DISCLAIMER

These draft T&Cs and the accompanying notes are intended to be a guide only to assist the expert witness in considering the most relevant matters in terms of their contract to provide services and their obligations to the Court. Prior to accepting any instruction the expert witness must ensure that the services required of them and all terms and conditions are clearly identified in writing and that they are aware of and compliant with the following:

- Protocol for the Instruction of Experts to give Evidence in Civil Claims (‘Protocol’);
- Civil Procedure Rules Part 35 Experts and Assessors (‘CPR35’);
- Practice Direction Part 35 Experts and Assessors (‘PD35’); and
- Practice Direction Pre-Action Conduct (‘PD Pre-Action Conduct’).

Expert witnesses using this document are advised to seek their own independent advice and they may also wish to consider training/membership of one of the organisations established to train and assist professional expert witnesses.

Draft letter from Expert Witness to Instructing Solicitors and Agencies setting out Terms and Conditions of Appointment

[Instructing Solicitors/Agency]

Dear Solicitor/Agent

Re: [Insert client details] (“Client”) [NB Insert details of Patient and Insurers where applicable]

Following our recent discussions I set out below the terms and conditions upon which I am prepared to accept appointment as an expert witness. These terms will be the only terms which apply to the Appointment and may only be amended by agreement in writing.

Where I am appointed directly by an MRO, all references in the Appointment to “Instructing Solicitors” shall be construed as references to the instructing agency.

[Option A]

The Appointment will only be accepted when I have a written copy of the information required in the Schedule, a copy of this letter signed by you (“Instructing Solicitors”) (both on behalf of your Client (as their authorised agent) and to confirm your obligations as Instructing Solicitors) and I have confirmed such acceptance in writing.]

OR
The Schedule sets out the requirements relating to the Appointment. Please confirm your acceptance by signing (both on behalf of your Client (as their authorised agent) and to confirm your obligations as Instructing Solicitors) and returning a copy of this letter.

1. Fees

[Option A: Where charging a Fixed Fee:

1.1 In consideration of the provision of my services as expert witness under the Appointment, a fixed fee of £ exclusive of VAT (the “Fixed Fee”) is payable, such fee to be payable by bank transfer [quarterly in arrears]/[in instalments as set out in the Schedule]. In addition, all disbursements will be reimbursed by your Client.

1.2 Disbursements will include travel, 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 £ per mile). I will provide your Client with receipted invoices in respect of all disbursements claimed on a monthly basis and payment will be due within days of the date of the invoice (subject to clause 1.3 in respect of matters funded by Legal Aid).

1.3 Invoices will be addressed to your Client but sent to your offices. You will arrange for these to be paid promptly. If you have any reason to believe your Client or other paying party may be unable to pay any fees or other sums due to me you will notify me immediately. If the fees are funded by the Legal Aid Board or other third party you will advise me before the Appointment is confirmed and you will ensure all invoices are promptly forwarded and settlement made within days of the date of the invoice.

1.4 If any payment due to me under the terms of the Appointment is not paid by the due date for payment (the “Due Date”), interest shall accrue on the overdue amount at the statutory rate. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment, whether before or after judgment.

1.5 Where I am instructed as a Single Joint Expert by the solicitors of both parties, both firms of Instructing Solicitors will be jointly and severally liable for the Fixed Fee and disbursements. Where I am instructed by an Agency which has itself been instructed by solicitors, both the Agency and its Instructing Solicitors will be jointly and severally liable for payment of the Fixed Fee and disbursements.

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1 Insert the appropriate rate approved by the Inland Revenue (dependent on size of car engine).
1.6 If any payment due to me under the terms of the Appointment is not paid by the due date for payment (the “Due Date”), interest shall accrue on the overdue amount at the statutory rate. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment, whether before or after judgment.

1.7 In the event of any court appearance being cancelled, for whatever reason, the full fee shall be paid unless I receive notification 7 days in advance. A cancellation charge of half the court fee per day booked will be paid where notification of cancellation is received with between 6 and 21 days notice, and 20% of the court fee per day booked will be paid if notification is received between 22 and 60 days in advance. In respect of notification received in advance of 61 days, all charges will be waived.

1.8 No charges will be payable in respect of a consultation or appointment with Instructing Solicitors and/or your 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 [£ ] will be levied.

