

brace digital

Terms & Conditions
G-Cloud 15

SERVICES AGREEMENT

SUPPLY OF SERVICES CONTRACT dated: XXXXX

Between

1. Brace Digital Limited (registered number: 09921185) whose registered office is C/O Accountants247 Ltd, Block 5, Room 5172, The Heath Business And Technical Park, Runcorn, Cheshire, England, WA7 4QX, United Kingdom (**Brace Digital**); and
2. [COMPANY NAME] LIMITED (No. [COMPANY NUMBER]) whose registered office is at [COMPANY ADDRESS] (**Customer**).

Background

- A. Brace Digital provides web development and IT services to customers.
- B. Brace Digital wishes to provide, and the Customer wishes to receive such services on the terms of this Contract.

Agreed Terms

1. Interpretation

1.1 Definitions:

- 1 **Acceptance Tests:** the tests carried out by Customer to ensure the Deliverables meet the expected result or as detailed in a specification document (as applicable).
- 2 **Background IPRs:** all Intellectual Property Rights of Brace Digital or its licensors which existed before the Services Start Date or which were not created wholly for the purposes of this Contract.
- 3 **Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- 4 **Charges:** the charges payable by the Customer for the supply of the Services by Brace Digital, as set out in Schedule 2.
- 5 **Contract:** the contract between the Customer and Brace Digital for the supply of the Services.
- 6 **Contract IPRs:** all Intellectual Property Rights subsisting in the Deliverables, excluding the Background IPRs.
- 7 **Customer Materials:** all materials, equipment and tools, drawings, specifications and data supplied by the Customer to Brace Digital.
- 8 **Data Protection Legislation:** up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.
- 9 **Deliverables:** all documents, products and materials developed by Brace Digital or its agents, subcontractors and personnel as part of or in relation to the Services in any form.
- 10 **Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, 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 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.

- 11 **Services:** the services, including without limitation any Deliverables, to be provided by Brace Digital pursuant to the Contract, as described in Schedule 1.
- 12 **Services Start Date:** the day on which Brace Digital is to start provision of the Services, as set out in Schedule 1.
- 13 **SLA:** the service level agreement signed by the parties and annexed to this Contract.
- 14 **Term:** the period given in clause 2.

1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision includes any subordinate legislation made from time to time under that statute or statutory provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes fax and email.

1.3 Conflict:

If there is any conflict or ambiguity between the terms of any of the following documents, they shall prevail in the following order: (i) this Contract (excluding its Schedules), (ii) the Schedules and (iii) the SLA.

2. Commencement and term

- 2.1 The Contract shall commence on the date when it has been signed by both parties and shall continue until the Services have been completed, unless terminated earlier in accordance with clause 2.2 or clause 12.
- 2.2 Either party may terminate this Contract at any time by giving to the other not less than one month's written notice to terminate.

3. Supply of services

- 3.1 The Supplier shall supply the Services to the Customer from the Services Start Date in accordance with the Contract.
- 3.2 In supplying the Services, the Supplier shall:
 - (a) perform the Services with reasonable care and skill;
 - (b) use reasonable endeavours to perform the Services in accordance with the service description set out in **Schedule 1**;
 - (c) use reasonable endeavours to meet any agreed performance dates (provided that time shall not be of the essence);
 - (d) ensure that the Deliverables are of satisfactory quality and are fit for purpose for a period of 30 days from the date on which the Acceptance Tests are successfully completed;

- (e) comply with all applicable laws, statutes, regulations from time to time in force provided that the Supplier shall not be liable under the Contract if, as a result of such compliance, it is in breach of any of its obligations under the Contract.
- (f) observe all reasonable health and safety rules and regulations and security requirements that apply at any of the Customer's premises and have been communicated to the Supplier, provided that the Supplier shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract; and
- (g) take reasonable care of all Customer Materials in its possession and make them available for collection by the Customer on reasonable notice and request, always provided that the Supplier may destroy the Customer Materials if the Customer fails to collect the Customer Materials within a reasonable period after termination of the Contract.

4. Customer's obligations

4.1 The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Services;
- (b) provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, systems, software (including source code), data and other facilities (including remote access to its systems) as required by the Supplier;
- (c) provide, in a timely manner, such information as the Supplier may reasonably require, and ensure that it is accurate and complete in all material respects.
- (d) If Brace Digital's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall:
- (e) not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay;
- (f) be entitled to payment of the Charges despite any such prevention or delay; and
- (g) be entitled to recover any additional costs, charges or losses the Supplier sustains or incurs that arise directly or indirectly from such prevention or delay.

5. Intellectual property

5.1 The Customer shall own the Deliverables and the Contract IPRs.

5.2 Brace Digital and its licensors shall retain ownership of the Background IPRs. The Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials.

5.3 Brace Digital grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, irrevocable, non-exclusive, royalty-free, licence to use the Background IPRs for the purpose of using the Deliverables for their intended purpose in the Customer's business.

5.4 The Customer grants Brace Digital a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the Term for the purpose of providing the Services to the Customer in accordance with the Contract.

5.5 Brace Digital:

- (a) warrants that the receipt, use of the Services and the Deliverables by the Customer shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
 - (b) shall not be in breach of the warranty at clause 5.5(a) to the extent the infringement arises from:
 - (i) the use of the Customer Materials in the development of, or the inclusion of the Customer Materials in any Deliverable;
 - (ii) any modification of the Deliverables or Services, other than by or on behalf of Brace Digital; and
 - (iii) compliance with the Customer's specifications or instructions.
- 5.6** The Customer warrants that the receipt and use of the Customer Materials in the performance of this Contract by Brace Digital, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party.

6. Acceptance Tests

- 6.1** Following completion of the Services and provision of the completed Deliverables to the Customer, the Customer shall within 14 days (or such other period as is set out in Schedule 1) of provision of the completed Deliverables carry out the Acceptance Tests, and promptly notify Brace Digital of the outcome.
- 6.2** If any Deliverable or any part of a Deliverable fails and Acceptance Test, Brace Digital shall promptly rectify such failure or omission on one or more occasions until the Acceptance Tests shall be successfully passed.
- 6.3** No Deliverable shall be deemed to have failed an Acceptance Test by reason of a minor failure or omission which does not affect the operation or performance of the Deliverable in question, provided that Brace Digital shall remain obliged to promptly rectify such failure or omission.
- 6.4** The Customer shall act reasonably in carrying out and determining the success or failure of the Acceptance Tests.

7. Charges and payment

- 7.1** In consideration for the provision of the Services, the Customer shall pay Brace Digital the Charges in accordance with this clause 7 and Schedule 2.
- 7.2** All amounts payable by the Customer exclude amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to Brace Digital at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.
- 7.3** Brace Digital shall submit invoices for the Charges plus VAT if applicable to the Customer at the intervals specified in Schedule 2. Each invoice shall include all reasonable supporting information required by the Customer.
- 7.4** The Customer shall pay each invoice due and submitted to it by Brace Digital, within the period and to the bank account set out in Schedule 2.
- 7.5** If the Customer fails to make any payment due to Brace Digital under the Contract by the due date for payment, then, without limiting Brace Digital's remedies under clause 12 (Termination):

- (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 will accrue each day at 4% a year above the Bank of England's base rate from time to time;
 - (b) Brace Digital may suspend all Services until payment has been made in full.
- 7.6** All amounts due under the Contract from the Customer to Brace Digital 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).
- 8. Limitation of liability**
- 8.1** Nothing in this Contract shall limit or exclude Brace Digital's liability for:
 - (a) death or personal injury caused by its negligence;
 - (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.
- 8.2** Subject to clause **8.1**, Brace Digital 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 this 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 or damage to goodwill;
 - (f) loss of use or corruption of software, data or information; or
 - (g) any indirect or consequential loss.
- 8.3** Subject to clause **8.1**, Brace Digital's total liability to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Contract shall be limited to the lower of £50,000 or 150% of the aggregate Charges paid by the Customer under this Contract.
- 8.4** The warranties set out in this Contract are in lieu of all other warranties and conditions which may otherwise be implied and which are, to the fullest extent permitted by law, excluded from this Contract.
- 9. Non-solicitation**
- 9.1** The Customer shall not, without the prior written consent of Brace Digital, at any time from the date of this Contract to the expiry of 24 months after the termination or expiry of this Contract, solicit or entice away from Brace Digital or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of Brace Digital in the provision of the Services.
- 9.2** Any consent given by Brace Digital in accordance with clause 9.1 shall be subject to the Customer paying to Brace Digital a sum equivalent to 20% of the then current annual remuneration of Brace Digital's employee, consultant or subcontractor or, if higher, 20% of

the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.

10. Change control

10.1 Either party may propose changes to the scope or execution of the Services but no proposed changes shall come into effect until a **Change Order** has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:

- (a) the Services;
- (b) Brace Digital's existing charges;
- (c) the timetable of the Services; and
- (d) any of the terms of this Contract.

10.2 If Brace Digital wishes to make a change to the Services it shall provide a draft Change Order to the Customer.

10.3 If the Customer wishes to make a change to the Services:

- (a) it shall notify Brace Digital and provide as much detail as Brace Digital reasonably requires of the proposed changes, including the timing of the proposed changes; and
- (b) Brace Digital shall, as soon as reasonably practicable after receiving the information at clause 10.3(a), provide a draft Change Order to the Customer.

10.4 If the parties:

- (a) agree to a Change Order, they shall sign it and that Change Order shall amend this Contract; or
- (b) are unable to agree a Change Order, this Contract shall continue unamended.

10.5 Brace Digital may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer pursuant to clause 10.3 on a time and materials basis at Brace Digital's standard daily rates.

11. Data protection and data processing

11.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

11.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and Brace Digital is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation. This clause 11 sets out the scope, nature and purpose of processing by Brace Digital, the duration of the processing and the types of Personal Data and categories of Data Subject (both as defined in the Data Protection Legislation).

11.3 Without prejudice to the generality of clause 11.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Brace Digital for the duration and purposes of this Contract.

11.4 Without prejudice to the generality of clause 11.1, Brace Digital shall, in relation to any Personal Data processed in connection with the performance by Brace Digital of its obligations under this Contract:

- (a) process that Personal Data only on the written instructions of the Customer;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or Brace Digital has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) Brace Digital complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) Brace Digital complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a Personal Data breach;
- (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Applicable Data Processing Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 11.

11.5 The Customer consents to Brace Digital appointing the third party processors set out in Schedule 1 for the processing of Personal Data under this Contract. Brace Digital confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business. As between the Customer and Brace Digital, Brace Digital shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 11.

12. Termination

12.1 Without affecting any other right or remedy available to it, either party to the Contract may terminate it with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (b) the other party 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;
- (c) the other party 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 other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

12.2 On termination of the Contract for whatever reason:

- (a) the Customer shall immediately pay to Brace Digital all of Brace Digital's outstanding unpaid invoices and interest and, in respect of Services supplied or undertaken but for which no invoice has been submitted, Brace Digital may submit an invoice, which shall be payable immediately on receipt;
- (b) any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect; and
- (c) termination or expiry of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, 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.

13. General

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

13.2 Assignment and other dealings. Either party may assign, transfer or subcontract any or all of its rights and obligations under the Contract without the other party's prior written consent.

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 or of any member of the group to which the other party belongs, except as permitted by clause 13.3. For the purposes of this clause, group means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.

- (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 any other party's confidential information for any purpose other than to perform its obligations under the Contract.

13.4 Entire agreement.

- (a) The Contract 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 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.

13.5 Variation. No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13.6 Waiver.

- (a) A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall 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 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 at 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 Schedule 1.
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt or 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 at the time recorded by the delivery service; and
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 13.8(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 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.

13.9 Third party rights. 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.

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.

This Contract has been entered into on the date stated at the beginning of it.

Signed

.....

for and on behalf of [NAME OF CUSTOMER]

Signed

.....

for and on behalf of Brace Digital Limited

Schedule 1 Contract Details

Contract reference: BDDEVXXX

Services Start Date: [XXXXXXXXXX].

Services: To be added as required, examples would be:

- Consultancy
- Technical advice
- Hosting support
- Design
- Frontend development
- Backend development
- Testing
- Project management
- IT system administration

Deliverables: [XXXXXXXXXX]

Brace Digital email address for notices: finance@bracedigital.com

Customer email address for notices: [XXXXXXXXXX].

Third party processors (for clause 11.5):

- Temporal Digital Ltd (Company No 10768325) of 1 Parkside Court, Bristol, BS4 3AA
- MadeBySwish Ltd, Military House, 24 Castle Street, Chester, CH1 2DS
- iO Associates Ltd, St Bartholomew's House, Bristol, BS1 2NH
- IOMI Solutions Ltd, 43 Stackpool Road, Bristol BS3 1NG
- ANS Group Limited, registered in England and Wales, company registration number 03176761, registered office 1 Archway, Birley Fields, Manchester M15 5QJ

Schedule 2 Charges**1. Charges for the services**

The Services shall be chargeable at £XXXXX + VAT for completion of the Services, on the following assumptions:

- There are no changes to the scope as agreed at the outset of this contract.

All services will be performed based on the rate card below. All rates are exclusive of VAT.

	Strategy & Architecture	Change & transformation	Development & implementation	Delivery & operation	People & skills	Relationships & engagement
1 - Follow	-	-	-	-	-	-
2 - Assist	-	-	-	-	-	-
3 - Apply	£750	£750	£750	£750	£750	£750
4 - Enable	£750	£750	£750	£750	£750	£750
5 - Ensure, advise	£750	£750	£750	£750	£750	£750
6 - Initiate, influence	£750	£750	£750	£750	£750	£750
7 - Set strategy, inspire, mobilise	£750	£750	£750	£750	£750	£750

2. Invoicing arrangements

The Customer shall settle invoices within 30 days of receipt by electronic transfer to the bank account detailed on invoice received.

brace digital