department of Constitutional Affairs (DCA) or the Criminal Cases Review Commission (as applicable).
- Client:** any person, firm, company or other party with whom FRL enters into a Contract to provide Services under the terms of this agreement and in the case of the appointment of a Single Joint Expert, any persons, firms, companies or other parties with whom FRL enters into a Contract to provide Services under the terms of this agreement.
- Contract:** the contract between FRL and the Client which shall comprise this agreement, the Instructions and the Confirmation.
- Confirmation:** the written confirmation of instructions provided to the Client by FRL.
- Court:** any Court of Law, Tribunal or body concerned with the process for arbitration or dispute resolution.
- Expenses:** subject to the rules of the Appropriate Paying Authority the reasonable expenses incurred in the production of the Report (and Addendum Report) including any car mileage, standard class rail travel, reasonable refreshments and hotel accommodation where an overnight stay is necessary, together with the cost of photocopying, reproduction of diagrams and other similar expenses incurred but excluding any expenses arising from any attendance at Court.
- Expert:** the expert appointed in accordance with clause 2.4 or clause 2.6 (as applicable).
- Fees:** the fees quoted in clause 2.7 and payable by the Client to FRL in accordance with clause 7.1.
- Forensic Testing:** means the testing of Samples in accordance with the Instructions.
- Intellectual Property Rights:** all patents, copyright and related rights, trade marks, business and domain names, rights in goodwill or to sue for passing off, unfair competition rights, rights in computer software, database right, 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.
- Instructions:** the written statement of services prepared by the Client.
- Law:** means the primary legislation of the UK Parliament and the European Union and any secondary legislation made thereunder, any applicable pharmacological or scientific guidance, direction or determination of the relevant regulatory authority which FRL or the Client (as the case may be) has a duty to have regard to and any applicable code.
- Report:** means the report to be prepared by the Expert in accordance with the Instructions.
- Samples:** means blood, controlled drugs, prescription drugs, documents and any other materials provided by the Client for the purposes of Forensic Testing.
- Services:** the services to be provided to the Client in accordance with the Instructions including, a Report, Forensic Testing and where necessary preparing an Addendum Report and attending any Court hearing.
- Single Joint Expert (SJE):** an expert who is instructed under Part 35.7 Civil Procedure Rules or Part 33.8 Criminal Procedure Rules (as the case may be) to submit expert evidence on a particular issue on behalf of all of the litigating parties.
- Supplemental Charges:** means the charges which arise in accordance with clause 7.6.
- VAT:** value added tax chargeable under English law for the time being and any similar additional tax.
- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 Words in the singular shall include the plural and vice versa.
- 1.5 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.6 A reference to **writing** or **written** includes faxes and e-mail other than as set out in clause 24.3.
- 1.7 Where the words **include(s)**, **including** or **in particular** are used in this agreement, they are deemed to have the words **without limitation** following them. Where the context permits, the words **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 1.8 Any obligation in this agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.9 References to clauses are to the clauses of this agreement.

## 2. SELECTION OF EXPERT

- 2.1 FRL shall shortlist a suitable expert or experts on behalf of the Client based on the Instructions.
- 2.2 Upon written request from the Client FRL shall provide the Client with the CVs of the available experts for the Client to consider whether such experts would be suitable for the preparation of the Report.
- 2.3 In the event the Report is required for Court, it is the Client's responsibility to confirm with the Court that the expert is suitable for the provision of the Services. If such approval is necessary, the Client shall confirm to FRL the Court's approval of the expert in writing.
- 2.4 In accordance with clause 2.2 the Client shall within 7 days of receipt of the expert's CVs from FRL or, if applicable, promptly following the Client's approval from the Court notify FRL of its preferred expert.
- 2.5 FRL acknowledges and agrees that the Client may at its discretion elect not to instruct an expert proposed by FRL, subject to the agreement that the Client shall be liable for such proportion of FRL's Fees as shall be reasonable in the circumstances.
- 2.6 If the Client does not request a copy of the short listed experts and has not notified FRL that the expert is subject to the Court's approval FRL shall select the Expert. FRL shall notify the

Client in writing the selected Expert and if not already provided in accordance with clause 2.2 shall provide the Client with the Expert's CV.

2.7 Quotations are given by FRL on the basis that no Contract shall come into existence except in accordance with clause 2.9. Any quotation is valid for a period of 30 days from its date, provided that FRL has not previously withdrawn it.

2.8 FRL shall enter into Contracts for the supply of the Services to the Client on the terms and conditions of this agreement.

2.9 A Contract shall be created either when the Client receives the Confirmation or when FRL commences the provision of the Services (whichever is earliest).

