



## **EXPERT WITNESS**

### **GENERAL TERMS AND CONDITIONS**

#### **1. Introduction**

- 1.1 The purpose of this document is to state the terms and conditions that will generally apply to the provision by us of the Expert Witness service.
- 1.2 We may need to amend these terms and conditions in some circumstances before we start to provide the service and if so we will advise you.
- 1.3 You should carefully read through these terms and conditions. If you have any questions concerning them please ask us. You should keep a copy.

#### **2. The Expert Witness service**

- 2.1 Congruent Actuarial Limited is a professional services company. The Expert Witness service is a professional service that is available to clients who are contemplating or are engaged in dispute resolution proceedings or civil litigation in England and Wales (or elsewhere if you and we have agreed that we have, or it is practicable for us to acquire, the necessary understanding to assist in another jurisdiction). We refer to the contemplated or actual proceedings as a claim and the person contemplating or pursuing the claim as the claimant.
- 2.2 Our expertise is in financial structuring, risk modelling and financial products and services. Our financial products and services expertise includes banking, investments, insurance, pensions and financial derivatives, their suitability to meet business needs and the regulatory requirements applying to recommendations for the products and arranging of the products, as well as valuation of the products. We will only provide a service where we have the necessary expertise and competence to do so and we will advise you immediately after receiving your instructions if we do not have the necessary expertise and competence.

2.3 The role of an Expert Witness is to express his or her independent expert opinion based on the information that is provided, including any information that it is agreed that the expert witness can gather for the purpose. The expert opinion must at all times satisfy a test that it can properly be certified by a statement of truth and be presented to a court or an independent person or tribunal who is charged with justly determining a claim.

2.4 The Expert Witness service includes necessary and agreed research and preparing drafts of the proposed evidence prior to final formulation of the expert opinion.

### **3. Advisory Expert services**

3.1 Advisory Expert services are based on the same expertise but, where provided, are to provide technical assistance to a party in dispute resolution or civil litigation in preparing or defending a claim. Examples are advice on the merits of a claim, advice on the procedure for pursuing a claim, advice on how best to present a claim, and advice on possible means of challenging an unsatisfactory outcome to a claim.

3.2 Unless it has been specifically agreed before we accept appointment for the Expert Witness service, and then only to the extent of that agreement, we will not be obliged to provide any advisory expert services whether without an additional fee or with an additional or separate fee. We note that providing advisory expert services to a claimant is an activity regulated by the Financial Conduct Authority in accordance with the provisions of the Financial Services and Markets Act 2000 and we may at our sole discretion decide that we are not able to or do not wish to meet the regulatory requirements.

### **4. Appointment of an individual as Expert Witness**

4.1 The Expert Witness service requires an individual to be appointed at the stage that the expert opinion is to be signed with a statement of truth and delivered to a court or to an independent person or tribunal. He or she will need to be available for questioning on his or her opinion in the court or other proceedings. Congruent Actuarial Limited will nominate a suitable individual for your agreement and the

services of that individual will be provided by Congruent Actuarial Limited in accordance with these terms and conditions.

## **5. The duty of an Expert Witness**

- 5.1 An expert witness is bound by the Rules, Directions and Protocol of a court and there may be corresponding provisions where a claim is to be determined by an independent person or tribunal. The provisions may include:
  - 5.1.1 It is the duty of experts to help the court on matters within their expertise and this duty overrides any obligation to the person from whom experts have received instructions or by whom they are paid.
  - 5.1.2 The expert's report must state the substance of all material instructions, whether written or oral, on the basis of which the report was written.
  - 5.1.3 Payments contingent upon the nature of the expert evidence given in legal proceedings, or upon the outcome of a case, must not be offered or accepted. To do so would contravene experts' overriding duty to the court and compromise their duty of independence.
- 5.2 A consequence of the requirement for an expert to state the substance of all material instructions is that in order to reduce the risk of misunderstandings Congruent Actuarial Limited will require that any material oral instructions – which may be information, or instructions how particular information or events should be interpreted, or instructions how the expert should proceed - must be confirmed in writing.
- 5.3 We can provide copies of the relevant Rules, Directions and Protocol if you require them (where it is the Civil Procedure Rules that apply it is Part 35 of those Rules together with practice directions).

