

# JOHN F S CABOT

— SOLICITORS —

Suite 9  
27 Ackmar Rd  
London SW6 4UR

To:

Date:

## **Terms and conditions of business and general information for clients (Retainer letter)**

### **1. The conduct of your matters**

- (i) John Cabot will conduct all work on your behalf in this matter of **[description of work to be carried out]**
- (ii) We will update you by telephone and/or in writing with progress on your matters regularly.
- (iii) We will communicate with you in plain language and will explain to you by telephone and/or in writing the legal work required as your matters progresses.
- (iv) We will update you on the cost of your matters at regular intervals but at not less than at six monthly intervals. We will update you on whether the likely outcome still justifies the likely costs and risks associated with your matters whenever there is a material change in circumstances.
- (v) We will update you on the likely timescales for each stage of this matter and any important changes in those estimates.

### **2. Charges and expenses (costs)**

- (i) Our charges are based mainly (but not only) on the time we spend in dealing with a matter. The time spent on your affairs will include meetings with you and others, such as counsel, experts and your opponent's solicitors; time spent travelling; considering, drafting, preparing and working on papers; correspondence; and making and receiving telephone calls.
- (ii) We will charge **£300 per hour for each hour engaged** on your matter. In the majority of cases an uplift will not be charged but in cases of sufficient seriousness, complexity or urgency we reserve the right to increase the level of hourly rates. The size of any uplift will be determined after consultation with and agreement has been reached with you. If we are unable to reach agreement we reserve the right to treat your non-agreement as your decision to end our retainer and that we are to cease acting. In those circumstances we will invoice you for the work completed up to that point in time.

- (iii) Time is charged on the basis of units of one tenth of an hour (ie. 6 minutes). This is the minimum unit charged, so that an attendance of less than 6 minutes will be charged as 6 minutes.
- (iv) We reserve the right to revise our charge-out rates during the conduct of a matter, and will notify you promptly of any change that is made. We review our basic charge-out rates annually.
- (v) Where applicable, value added tax will be added to our charges at the rate that applies when the work is done. At present, the applicable rate is 20%.
- (vi) We shall, where necessary instruct counsel and/or obtain other expert advice and incur other expenses (e.g. Court fees, courier costs and third party photocopying costs) for the proper conduct of your case. We will not pay any disbursement of a value greater than £25 until we have received from you cleared funds to cover such expenses. We will endeavour to give you an accurate estimate of any such costs, but in certain cases, such as Counsel/expert's fees where it is only possible to estimate the cost initially, we will require you to accept our estimate of those fees until a final invoice is rendered by Counsel or the expert.
- (vii) If you require an estimate of costs in advance of work being carried out on any matter in which we are instructed it must be a written request. We only give estimates as a guide. While we will make every attempt to ensure their accuracy we cannot guarantee that the total of our costs will not exceed the estimate because it is always possible that costs will exceed an estimate given due to unforeseen factors (including the way in which the other side, or indeed you yourself, may decide to conduct the matter concerned). We will endeavour to give you notice as soon as it appears likely that an estimate will be exceeded.
- (viii) It is normal practice to ask clients to pay sums of money from time to time on account of the charges and expenses which it is expected will be incurred during the currency of the matter. **In this matter we require a minimum advance payment of £720.00 on account of our charges** and to enable payment of expenses before we start work for you. It is likely further payments on account for charges and expenses to be incurred will be required as this matter progresses or instructions on other matters are received. Payments on account will be held in our client account. This account does not earn interest. We are required by the Law Society to offset any payments on account against the bill to be rendered to you. If the matter is ongoing then we will require you to make a further advance payment for the next period of work. When a payment on account is applied against a bill rendered to you, we will send you a receipted copy of that bill. It is important that you understand that your total charges and expenses may be greater than any payments on account made. Please transfer the above sum on account of costs to our client account at Adam & Company Plc the details are:-  
**John F S Cabot Practice Account Client**  
**Sort Code [will be included when sent to a client]**  
**Account No. [will be included when sent to a client]**
- (ix) When we instruct and/or brief counsel on your behalf we become liable to counsel for his/her fees. We will either obtain an estimate of counsel's likely fee for advising and giving written opinions or agree a brief fee before a court hearing. Before we commit this firm to that liability we will require you to pay a sum into the above client account to cover that liability. It is now not unusual for counsel to charge on a similar basis to solicitors in that they record the time they spend on a case rather than working for a set fee. In those circumstances we will endeavour to obtain an estimate from counsel's clerk for agreement with you and once agreed you will be required to put us in funds to cover this liability.

### **3. Billing arrangements**

- (i) You shall at all times be jointly and severally liable for payment of our charges and expenses.
- (ii) For non-contentious work we will generally send you a final bill after work has been completed. For contentious work and, where appropriate for protracted non contentious matters, we will send you interim bills for our charges and expenses at reasonably regular intervals while work on a matter is in progress.
- (iii) When we deliver interim bills they will be interim statute bills by which we mean that because they will comply with all the requirements of the Solicitors Act 1974 they are final bills in respect of the work covered by them and cannot be adjusted in light of the outcome of the case. They can be sued upon in the event of non payment and you have the right to apply for a remuneration certificate from the Law Society or have them taxed under the Solicitors Act 1974.
- (iv) Payment is due to us within 7 days of our sending you a bill. If we hold sufficient funds on your behalf we will deduct our costs from these funds. We reserve the right to charge you statutory interest on the bill from the end of this 7 day period at the rate payable under The Late Payment of Commercial Debts (Interest) Act 1998 if you do not make payment within this time. Interest will be charged on a daily basis.
- (v) Any bill that remains unpaid for a period greater than 14 days after it has been delivered entitles us, at our option, to suspend or cease acting for you. Notice of our decision to cease acting will be conveyed to you in writing and until all our costs are paid we are entitled to retain documents belonging to you.
- (vi) If you have any query about a bill, you should contact John Cabot straight away.

#### **Corporate Clients Only –**

**In the event that any bill is unpaid for a period greater than 7 days after it has been delivered, or the company enters into an arrangement with its creditors or is put into receivership or liquidation we shall be entitled to recover any outstanding costs, billed or otherwise, from its directors who agree to indemnify us for such costs. All directors who sign these terms and conditions of engagement are advised to seek separate advice in respect of their personal liability before signing because on signing they jointly and severally undertake to pay all such outstanding costs within 7 days of any one of the events described above occurring.**

- (vii) We may require guarantees from directors or controlling shareholders of corporate clients. If such a request is refused we will be entitled to stop acting and require payment of our fees and disbursements for any work done up to that point.

### **4. Litigation Costs**

- (i) It is important for you to understand that, unless we agree otherwise, you are at all times primarily responsible for paying the whole of our charges and expenses. We will discuss with you whether those charges and expenses might ultimately be reimbursed to you by another party. (Note, in particular, paragraph 5 below dealing with funding and insurance). Any recovery you are able to obtain from your opponent in respect of your costs will serve to reimburse you in respect of the amounts that you are responsible for paying to us.

- (ii) In litigation matters no party has a right to costs. They are in the discretion of the Court. If though a Court makes an order as to the costs of the litigation the general rule is that the unsuccessful party will be ordered to pay the successful party's costs. This means that if you win the case, you might be able to recover from your opponent a proportion of the charges and expenses that you have to pay to us. If you lose the case, however, the reverse will apply and you might be required to pay some or all of your opponent's costs over and above your liability to us for our charges and expenses. Even if you win the case, the charges and expenses which you will have to pay to us are likely to be greater than the amount you can actually recover from your opponent. It is also possible that your opponent may not have sufficient assets to make payment of any amount ordered.
- (iii) The financial value of a claim may determine the amount of recoverable costs (which may be substantially less than the costs actually incurred). Currently, virtually no costs are recoverable for claims under £10,000 ("small claims") and there are restrictions on costs recoverable on claims allocated to the fast track system. We will advise you of any costs restrictions where appropriate.
- (iv) The Court has a wide discretion when making orders on costs and, in addition to analysing which party has "won" the case, it will take into account other factors such as the conduct of the parties, whether a party has succeeded on part of the case even if that party has not been wholly successful and offers made to settle the proceedings. The Court also has power, in very limited circumstances, to award costs to a party on what is known as the "indemnity basis" rather than the standard basis. The effect of this is that the party to whom the costs are being awarded will generally be entitled to receive a larger portion of its actual costs (possibly up to 100% of those costs).
- (v) If the other party proves to be financially unsound, you may not get back any of your costs even if you win the case. If the other party is publicly funded, it is probable that you will not be able to recover any of your costs.
- (vi) You will be responsible for paying to us the costs of seeking to recover any costs that the Court orders your opponent to pay to you.
- (vii) Under the Civil Procedure Rules, the Court is empowered to make costs orders against parties involved in litigation which are to be paid while the litigation progresses (rather than following the conclusion of the litigation). If the Court does make any such orders against you during the course of the case, you will be required to place us in funds immediately (as payment to the other party will generally be required within a short period of time, ie. within 7 or 14 days). Failure to make payment to the other party in accordance with the time limit fixed by the Court may cause serious prejudice to your case. We will advise you prior to any Court application of any potential costs order which may be made against you.

## **5. Funding and Insurance**

- (i) You will understand that the work done for you has to be paid for and, as set out above, unless we agree otherwise, you will be responsible for paying our bill(s). However, there are some options that you might wish to consider to assist in funding or sharing the risks associated with pursuing or defending your case.
- (ii) Funding might be available from the Community Legal Service Fund, which is run by the Legal Services Commission (LSC). This is the equivalent of what used to be known as "Legal Aid" funding. LSC funded services are only available from solicitors or advice agencies that have chosen to hold a contract with the LSC, and in order to qualify for funding

you would need to satisfy a financial eligibility test. We have chosen not to hold a contract with the LSC and therefore we do not undertake LSC funded work. However, if you think that you might be entitled to LSC funding, and you would like advice as to your eligibility, please let us know and we will try to assist you in finding an appropriate firm of solicitors.

- (iii) Funding might be available from third parties such as a trade union or your employer. If you think that funding might be available from any third party source, please let us know.
- (iv) You might have what is known as a “Before the Event Insurance Policy”. This is a legal expense insurance policy that can be taken out to provide cover for a possible future legal problem. You might have one, for example, as part of your business, credit card, or home contents insurance policies. However, Before the Event Insurance Policies are usually limited in scope and they might include restrictions on your freedom of choice of lawyer. If you think that you have such a policy and you would like to claim under it, then it is important that you provide a copy of the policy to us immediately to enable us to review it and to determine whether it is applicable.
- (v) You might be able to obtain what is known as an “After the Event Insurance Policy”. This is a legal expense insurance policy that can be taken out after a dispute has arisen. Insurance cover can be purchased to protect against payment by you of:
  - (1) Your opponent’s legal costs;
  - (2) Your own “disbursements” (i.e. expenses such as Court fees, barrister’s fees, courier charges referred to in paragraph 2(vi) above); and
  - (3) Your own legal charges and expenses.
- (vi) You should note that it will not always be possible to obtain an After the Event Insurance Policy. However, if you are able to obtain it, you will be required to pay the insurance premium. The premium is usually calculated as a percentage of the sum insured (i.e. a percentage of the total estimated charges against which you wish to protect yourself). This premium rate will depend on the circumstances of each case. In commercial litigation cases, you could expect the premium rate to be at least 20% of the sum insured, and it is not unusual for rates of 40-50% to apply. Accordingly, After the Event Insurance Policies can prove to be very expensive and may require a substantial up-front payment.
- (vii) The Court has wide discretion to make orders as to the payment of costs, but there now only limited instances where a Court will order your opponent to pay the cost of your insurance premium if you win.
- (viii) If you would like us to do so, we can assist you in obtaining After the Event Insurance cover. However, you should note that we cannot be aware of all of the possible insurance policies available to the public and cannot guarantee that any available policy will necessarily be the most appropriate to your needs. You must also be aware that any After the Event Insurance Policy which is obtained may not cover you for all of your and/or your opponent’s costs. Once again, you are at all times primarily responsible for paying the whole of our charges and expenses. You will therefore be responsible for paying the difference between any sum paid out under an insurance policy and the actual costs incurred by us and/or your opponent.
- (ix) Any work that we undertake in order to assist in ascertaining whether alternative funding or insurance is available to you, or to assist in obtaining funding or insurance, will be charged to you at our hourly rate as set out in paragraph 2 above.

## **6. Storage of papers and documents**

After completing work for you, we are entitled to keep all your papers and documents while there is money owing to us for our charges and expenses. Where no amounts are owing to us, we will keep our file(s) of papers on a matter (except for any of your papers which you ask to be returned to you) for no more than 6 years from the date of the final bill sent to you on that matter. We keep the file(s) on the understanding that we have the authority to destroy it/them once such 6 year period has elapsed.

## **7. Termination**

- (i) You may terminate your instructions to us in writing at any time, but you agree that we will be entitled to keep all your papers and documents while there is money owing to us for our charges and expenses (as set out in paragraphs 3(v) and 6 above).
- (ii) In some circumstances, we may consider that we ought to stop acting for you (for example, if you cannot give clear or proper instructions on how we are to proceed). We may only decide to stop acting for you with good reason (for example, if you do not pay an interim bill or comply with our request for a payment on account). We will give you reasonable notice that we intend to stop acting for you in such circumstances.
- (iii) If you decide that we are to cease acting for you then you will be required to pay our charges and expenses on the basis set out above up to the date on which we cease to act for you. If we decide to cease acting for you for a good reason (such as your failure to provide funds for disbursements, the discovery that your case, even though properly commenced, cannot be successfully maintained or we are asked to do something dishonourable or you hinder and prevent us from conducting your case) and have given you reasonable notice of that decision you will be required to pay our charges and expenses on the basis set out above up to the date on which we cease to act for you.

## **8. Complaints**

If you are dissatisfied with the conduct of the action, you should in the first instance contact John Cabot to explain your dissatisfaction. If you are still not satisfied, you should then put your complaints in writing and we will endeavour to answer all your concerns. If you remain dissatisfied then you may make a complaint to the Solicitors' Complaints Bureau or, if you consider that we have been negligent you should terminate our services and take advice elsewhere. We are covered by compulsory insurance arrangements against claims for negligence.

## **9. Liability for negligence**

We are entitled to limit our liability for negligence provided that

- (a) the limitation is not below the minimum level of cover required by the Solicitors' Indemnity Insurance Rules for a policy of qualifying insurance;
- (b) is brought to your attention;
- (c) is in writing.

At present this firm has indemnity insurance to a maximum of £2,000,000 on any one claim which complies with paragraph 9 (a) above. This is the limit of our liability to you in the event of a claim by you against this firm.

**10. Money Laundering and Identification Procedures**

We are required to comply with anti-money laundering legislation, and we will therefore request information or documentation from you in order to ensure that we are acting in accordance with the law. For example, we are required to verify your identity and address. If you are a company/partnership, we are also required to ensure that the person/s from whom we are to take instructions has/have the authority to provide instructions on the company's/partnership's behalf. You agree to comply with any requests for information or documentation that we may make in order to comply with our legal obligations.

**11. Electronic and Internet Communication**

- (i) Unless you advise us otherwise you shall be deemed to have consented to us corresponding with you by means of the internet or other electronic media. Whilst we will take reasonable steps to safeguard the security and confidentiality of the information transmitted, you acknowledge that we cannot guarantee its security and confidentiality.
- (ii) Internet email may be susceptible to data corruption, interception and unauthorised amendment for which we do not accept liability. Whilst efforts are made to safeguard messages and attachments, we cannot guarantee that messages or attachments are virus free, do not contain malicious code or other harmful matter or are compatible with your electronic systems and we do not accept liability in respect of viruses, malicious code, other harmful matter or any related problems that you may experience.

**12. General Data Protection Regulation (Regulation (EU) 2016/679) (“GDPR”)**

The GDPR is intended to regulate the processing of personal data which includes the use of and storage. Personal data is information that can directly or indirectly be used to identify a person, such as name, location data and email addresses. Details of the individual/s to whom these terms and conditions are sent, together (where relevant) with details of other key individuals in a client organisation supplied to us from time to time, will be entered into our client database for the purpose of providing the service described in clause 1(i) herein. While we consider that the use of your personal data comes within one of the criteria of "necessity" set out in the GDPR for the avoidance doubt will you please sign the declaration of consent to process your data which appears immediately below. You have the right to withdraw your consent at any time but in order for the withdrawal to be effective it must be in writing and signed by you. If you give us information about another person we are entitled to assume that the other person has appointed you to act on his/her behalf and has agreed that you can give consent on his/her behalf to the processing of such data and receive on his/her behalf any data protection notices.

**Declaration of consent**

I/we consent to John F S Cabot, solicitors using my/our personal data for the express purpose of acting for me/us in the matter described at cl 1(i) herein and that this consent remains effective until written notice of my/our withdrawal of consent is delivered to you.

Signed.....

Dated.....

**13. Agreement**

- (i) Unless otherwise agreed, these terms of business apply to the first and any future instructions you give us. If you have any questions or concerns about the terms of this engagement letter please contact John Cabot or seek independent legal advice on it.
- (ii) Your continuing instructions in the first matter on which you instruct us will amount to your acceptance of these terms and conditions of business. Even so, we ask you to please sign and date these terms and conditions, keep a copy for your records, and return the original to us immediately. We can then be confident that you and we both agree and understand the basis on which we act for you.

**This is an important document - please keep it in a safe place for future reference**

Signed: .....

Please print name after your signature

Date:.....