2.10 The Services supplied under this agreement shall continue to be supplied until they are completed in accordance with the Contract, unless terminated in accordance with clause 15.

## 3. FRL'S OBLIGATIONS

- 3.1 FRL shall use its reasonable endeavours to ensure that it adheres to the timeframe for the provision of the Report (and any Addendum Report) as set out in the Instructions however, time shall not be of the essence in this agreement.
- 3.2 FRL undertakes and agrees with the Client at all times during the provision of the Services:
- to act in the best interests of the Client and in good faith provided that this does not affect the overriding duty owed to the Court;
  - except as provided in this agreement or otherwise authorised in writing by the Client, not to act in a way which will incur any liabilities on behalf of the Client;
  - to comply with all reasonable and lawful instructions of the Client from time to time provided that nothing in this clause 3.2 shall prevent FRL from recovering its Fees; and
  - to perform the Services in a proper and efficient manner.
- 3.3 FRL reserves the right at its discretion not to commence the Services until payment in accordance with clause 7.4 (a) has been made.

## 4. CLIENT'S OBLIGATIONS

- 4.1 The Client shall:
- provide FRL with Instructions which include sufficient details of the relevant issues and time tabling information to enable the Expert to comply with its obligations under the Civil Procedure Rules or Criminal Procedure Rules (including any practice directions) or any other practice direction or protocol for the use of expert evidence (as appropriate) and any order of the Court including any provisional dates for attendance at Court.
  - co-operate with FRL in all matters relating to the Services;
  - notify FRL immediately of any changes to its requirements in connection with the provision of the Services;
  - indemnify FRL against any liabilities which FRL may incur as a result of any acts or omissions of the Client; and
  - supply promptly to FRL all information, which FRL may reasonably request for the purposes of the Services.
- 4.2 The Client acknowledges and agrees that it shall liaise directly with FRL in respect of the provision of the Services. In particular, the Client shall promptly notify FRL in the event of:
- any changes in the scope or the details of the Instructions including any new evidence which the Expert may need for the purposes of the Report (and any Addendum Report); and
  - the Expert's attendance at Court is required together with details of the dates, time and venue of such attendance.
- 4.3 If FRL's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, FRL shall not be liable for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such prevention or delay.

## 5. SAMPLES

- 5.1 FRL shall handle all Samples in accordance with the terms of the required accreditation, licences and consents necessary for the handling and use of Samples in accordance with the Law.
- 5.2 The Client shall arrange for any Samples to be sent to such address as notified to the Client in writing by FRL.
- 5.3 Unless otherwise agreed with the Client in writing, FRL shall send and return all Samples received from the Client for the purposes of Forensic Testing by Royal Mail, courier or secure method of FRL's choosing.
- 5.4 Whilst every care and consideration is taken to ensure that Samples are sent to the client or laboratory in a secure manner, FRL accepts no responsibility or liability for any Samples lost, stolen or contaminated once accepted by the delivery service. FRL shall provide the Client with such assistance as it deems reasonable to assist the Client in any investigation of loss or damage of the Samples.

## 6. CHANGE CONTROL

- 6.1 FRL reserves the right in exceptional circumstances to change the agreed dates for the provision of the Services as set out in the Contract provided that prior written notification is given to the Client.
- 6.2 If the Client requests a change to the scope of the Instructions or execution of the Services as set out in the Contract, FRL shall within a reasonable time provide the Client with an estimate of:
- the likely time required to implement the change;
  - any necessary variation in the Fees; and
  - any other impact of the change in the provision of the Services.