## **6. Information and Access**

- 6.1 In order that we can provide the Expert Evidence service you will be responsible for providing us with the following on request at any time :

- 6.1.1 the information and explanations that we require (however we will be prepared to explain why we need any particular information or explanations and, if appropriate, work with you to identify how best to produce the information and explanations)
- 6.1.2 access to all the appropriate officers, employees, agents or advisers of you or your business who have information, or can provide explanations that we require

## **7. Your Authorised Litigator (a Solicitor or other authorised person)**

- 7.1 We will at all times be entitled to proceed on the basis that your Authorised Litigator is acting on your behalf and with your authority and knowledge.
- 7.2 We will accept a request to submit invoices for payment to your Authorised Litigator, and will accept payments from your Authorised Litigator, but at all times you will remain responsible for the discharge of all amounts owing to us if they are not paid by your Authorised Litigator.
- 7.3 We are able to provide the Expert Witness service even if you are not represented by an Authorised Litigator provided you are able to satisfy us that you are indeed contemplating or are engaged in dispute resolution proceedings or civil litigation in England and Wales and that you genuinely require the Expert Witness service for that purpose. We will be able to continue to provide the service if you subsequently appoint an Authorised Litigator to represent you.

## **8. Charges and Expenses**

- 8.1 The work to provide the Expert Evidence service to you will be assessed by Congruent Actuarial Limited and assigned to one or more staff according to the level of skill and experience necessary. Work will be delegated where it can be, subject to ensuring that the required quality of work is achieved. Work will be subject to checking and to formal peer review where appropriate.
- 8.2 Time spent by each member of staff engaged will be recorded as it takes place in an electronic "daily recording system" with a description of the work being undertaken and the length of time taken for each working session. The recording system is subject to internal audit so that Congruent Actuarial Limited can be satisfied that the records are correct. Travel and subsistence expenses (if these are necessarily incurred

in making visits) will be recorded similarly. Business mileage is charged at 45p per mile – this rate is reviewed each 1 January. If it is necessary for us to incur other expenses we will seek your specific agreement to them.

- 8.3 Congruent Actuarial Limited will provide a list of the staff engaged on the work and their hourly charge-out rates, which depend on seniority. Rates are reviewed each 1 January.
- 8.4 Congruent Actuarial Limited will provide an estimate of the amount of work and the charges and expenses and update that from time to time or whenever agreed limits are reached.
- 8.5 If, instead of the arrangements stated above, you wish costs to be fixed in advance we will prepare a Statement of Work ("SoW") for that part of the work for which we are willing to quote a fixed cost, for your approval. The SoW may break the work into stages and the defined stage payments will be invoiced as each stage is completed. Costs and expenses not covered by the SoW will be determined in the usual way stated above; for the avoidance of doubt this also applies to any subsequent consequential work such as answering questions put to the Expert Witness or attendance of the Expert Witness at a hearing.

## **9. Invoices, Interest on Late Payment, and Recovery of Amounts Owing**

- 9.1 Invoices will be issued at the end of each calendar month for charges and expenses incurred in that month (except that travel and subsistence expenses and other agreed expenses not yet brought into account may be included in a later invoice) and at other times by agreement.
- 9.2 If any invoice is not paid within 30 days interest may be added at a rate not exceeding 3% per annum above the base rate of Barclays Bank plc applicable from time to time.
- 9.3 We need to ensure that we hold up-to-date records at all times of our clients and, in the case of a business, that may include address and contact information of the business and of the principals.

## **10. Value Added Tax**

10.1 United Kingdom Value Added Tax ("VAT") will be added to invoices unless proof has been provided to us that United Kingdom VAT is not payable.

## **11. Communicating With Us and Electronic Mail**

11.1 You are able to contact us by telephone on 020 3143 3150 - however for substantive matters we suggest that you use writing or email. Send letters and paper documents by post, or by hand or courier, to Congruent Actuarial Limited, 141-142 Fenchurch Street, London, EC3M 6BL (you may add a contact name if you wish but the name Congruent Actuarial Limited must be included). Email should be sent to the following email address and can include attachments: [team@mycongruent.com](mailto:team@mycongruent.com)

11.2 Our preference is to communicate by email because it enables matters to progress more quickly. However we are aware that some clients are concerned at the risk of emails being an insecure method of transferring information and others do not have systems in place which ensure that others in their organisation will not be able to see their emails. Please advise us if you do not wish to correspond by email.

11.3 We are able to offer confidential secure electronic transfer of documents if required.

11.4 If you need to serve legal notice on us this should be in writing addressed to The Directors, Congruent Actuarial Limited at our registered office address of 141-142 Fenchurch Street, London, EC3M 6BL.

