

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF clause 7.

Brace Creative Agency is a trading name of Brobuild Ltd. For the purposes of simplicity it will be referred to a 'Brace'

1. INTERPRETATION

1.1 Definitions:

Acceptance: the acceptance or deemed acceptance of the Site by the Customer pursuant to clause 9.

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 supply of the Services in accordance with clause 5.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 13.5.

Contract: the contract between Brace and the Customer for the supply of Services in accordance with these Conditions.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be construed accordingly.

Customer: the person or firm who purchases Services from Brace.

Customer Default : has the meaning set out in clause 4.3.

Deliverables: the deliverables set out in the Order including the Site and all documents, products and materials developed by Brace or its agents, subcontractors and personnel as part of or in relation to the Services in any form.

Intellectual Property Rights: patents, rights to inventions, copyright and related 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 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.

Materials: including but not limited to written content, logos, images, pictures, photographs, accreditations, qualifications and certification provided to Brace by the Customer from time to time for incorporation in the Site.

Order: the Customer's order for Services as set out in the Customer's purchase order form or the Customer's written acceptance of a quotation by Brace, as the case may be.

Services: the services, including the Deliverables, supplied by Brace to the Customer as set out in the Specification.

Site: the Customer's website to be designed, developed and hosted by the Brace.

Site Software: the software for the Site commissioned by the Customer as set out in the Specification.

Specification: the description or specification of the Services provided in writing by Brace to the Customer.

Third Party Products: those third party software products used by Brace in the design and development of the Site including but limited to software, data and images.

Website Development Services: the design and development of the Site.

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 any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) Any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as

illustrative and shall not limit the sense of the words preceding those terms.

- (c) A reference to **writing** or **written** includes email.

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when Brace issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by Brace, and any descriptions or illustrations contained in Brace's brochures or on their website, 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.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by Brace shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. SUPPLY OF SERVICES

- 3.1 Brace shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 Brace shall use all reasonable endeavours to meet any performance dates specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 Brace shall have the right to make any changes to the Services which are necessary to comply with any applicable law, or which do not materially

affect the nature or quality of the Services, and Brace shall notify the Customer in any such event.

- 3.4 Brace warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.5 Brace is part of a group of companies and as such in the event of Brobuild either being sold or no longer trading the site data is stored with the other companies within the group and as such the data is safe and will still be available to the content owner.

4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall:
- (a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
 - (b) co-operate with Brace in all matters relating to the Services;
 - (c) provide Brace with such information and materials as Brace may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
 - (d) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
 - (e) comply with all statutes, licences, codes of conduct, rules and regulations applicable to the Services;
 - (f) comply with any additional obligations as set out in the Specification;
 - (g) comply with any additional requirements for security and encryption techniques or software which may from time to time be specified by the Supplier.
- 4.2 For the duration of the Contract the Customer shall not, without the Supplier's prior written approval, allow any person other than a representative of the Supplier to modify, repair or maintain any part of the Site.

- 4.3 If Brace's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) Brace shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Brace's performance of any of its obligations;
 - (b) Brace shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Brace's failure or delay to perform any of its obligations as set out in this clause 4.3; and
 - (c) the Customer shall reimburse Brace on written demand for any costs or losses sustained or incurred by Brace arising directly or indirectly from the Customer Default.

5. CHARGES AND PAYMENT

- 5.1 Clause 5.2 shall apply if the Services are to be provided on a time and materials basis. Clause 5.3 and clause 5.4 shall apply if the Services are to be provided for a fixed price. The remainder of this clause 5 shall apply in either case.
- 5.2 Where the Services are provided on a time-and-disbursements basis:
- (a) the charges payable for the Services shall be calculated in accordance with Brace's standard daily fee rates;
 - (b) Brace's standard daily fee rates (as amended from time to time) are calculated on the basis of an eight-hour day worked between 9.00 am and 5.00 pm on weekdays (excluding weekends and public holidays);
 - (c) Brace shall be entitled to charge its standard daily fee rate (as amended from time to time) plus 20% for each hour worked outside the hours referred to in clause 5.2(b) on a pro-rata basis;

- (d) Brace shall invoice the Customer monthly in arrear for its charges for time and disbursements (together with VAT where appropriate) for the month concerned, calculated as provided in this clause 5. Each invoice shall set out the time spent and provide a breakdown of any disbursements, accompanied by the relevant receipts.
- 5.3 Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Specification. The total price shall be paid to Brace in instalments as set out in the Specification. All amounts due under this agreement shall be paid by the Customer to Brace in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 5.4 Any fixed price contained in the Specification excludes:
 - (a) the cost of any disbursements or services reasonably and properly provided by third parties required by Brace for the supply of the Services. Such disbursements and third party services shall be invoiced by Brace at cost; and
 - (b) VAT, which Brace shall add to its invoices at the appropriate rate.
- 5.5 Annual fees for some Services and the Site are payable monthly in advance by direct debit. For some other services Brace will submit an invoice to the Customer which must be paid in full, in cleared funds, within 14 days of receipt.
- 5.6 Without prejudice to any other right or remedy that Brace may have, if the Customer fails to pay Brace on the due date Brace may:
 - (a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and
 - (b) suspend all Services until payment has been made in full.
- 5.7 Time for payment shall be of the essence of the Contract.

5.8 All payments payable to Brace under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

5.9 Brace may, without prejudice to any other rights it may have, set off any liability of the Customer to Brace against any liability of Brace to the Customer.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Brace.

6.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on Brace obtaining a written licence from the relevant licensor on such terms as will entitle Brace to license such rights to the Customer.

6.3 The customer can take ownership of the Intellectual Property after payment of an agreed fee after which the customer will own the Intellectual Property.

7. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

7.1 Nothing in the Contract shall limit or exclude Brace's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

- 7.2 Subject to clause 7.1, Brace shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- (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 damage to goodwill; and
 - (g) any indirect or consequential loss.
- 7.3 Brace shall not be liable for any errors, defects or omissions in any Deliverables once these has been checked and authorised for publication by the Customer.
- 7.4 Brace will run the Site and store all information provided to them on secure servers. Brace will implement appropriate technical and organisational measures to protect the Site and any data against unauthorised or unlawful processing and accidental loss or damage. The Customer acknowledges and accepts that the use of the internet and transmission of information via the internet is not completely secure and although Brace will use their reasonable endeavours to protect the Site and any data provided by the Customer, Brace cannot guarantee that security measure will be successful all of the time. Brace shall have no liability for any malicious breach of its security measures and the transmission of the Site and any data is at the Customer's own risk.
- 7.5 Subject to clause 7.1, Brace's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the total Charges paid under the Contract.
- 7.6 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

7.7 This clause 7 shall survive termination of the Contract.

8. ADVERTISING CAMPAIGNS

8.1 Unless stated otherwise in the Order, advertising campaigns will last for 12 months from either the 1st or the 15th of the month whichever is the earlier after the campaign has been agreed as set out below.

8.2 Brace will provide the Customer with a draft of the advertising campaign..

8.3 The Customer must provide Brace with comments on the draft advertising campaign within 5 days of receipt.

8.4 Brace will use their best endeavours to secure the Customer's agreement to the advertising campaign during such 5 day period but such endeavours shall not exceed 3 attempts.

8.5 If the Customer fails to respond to requests from Brace during the 5 day period, the advertising campaign will go live and the Customer shall not be able to make any comments on it and shall no remedy against Brace..

8.6 If the Customer responds during the 5 day period, Brace shall make such amendments to the campaign as are agreed with the Customer. The advertising campaign will go live as soon as it have been finalised. Once agreed and the campaign goes live, no further amendments can be made.

9. WEBSITE DEVELOPMENT

9.1 Once Brace has completed the design and development of the Site in accordance with the Specification, Brace shall send a proof of the Site to the Customer.

9.2 Acceptance of the Site shall take place upon the occurrence of any of the following events:

- (a) The Customer confirms acceptance of the Site in writing; or

- (b) the Customer uses any part of the Site for any revenue-earning purposes or to provide any services to third parties other than for test purposes.
- 9.3 Any Third Party Products used in developing the Site shall be supplied in accordance with the relevant licensor's standard terms. The one-off licence fee for such Third Party Products is included in the Charges as a disbursement.
- 9.4 Brace shall not be liable to the Customer for any damage to software, damage to or loss of data, loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage.
- 9.5 All Intellectual Property Rights in the Site (including in the content of the Site and the Site Software), but excluding the Materials, arising in connection with this agreement shall be the property of Brace until the termination or expiry of the Contract, and Brace hereby grants the Customer a non-exclusive licence of such Intellectual Property Rights for the purpose of operating the Site during such period.
- 9.6 The Customer shall indemnify Brace against all damages, losses and expenses arising as a result of any action or claim that the Materials infringe the Intellectual Property Rights of a third party.
- 9.7 Brace shall indemnify the Customer against all damages, losses and expenses arising as a result of any action or claim that the Site infringes any Intellectual Property Rights of a third party in the UK.
- 9.8 The Customer shall ensure that the Materials do not infringe any applicable laws, regulations or third party rights (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous or in breach of any third party Intellectual Property Rights) (**Inappropriate Content**).
- 9.9 The Customer acknowledges that Brace has no control over any content placed on the Site by visitors and does not purport to monitor the content

of the Site. Brace reserves the right to remove content from the Site where it reasonably suspects such content is Inappropriate Content. Brace shall notify the Customer promptly if it becomes aware of any allegation that any content on the Site may be Inappropriate Content.

- 9.10 The Customer shall indemnify Brace against all damages, losses and expenses arising as a result of any action or claim that the Materials constitute Inappropriate Content.
- 9.11 Brace may include the statement "Designed by Brace" or words to a similar effect on the home page of the Site in a form to be agreed.
- 9.12 Once the site has been handed over no further development will take place unless an agreed rate or fee has been put in place or the customer is on a maintenance plan. This can be agreed with Brace either before or after completion.
- 9.13 In the event of a damaged or corrupt site Brace will reinstate the website to the last available backup. As part of any hosting package we usually backup on a weekly basis but can increase this depending on the customer's requirement at an additional cost. We will provide the customer with the login details to enable them to do more regular backups themselves on request.

10. DATA PROTECTION

- 10.1 The following definitions apply:
- (a) the terms "data controller", "data processor", "data subject" and "processing" bear the respective meanings given them in the Data Protection Act 1998, and "data protection principles" means the eight data protection principles set out in Schedule 1 to that Act.
 - (b) data includes Personal Data.
 - (c) **Customer Personal Data** mean any Personal Data provided by or on behalf of the Customer including customers of the Customer.
- 10.2 In regard to GDPR Brace shall:

- (a) only carry out processing of any Customer Personal Data on the Customer's instructions;
 - (b) implement appropriate technical and organisational measures to protect any Customer Personal Data against unauthorised or unlawful processing and accidental loss or damage; and
 - (c) only transfer Customer Personal Data to countries outside the European Economic Area that ensure an adequate level of protection for the rights of the data subject.
- 10.3 The Customer acknowledges that Brace will be acting as a data processor, rather than as a data controller, in respect of all such data processing activities which Brace carries out under the Contract.
- 10.4 The data that Brace collects from the Customer is not transferred to, and stored at, a destination outside the European Economic Area ("EEA").
- 10.5 Brace will use their best endeavours to ensure that Customer Personal Data is maintained securely and is properly backed-up. In the event of any loss or damage to Customer Personal Data, the Customer's sole and exclusive remedy shall be that Brace use their best endeavours to restore the lost or damaged Customer Data from the latest back up of such Customer Personal Data. Brace shall not be responsible for any loss, destruction, alteration or disclosure of Customer Personal Data caused by any third party (except those third parties sub-contracted by Brace to perform services related to Customer Data maintenance and back-up).

11. TERM AND TERMINATION

- 11.1 The Contract shall, unless otherwise terminated as provided in this clause 11, continue for 12 months (the Initial Term) and, thereafter, the Contract shall be automatically renewed for successive periods of 12 months (each a Renewal Period), unless:
- (a) either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Term or any Renewal Period, in which case the Contract shall terminate upon the expiry of the applicable Initial Term or Renewal Period; or

- (b) otherwise terminated in accordance with these Conditions;

and the Initial Term together with any subsequent Renewal Periods shall constitute the Term.

11.2 Without limiting its other rights or remedies, Brace may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of the Customer being notified in writing to do so;
- (b) the Customer 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 or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the Customer 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 Customer's financial position deteriorates to such an extent that in Brace's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- (e) the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 7 days after being notified to make such payment; or
- (f) there is a change of Control of the Customer.

11.3 Without limiting its other rights or remedies, Brace may suspend provision of the Services under the Contract or any other contract between the Customer and Brace if the Customer becomes subject to any of the events

listed in clause 11.2(b) to clause 11.4(d) or Brace reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

12. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to Brace all of Brace's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Brace shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of Brace Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then Brace may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, 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; and
- (d) clauses which expressly or by implication survive termination shall continue in full force and effect.

13. GENERAL

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

13.2 **Assignment and other dealings.**

- (a) Brace may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Customer shall not, without the prior written consent of Brace, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

13.3 **Confidentiality.**

- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.3(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 13.3; 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 perform its obligations under the Contract.

13.4 **Entire agreement.**

- (a) This agreement 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 agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

13.5 **Variation.** We may revise these terms and conditions at any time. Please check our website from time to time to take notice of any changes we made, as they are binding on you.

13.6 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- (a) waive that or any other right or remedy; or
- (b) prevent or restrict the further exercise of that or any other right or remedy.

13.7 **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.

13.8 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid

first class post or other next working day delivery service, commercial courier, or email.

- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.8(a); 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by or email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13.9 **Third parties.** No one other than a party to the Contract shall have any right to enforce any of its terms.

13.10 **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.

13.11 **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.