TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

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THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF *CLAUSE 8* (LIMITATION OF LIABILITY).

1. Interpretation

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

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Charges: the charges payable by the Customer for the Services. The charges are set out in the Order.

Conditions: these terms and conditions as varied by any Special Conditions or in accordance with clause 10.5.

Confidential Information: information that one party discloses or makes available to the other party (**recipient**) in connection with the Contract and which would be regarded as confidential by a reasonable business person. It does not include information that the recipient already knew, is or becomes public through no fault of the recipient, is independently developed by the recipient, or is rightfully given to the recipient by a third party without confidentiality obligations.

Contract: the contract between the Supplier and the Customer for the supply of Services, comprising the Order and these Conditions.

Customer: the person who purchases Services from the Supplier.

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

Customer Materials: all documents, information, and other materials (whether owned by the Customer or a third party), which are provided by the Customer to the Supplier in connection with the Services.

Data Protection Laws: all applicable laws and regulations relating to the protection of personal data and the privacy of individuals.

Deliverables: the deliverables set out in the Order and all other documents, products, and other materials developed by the Supplier for the Customer in the performance of the Services.

Effective Date: has the meaning given in clause 2.2.

IPRs: patents, copyright, trade marks, business names and domain names, 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 all similar or equivalent rights or forms of protection anywhere in the world.

Losses: all liabilities, damages, losses (including loss of profits, loss of business, loss of reputation, loss of savings and loss of opportunity), fines, expenses and costs (including all interest, penalties, legal costs (calculated on a full indemnity basis) and professional costs and expenses).

Order: the order form, written acceptance of the Supplier's quotation, or other document sent by the Customer to the Supplier requesting the supply of Services.

Services: the services set out in the Order alongside the Supplier's quotation.

Special Conditions: a written variation of these Conditions which is signed by the parties (or their authorised representatives) and specifically identifies the clause(s) being varied and the particular Order (or series of Orders) to which the variation applies.

Supplier: T.M. Browne Ltd registered in England and Wales with company number 04443068.

1.2 Interpretation

(a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(b) A reference to legislation or a legislative provision:

(i) is a reference to it as amended, extended or re-enacted from time to time; and

(ii) includes all subordinate legislation made from time to time under that legislation or legislative provision.

(c) References to **include** or **including** are interpreted as being without limitation.

(d) A reference to **writing** or **written** includes email but not fax.

2. Basis of contract

2.1 Each Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Supplier is free to accept or reject each Order at its absolute discretion. An Order will only be deemed to be accepted by the Supplier when the Supplier issues written acceptance of the Order at which point and on which date the Contract comes into existence (**Effective Date**).

2.3 Any descriptions or illustrations contained in the Supplier's advertising, brochures or other marketing collateral are provided for the sole purpose of giving an approximate idea of the Services and do not form part of the Contract or have any contractual force.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate. The Customer waives any right it might have to rely on any term endorsed upon, delivered with or contained in any document of the Customer that is inconsistent with these Conditions.

2.5 Any quotation given by the Supplier does not constitute an offer to enter into a contractual arrangement capable of acceptance by the Customer.

2.6 If there is any conflict or inconsistency between any of the provisions in these Conditions and the provisions of an Order, the provisions of these Conditions prevail.

3. Supply of Services

3.1 The Supplier shall supply the Services to the Customer from the Effective Date in accordance with the Contract in all material respects.

3.2 The Supplier shall perform the Services with reasonable care and skill in accordance with the generally recognised standards and practices in its industry.

3.3 The Supplier shall perform the Services in a timely and professional manner. The Supplier shall use reasonable endeavours to meet any performance dates specified in the Contract but these dates are estimates only. Time is not of the essence for the performance of any of the Supplier's obligations in the Contract.

3.4 The Supplier may suspend the provision of any Services or modify the specification for any Services if necessary to comply with any applicable law or regulatory requirement. The Supplier shall notify the Customer if it does so.

3.5 The Supplier shall ensure its staff observe all reasonable health and safety and security requirements that apply at any of the Customer's premises they access, provided that those requirements have been communicated to the Supplier in advance in writing. The Supplier will not be liable under the Contract if, as a result of observing these requirements, it is in breach of any of its other obligations under the Contract.

4. Customer obligations

4.1 The Customer shall:

(a) co-operate with the Supplier in all matters relating to the Services and ensure that its other suppliers co-operate with the Supplier where reasonably necessary;

(b) provide the Supplier and its subcontractors with access to the Customer's premises and other facilities as reasonably required by the Supplier for the performance of the Services;

(c) provide the Supplier with all information and materials as the Supplier may reasonably require to supply the Services, and ensure that:

(i) they are accurate and complete in all material respects; and

(ii) all electronic files used to provide them are free from malware and other harmful code;

(d) comply with all applicable laws and regulations in its performance of the Contract.

4.2 To the extent that the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or any of its agents, consultants or other suppliers (**Customer Default**), the Supplier shall not be in breach of the Contract nor

liable for any Losses incurred by the Customer as a result of its performance being prevented or delayed. The Customer shall reimburse the Supplier on written demand for any Losses incurred as a result of the Customer Default.

5. Charges and payment

5.1 In consideration for the provision of the Services, the Customer shall pay the Supplier the Charges in accordance with this clause 5.

5.2 Where the Charges are calculated on a time and materials basis, the details of which shall be shown in the Order alongside the quotation provided by the Supplier.

5.3 The Customer shall reimburse the Supplier for:

(a) any expenses reasonably incurred by Supplier personnel in the performance of the Services, including travel, hotel, subsistence and other ancillary expenses; and

(b) the cost of any materials or services procured by the Supplier from third parties for the performance of the Services.

5.4 The Supplier may increase the Charges with effect from each anniversary of the Effective Date in line with the percentage increase in the CPI during the previous twelve months.

5.5 The Supplier shall invoice the Customer for the Charges on the schedule set out in the Order . Where no schedule is specified, the Supplier shall invoice the Customer for the Charges at the end of each month for Services performed during that month

5.6 The Supplier shall invoice the Customer monthly in arrears for expenses, materials and third party costs.

5.7 The Customer shall pay each invoice submitted by the Supplier within 30 days of the invoice date (unless otherwise agreed in writing by the Supplier) to a bank account nominated in writing by the Supplier.

5.8 All sums payable by the Customer exclude value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier any additional amounts in respect of VAT as are chargeable on those sums.

5.9 Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails to make a payment due to the Supplier under the Contract by the due date:

(a) the Customer 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 5.9 will accrue each day at 4% 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%;

(b) the Supplier may suspend all or part of the Services until payment has been made in full; and

(c) the Supplier may withdraw the Customer's entitlement to any credit or discounts or other benefits that apply to the relevant Order and reclaim any discounts or other benefits previously provided to the Customer in connection with that Order.

5.10 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. Data protection

6.1 Each party shall comply with Data Protection Laws in its processing of personal data under or in connection with the Contract.

7. Limitation of liability

7.1 The following definitions apply in this clause 7:

(a) **default:** any act or omission resulting in one party incurring liability to the other; and

(b) **liability:** every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence) or otherwise.

7.2 Nothing in the Contract limits or excludes:

(a) liability for deliberate default;

(b) liability for death or personal injury caused by negligence to the extent preserved by section 2(1) of the Unfair Contract Terms Act 1977;

(c) liability for fraud or fraudulent misrepresentation;

(d) liability for breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982;

(e) any liability that cannot legally be limited; or

(f) the Customer's liability for its payment obligations under the Contract.

7.3 Subject to clause 7.2, the Supplier's total liability for all loss or damage shall not exceed 100% of the Charges paid or payable to the Supplier under the Contract.

7.3 Subject to clause 7.2, neither party shall have any liability for:

(a) loss of profits (including loss of anticipated savings);

(b) loss of business or business opportunity;

(c) loss of use or corruption of software, data or information;

(d) loss of or damage to goodwill; or

(e) indirect or consequential loss.

7.4 Subject to clause 7.2, the Supplier shall not be liable for any Losses incurred by the Customer as a result of:

(a) using draft Deliverables as finished work without the Supplier's prior written approval; or

(b) using the Deliverables for any purpose other than that for which they were intended.

7.5 Subject to clause 7.2, all conditions, warranties, representations or other terms that might otherwise be implied into the Contract by statute, common law, course of dealing, trade usage or otherwise are excluded from the Contract.

7.6 Unless a party notifies the other party that it intends to make a claim within the notice period, the other party shall have no liability for that claim. The **notice period** shall start on the day on which the party wishing to make a claim became, or ought reasonably to have become, aware of its having grounds to make a claim and shall expire [3] months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

8. Termination

8.1 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract by giving the Customer not less than 30 days' notice expiring on or after the Initial Period. The **Initial Period** means the period of 14 days starting on the Effective Date.

8.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by notifying the other party if:

(a) the other party is in material breach of the Contract where:

(i) the breach is not capable of remedy; or

(ii) the breach is capable of remedy and is not remedied within 20 days by the other party after being notified to do so;

(b) the other party takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors, applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court), being struck off the register of companies, having a receiver appointed to any of its assets, or its entering a procedure in any jurisdiction with a similar effect to a procedure listed in this clause 8.2(b); or

(c) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

8.3 The Supplier reserves the right to terminate if the financial position of the Customer deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

8.4 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by notifying the Customer if the Customer fails to pay any amount due under the Contract by the due date for payment.

8.5 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services if the Customer becomes, or the Supplier reasonably believes that the Customer is about to become, subject to any of the events listed in clause 8.2(b), clause 8.2(c) or **Error! Bookmark not defined.**8.3.

9. Consequences of termination

9.1 On termination of the Contract:

(a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, where no invoice has been submitted for Services supplied, the Supplier may submit an invoice, which shall be payable by the Customer immediately on receipt; and

(b) except as otherwise set out in these Conditions, the Customer shall promptly destroy or return to the Supplier (as instructed by the Supplier) all materials and other property in its possession or control that belong to the Supplier and were supplied in connection with the Contract.

9.2 Termination of the Contract will not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

9.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract will remain in full force and effect, including clause 7, this clause 9 and clause 10.3.

10. General

10.1 Force majeure. Neither party will be liable for any delay or failure in performing any of its obligations for so long as and to the extent that the delay or failure results from events, circumstances or causes beyond its reasonable control.

10.2 Assignment and other dealings.

(a) The Customer shall not assign, novate, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract without the prior written consent of the Supplier.

(b) The Supplier may subcontract or delegate any or all of its obligations under the Contract to any third party, provided that it:

(i) only subcontracts or delegates obligations to reputable third parties; and

(ii) remains responsible for the performance of the Contract and liable for all acts and omissions of third parties to which it subcontracts or delegates obligations as if they were its own.

10.3 Confidentiality.

(a) Each party undertakes that it shall not at any time disclose to any person any Confidential Information of the other party, except as permitted by clause 10.3(b).

(b) Each party may disclose the other party's Confidential Information:

(i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know that information for the purposes of exercising its rights or carrying out its obligations under the Contract (**Representatives**). Each party shall ensure that its Representatives comply with confidentiality obligations which are substantially equivalent to those set out in this clause 10.3; 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 exercise its rights and perform its obligations under the Contract.

10.4 Entire agreement.

(a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances 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 or negligent misstatement based on any statement in the Contract.

10.5 Variation.

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

(b) The Supplier may vary these Conditions from time-to-time by posting an updated version at https://tmbrowneltd.co.uk/supplier-terms-conditions.pdf but, unless otherwise agreed in writing and signed by the parties (or their authorised representatives), no variation will apply to Orders already in force prior to that variation.

10.6 **Waiver**. A waiver of any right or remedy is only effective if given in writing and will not be deemed a waiver of any subsequent right or remedy. A failure or delay to exercise, or the single or partial exercise of, any right or remedy does not waive that or any other right or remedy, nor does it prevent or restrict any further exercise of that or any other right or remedy.

10.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it will be deemed deleted, but that will not affect the validity and enforceability of the rest of the Contract.

10.8 **Notices.**

(a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

(i) delivered by hand or by pre-paid first-class post or other next working day delivery service to its registered office (if a company) or its principal place of business (in any other case); or

(ii) sent by email to the address specified in the Order (or to any substitute address as it may have notified to the other party in accordance with this clause 10.8).

(b) Any notice will be deemed to have been received:

(i) if delivered by hand, at the time the notice is left at the proper address;

(ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

(iii) if sent by email, at the time of transmission or, if this time falls outside business hours, when business hours resume. In this clause 10.8(b)(iii), **business hours** means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

(c) This clause 10.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

10.9 **Third party rights.**

(a) 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.

(b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

10.10 **Relationship of the parties.** Nothing in these Conditions is intended to, or will be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

10.11 **Governing law and jurisdiction.** 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, will be governed by the law of England and Wales and subject to the exclusive jurisdiction of the courts of England and Wales.