

## **BRACE CREATIVE AGENCY LTD**

### **BUSINESS TERMS AND CONDITIONS FOR CREATIVE, DIGITAL, WEBSITE, SEO, MAINTENANCE AND SUPPORT SERVICES**

**Version:** 1.0

**Effective date:** 1<sup>st</sup> June 2025

Brace Creative Agency Ltd is a company registered in England and Wales under company number 07053595, whose registered office is at 2nd Floor, Olympus House, Olympus Park, Quedgeley, Gloucester, England, GL2 4NF.

These Terms and Conditions apply only where the Customer is acting in the course of a business, trade or profession. They do not apply to consumers.

The Customer's attention is particularly drawn to clause 17, which limits Brace's liability.

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## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In these Conditions:

**Brace, we, us or our** means Brace Creative Agency Ltd.

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

**Charges** means the fees, expenses and other amounts payable by the Customer for the Services.

**Commencement Date** means the date on which an Order is accepted in accordance with clause 2.

**Conditions** means these Terms and Conditions, including their schedules.

**Contract** means the contract between Brace and the Customer comprising the applicable Order and these Conditions.

**Customer, you or your** means the business, organisation, partnership, sole trader or other person purchasing the Services.

**Customer Materials** means all content, information, data, branding, images, documents, software, access credentials and other materials supplied or made available by or on behalf of the Customer.

**Deliverables** means the work product expressly identified as a deliverable in an Order.

**Initial Term** means any minimum contract period stated in the Order.

**Intellectual Property Rights** means patents, copyright, database rights, design rights, trademarks, domain-name rights, rights in confidential information, moral rights and all similar or equivalent rights anywhere in the world.

**Order** means a proposal, quotation, statement of work, service order, subscription, renewal, written instruction or other document that identifies the Services to be provided.

**Recurring Services** means Services charged on a weekly, monthly, quarterly, annual or other recurring basis.

**Services** means the services provided by Brace under an Order.

**Specification** means the description and scope of the Services set out in an Order.

**Third-Party Services** means software, hosting, domains, plugins, themes, platforms, advertising services, search engines, social-media services, payment services, email services, stock materials and other products or services supplied or controlled by a third party.

## **1.2 Interpretation**

References to writing include email.

Headings do not affect interpretation.

Words following “including”, “includes”, “such as” or similar expressions are illustrative and do not limit the preceding words.

A reference to legislation includes any amendment, replacement or re-enactment of it.

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## **2. BASIS OF CONTRACT**

### **2.1**

An Order constitutes an offer by the Customer to purchase the Services described in it subject to these Conditions.

### **2.2**

An Order is accepted, and the Contract begins, when any of the following occurs after the Customer has been supplied with or given access to these Conditions:

- a. Brace confirms acceptance in writing;
- b. the Customer signs or electronically accepts the Order;

- c. the Customer confirms acceptance by email;
- d. the Customer pays a deposit, invoice or recurring charge relating to the Order;
- e. the Customer instructs Brace to start work; or
- f. Brace begins supplying the Services with the Customer's knowledge and authority.

### **2.3**

The Customer confirms that the individual accepting an Order has authority to bind the Customer.

### **2.4**

Marketing materials, examples, presentations, concepts, estimates and discussions are illustrative only unless expressly incorporated into an Order.

### **2.5**

If there is a conflict between documents forming the Contract, the following order of priority applies:

- a. the Order;
- b. any service schedule expressly incorporated into the Order;
- c. these Conditions.

### **2.6**

Any terms submitted by the Customer, including terms on a purchase order or procurement portal, do not apply unless expressly accepted in writing by a director of Brace.

### **2.7**

Unless otherwise stated, quotations remain valid for 30 days.

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## **3. SUPPLY OF SERVICES**

### **3.1**

Brace shall provide the Services substantially in accordance with the applicable Specification and with reasonable care and skill.

### **3.2**

Any delivery date, completion date, campaign date, response time or timetable is an estimate unless the Order expressly states that it is guaranteed.

Time shall not be of the essence.

### **3.3**

Brace may make reasonable changes to the Services where required:

- a. to comply with law, regulation, security requirements or industry practice;
- b. because of changes made by a Third-Party Service;
- c. to correct an error or vulnerability; or
- d. where the change does not materially reduce the overall Services.

### **3.4**

Brace may use appropriately skilled employees, contractors and subcontractors to provide the Services.

### **3.5**

Brace does not provide legal, regulatory, tax, financial or compliance advice. The Customer remains responsible for obtaining its own professional advice and for ensuring that its business, website, content, advertising, promotions and data use comply with applicable law.

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## **4. CUSTOMER OBLIGATIONS**

### **4.1**

The Customer shall:

- a. provide complete, accurate and timely instructions;
- b. cooperate with Brace and respond promptly to requests;
- c. provide the access, accounts, credentials, approvals, content and information reasonably required;
- d. ensure that Customer Materials are accurate, lawful and suitable for their intended use;
- e. obtain all licences, consents and permissions required for the Customer Materials and Services;
- f. maintain appropriate internal copies of important information and business data;
- g. nominate an authorised contact with authority to provide instructions and approvals;
- h. keep access credentials secure and notify Brace promptly of suspected compromise;

- i. promptly review proofs, test links, forms, functionality and Deliverables; and
- j. use the Services lawfully and in accordance with applicable Third-Party Service terms.

#### **4.2**

Brace may rely on instructions and approvals given by the Customer's nominated contacts.

#### **4.3**

The Customer is responsible for the accuracy and legality of all claims, prices, offers, product descriptions, terms, privacy information and other content published on its behalf.

#### **4.4**

Where the Customer fails to provide information, access, materials, feedback or approval when reasonably required:

- a. deadlines shall be extended accordingly;
- b. Brace may reschedule the work;
- c. Brace shall not be liable for any resulting delay or loss;
- d. Brace may charge for wasted, repeated or additional work; and
- e. recurring Charges shall continue to be payable.

#### **4.5**

The Customer must not give Brace access to more personal data or systems than is reasonably necessary for the Services.

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### **5. PROJECT MANAGEMENT, CHANGES AND ACCEPTANCE**

#### **5.1**

The Services include only the work expressly described in the Order.

#### **5.2**

Any requested amendment, additional feature, additional page, additional campaign, revised brief, repeated revision or other work outside the agreed scope is a change request.

#### **5.3**

Brace may provide a revised quotation, estimated cost or timetable for a change request. Brace is not required to begin additional work until the Customer has approved it in writing.

#### **5.4**

Where the Order includes a stated number of design or content revisions, additional revisions shall be chargeable.

#### **5.5**

The Customer shall review Deliverables promptly and notify Brace of any material failure to meet the agreed Specification within 10 Business Days after delivery or presentation for review.

#### **5.6**

A Deliverable shall be treated as accepted where:

- a. the Customer confirms acceptance;
- b. the Customer publishes, launches, distributes or uses it;
- c. the Customer instructs Brace to proceed to a later project stage; or
- d. the Customer does not notify Brace of a material failure within the period in clause 5.5.

#### **5.7**

Where the Customer identifies a genuine material failure within the review period, Brace shall use reasonable efforts to correct it. This is the Customer's primary remedy in relation to that failure.

#### **5.8**

Minor aesthetic preferences, changes to the original brief or matters caused by Third-Party Services do not constitute a failure to meet the Specification.

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## **6. CHARGES AND PAYMENT**

### **6.1**

The Customer shall pay the Charges set out in the Order.

### **6.2**

Unless the Order states otherwise:

- a. project work may be invoiced in advance, in stages or on completion;

- b. Recurring Services are invoiced in advance;
- c. time-based work is charged at Brace's applicable hourly or daily rate;
- d. reasonable expenses and approved third-party costs are additional; and
- e. all Charges are exclusive of VAT.

### **6.3**

Invoices are payable within 14 days of the invoice date unless the Order states otherwise.

### **6.4**

The Customer shall maintain a valid Direct Debit instruction where this is a condition of the Order.

### **6.5**

If the Customer disputes an invoice, it must notify Brace in writing within 10 Business Days after the invoice date, identifying the amount disputed and providing reasonable details.

The Customer must pay any undisputed part by the due date.

### **6.6**

The Customer may not withhold payment, make a deduction or exercise a right of set-off unless required by law.

### **6.7**

Where an amount is overdue, Brace may:

- a. charge statutory interest under the Late Payment of Commercial Debts (Interest) Act 1998;
- b. claim applicable statutory fixed compensation and reasonable recovery costs;
- c. suspend some or all Services;
- d. withhold unpublished Deliverables;
- e. decline new instructions; and
- f. require payment in advance before resuming work.

### **6.8**

Suspension does not remove the Customer's obligation to pay recurring Charges or other amounts falling due.

## **6.9**

Brace may review Recurring Service Charges once in any 12-month period by giving at least 30 days' written notice.

Changes in taxes, advertising spend, licence costs or Third-Party Service charges may be passed on when they take effect.

## **6.10**

Any estimate is based on information available when it is issued. If the assumptions or scope materially change, Brace may revise the estimate.

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## **7. THIRD-PARTY SERVICES**

### **7.1**

The Services may depend upon Third-Party Services.

### **7.2**

The Customer agrees to comply with the terms and policies applicable to any Third-Party Services used for its work.

### **7.3**

Brace is not responsible for:

- a. changes made by third-party providers;
- b. withdrawal or suspension of a Third-Party Service;
- c. changes to algorithms, policies, prices or functionality;
- d. outages or security incidents outside Brace's reasonable control;
- e. loss caused by the Customer's breach of third-party terms; or
- f. refusal, suspension or closure of a third-party account.

### **7.4**

Unless otherwise stated, third-party fees, advertising budgets, licence costs, premium plugins, stock assets, fonts, hosting, domains and similar expenses are additional to Brace's Charges.

### **7.5**

Brace may replace a Third-Party Service with a reasonably equivalent alternative where necessary.

## **7.6**

The Customer acknowledges that access to some Third-Party Services may end when the Contract terminates, particularly where a licence is held through Brace.

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## **8. SEARCH ENGINE OPTIMISATION SERVICES**

This clause applies where an Order includes search engine optimisation or related organic-search services.

### **8.1 Scope**

SEO Services include only the activities stated in the Order. They may include technical review, keyword research, content recommendations, website optimisation, local SEO, reporting, link analysis and other agreed activities.

### **8.2 No guarantee of results**

The Customer acknowledges that search-engine rankings, traffic, enquiries, sales and commercial results are affected by numerous factors outside Brace's control.

Brace does not guarantee:

- a. any particular ranking or position;
- b. placement for any particular keyword;
- c. a particular level of traffic, leads or sales;
- d. continued inclusion within a search engine's index; or
- e. that previous rankings or performance will be maintained.

### **8.3 Search-engine changes**

Brace is not responsible for changes caused by search-engine algorithm updates, policy changes, competitor activity, website changes made by others, market conditions or restrictions imposed by a Third-Party Service.

### **8.4 Customer cooperation**

The Customer shall provide reasonable access to its website, analytics, search-console accounts, business profiles and other systems required for the SEO Services.

The Customer shall promptly review and approve recommendations, content and technical changes.

### **8.5 Delayed or rejected recommendations**

Brace is not responsible for reduced performance caused by the Customer delaying, rejecting, reversing or failing to implement recommendations.

#### **8.6 Previous and third-party activity**

Brace is not responsible for penalties, poor-quality links, technical faults, copied content or other issues arising from activity undertaken before the Commencement Date or by the Customer or another supplier.

#### **8.7 Ethical practice**

Brace shall not knowingly use techniques that it reasonably considers deceptive or contrary to major search-engine guidelines.

However, Brace cannot guarantee how any search engine will interpret a particular activity.

#### **8.8 Reporting**

The frequency and scope of reporting shall be as stated in the Order.

Data supplied by analytics and search platforms may be estimated, delayed, sampled or subsequently amended.

#### **8.9 SEO cancellation and notice**

Unless the Order specifies a longer Initial Term:

- a. the Customer may cancel ongoing SEO Services by giving Brace not less than three calendar months' written notice;
- b. notice may be given at any time and takes effect on the date it is received by Brace;
- c. the SEO Services shall terminate on the corresponding date three calendar months after receipt of notice;
- d. where there is no corresponding date in the final month, termination shall occur on the last day of that month;
- e. all SEO Charges remain payable throughout the notice period;
- f. notice cannot expire before the end of any Initial Term stated in the Order; and
- g. cancelling SEO Services does not automatically cancel any website maintenance, hosting, advertising, creative, development or other Services.

#### **8.10**

During the notice period Brace shall continue to provide the agreed SEO Services, subject to the Customer continuing to provide access and cooperation.

If the Customer asks Brace to stop work immediately or removes required access, Charges remain payable throughout the notice period.

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## **9. WEBSITE MAINTENANCE AND SUPPORT SERVICES**

This clause applies where an Order includes WordPress maintenance, website maintenance or support.

### **9.1**

The included maintenance and support Services are limited to those stated in the Order.

### **9.2**

Unless expressly included, maintenance does not include:

- a. redesign or redevelopment;
- b. new pages, features or integrations;
- c. routine content entry;
- d. search-engine optimisation;
- e. copywriting, photography or graphic design;
- f. repair of faults caused by the Customer or another supplier;
- g. repair of pre-existing faults;
- h. recovery from a major cyberattack or malware infection;
- i. replacement of abandoned or incompatible software;
- j. work outside normal business hours; or
- k. third-party licence fees.

### **9.3 Updates**

Brace shall use reasonable care when applying agreed software updates.

The Customer acknowledges that updates to a content-management system, theme, plugin, server or Third-Party Service may create incompatibilities or faults that could not reasonably have been predicted.

Any substantial remedial or redevelopment work may be chargeable.

### **9.4 Security**

Security scanning, monitoring and updates reduce risk but do not guarantee that a website or system will be free from malware, vulnerabilities, unauthorised access or interruption.

Brace does not warrant that any website or system will be completely secure.

### **9.5 Backups**

Where backups are included:

- a. the frequency and retention period shall be as stated in the Order or applicable package;
- b. backups are a disaster-recovery measure and are not a permanent archive;
- c. Brace does not guarantee that every backup will be complete or capable of restoration;
- d. the Customer should retain separate copies of irreplaceable content and business data; and
- e. restoration work may be chargeable unless the Order expressly includes it.

### **9.6 Included support time**

Where a package includes support time:

- a. it may be used only for eligible work during the applicable billing period;
- b. unused time expires at the end of that billing period unless the Order states otherwise;
- c. it cannot be exchanged for cash or credited against other Services; and
- d. additional work shall be charged at the applicable rate.

### **9.7 Response and resolution**

Any response targets are targets only unless expressly described in the Order as a service-level commitment.

A response target is not a guaranteed resolution time.

### **9.8 Emergency work**

Brace may take reasonable emergency action to protect a website, system, data or other customers. This may include disabling a feature, plugin, form or account.

Brace shall inform the Customer as soon as reasonably practicable.

### **9.9 Maintenance cancellation**

Unless an Order specifies an Initial Term or different notice period, the Customer may cancel ongoing website maintenance or support by giving one calendar month's written notice.

Charges remain payable during the notice period.

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## **10. HOSTING, DOMAINS AND EMAIL SERVICES**

### **10.1**

This clause applies only where Brace is expressly named as the supplier of hosting, domain or email Services.

### **10.2**

Where these services are supplied by a separate legal entity, including Sentinel Infrastructure or White Light Hosting Limited, that supplier's own terms apply.

### **10.3**

Brace does not guarantee uninterrupted availability of hosting, domains, DNS or email services.

### **10.4**

The Customer remains responsible for:

- a. renewing services not expressly managed by Brace;
- b. maintaining accurate registrant and account details;
- c. lawful use of email and hosting resources;
- d. mailbox storage and local archiving; and
- e. ensuring that authorised contacts remain current.

### **10.5**

A domain name remains subject to registry and registrar rules. Brace cannot guarantee registration, renewal, transfer or recovery of a particular domain.

### **10.6**

Brace may suspend hosting, website or email access where reasonably necessary because of non-payment, unlawful use, excessive resource usage, a security threat or a breach of applicable provider terms.

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## **11. INTELLECTUAL PROPERTY RIGHTS**

### **11.1 Customer Materials**

The Customer retains ownership of the Intellectual Property Rights in Customer Materials.

The Customer grants Brace a non-exclusive, royalty-free licence to use, reproduce, modify and process Customer Materials to the extent reasonably required to provide the Services.

### **11.2 Customer warranty**

The Customer warrants that:

- a. it owns or has permission to use the Customer Materials;
- b. Brace's authorised use of them will not infringe another person's rights; and
- c. they are not unlawful, defamatory, misleading or harmful.

### **11.3 Brace background materials**

Brace retains ownership of:

- a. materials, code, software, tools, templates and systems created before the Contract;
- b. general skills, concepts, processes and know-how;
- c. reusable code and functionality;
- d. working files and development tools;
- e. preliminary concepts and rejected designs; and
- f. materials not expressly identified as final Deliverables.

These are referred to as **Brace Background Materials**.

### **11.4 Bespoke final Deliverables**

Subject to full payment of all amounts due under the relevant Order, Brace assigns to the Customer the copyright in final bespoke Deliverables created exclusively for the Customer, excluding:

- a. Brace Background Materials;
- b. open-source software;
- c. Third-Party Services and materials;
- d. fonts, stock assets, plugins and licensed materials;

- e. reusable code and generic functionality; and
- f. working files unless expressly included in the Order.

### **11.5 Embedded Brace materials**

Where Brace Background Materials are incorporated into a paid Deliverable, Brace grants the Customer a perpetual, non-exclusive, worldwide licence to use those materials as part of that Deliverable for the Customer's own business purposes.

The Customer may not extract, resell or commercially exploit the Brace Background Materials separately.

### **11.6 Third-party rights**

Third-party and open-source materials remain subject to their applicable licence terms.

### **11.7 Unpaid work**

No licence or assignment takes effect until all amounts due for the relevant work have been paid in full.

### **11.8 Portfolio use**

Unless the Customer objects in writing for a genuine confidentiality reason, Brace may identify the Customer as a client and display non-confidential completed work in Brace's portfolio, website, presentations, award entries and marketing materials.

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## **12. CONFIDENTIALITY**

### **12.1**

Each party shall keep the other party's confidential information confidential and use it only for the purposes of the Contract.

### **12.2**

Confidential information may be disclosed:

- a. to employees, professional advisers and subcontractors who need it and are subject to confidentiality obligations;
- b. where required by law, regulation or court order; or
- c. with the other party's written consent.

### **12.3**

Confidential information does not include information that:

- a. is lawfully public;
- b. was already lawfully known without restriction;
- c. is independently developed without use of the confidential information; or
- d. is lawfully obtained from another source.

#### **12.4**

This clause survives termination.

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### **13. DATA PROTECTION**

#### **13.1**

Each party shall comply with applicable data-protection law, including the UK GDPR and Data Protection Act 2018.

#### **13.2**

The parties shall determine their respective controller and processor roles based on the particular processing activity.

#### **13.3**

Where Brace processes personal data solely on the Customer's behalf, the Customer is the controller and Brace is the processor. Schedule 1 applies to that processing.

#### **13.4**

The Customer is responsible for:

- a. identifying a lawful basis for processing;
- b. giving required privacy information;
- c. responding to individuals exercising their rights;
- d. ensuring that its instructions are lawful;
- e. collecting only the personal data it needs; and
- f. deciding appropriate retention periods.

#### **13.5**

Brace may process business contact information as an independent controller for account administration, billing, legal compliance, security and management of the commercial relationship.

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## **14. TERM, CANCELLATION AND TERMINATION**

### **14.1**

The Contract starts on the Commencement Date and continues:

- a. for the Initial Term stated in the Order; and
- b. thereafter until terminated in accordance with the Order or these Conditions.

### **14.2 Project work**

Where the Customer cancels project work after acceptance, it shall pay:

- a. all work completed up to cancellation;
- b. work reasonably scheduled or committed;
- c. non-refundable third-party costs;
- d. cancellation charges stated in the Order; and
- e. reasonable costs arising from cancellation.

Any deposit is non-refundable to the extent required to cover those amounts.

### **14.3 Recurring Services**

Unless a different period is stated in the Order:

- a. SEO Services require three calendar months' written notice under clause 8.9;
- b. website maintenance and support require one calendar month's written notice under clause 9.9; and
- c. other Recurring Services require one calendar month's written notice.

### **14.4 Form of cancellation notice**

Cancellation notice must:

- a. be in writing;
- b. identify the Customer and Services being cancelled;
- c. be sent to [accounts@brace.co.uk](mailto:accounts@brace.co.uk) or another address notified by Brace; and
- d. be sent by a director, owner or authorised representative of the Customer.

Brace shall acknowledge valid notice in writing.

### **14.5**

A request to pause work, remove access, stop a Direct Debit or stop using the Services is not, by itself, valid cancellation notice.

#### **14.6 Termination for breach**

Either party may terminate the affected Contract immediately by written notice where the other party:

- a. commits a material breach that cannot be remedied;
- b. commits a material breach capable of remedy and fails to remedy it within 14 days after written notice;
- c. becomes insolvent, enters liquidation or administration, ceases trading or is unable to pay its debts; or
- d. acts unlawfully in connection with the Services.

#### **14.7 Brace termination and suspension**

Brace may suspend Services or terminate the affected Contract immediately where:

- a. an invoice remains overdue after written reminder;
- b. the Customer repeatedly pays late;
- c. the Customer creates a material security, legal or reputational risk;
- d. continued work would breach law or third-party terms;
- e. the Customer abuses or threatens Brace personnel; or
- f. required access or cooperation is persistently withheld.

#### **14.8 Change of control**

The Customer shall notify Brace promptly of a material change in ownership or control.

A change in the Customer's shareholders, directors or management does not release the Customer from its existing contractual obligations.

Brace may reasonably require updated billing details, contact details, authority evidence, payment arrangements or security following a change of control.

#### **14.9**

Termination of one Order does not automatically terminate any other Order.

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## **15. CONSEQUENCES OF TERMINATION**

### **15.1**

On termination:

- a. all outstanding invoices and accrued Charges become payable;
- b. Brace may invoice work completed and costs incurred but not yet invoiced;
- c. the Customer's right to use unpaid Deliverables ends;
- d. each party shall return or delete confidential information where reasonably required;  
and
- e. clauses intended to survive termination remain in force.

## **15.2 Handover**

After all amounts due have been paid, Brace shall provide reasonable cooperation to hand over Customer-owned materials and access held by Brace.

## **15.3**

Unless included in the Order, migration, export, documentation, data preparation, supplier liaison, training and other transition assistance are chargeable at Brace's applicable rates.

## **15.4**

Brace is not required to:

- a. transfer licences that are not transferable;
- b. supply proprietary Brace tools or Background Materials;
- c. release another customer's information;
- d. continue providing Services after termination; or
- e. carry out handover work while invoices are overdue.

## **15.5**

Unless law requires otherwise, Brace may delete working files, backups and Customer personal data after 30 days from termination or completion of the relevant handover.

The Customer must request and obtain any required export before that period expires.

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## **16. WARRANTIES AND DISCLAIMERS**

### **16.1**

Brace warrants that it shall provide the Services with reasonable care and skill.

## **16.2**

Except as expressly stated in the Contract, all warranties, conditions and other terms implied by law are excluded to the fullest extent permitted by law.

## **16.3**

Brace does not warrant that:

- a. the Services will achieve a particular commercial result;
- b. a website, application or campaign will be uninterrupted or error-free;
- c. a website will display identically on every device, browser or software version;
- d. every security threat will be detected or prevented;
- e. Third-Party Services will remain available or unchanged; or
- f. the Customer's business, content or processes comply with law.

## **16.4**

Brace is not responsible for loss caused by:

- a. inaccurate or incomplete Customer instructions;
  - b. Customer Materials;
  - c. changes made by the Customer or another supplier;
  - d. failure by the Customer to follow advice;
  - e. compromised Customer credentials;
  - f. unsupported or obsolete software;
  - g. Third-Party Services; or
  - h. matters outside Brace's reasonable control.
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## **17. LIMITATION OF LIABILITY**

### **17.1**

Nothing in the Contract limits or excludes liability for:

- a. death or personal injury caused by negligence;
- b. fraud or fraudulent misrepresentation;
- c. a liability that cannot lawfully be limited or excluded; or

d. the Customer's obligation to pay the Charges.

## **17.2**

Subject to clause 17.1, Brace shall not be liable for:

- a. loss of profit;
- b. loss of revenue;
- c. loss of sales or business;
- d. loss of contracts;
- e. loss of anticipated savings;
- f. loss of opportunity;
- g. loss of goodwill or reputation;
- h. loss or corruption of data, except for reasonable direct restoration costs under clause 17.4;
- i. business interruption; or
- j. any indirect or consequential loss.

## **17.3**

Subject to clause 17.1, Brace's total aggregate liability arising out of or in connection with an Order, whether in contract, tort, negligence, misrepresentation, breach of statutory duty or otherwise, shall not exceed the total Charges paid or payable under that Order during the 12 months immediately preceding the event giving rise to the claim.

Where the relevant Order has existed for less than 12 months, the cap shall be the total Charges paid or payable during that shorter period.

## **17.4**

Where Brace is liable for loss or corruption of data, Brace's liability is limited to the reasonable direct cost of attempting to restore the data from the latest usable backup held by Brace, subject always to the overall cap in clause 17.3.

## **17.5**

Brace shall not be liable for a failure caused by the Customer, a Third-Party Service or an event outside Brace's reasonable control.

## **17.6**

The parties agree that:

- a. the Charges reflect the allocation of risk in this clause;
- b. the Customer is responsible for arranging appropriate business interruption, cyber, data and other insurance; and
- c. the Customer may request a higher liability cap before accepting an Order, subject to agreement of revised Charges and insurance arrangements.

#### **17.7**

Each limitation and exclusion in this clause operates separately.

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### **18. CUSTOMER INDEMNITY**

The Customer shall indemnify Brace against losses, liabilities, claims, costs and reasonable professional expenses arising from a third-party claim caused by:

- a. Customer Materials infringing Intellectual Property Rights;
- b. unlawful, defamatory, misleading or harmful Customer Materials;
- c. Brace following an unlawful Customer instruction;
- d. the Customer's breach of applicable Third-Party Service terms; or
- e. the Customer's breach of clause 4 or clause 11.2.

This indemnity does not apply to the extent that the claim was caused by Brace's own breach or negligence.

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### **19. FORCE MAJEURE**

Neither party shall be liable for delay or failure caused by an event outside its reasonable control.

Such events may include failure of telecommunications or internet services, utility failure, cyberattack, epidemic, industrial dispute, fire, flood, extreme weather, governmental action and failure of a critical supplier.

The affected party shall notify the other and use reasonable efforts to reduce the effect.

If the event continues for more than 60 days, either party may terminate the affected Services on written notice. Charges accrued before termination remain payable.

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### **20. NOTICES**

## **20.1**

A formal notice under the Contract must be in writing and sent:

- a. by hand or prepaid first-class post to the registered office or principal business address of the receiving party; or
- b. by email to the address stated in the Order or subsequently notified for formal notices.

## **20.2**

A notice is treated as received:

- a. if delivered by hand, when left at the correct address;
- b. if posted, at 9:00am on the second Business Day after posting; and
- c. if emailed, when sent, provided no delivery-failure notification is received, or at 9:00am on the next Business Day if sent outside normal business hours.

## **20.3**

This clause does not apply to service of court proceedings.

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## **21. GENERAL**

### **21.1 Entire agreement**

The Contract constitutes the entire agreement relating to its subject matter and replaces previous discussions, representations and understandings relating to that Order.

Neither party relies on a statement not set out in the Contract, except that this does not exclude liability for fraud.

### **21.2 Variation**

A material variation to the Contract must be agreed in writing by authorised representatives of both parties.

### **21.3 Assignment**

Brace may assign or subcontract its rights and obligations provided this does not materially reduce the Customer's rights.

The Customer may not assign, transfer or subcontract the Contract without Brace's prior written consent.

### **21.4 No partnership**

Nothing in the Contract creates a partnership, joint venture, employment relationship or agency between the parties.

### **21.5 Third-party rights**

A person who is not a party to the Contract has no right to enforce it under the Contracts (Rights of Third Parties) Act 1999.

### **21.6 Waiver**

A failure or delay in exercising a right is not a waiver of that right.

### **21.7 Severance**

If any provision is held invalid or unenforceable, it shall be modified to the minimum extent necessary or deleted, and the remaining provisions shall continue in force.

### **21.8 Continuing provisions**

Provisions relating to payment, confidentiality, data protection, Intellectual Property Rights, liability, indemnities and consequences of termination survive termination.

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## **22. GOVERNING LAW AND JURISDICTION**

The Contract and any dispute or claim arising out of it are governed by the law of England and Wales.

The courts of England and Wales shall have exclusive jurisdiction.

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## **SCHEDULE 1**

### **DATA PROCESSING TERMS**

This Schedule applies where Brace processes personal data on behalf of the Customer.

#### **1. ROLES**

The Customer is the controller and Brace is the processor for the relevant processing.

Each party shall comply with the obligations applicable to it under data-protection law.

#### **2. PROCESSING DETAILS**

Unless an Order states otherwise:

**Subject matter:**

Provision of website development, website maintenance, digital marketing, technical

support, system support, analytics, hosting-related administration and related Services.

**Duration:**

For the duration of the relevant Services and any reasonable handover, backup-retention or legal-retention period.

**Nature and purpose:**

Accessing, collecting, recording, organising, structuring, storing, reviewing, modifying, retrieving, consulting, transmitting, backing up, restoring, deleting and otherwise processing personal data to provide the Services.

**Categories of personal data may include:**

Names, business contact details, personal contact details, website submissions, account details, communications, technical identifiers, IP addresses, analytics information, customer-service records, transaction information and other information held within systems to which Brace is given access.

**Categories of data subjects may include:**

The Customer's employees, workers, contractors, customers, prospective customers, suppliers, business contacts, website users and other individuals whose personal data is held in the relevant systems.

The Customer shall notify Brace before providing special-category data, criminal-offence data, financial authentication data or other unusually sensitive information not reasonably expected for the Services.

**3. DOCUMENTED INSTRUCTIONS**

Brace shall process personal data only on the Customer's documented instructions, including the Contract, Order and lawful instructions issued during the Services.

Brace may process personal data where required by UK law, in which case Brace shall inform the Customer before processing unless the law prohibits this.

Brace shall promptly notify the Customer if it reasonably believes an instruction infringes data-protection law.

**4. CONFIDENTIALITY**

Brace shall ensure that persons authorised to process Customer personal data are subject to appropriate confidentiality obligations.

**5. SECURITY**

Brace shall implement appropriate technical and organisational measures having regard to:

- a. the nature, scope, context and purposes of processing;
- b. the available technology;
- c. implementation costs; and
- d. the likelihood and severity of risks to individuals.

Measures may include, where appropriate:

- a. access controls and least-privilege access;
- b. password management and multifactor authentication;
- c. encryption in transit;
- d. device and network security;
- e. software updates and vulnerability management;
- f. backup and recovery measures;
- g. malware protection;
- h. staff confidentiality and security awareness;
- i. incident-management procedures; and
- j. periodic review of access.

## **6. SUB-PROCESSORS**

The Customer gives Brace general authorisation to appoint sub-processors reasonably required to provide the Services.

Brace shall:

- a. carry out reasonable due diligence;
- b. impose written data-protection obligations providing an equivalent level of protection;
- c. remain responsible for the sub-processor's performance of those obligations; and
- d. provide information about material sub-processors on reasonable request.

Brace shall give reasonable notice of a material new sub-processor where practicable.

The Customer may object on reasonable data-protection grounds within 10 Business Days. The parties shall work in good faith to resolve the objection.

If no reasonable alternative is available, either party may terminate the affected processing Service.

## **7. INDIVIDUAL RIGHTS**

Taking account of the nature of processing, Brace shall provide reasonable assistance to help the Customer respond to requests from individuals exercising data-protection rights.

Unless caused by Brace's breach, substantial assistance may be charged at Brace's applicable rates.

Brace shall not respond directly to an individual's request concerning Customer personal data unless instructed by the Customer or required by law.

## **8. PERSONAL DATA BREACHES**

Brace shall notify the Customer without undue delay after becoming aware of a personal data breach affecting Customer personal data.

Where available, the notification shall include:

- a. the nature of the breach;
- b. categories of data and individuals affected;
- c. likely consequences;
- d. measures taken or proposed; and
- e. available contact details.

Brace may provide information in stages where it is not immediately available.

## **9. ASSISTANCE AND COMPLIANCE**

Taking account of the nature of processing and information available to it, Brace shall provide reasonable assistance with:

- a. security obligations;
- b. personal data breach notifications;
- c. data-protection impact assessments; and
- d. prior consultation with the Information Commissioner.

Assistance outside the ordinary Services may be chargeable unless required because of Brace's breach.

## **10. RETURN AND DELETION**

At the end of the Services, Brace shall, at the Customer's choice and subject to payment of applicable Charges, return or delete Customer personal data, unless UK law requires its retention.

Personal data may remain temporarily in routine backups until overwritten in accordance with normal retention cycles, provided it remains protected and is not used for another purpose.

## **11. AUDITS**

Brace shall make available information reasonably necessary to demonstrate compliance with this Schedule.

The Customer may carry out one reasonable audit in any 12-month period by giving at least 20 Business Days' notice.

Audits must:

- a. take place during normal business hours;
- b. avoid unnecessary disruption;
- c. protect other customers' confidentiality and security; and
- d. use existing independent reports and documentation where reasonably sufficient.

The Customer shall bear reasonable audit costs unless the audit identifies a material breach by Brace.

## **12. INTERNATIONAL TRANSFERS**

Brace shall not make a restricted transfer of Customer personal data outside the United Kingdom unless:

- a. the transfer is covered by UK adequacy regulations;
- b. appropriate safeguards are in place; or
- c. another lawful transfer mechanism applies.

## **13. PRIORITY**

If this Schedule conflicts with another part of the Contract regarding processing of Customer personal data, this Schedule takes priority.