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- 6.3 If FRL considers that its fees for providing the Services shall exceed the Fee quoted in accordance with clause 2.7, it shall notify the Client in writing immediately giving reasons for the increase. Unless such increase is agreed in writing by the Client, FRL shall not be entitled to invoice for a sum greater than the Fee.
- 6.4 If FRL agrees to the Client's proposed change in accordance with clause 6.2 or if the Client agrees to the increase in Fees in accordance with clause 6.3 the Contract shall be amended, in accordance with clause 17 of this agreement, to take account of the change.
- 6.5 Notwithstanding clause 6.4, FRL may from time to time and without notice, change the provision of the Services under the Contract in order to comply with any relevant changes to the Civil Procedure Rules or Criminal Procedure Rules (including any practice directions) or any other practice direction or protocol for the use of expert evidence (as appropriate) or changes in law.
- 7. CHARGES AND PAYMENT**
- 7.1 The Client shall pay FRL's Fees and all costs incurred by FRL in connection with the provision of the Services as set out in the Contract.
- 7.2 Where a Single Joint Expert is appointed, the Client shall be jointly and severally liable pursuant to clause 7.1.
- 7.3 The Fees quoted to the Client shall be exclusive of VAT unless stated otherwise and FRL shall add VAT to its invoices at the appropriate rate.
- 7.4 Where the Client is not in receipt of public funding the Fees shall become due and payable by the Client in two equal instalments which shall be invoiced by the Client as follows:
- (a) an invoice in respect of 50% of the Fees shall be issued at the time of contract in accordance with clause 2.9; and
  - (b) an invoice in respect of the outstanding 50% of the Fees and any Expenses shall be issued on completion of the Report.
- 7.5 In cases where a Client is in receipt of public funding FRL shall issue an invoice for the Fees and any Expenses on completion of the Report.
- 7.6 In the event the Expert is a Single Joint Expert and is required to prepare an Addendum Report, the Client shall be responsible for the payment of FRL's additional fees arising there from.
- 7.7 Notwithstanding clause 6.3 Supplemental Charges shall be payable by the Client to FRL where the performance of the Services is made more difficult or costly as a result of a breach of the Client's obligations under this agreement.
- 7.8 All invoices shall be paid within 28 days of the date of the invoice. Time for payment of the Fees shall be of the essence.
- 7.9 The amount due will not be subject to taxation by the Court of other authority, nor any conditional fee arrangement or agreement, nor on resolution of the case, nor by assessment by the Legal Services Commission or other authority.
- 7.10 In publically funded cases in the English Crown Court, upon receipt of FRL's invoice the Client shall apply for payment on account of the FRL invoice in accordance with sections 4A(1) and 4A(2) of the Criminal & Care Proceedings (Costs) Regulations 1989, and *promptly pass payment* to FRL.
- 7.11 The parties acknowledge and agree that if the Expert is required to attend Court the Client shall be responsible for payment of the Expert's additional fees incurred in the connection with such attendance and the Client procures to obtain any necessary prior approval from the Court or otherwise. The Client shall pay any additional fees incurred pursuant to this clause 7.11 within 28 days of the date of the invoice.
- 7.12 Without prejudice to any other right or remedy that it may have, if the Client fails to pay FRL on the due date, FRL may:
- (a) claim interest and any other charges under the Late Payment of Commercial Debts (Interest) Act 1998 (as may be amended, revoked or repealed); and/or
  - (b) suspend all Services under any Contract until payment has been made in full; and/or
  - (c) terminate any Contract in whole or in part and seek to recover damages for breach of Contract from the Client.
- 7.13 All sums payable to FRL under this agreement shall become due immediately on its termination, despite any other provision. This clause 7.13 is without prejudice to any right to claim for interest under the law, or any such right under this agreement.
- 8. CANCELLATION/POSTPONEMENT**
- 8.1 The Client may not cancel or postpone any Contract except with the written agreement of FRL and provided that the Client shall pay such proportion of the Fees as may be appropriate to reflect the work undertaken in relation to the Service up to the date of cancellation.
- 9. INTELLECTUAL PROPERTY RIGHTS**
- 9.1 Nothing in this agreement shall be construed as assigning to the Client any Intellectual Property Rights in the Report (and any Addendum Report).
- 9.2 FRL grants to the Client an exclusive, non-transferable licence to use the Report (and any Addendum Report) for the purposes required as stated in the Instructions provided that the Client shall not:
- (a) amend, alter, delete or vary the Report (and any Addendum Report) in any way; and
  - (b) amend, alter, delete or vary the copyright notice on the Report (and any Addendum Report) (if applicable).
- 10. CONFIDENTIALITY**
- 10.1 Each party undertakes that it shall not at any time disclose to any person any confidential information or otherwise concerning the business, finances, affairs, and all materials and documents supplied under this agreement except as permitted by clause 10.2.
- 10.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, sub-contractors, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this agreement; and
  - (b) as may be required by law, court order or any governmental or regulatory authority.
- 10.3 No party shall use any other party's confidential information for any purpose other than to perform its obligations under this agreement.
- 11. WARRANTIES**
- 11.1 FRL warrants that:
- (a) it has selected the Expert with reasonable skill and care; and
  - (b) that the Expert is an expert in his field, has been accredited by their professional body to be an expert witness and, where possible, is registered with the Council for Registration of Forensic Practitioners or such other regulatory body as may apply to the Expert's field of practice;
  - (c) is accredited to use the laboratories or equipment required to be used for the purposes of the Services; and
  - (d) at the time of the Contract the Expert is not subject to any adverse findings by a professional or regulatory body and has no proceedings, referrals or investigations pending which have been brought by a professional or regulatory body.
- 12. LIMITATION OF LIABILITY - THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 12.1 This clause 12.1 sets out the entire financial liability of FRL (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Client in respect of:
- (a) any breach of this agreement;
  - (b) any use made by the Client of the Services; and
  - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 12.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement.
- 12.3 Nothing in this agreement limits or excludes the liability of FRL:
- (a) for death or personal injury resulting from negligence; or
  - (b) for any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by FRL.
- 12.4 FRL shall not be liable for any loss, damage, costs or expenses suffered by the Client or any third party arising from:
- (a) the Client's failure to seek the Court's approval in accordance with clause 2.3;
  - (b) inaccurate or incomplete Instructions.
  - (c) loss of or damage to any Samples pursuant to clause 5.2.
- 12.5 Subject to clauses 12.2, 12.3 and 11.4 FRL's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of any Contract under this agreement shall be limited to 120% of the Fees for the Services as set out in the Contract.
- 13. INSURANCE**
- 13.1 During the term of the Contract, FRL shall maintain in force, with a reputable insurance company, professional indemnity insurance in an amount not less than £2 million per annum.
- 14. DATA PROTECTION**
- The parties agree that they shall comply with their obligations under the Data Protection Act 1998 (as may be amended, revoked or repealed) and with any guidance issued by the Information Commissioners Office, in the performance of the Contract.
- 15. TERMINATION**
- Either party may give notice in writing to the other party to terminate any Contract concluded under this agreement with immediate effect if either party commits any serious breach of any of the terms of this agreement and that breach (if capable of remedy) is not remedied within twenty (20) working days of written notice being given by either party requiring it to be remedied;
- 15.1 FRL may give notice in writing to the Client terminating any Contract concluded under this agreement with immediate effect if:
- (a) an order is made or a resolution is passed for the winding-up of the Client or an order is made for the appointment of an administrator to manage the affairs, business and property of the Client or a receiver and/or manager or administrative receiver is appointed in respect of all or any of the Client's assets or undertaking or circumstances arise which entitle the Court or a creditor to appoint a receiver and/or manager or administrative receiver or which entitle the Court to make a winding-up or bankruptcy order or the Client takes or suffers any similar or analogous action in consequence of debt;
  - (b) the Client ceases, or threatens to cease, to carry on business.
- 15.2 Subject to clauses 15.1 and 15.2 any Contract concluded under this agreement shall terminate automatically on completion of the Services.
- 15.3 On termination of this agreement for any reason the Client shall immediately pay to FRL all of FRL's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, FRL may submit an invoice, which shall be payable immediately on receipt.
- 15.4 On termination of this agreement (however arising) the following clauses shall survive and continue in full force and effect:
- (a) clause 9;
  - (b) clause 10;

