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Terms and Conditions

These are the terms and conditions (**Terms**) on which DMR Collation Limited, registered under company number 09373931 (hereafter **DMR**), shall provide medico-legal data services to you (the **Contract**). A reference to these Terms shall be deemed to incorporate (and are subject to) the terms of our Letter of Engagement (as defined below) and any other policies referred to herein.

We reserve the right to amend these Terms from time to time pursuant to clause 11.4. All correspondence, queries or notices referred to under these Terms should be directed to our contact details in the header.

1. Interpretation

The following definitions and rules of interpretation apply in these Terms.

1.1 Definitions:

Client: the person or firm who purchases Services from DMR and to whom the Letter of Engagement is addressed.

Commencement Date: has the meaning given in clause 2.3.

Controller, processor, data subject, personal data, special categories of personal data, personal data breach, processing and appropriate technical measures, shall have the meaning ascribed to them in the Data Protection Legislation.

Client Default: has the meaning set out in clause 4.2.

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.

Deliverables: the deliverables set out in the Letter of Engagement to be produced by DMR for the Client, including chronologies of data, schedules of radiology, analysis reports and any other ancillary documentation relating to the collation of medico-legal data, indexed and referenced for use in the jurisdiction of England and Wales.

Fees: the charges payable by the Client for the supply of the Services in accordance with clause 5 and the Letter of Engagement.

Initial Written Instructions: the Client's order for Services (including the Deliverables) to be provided pro forma to DMR on or before the Commencement Date as more particularly described in clause 2.1, and **Written Instructions** shall refer to the Initial Written Instructions as amended in writing between the parties throughout the duration of the Contract.

Intellectual Property Rights: rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Services: the services, including the Deliverables, supplied by DMR to the Client as set out in the Letter of Engagement.

SRA Code of Conduct: the Solicitors Regulation Authority Code of Conduct 2011 as amended from time to time.

Letter of Engagement: the particulars of the Services to be provided by DMR in writing to the Client and in accordance with the SRA Code of Conduct, including the scope of the Services, timescales for performance or milestones (as the case may be), fees and costs (including disbursements), expectations and assumptions, due diligence requirements and any other terms further to these Terms.

1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (b) 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.
- (c) A reference to **writing** or **written** includes fax and email unless expressly excluded.
- (d) A reference to **parties** shall refer to both DMR and the Client and **party** may refer to either one of them.



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2. Basis of contract

- 2.1 DMR shall provide a free consultation with the Client to establish the nature of the engagement and provide to the Client a pro forma instruction sheet setting out the required particulars of the Initial Written Instruction (if required). The client shall provide to DMR the Initial Written Instructions which shall include:
- (a) type of claim (Personal Injury, Road Traffic, Historic Abuse or Clinical Negligence);
 - (b) date of the Incident;
 - (c) personal information regarding the claimant and/or defendant to be processed in accordance with clause 7 (name, address and date of birth);
 - (d) synopsis of the claim;
 - (e) source of instruction (claimant or defendant or both);
 - (f) normal or urgent turnaround;
 - (g) details of Legal Aid (if relevant); and
 - (h) the Deliverables required.
- 2.2 Upon receipt of the Initial Written Instructions, DMR shall provide an acknowledgment of receipt to the Client confirming the Written Instructions and the likely completion date for the work.
- 2.3 The Letter of Engagement constitutes an offer to purchase the Services under these Terms. Acceptance of the Contract occurs once the Client has signed the Letter of Engagement at which point and on which date the Contract shall come into existence (**Commencement Date**). The Contract shall continue from the Commencement Date until the completion of the Services as described in the Letter of Engagement, unless terminated earlier in accordance with clause 9.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by DMR, and any descriptions or illustrations contained in DMR's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Terms apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing save for the Letter of Engagement or variation between the parties in accordance with clause 11.4. In the event of a conflict between the Letter of Engagement and these Terms, the Letter of Engagement shall take precedence. Any Written Instructions issued by the Client after the Commencement Date to DMR shall not have any contractual force until confirmed in writing by DMR.
- 2.6 Any estimate given by DMR shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.

3. Supply of Services

- 3.1 DMR shall supply the Services to the Client in accordance with the Letter of Engagement in all material respects. Any Services (or advice given in relation to the Services) that have been provided outside of the scope of the Letter of Engagement may not be relied on by the Client (or any third party) without the express written consent of DMR.
- 3.2 DMR shall use all reasonable endeavours to meet any performance dates or milestones specified in Letter of Engagement, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 DMR reserves the right to amend the Letter of Engagement if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and DMR shall notify the Client in any such event.
- 3.4 DMR warrants to the Client that the Services will be provided using reasonable care and skill.



4. Client's obligations

4.1 The Client shall:

- (a) ensure that the Initial Written Instructions (and all other Written Instructions that may be provided throughout the duration of the Contract) are complete and accurate;
- (b) co-operate with DMR in all matters relating to the Services;
- (c) provide DMR with such information and materials as DMR may reasonably require in order to supply the Services and provide the Deliverables (including access information where such information is encrypted or otherwise protected), and ensure that such information is complete and accurate in all material respects;
- (d) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start, including the licence of Intellectual Property Rights set out in clause 6.4;
- (e) comply with all applicable laws, including the Data Protection Legislation at all times; and
- (f) comply with any additional obligations as set out in the Letter of Engagement.

4.2 If DMR's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):

- (a) without limiting or affecting any other right or remedy available to it, DMR shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays DMR's performance of any of its obligations;
- (b) DMR shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from DMR's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Client shall reimburse DMR on written demand for any costs or losses sustained or incurred by DMR arising directly or indirectly from the Client Default.

5. Fees and payment

5.1 The Fees for the Services shall be calculated on a time basis:

- (a) in accordance with DMR's hourly fee rates, as set out in the Letter of Engagement;
- (b) billed to the Client in 6 minute units for all time spent on the Client's matter which may include;
 - (i) the review and preparation of instructions, correspondence and other documentation;
 - (ii) records collation;
 - (iii) scanning, pagination and indexing of records relating to the preparation of the deliverables;
 - (iv) making and receiving telephone calls;
 - (v) sending and receiving emails;
 - (vi) analysing records and preparing chronologies;
 - (vii) reviewing radiology images, reports and records and preparing schedules of radiology;
 - (viii) performing redaction of records to remove third party and privileged data; or
 - (ix) preparation of digital booklets.
- (c) DMR shall be entitled to charge the Client for the cost of printing and/or photocopying records.

5.2 DMR reserves the right to increase the Fees on an annual basis with effect from each anniversary of the Commencement Date. In the event the Fees are increased DMR shall notify the Client no less than 1 month before such increase shall take effect, at which point the Client will be provided with an option to terminate the Contract.

5.3 DMR reserves the right to charge a higher hourly rate to facilitate any instructions which are deemed necessary by the client.



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- 5.4 DMR shall invoice the Client on a per matter basis once the work on that matter has been completed and the Client shall pay each invoice submitted by DMR:
- (a) within 30 days of the date of the invoice or in accordance with any other payment terms agreed by DMR and confirmed in writing to the Client; and
 - (b) in full and in cleared funds to a bank account nominated in writing by DMR, and time for payment shall be of the essence of the Contract.
- 5.5 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by DMR to the Client, the Client shall, on receipt of a valid VAT invoice from DMR, pay to DMR such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.6 If the Client fails to make a payment due to DMR under the Contract by the due date, then, without limiting DMR's remedies under clause 9, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.5 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 6. Intellectual property rights**
- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by DMR.
- 6.2 DMR grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding materials provided by the Client) for the purpose of receiving and using the Services and the Deliverables in its business.
- 6.3 The Client shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2.
- 6.4 The Client grants DMR (or shall procure the grant of) a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to DMR for the term of the Contract for the purpose of providing the Services to the Client.
- 7. Data protection**
- 7.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 7, **Applicable Laws** means (for so long as and to the extent that they apply to DMR) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the Data Protection Legislation from time to time in force in the UK and any other law that applies in the UK.
- 7.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the controller and DMR is the processor.
- 7.3 Without prejudice to the generality of clause 7.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to DMR for the duration and purposes of the Contract.
- 7.4 Without prejudice to the generality of clause 7.1, DMR shall, in relation to any personal data processed (including special



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categories of personal data) in connection with the performance by DMR of its obligations under the Contract:

- (a) process that personal data only on the documented written instructions of the Client unless DMR is required by Applicable Laws to otherwise process that personal data. Where DMR is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, DMR shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit DMR from so notifying the Client;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- (d) not transfer any personal data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following Terms are fulfilled:
 - (i) the Client or DMR has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) DMR complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (iv) DMR complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the personal data;
- (e) assist the Client, at the Client's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Client without undue delay on becoming aware of a personal data breach;
- (g) at the written direction of the Client, delete or return personal data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the personal data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 7 and immediately inform the Client if, in the opinion of DMR, an instruction infringes the Data Protection Legislation.

7.5 The Client consents to DMR appointing third party processors of Personal Data under the Contract as notified to the Client by DMR from time to time. DMR confirms that it has entered or (as the case may be) will enter with the third party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 7 and in either case which DMR confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Client and DMR, DMR shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 7.

7.6 The Customer warrants and represents that DMR's expected use of the Personal Data in the course of providing the Services, and as specifically instructed by the Client, will comply with the Data Protection Legislation. The Client agrees to indemnify, keep indemnified and defend at its own expense DMR against all costs, claims, damages or expenses incurred by DMR or for which DMR may become liable due to any failure by the Client or its employees, subcontractors or agents to comply with any of its obligations of the Data Protection Legislation.

7.7 Either party may, at any time on not less than 30 days' notice, revise this clause 7 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

8. Limitation of liability: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

8.1 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:



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- (a) death or personal injury caused by negligence; or
 - (b) fraud or fraudulent misrepresentation.
- 8.2 Subject to clause 8.1, DMR's total liability to the Client shall not exceed the total value of the Contract on an individual matter basis. DMR's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.
- 8.3 The following types of loss are wholly excluded:
 - (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;
 - (f) loss of or damage to goodwill; or
 - (g) indirect or consequential loss.
- 8.4 Unless the Client notifies DMR that it intends to make a claim in respect of an event within the notice period, DMR shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of its having grounds to make a claim in respect of the event and shall expire on 1 month from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 8.5 This clause 8 shall survive termination of the Contract.
- 9. Termination**
- 9.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party 1 months' written notice.
- 9.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
 - (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 days of that party being notified in writing to do so;
 - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
 - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 9.3 Without affecting any other right or remedy available to it, DMR may terminate the Contract with immediate effect by giving written notice to the Client if:
 - (a) the Client fails to pay any amount due under the Contract on the due date for payment; or
 - (b) If the Services give rise to a conflict of interests.
- 9.4 Without affecting any other right or remedy available to it, DMR may suspend the supply of Services under the Contract or any other contract between the Client and DMR if the Client fails to pay any amount due under the Contract on the due date for payment, the Client becomes subject to any of the events listed in clause 9.2(b) to clause 9.2(d), or DMR reasonably believes that the Client is about to become subject to any of them.



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10. Consequences of termination

- 10.1 On termination of the Contract the Client shall immediately pay to DMR all of DMR's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, DMR shall submit an invoice, which shall be payable by the Client immediately on receipt.
- 10.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 10.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

11. General

11.1 Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

11.2 Confidentiality

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, Clients, clients or suppliers of the other party, except as permitted by clause 11.2(b).
- (b) Each party may disclose the other party's confidential information:
- (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 2; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- (d) All confidential information shall be returned to the Client or destroyed by DMR:
- (i) on Termination or expiry of the Contract; or
 - (ii) upon written notice by the client to DMR that the matter has settled;
 - (iii) on receipt of a written request by the Client to DMR; or
 - (iv) 6 months after DMR serves notice that confidential information shall be destroyed.

11.3 Entire agreement

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

11.4 Variation

Except as set out in these Terms, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).



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11.5 Waiver

A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

11.6 Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

11.7 Third party rights

Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

11.8 Governing law

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

11.9 Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.