1.9 If your Client and/or Instructing Solicitors fail[s] to attend a consultation or appointment without notice, your Client shall pay on demand the sum of £[ ] by way of liquidated damages. The parties confirm that this sum represents a genuine pre-estimate of the loss of earnings that I would suffer in the event that your Client and/or Instructing Solicitors fail[s] to attend a consultation or appointment without notice.

OR

[Option B: Where charging by hourly rate:

1.1 Save as may be provided in the Schedule, my [hourly] / daily rate is [£ ]. My time will be charged in units of [ ] of an hour. [The daily rate assumes a working day of [ ] hours (including travel)].

1.2 All rates quoted are exclusive of VAT and subject to review annually.

1.3 The Schedule contains an estimate of my fees to cover the initial work. I will keep these under review and advise you or your Client as promptly as possible if I believe they will be exceeded). The Schedule also includes details of my fees for Court appearances, Conferences with Counsel and Client meetings (if or to the extent they differ from the quoted rate).

2 This should be a nominal fee to cover actual administration costs consistent with your usual practice regarding cancelled appointments.
1.4. I will charge all time spent in connection with this Appointment, including but not limited to, all investigations, preparing reports, and telephone or written attendance on your Client and/or Instructing Solicitors. Travel time from [hospital/consulting rooms] will be charged.

1.5. I will keep a note of the time that I spend on this matter on [an hourly basis] / [the basis of units of [     ] of an hour], and submit the same with my invoices.

1.6. All disbursements will be reimbursed. 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 [£  ]^3 per mile). I will provide your Client with receipted invoices in respect of all disbursements claimed.

1.7. I will invoice on a [monthly/upon delivery of my report (and monthly in respect of any fees accrued)]. Payment will be due within [ ] days of the date of the invoice (subject to clause 1.8 in respect of matters funded by Legal Aid).

1.8 Invoices will be addressed to your Client but sent to your offices. You will arrange for these to be paid promptly. If you have any reason to believe your Client or other paying party may be unable to pay any fees or other sums due to me you will notify me immediately. If the fees are funded by the Legal Aid Board or other third party you will advise me before the Appointment is confirmed and you will ensure all invoices are promptly forwarded and settlement made within [   ] days of the date of the invoice.

1.9 Where I am instructed as a Single Joint Expert by the solicitors of both parties, both firms of Instructing Solicitors will be jointly and severally liable for the fees and disbursements. Where I am instructed by an Agency which has itself been instructed by solicitors, both the Agency and its Instructing Solicitors will be jointly and severally liable for payment of the fees and disbursements.

1.10 If any payment due to me under the terms of the Appointment is not paid by the due date for payment (the “Due Date”), interest shall accrue on the overdue amount at the statutory rate. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment, whether before or after judgment.

1.11 In the event of any court appearance being cancelled, for whatever reason, the full fee shall be paid unless I receive notification 7 days in advance. A cancellation charge of half the court fee per day booked will be paid where notification of cancellation is received with between 6 and 21 days notice, and 20% of the court fee per day booked will be paid if notification is received between 22 and 60 days in advance. In respect of notification received in advance of 61 days, all charges will be waived.

\(^3\) Insert the appropriate rate approved by the Inland Revenue (dependent on size of car engine).
1.12 No charges will be payable in respect of a consultation or appointment with Instructing Solicitors and/or your 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 £[ ] will be levied.

1.13 If your Client and/or Instructing Solicitors fail[s] to attend a consultation or appointment without notice, your Client shall pay on demand the sum of £[ ] by way of liquidated damages. The parties confirm that this sum represents a genuine pre-estimate of the loss of earnings that I would suffer in the event that your Client and/or Instructing Solicitors fail[s] to attend a consultation or appointment without notice.

2. Instructing Solicitors' Obligations

Instructing Solicitors:

2.1. are responsible for giving adequate instructions, and obtaining all relevant notes, records and investigations, and shall check that all relevant matters are addressed in the reports.

2.2. shall:

2.2.1. provide me with, or procure the provision of, all information which might reasonably be expected to be relevant in enabling me to fulfil my responsibilities under this Appointment (“Information”) as and when it becomes available to your Client and/or to Instructing Solicitors;

2.2.2. ensure that the Information provided or prepared by your Client or on your Client’s behalf is complete and accurate in all material aspects and not misleading and is updated as necessary (informing me immediately if your Client discovers or has reason to believe that any of the Information is, or becomes, untrue, incomplete, misleading or inaccurate in any material respect).