## **12. Confidentiality and Data Protection**

12.1 As a professional services company Congruent Actuarial Limited treats all information that it receives as confidential. Congruent Actuarial Limited complies with all privacy and data protection and other laws, rules and regulations, including without limitation the Data Protection Act 1998, as amended from time to time.

12.2 Congruent Actuarial Limited confirms that when it is processing information it will act on your reasonable instructions allowing for our reasonable needs for appropriate backup, systems administration and quality control purposes.

12.3 However the Rules, Directions and Protocol applying to the Expert Witness service may require disclosure of information, for purposes of court proceedings, which

might otherwise be regarded as confidential and the duty of the expert witness to the court overrides any obligation to the person from whom experts have received instructions or by whom they are paid. Disclosure for purposes of court proceedings is not limited to hearings of the court but can include exchange of expert reports, meetings of experts, and requests by the expert for directions from the court.

### **13. Insurance and Liability**

- 13.1 If you wish to make a claim relating to or in connection with our services, the claim can only be brought against Congruent Actuarial Limited and not against the individual officers or employees including, for the avoidance of doubt, an appointed Expert Witness. We believe this is reasonable as it corresponds to modern business practice and that Congruent Actuarial Limited has in place professional indemnity insurance.
- 13.2 For the purpose of paragraph 13 "claim" means any claim whether arising out of the provision by us of the Expert Witness service or otherwise, and whether such claim is in contract, tort, breach of trust or on any other basis.
- 13.3 We shall only be liable for any loss or damage suffered by you which is a reasonably foreseeable consequence of a breach of our obligations to you in relation to the provision of the Expert Witness service. In the event that any loss or damage suffered by you relates to your business activities then we exclude all liability and in particular we exclude all liability for loss of profits or other economic loss arising of a breach of this contract.
- 13.4 We do not exclude or limit liability for our negligence or negligent omission which causes personal injury or death.

### **14. Termination**

- 14.1 You may terminate the provision by us of the Expert Witness service at any time by giving written notice by recorded delivery addressed to The Directors, Congruent Actuarial Limited at 141-142 Fenchurch Street, London, EC3M 6BL or by email instruction addressed to [directors@mycongruent.com](mailto:directors@mycongruent.com).

14.2 You will be liable for all charges incurred until we stop work and you agree for this purpose that it may be up to one working day after delivery of your written notice or email instruction for the instruction to reach the required person or persons and they have been able to close down the records of their work in good order.

14.3 We will only unilaterally stop providing the Expert Witness service to you if we have a good reason to do so, for example if you do not pay one of our invoices, or you do not provide information that we require, or if you provide instructions which are unreasonable or would require us to breach a professional rule or a duty to the court or involve the commission of a criminal offence. If, in accordance with these provisions, we decide to stop providing the Expert Witness service to you we will give you reasonable notice but the length of the notice will depend on the circumstances.

## **15. Contracts (Rights of Third Parties) Act 1999**

15.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999 the contract of which these general terms and conditions is a part is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

## **16. Complaints and Disputes**

16.1 If you have any complaint it will be investigated by a Director – if possible by a Director who has not been directly involved in the provision of the Expert Witness service to you.

16.2 Any dispute that arises between us that cannot be resolved between us will be referred to an expert for final determination, such expert to be agreed by you and us. If we cannot agree, the Academy of Experts will be asked to appoint a suitably qualified and experienced expert. The expert will act as an expert and not an arbitrator and the decision of the expert will be final and binding on you and on us. The costs and expenses of the services of the expert will be shared equally between each of us.

## **17. Amendments to the Contract**

17.1 Where these general terms and conditions form part of a contract between us we may amend the terms of the contract where:



- 17.1.1 we need to do so in order to comply with changes in the law or for regulatory reasons
- 17.1.2 we need to correct any errors or omissions, as long such correction is minor and does not materially affect the contract
- 17.2 Where we are making any amendment we will give you 30 days' prior written notice.

**18. Law and Jurisdiction**

- 18.1 The provision by us of the Expert Witness service shall be governed by and construed in accordance with the law of England and Wales and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.
- 18.2 For the avoidance of doubt, this provision will apply if we agree to provide the Expert Witness service in relation to civil litigation in a jurisdiction other than England and Wales, unless we have specifically agreed otherwise in writing.