

terms of business

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1 Introduction

- 1.1 **About us** - Browne Jacobson LLP is a limited liability partnership (registered number OC306448). Our registered office is at Mowbray House, Castle Meadow Road, Nottingham, NG2 1BJ.
- 1.2 **Terms** - These terms apply to the services you have instructed us to provide. We will carry out the work in line with our engagement letter and these terms (and any variations to these which we agree with you in writing). If there is any difference between the engagement letter

and these terms, the engagement letter will apply.

Your continuing instructions will confirm that you accept these terms and any engagement letter we have sent. Unless we agree otherwise, these terms and the engagement letter will apply to any future instructions you give us. We will review these terms from time to time, and we will notify you of any changes to them.

If we need to give you notice under these terms we will send it to you at your home, registered office or main place of business. If you need to give us notice, you should send it to us at our registered office.

2 Services

- 2.1 **Services** - We aim to provide a high-quality service and to make sure that the matters we handle for you are dealt with as smoothly as possible.
- 2.2 **Relying on our advice** - Our advice, both verbal and written, only applies to the particular matter it relates to, and you should not rely on it in any other matter. You must not pass on the advice we give you to another person without first getting our written permission. If we give permission, it will be on the basis that no one other than you may rely on the advice. Apart from our partners, members, employees, consultants, subcontractors and agents who have the benefit of section 13 (limitations of liability), nothing in this agreement will entitle any third party to rely on or enforce any term of this agreement whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 2.3 **Dealing with other people on your behalf**
We are happy to deal with other people on your behalf as necessary. We will instruct these people on your behalf and they will not act as our agents. We take no responsibility or liability for the advice or services the other person provides to you.

3 Fees and expenses

- 3.1 **How we calculate our fees** - Unless we agree otherwise in writing, we calculate our charges based on the time we spend dealing with your matter (based on units of one tenth of an hour) and the hourly rates of the people concerned.
- 3.2 **Hourly rates** - We will give you details of our hourly rates at the start of our relationship and at any time you ask for these. We review our charging rates every year and we increase individuals' hourly rates when they are promoted.
- 3.3 **Expenses** - As well as our fees, we may charge for disbursements and other expenses if these apply. Examples of disbursements include counsels' and experts' fees, travel expenses and search fees. We describe and charge other expenses, which are not disbursements, as 'other service items', and these charges are based on the quantity of the service used. If you agree that we can instruct other people (for example, foreign lawyers, experts, barristers, accountants or other professionals) to help provide the service to you, we do this as your agent and you are directly responsible for paying their fees and expenses. You will pay for any fees and expenses that we pay on your behalf.
- 3.4 **Taxes** - You will pay any taxes, including VAT, that are due in relation to our services and expenses at the appropriate rate.

- 3.5 **Payments on account** - If we ask you to pay money on account of our fees and expenses, we will use these payments to reduce any unpaid bills you have. But it is important that you understand that the total fees and expenses may be more than any payments you make.
- 3.6 **Client accounts** - Except for payments you make to cover our fees and expenses, all money we hold for you in a client account belongs to you. As such, these sums are a debt owed to you by the relevant bank and not by us. If the bank holding our client account funds fails, your claim is against the bank and not against us or any individual partner or member of the firm. We hold our client account funds with a range of authorised banks, and we monitor the security of the funds as far as we are reasonably able to. If a bank fails and you are an individual or a small company, you may be entitled to help under the Financial Services Compensation Scheme. If you need further information about where your funds are held, please let us know.
- 3.7 We will only hold your money if this is necessary to carry out a transaction or other obligation, commit to spending on your behalf or make sure that there is enough money to cover our costs to an agreed stage. You should not pay money to us unless we ask you to. If we do ask you to pay money to us, we will hold it only for as long as is necessary to deal with the matter it relates to. If there is any money left over after dealing with the matter, we will return this to you as soon as possible.
- 3.8 **Joint instructions** - If we are instructed jointly by more than one public body, company or individual, all such bodies, companies or individuals (as the case may be) will be jointly and individually responsible for the fees and expenses relating to the work we do under the joint instructions. This is known as joint and several liability.
- 3.9 **Interest on client money** - We have an interest rate policy that makes sure you are treated fairly, and this is fully in line with the SRA Accounts Rules. The policy is available on our website or you can ask us for a copy.
- 4 Billing and payment**
- 4.1 **Billing and payment** - We may invoice you each month for our fees and each month (or more frequently) for disbursements and other expenses. Unless we agree otherwise in writing, you must pay all invoices when you receive them.
- 4.2 Unless we tell you otherwise in writing, all of our interim invoices are interim statute bills and are final for the period covered rather than requests for payment on account. This means that we may sue you if you do not pay any interim invoice and you are entitled to ask the court to assess the amount of the invoice in line with section 4.5 (disputed invoices). Once you have paid an interim invoice, in full or in part, we will treat it as a final and binding

account for the period (or periods) it relates to, unless we have agreed otherwise in writing.

- 4.3 **Late payment and interest** - We may charge interest on overdue invoices at 2% above The Royal Bank of Scotland Plc base rate that applies from the date on which the payment was due.
- 4.4 **Set-off and lien** - Unless we are not allowed to do so under the SRA Accounts Rules, we may take the amount of any overdue invoice from any money we hold on your behalf. We may exercise a lien (a charge) over any property or papers in our possession until all fees, disbursements and other expenses are paid for all matters we have carried out on your behalf (for health matters, we will not exercise a lien over private medical records). This will apply to any property or papers we hold on behalf of any member of your group or anyone instructing us jointly with you.
- 4.5 **Disputed invoices** - We make every effort to avoid disagreements over our invoices, but we accept that there may be occasions where disagreements will arise. These terms do not restrict your right to challenge our charges and there are a number of options open to you, including:
- raising the matter with the person dealing with your matter or the supervising partner;
 - using our complaints procedure;
 - making a complaint to the Legal Ombudsman (see section 7) if we are

unable to settle your complaint and as long as you meet certain conditions; or

- applying to the court for your invoice to be assessed under Part III of the Solicitors Act 1974.
- (Please note, the Legal Ombudsman may not consider a complaint about an invoice if you have applied to the court for an assessment.)

5 Money laundering

- 5.1 **Our obligations** - Under legislation relating to money laundering and terrorist financing, solicitors must get satisfactory evidence of the identity of their clients, and sometimes of people related to them. By law, we must get evidence of your identity before starting work, and we must keep these records up to date.
- 5.2 **Verification** - We may carry out identity checks on databases kept by other organisations. These checks may be carried out electronically. By giving us personal information and accepting these terms, you agree to us using that information for this purpose.
- 5.3 **Reporting** - While solicitors are under a professional and legal obligation to keep the affairs of their clients confidential, there is legislation which, in certain circumstances, places us under a legal duty to give information to the authorities. If this happens, we may not be able to tell you that we have given information about you to others, or our reasons for doing this. We may have to stop working on your matter for a period

of time and we may not be able to tell you why. We do not accept any liability for any loss arising directly or indirectly from meeting these legal duties.

- 5.4 **Cash** - Our policy is not to accept cash from clients. If you pay cash into our bank account, we may charge for any extra checks that are needed to find out where the money has come from. In certain circumstances we may not be able to return the cash to you. We will not pay any amounts to you or to anyone else on your behalf in the form of cash.

6 Financial services

We are not authorised by the Financial Conduct Authority. However, we are included on the register maintained by the Financial Conduct Authority so that we can carry on insurance mediation activity, which is broadly the advising on, selling and administration of insurance contracts. This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by the Solicitors Regulation Authority. The register can be accessed via the Financial Conduct Authority website at www.fca.org.uk.

7 Other queries and concerns

- 7.1 **Raising queries and concerns with us** - We are confident that we will provide you with a high- quality service. However, if you have any queries or concerns relating to the work we do for you or about our invoice, please make this clear to the person with day-to-day control of your

matter, the partner responsible or the senior partner if you prefer.

- 7.2 **Complaints** - Full details of our complaints procedure are available on our website or you can ask us for a copy. If you are not satisfied with the way we handle your complaint, you may be entitled to ask the Legal Ombudsman to consider the complaint. The Legal Ombudsman allows us eight weeks to deal with complaints before they will investigate the complaint. The Legal Ombudsman only accepts complaints from individuals and certain small businesses and organisations. Full details are available at www.legalombudsman.org.uk. The Legal Ombudsman can investigate complaints up to six years from the date of the problem happening or within three years of when you found out about the problem. If you are entitled to ask the Ombudsman to look into your complaint, you must normally do this within six months of receiving a final written response from us about your complaint.

8 Working electronically, and retaining and disposing of records

- 8.1 **Working electronically** - Where possible we work electronically, which may include scanning any letters and other documents we receive, destroying the originals and replacing them with electronic files. We have your authority to work in this way unless you tell us otherwise in writing.
- 8.2 **Keeping records** - Under our record retention and destruction policy, we will

keep records relating to your matters for a minimum period of seven years (the retention period) from the date the matter is closed, unless our contract with you or relevant legislation says otherwise. We may destroy all of the records (electronic or paper) relating to your matter at the end of the retention period, unless you have contacted us before then, in writing, to ask us not to, in which case we will return them to you. However, we will return all original documents, such as title deeds and original signed agreements, to you when or before we finish working on your matter, unless we have agreed to keep them.

We strictly follow our data protection and retention and destruction policies when keeping your records and when processing any personal information we receive in the course of our business. Our data protection and retention and destruction policies are on our website (www.brownejacobson.com). Our liability for any loss of, or damage to, your records will be limited to the cost of replacing or restoring your records. Any documents that we keep will be kept securely, either at our offices or in external secure storage vaults, which may be owned and operated by third parties. Any third parties who process personal information on our behalf are approved by us and must strictly follow the terms of their contract with us in line with data protection legislation.

8.3 **Retrieval charges** - We may charge you if we need to take paper documents out of

storage, before or after the end of the retention period, in relation to continuing or new instructions to act for you. Any charge we make will be based on the amount of time spent producing archived records for you or any other person you ask us to give the records to. We may also charge for reading, correspondence or other work that is necessary to follow your instructions.

8.4 **Copyright** - We own all copyright and other intellectual property rights in material we create or develop while carrying out your instructions. We may keep copies of documents relating to any work which these terms apply to (including your documents and documents created by other people we instruct on your behalf, such as foreign lawyers, counsel, experts or other professionals), and may make the contents available within our organisation for training or 'know how' purposes. We may also use such material to help us to provide services to other clients, as long as we do not reveal your identity or confidential information relating to you.

9 **Confidentiality, data protection and information security**

9.1 **Our commitment** - We are committed to keeping your information secure. This means that we will keep your information electronically on our secure systems where possible and, as noted above, will keep documents and paper records securely, either within our offices or in external storage facilities. All devices we use when providing our services are encrypted and

we regularly test our systems to make sure they are secure.

9.2 Communications with you - You authorise us to communicate with you and others in connection with your matters by email and other methods of electronic communication. If we communicate over the internet, you acknowledge that we are unable to guarantee that the information will remain secure and confidential. We will have no responsibility whatsoever (whether in contract, tort (see note 1 below), negligence or otherwise and however it arises) if, due to circumstances beyond our reasonable control, you do not receive a communication, a communication is delayed or corrupted, or someone who is not authorised to do so sees a communication. If you want to discuss our procedures or you need particular communication or security arrangements to be put in place in relation to your matters, please let us know in writing. We will try to put in place any specific requirements you ask for, but we may pass on to you any charges involved.

Note 1

Tort is a legal term for which there is no precise legal definition. The reference above is intended to cover any interpretation the courts give to the term. For guidance only, a tort is often explained as a civil wrong or wrongful act (whether deliberate or accidental) which harms or causes loss to another.

9.3 Confidentiality - We will keep confidential all information you give to us (unless that

information is in the public domain, or we have to reveal it by law) and all reports, advice and recommendations we produce while working on your affairs. While working for you we may need to give information on a confidential basis to other people such as other professional advisors and expert witnesses (the terms and conditions that apply when we do this are available on our website). Our accountants or other assessors may need access to our files as part of an audit or quality check, and our professional indemnity insurers or any relevant regulatory body may also need access to them. We may ask other organisations or people to do typing, photocopying, scanning or other work on our files. This work may be done on or off our premises. Any third parties who process personal information on our behalf are approved by us and must strictly follow the terms of their contract, which are in line with data protection legislation.

We may want to refer to you and, in general terms, to the services we have carried out for you when marketing our services, including in proposals or other similar documents to prospective clients and in legal directories. We will not process any personal information you give us for these purposes without your permission.

9.4 Personal information - We will use any personal information you provide to us in our working relationship with you. This includes:

- updating and improving client records;
- carrying out identity, credit, anti-money laundering and fraud prevention checks against your name using databases kept by other organisations and watch lists (which may involve giving your details to registered credit reference or fraud prevention agencies who may keep and use these); and
- analysing the information to help us manage our practice and statutory returns and to meet legal and regulatory requirements.

We strictly follow data protection legislation. There is information about this on our website. Under data protection legislation, people have the right to see the personal information we hold about them. Our privacy notice contains information about this and other rights you have relating to data protection. Our privacy notice is available on our website, or you can ask us for a copy.

- 9.5 **Trade monitoring** - We will monitor and record information relating to your trade performance and we will make these details available to credit reference and fraud prevention agencies, who may keep that information and share it with other businesses when assessing applications for credit and for fraud prevention purposes.

10 Employees

Our employees are very valuable to us and you agree that, unless you have our permission in writing, you will not offer

employment to, or use the services of, either independently or through a third party, any member of our staff who has been working on your matter for a period of six months following the end of their involvement in the matter.

11 Terminating, cancelling or suspending the agreement

- 11.1 **When you can terminate the agreement** - You may terminate your instructions to us in writing at any time, but we may keep all your papers and documents (except for private medical records in health matters) until you have paid all our fees and expenses.

- 11.2 **When we can terminate or suspend the agreement** - We will only suspend acting for you or stop acting for you altogether if we have a good reason (for example, if you do not pay an invoice in full within 14 days of its due date, if you do not make a payment on account when we ask you to, if a conflict of interest arises, if following your instructions may mean we would break our professional duties or go beyond an agreed value of work). Where appropriate, we will give you reasonable notice that we will stop acting for you and explain the reasons why.

- 11.3 **When either of us can terminate this agreement** - Either of us may terminate this agreement immediately by giving written notice to the other if:

- the other is or appears to be unlikely to be able to pay its debts or becomes insolvent; or

- the other has significantly broken any of these terms and this cannot be put right or, if it can be put right, is not put right within 14 days of the notice.

11.4 Consequences of terminating this agreement - If you or we terminate this agreement, we will send a final invoice for the work we have already done and for any disbursements and other expenses we have paid on your behalf. Unless we agree otherwise with you, neither you nor we will have any further obligation to the other after the agreement ends. However, terminating this agreement will not affect our or your rights, remedies, obligations or liabilities that exist at the time the agreement ends. Any term which is intended to come into force, or to continue, when or after this agreement ends will remain in full force and effect, including, but not limited to, section 13 (limitations of liability).

12 Conflicts of interest

Solicitors are under a professional duty to avoid conflicts of interest. Before beginning any work for you, we will ask you to provide information so that we can identify any possible conflict of interest. We may be unable to act for you, or we may stop acting for you, if we become aware of a conflict of interest which we are unable to settle. We are free to act for other clients unless this would lead to a conflict of interest.

13 Limitations of liability

Unless forbidden by law our maximum total liability (including that of our partners, members, employees, consultants, subcontractors or agents) relating to any and all claims made by you (under contract, tort (see note 1 above), statute, negligence or otherwise) arising out of or in connection with our engagement to act in connection with any individual matter will be limited to £3,000,000 (including interest and costs) or, if greater, 20 times the value of our total fees billed (not including VAT, disbursements or other expenses). We (and our partners, members, employees, consultants, subcontractors or agents) will not (under contract or tort (see note 1 above), statute, negligence or otherwise) be liable for:

- (a) Any indirect or consequential loss; or
- (b) any of the following types of loss, whether the loss is direct, indirect or consequential: loss of profit, loss of business, loss of chance, loss of revenue or loss of any anticipated saving or benefit that you or any other person suffers as a result of or in connection with our agreement to act in connection with this matter.

Our liability to you will be limited to an amount which represents our proportionate share of responsibility for any loss that you suffer, taking into account any contribution to, or responsibility for, the loss by you, your

agents and employees and any other person liable to you.

These limitations of liability will apply regardless of any express or implied term or condition contained in any other agreement between us, or any warranty or representation we make, as long as nothing in this agreement will exclude any liability for death or personal injury or any other liability which we are not allowed to exclude or restrict by law or any liability arising as a result of fraud or dishonesty. We accept the benefit of this agreement as agent and trustee of each of our partners, members, employees, consultants, subcontractors or agents who will be entitled to rely on this clause 13.

As far as is allowed by law, our partners, members, employees, consultants and agents will not have any separate or individual responsibility or liability whatsoever for any loss or damage you or anyone else suffers. Anyone carrying out work for you will be entitled to the protection of all the limitations, exclusions, qualifications and defences that are available to us under our agreement with you.

14 Agreement

These terms will be governed and interpreted in line with English law, and any disputes will be dealt with exclusively in the English courts under English law. If a court or administrative body (for example, a tribunal or ombudsman) decides that any of these terms is not valid or cannot be enforced, this will not affect the other terms which will continue to apply. If a court or administrative body decides that any of these terms is not valid or cannot be enforced but would be valid or could be enforced if some part of the terms were deleted, the term (or terms) in question will apply with any changes that are necessary to make it valid.

15 Interpretation

We or **us** or **our** - refers to Browne Jacobson LLP.

You or **your** - refers to our instructing client or clients in any particular matter.

Revised: 15 May 2018