Instructing Solicitors acknowledge that I shall, and am entitled to, rely upon all Information provided to me, that I shall not be responsible for the accuracy or verification of any Information and that my report will be provided only on the basis of the Information disclosed to me by you.

2.3. confirm that my charges are no higher than reasonably necessary for the purpose of litigation bearing in mind my professional expertise and where necessary, that prior approval [has been / will be ] obtained from the Legal Aid Board or any other third party payor in respect of my charges.

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4 This should be a nominal fee to cover actual administration costs consistent with your usual practice regarding cancelled appointments.
2.4. agree to comply with and to take all reasonable steps to assist me in complying with the Protocol and the Civil Procedures Rules referred to in Clause 3.

3. Duties to the Court

3.1. I confirm that I have read and will comply with the Protocol published by the Civil Justice Council, CPR35, PD35, and PD Pre-Action Conduct. In particular I understand that, although I owe a duty of care to your Client and Instructing Solicitors to exercise reasonable skill and care in carrying out their instructions, my primary duty as an expert witness is to provide independent and unbiased evidence to the Court.

4. Liability

My total liability for professional negligence (excluding any liability for fraud or wilful misconduct) under or in connection with this Appointment shall not exceed £[   ].

5. [Insurance

I confirm that I hold professional indemnity insurance in respect of the Appointment.]

6. Right to Terminate

The Appointment is subject to receipt of all necessary and relevant information from you in sufficient time to prepare a response and payment of monthly invoices and/or the Fixed Fee as they fall due. I will advise you promptly if:

6.1. instructions are not acceptable because, for example, they require work that falls outside my expertise, impose unrealistic deadlines, or are insufficiently clear;

6.2. I consider that instructions are or have become insufficient to complete the work;

6.3. I become aware that I may not be able to fulfil any of the terms of Appointment; or

6.4. I am not satisfied that I can comply with any orders that have been made.

This retainer may be terminated by Instructing Solicitors or your Client at any time by written notice subject to discussion in accordance with the Protocol. Where I am instructed jointly termination will be effective when I have received written notice from all instructing parties. Termination will not affect my entitlement to payment of any fees for work conducted or invoiced before the date of the termination.

Upon termination, all documents and materials provided to me for the purpose of this Appointment must be returned promptly to Instructing Solicitors save for one copy that I may retain for my records.
7. Intellectual Property

I will own the copyright in all reports and/or materials produced by me. Additionally, I will retain the title to all reports and/or materials produced by me until I have received full payment in accordance with paragraph 1.1 above. Subject to receipt of all payments due your Client is authorised to use the same for the purposes of the matters contained in the Schedule.

8. Confidentiality

I will treat all information, facts, matters, documents and all other materials of a confidential nature which I receive or create as a result of this Appointment as confidential, (except insofar as I have to refer to them when setting out the substance of my instructions in your report or as required by law).

9. Responsibility

[I confirm that the work which is carried out in relation to this retainer will be my own and will not be delegated or sub-contracted to someone else.]

OR

[I have indicated that it will be more cost effective to delegate some aspects of the work. I will let you know before involving anybody else, which aspects of the work are likely to be delegated, to whom they are likely to be delegated, their experience and their charge out rates.]

10. Conflict

You have notified me in writing of all parties who have some limited involvement in this matter including Counsel and solicitors and other experts already instructed in this case. I confirm that I do not have an actual or potential conflict of interest in accepting this Appointment in respect of any parties so named and that I will let you know without delay if I become aware of such a conflict.

11. Joint Instructions

In circumstances where I am jointly instructed by Instructing Solicitors, both sets of Instructing Solicitors must sign and return a copy of this letter and completed schedule within seven days and ensure it is copied to all Instructing Solicitors. It is for Instructing Solicitors to resolve any disagreements the parties may have in relation to instructions or to clearly identify areas of disagreement in the Schedule. Instructing Solicitors should note that Paragraph 17 of the Protocol will apply.
12. Governing Law

This Appointment is subject to English law and the parties hereto submit to the exclusive jurisdiction of the English courts.

13. Force Majeure

I shall not be liable for any delay in the performance of any obligations under this Appointment (and the time for the performance of any obligations under this Appointment shall be extended accordingly) if such delay arises from or is attributable to acts, events, omissions or accidents beyond my reasonable control including but not restricted 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.

Please complete the Schedule to enable me to confirm acceptance of the Appointment and sign and return the enclosed copy letter to confirm acceptance of these terms and conditions [subject to my confirmation of acceptance]. In signing these terms for your Client, you warrant that you have all requisite full power and authority to do so both as agent for your Client(s) and in your own capacity to the extent that you undertake direct obligations.

Yours sincerely

[      ]
Schedule

[Section 1-5 to be completed by Instructing Solicitors or to confirm information already supplied]

1. Capacity (i.e. area of expertise for expert witness)
2. Services required
3. Background Facts
4. Issues to be addressed in advice/report
5. Timing

5.1. Delivery of full information to expert
5.2. Delivery of report
5.3. Court Dates (if known) (Expert to specify dates upon which they will not be available)

6. Estimate of fees

The following estimates are based on the details contained in sections 2 and 3 of this Schedule and are by way of guidance only. Where no figure is contained in paragraph 6.1 to 6.7 below the hourly rate will apply subject to any fixed rates set out in paragraph 7.

6.1. Professional reports of facts for uncontested personal injury cases, fast track, value under £10,000 [estimate]
6.2. Expert medical reports in more complex cases involving opinion as to injuries, causation, and prognosis: [estimate]
6.3. Further reports, reviews, joint consultations: to be charged at hourly rate
6.4 Medical and Clinical Negligence: CPR compliant consultation reports: [estimate]
6.5. Advisory reports based on records: [estimate]
6.6. Conference with Counsel: [estimate] per half day
6.7. Expert witness: Evidence in court: [estimate] per day

7. [Include agreed fixed rates if any] [See Clause 1.1 Option B re. hourly rate and basis of charging].

8. Payor (please confirm if fees are to be paid by a third party). If the Legal Aid Board or insurers are paying, please identify details by reference to approved details and/or policy details.

9. Details of other parties (see clause 10).
Structure

Most Instructing Solicitors or agencies will prefer to use their own terms or may try and change yours in correspondence. However, please note that you are not required to adopt their standard terms and conditions or fixed fee rates and can negotiate the terms on which you agree to provide your services. Please ensure you review any proposed terms thoroughly and make notes of any discussions entered into. Before entering into a contract you should also seek independent legal advice and, if the contract is with an agency you may also wish to conduct due diligence checks on the agency e.g. consider obtaining a report from a credit-rating agency which may disclose any county court judgments, risk warnings and the financial position of the agency.

Client

The reference to the “Client” refers to the person or entity for whom the Instructing Solicitors or the Agency is acting and who requires your services as an expert witness. This could include claimant patients, defendant medical professionals, or insurance companies. We suggest that both patient and insurer are named where the insurers are the paying party. Option A is intended to ensure that you have sufficient detail to enable you to assess your suitability for the Appointment in professional terms and also to ensure that you are able to accept the Appointment in terms of time and workload. If you already have sufficient detail to make these decisions you may prefer to use Option B and provide the completed Schedule.

Fees (Clause 1)

This section, together with the Schedule, sets out your fee structure and places responsibility on the Instructing Solicitors to chase payment. However, payment remains the responsibility of the Client. If you are in any doubt you may wish to seek an undertaking from the Instructing Solicitors’ or the Agency to pay and to reclaim your fees. It may depend on the Client as to whether you would be more likely to be paid more quickly by them than by their Instructing Solicitors, but you should be aware that most solicitors will refuse to give such an undertaking.

You may wish to set a fixed fee for your services or for certain tasks or to charge an hourly rate for all activities (which you may choose to record and charge in smaller units of parts of an hour e.g. 1/10, 1/3 or 1/2 an hour). Both fixed fee and hourly rate options are accommodated in the draft terms and conditions and there is the option in the latter case of specifying the time unit basis of calculation. Where the hourly rate is applied you will be expected to keep detailed notes of the tasks performed and the time spent. Not only will this process assist you in providing estimates it will assist in limiting any challenges to your costs. If the instructions are likely to be extended/varied then you may wish to refer to an hourly rate.
The draft terms and conditions envisage that disbursements will be reimbursable regardless of whether you choose to charge a fixed fee for your services or to charge based on an hourly rate for your services. Nonetheless, it is advisable to obtain consent before incurring significant expenses.

**VAT**

You must charge VAT for your services if you are VAT registered. Registration is only required if your annual earnings for the provision of your services (other than as an employee) exceed the VAT threshold or may soon exceed said amount. Different VAT rates apply to different services and there are currently three rates: standard rate, reduced rate and zero rate. Exemptions apply to services provided by health professionals if said services are (i) within the profession in which the professional is licensed to practice and (ii) the primary purpose of the services is the protection, maintenance or restoration of the health of the person in question. Provision of expert witness services will usually attract the default rate as they contain no element of therapeutic care but instead enable a third party to make a decision in relation to a patient. For more information on VAT refer to HM Revenue & Customs (HMRC) at: http://www.hmrc.gov.uk/index.htm

**Liquidation of agency**

Please note that should an agency go into liquidation, an expert will have no security over monies owed to him/her. It may therefore be advisable, where appropriate (e.g. if you have any concerns regarding the medical reporting agency or if the instruction is privately funded), to ask the Client to pay for certain services upfront, for example, by credit card or alternatively to countersign the agent’s instructions. By countersigning the agent’s instructions, the Client confirms that the agent has authority to enter into the contract and confirms its own obligations to pay under the Appointment. The expert witness can, therefore, proceed directly against the Client for any sums due (although this should be the case by virtue of the agency principle). This is probably less relevant where solicitors are instructing.

**Estimate of Fees**

There is no requirement to provide an estimate of your fees in the Schedule but it is sensible to manage the expectations of the parties. Where a fixed fee is to be charged, that can be inserted in the Schedule.

**Late payments**

The statutory rate for late payments is determined in accordance with the Late Payment of Commercial Debts (Interest) Act 1988 as amended and supplemented by the Late Payment of Commercial Debts (Interest) Regulations 2002. It is set at 8% above the “reference rate” covering the sixth month period in which the debt becomes late. The “reference rate” for 1st January to 30th June is the Bank of England’s base rate on 31st December and, for 1st July to 31st December, it is the base rate on 30th June.
Discounts for early payment

In general, it is not commercially advisable to offer discounts for early payment. However, should you wish to exercise this option, the following wording would be appropriate as a new clause 1.7A: “If payment is received within 5 days of the date of the invoice, I will provide a discount of [ ]% of the invoiced sum in the form of a credit note addressed to the Client but addressed to your offices”.

Cancellation Charges (Clauses 1.11-1.13) (relates only to circumstances where expert is charging an hourly rate)

The figure inserted for liquidated damages payable to the expert on cancellation of a consultation or appointment without notice must be a genuine pre-estimate of loss to be enforceable (i.e. not a penalty or unreasonable in the context of a consumer contract).

Legal Aid

Where fees are being funded by the Legal Aid Board, it is important that Instructing Solicitors or the instructing agency keep the Board informed as to when and how payments should be made as the Board is not a party to the Appointment.

Joint and Several Liability

Under the terms of the Appointment, the instructing parties assume joint and several liability for all fees and charges, which means that they are both collectively and individually obliged to meet the payments under clause 1. This is intended to protect the expert witness in circumstances where one of the instructing parties has gone into liquidation or administration as the expert can proceed against any one or more of the instructing parties for the full amount due.

Duties/Protocol (Clause 3)

Instructing Solicitors will require confirmation that you, as an expert witness, understand and are prepared to comply with the relevant requirements. It is extremely important that you understand the nature of the duties which the Appointment would impose on you.

All expert witnesses should therefore be familiar with the Protocol, and the relevant Civil Procedure Rules and Practice Directions before agreeing to the Appointment. These may be found on the Ministry of Justice website www.justice.gov.uk

A requirement to comply with these obligations will be of principal importance to any Instructing Solicitors. Providing this confirmation will reassure Instructing Solicitors who may as a result be comfortable to use your terms and conditions as a basis for negotiation in place of imposing their standard terms on you.
The Protocol contains guidance to experts and to those instructing them in the interpretation of and compliance with CPR35 and its associated practice direction PD35. It is intended to both assist in the interpretation of those provisions and to establish “good practice” standards for the conduct of experts and those who instruct them. The existence of this Protocol does not replace the need for experts and those who instruct them to comply with CPR35 and PD35.

The 50th Update to the Civil Procedure Rules (SI 2009 No. 2092) came into force in England and Wales on 1 October 2009. This included a number of changes relevant to expert witnesses. Experts are required to contain a statement at the end of the report confirming that they:

(a) understand their duty to the court, and have complied with that duty; and
(b) are aware of the requirements under CPR35, PD35 and the Protocol.5

Requirements under PD Pre-Action Conduct also apply to expert witnesses. Where an expert’s evidence is necessary the parties should consider how best to minimise expense. Guidance on instructing experts can be found in Annex C of PD Pre-Action Conduct.6 The following suggested wording may be used by experts at the end of their report:

An expert’s report must also be verified by a statement of truth7 in the following form – the wording is mandatory and may not be modified:

“I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.”

Individuals signing a statement of truth must print their full name clearly beneath their signature.8 Proceedings for contempt of court may be brought against a person verifying a document containing a false statement without an honest belief in its truth.9

Please note that an expert’s breach of their duty to the Court can lead to their evidence being publicly disregarded and the Client losing the case. Whilst an expert may be immune from civil suit in respect of any work that “is so intimately connected with the conduct of the case of the Court”, they will not be immune from disciplinary proceedings before their professional body. Further, immunity from suit will not protect an expert from prosecution for perjury, contempt of court or perverting the course of justice.

5 Paragraph 3.2(9) of Practice Direction Part 35 Experts and Assessors. See also rules 35.3 and 35.10 of Civil Procedure Rules Part 35 Experts and Assessors Practice
6 Paragraph 9.4 of Practice Direction Pre-Action Conduct
7 Paragraph 3.3 of Practice Direction Part 35 Experts and Assessors
8 Paragraph 3.9 of Practice Direction Part 22 Statements of Truth
9 Rule 32.14 of Civil Procedure Rules Part 32 Evidence
Notwithstanding any caps on the expert’s liability (see clause 5), the Court is able to make a costs order in appropriate circumstances against an expert who has disregarded his duties to the Court.

**Cap on Liability (Clause 4)**

The cap on an expert’s liability has to be reasonable, particularly where the expert witness is acting for a consumer. This is due to the fact that an individual consumer is deemed to be more vulnerable than a commercial entity (in this case the expert witness) and, therefore, requires greater protection. Consumer protection legislation is intended to protect the consumer (as opposed to a business).

There will always be doubt as to what is a reasonable level of limitation depending on the respective bargaining position of the expert witness and the Client. However, it will always seem more reasonable if, where a financial limit is inserted, the liability is limited in professional negligence excluding fraud or wilful misconduct. It should also be noted that any exclusion is as between the Client and the expert witness only (see above regarding liabilities of the expert witness regarding the Court). A sensible position is to align the cap with the expert’s professional indemnity insurance cover.

**Insurance (Clause 5)**

This is a standard requirement and it is unusual for an expert witness not to carry such insurance. This is particularly important since the Court has held in principle at least that an expert witness who breaches his or her duties to the Court (admittedly in a flagrant and reckless fashion) may be held liable for the wasted costs incurred in dealing with his or her evidence.

**Right to Terminate (Clause 6)**

Once the Appointment has been accepted this should only be used after reviewing the Protocol and discussing the matter with the Instructing Solicitors.

**Intellectual Property (Clause 7)**

It is important at this early stage to assert ownership of copyright and title in relation to any reports that may be produced by the expert witness. This is very necessary in the event that an expert witness fails to receive payment for their work undertaken. If full reimbursement is not forthcoming along the terms set out in paragraph 1.3 (if fixed fee) or 1.8 (if hourly rate), then the expert witness may wish to decide to withhold handing over the report until such time as they do receive payment, subject to any specific advice from their respective medical defence body.

**Joint Instructions (Clause 11)**

Where the expert witness is jointly instructed, both sets of Instructing Solicitors should execute the Appointment in order that they both confirm their obligations as Instructing Solicitors under the Appointment.
**Governing Law (Clause 12)**

Where the Client is not based in the UK, it may not be effective to keep proceedings in the UK but it is the right starting point.