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- (c) clause 12;
- (d) clause 15; and
- (e) clause 25.

- 16. FORCE MAJEURE**  
The obligations of FRL under this agreement shall be suspended during the period and to the extent that FRL is prevented or hindered from complying with them by any cause beyond its reasonable control including (without prejudice to the generality of the foregoing) strikes, lock-outs, labour disputes, 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 and storm.
- 17. VARIATION**  
Subject to clause 6, no variation of this agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 18. WAIVER**  
18.1 Failure to exercise, or any delay in exercising, any right or remedy provided under this agreement or by law shall not constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict any further exercise of that (or any other) right or remedy.  
18.2 No single or partial exercise of any right or remedy provided under this agreement or by law shall preclude or restrict the further exercise of any such right or remedy.
- 19. SEVERANCE**  
If any provision of this agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this agreement, and the validity and enforceability of the other provisions of this agreement shall not be affected.
- 20. ENTIRE AGREEMENT**  
20.1 This agreement constitutes the entire agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this agreement.  
20.2 Nothing in this clause shall limit or exclude any liability for fraud.
- 21. ASSIGNMENT**  
FRL may at any time assign, transfer or subcontract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 22. NO PARTNERSHIP OR AGENCY**  
Nothing in this agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 23. RIGHTS OF THIRD PARTIES**  
A person who is not a party to this agreement shall not have any rights under or in connection with it.
- 24. NOTICES**  
24.1 Any notice required to be given under this agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to each party required to receive the notice at its address as set above or as otherwise specified by the relevant party by notice in writing to each other party.  
24.2 Any notice shall be deemed to have been duly received:  
(a) if delivered personally, when left at the address and for the contact referred to in this clause; or  
(b) if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second working day after posting; or  
(c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.  
24.3 A notice required to be given under this agreement shall not be validly served if sent by email.
- 25. GOVERNING LAW AND JURISDICTION**  
25.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the laws of England and Wales.  
25.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter.