

SPECIAL TERMS – IT CONSULTANCY AND AD-HOC SUPPORT

These Special Terms – IT Consultancy and Ad-Hoc Support apply to the MSA between the Customer and the Company where IT Consultancy and Ad-Hoc Support is purchased. These Special Terms – IT Consultancy and Ad-Hoc Support apply in addition to the terms of the MSA in relation to the IT Consultancy and Ad-Hoc Support only.

1. Definitions

1.1 All terms in capitals used herein shall have the meaning given to them below unless defined otherwise in the General Terms and Conditions.

“Consultant”	means employees, agents and contractors of the Company;
“Content Standards”	means the content standards of the Company set out in Schedule I of these Special Terms - IT Consultancy and Ad-Hoc Support and/or of the Supplier, as applicable;
“Content”	means any design, software, source code, artwork, copy, drawing, data, specification, annual, content or other information (on whatever media stored including but not limited to electronic and printed media and materials) used or created by the Company (or its Consultants) in providing the IT Consultancy and Ad-Hoc Support;
“Customer Data”	means any and all materials, including without limitation any text, images, brand names or logos, copy material supplied by the Customer to the Company (or its Consultants) and including all content displayed on the Websites used in providing the IT Consultancy and Ad-Hoc Support;
“Effective Date”	means the effective date set out in the Order Form for the commencement of the IT Consultancy and Ad-Hoc Support;
“Inappropriate Content”	means material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of the Content Standards;
“IT Consultancy and Ad-Hoc Support”	means the IT Consultancy and Ad-Hoc Support included in an Order Form;
“Supplier”	means any third party supplier who provides software, hardware, hosting services, maintenance and support services or any services to the Customer, who is not the Company (or its Consultants);
“Term”	means the term starting from the Effective Date until either party terminates the IT Consultancy and Ad-Hoc Support as set out in clause 3.1;
“Website(s)”	means all websites owned or operated by the Customer.

2. Appointment

- 2.1 The Customer engages the Company to provide the IT Consultancy and Ad-Hoc Support to the Customer using its Consultants in accordance with these Special Terms – IT Consultancy and Ad-Hoc Support and the terms of the MSA.
- 2.2 The IT Consultancy and Ad-Hoc Support will be provided to the Customer on an ad hoc basis.

3. Term

3.1 The IT Consultancy and Ad-Hoc Support shall begin on the Effective Date set out in the Order Form and shall be provided until the IT Consultancy and Ad-Hoc Support is terminated by either party giving the other at least sixty (60) days notice in writing at any time.

4. Company Obligations

4.1 The Company shall provide the IT Consultancy and Ad-Hoc Support to the Customer:

4.1.1 On a non-exclusive, “when-needed” basis during the Term at its sole discretion upon receiving a request from the Customer. The Company provides no guarantee or its availability of the time for responding to a request or carrying out any work;

4.1.2 Only on Business Days during Business Hours;

4.1.3 Remotely or on premises, at such locations as the Company and Customer agree for any work.

4.2 The IT Consultancy and Ad-Hoc Support shall be provided by the company or its Consultants with reasonable skill and care.

4.3 The Company shall keep records of all acts and things done by the Consultant in relation to the provision of the IT Consultancy and Ad-Hoc Support and shall make such records available for inspection by the Customer and/or provide copies to the Customer, on request.

4.4 Where delivery of any IT Consultancy and Ad-Hoc Support is prevented or delayed by any act or omission of the Customer or failure of the Customer to perform any of its obligations, without limiting its other rights or remedies, have the right to suspend performance of the IT Consultancy and Ad-Hoc Support until the Customer remedies its default, and to rely on the Customer’s default to relieve the Company from the performance of any of its obligations to the extent that the default prevents or delays performance of any of the Company’s obligations. Furthermore, the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company’s failure or delay to perform any of its obligations and the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by it arising directly or indirectly from the Customer’s default.

5. Obligations of the Customer

5.1 The Customer shall:

5.1.1 Provide or arrange such reasonable support, assistance, materials and equipment (which shall be at the Customer’s expense) as the Company may reasonably require to enable it to properly provide the IT Consultancy and Ad-Hoc Support and so that the Company is not delayed in performing its obligations;

5.1.2 Provide the Company and Consultants, with access to the Customer’s premises, office accommodation, IT infrastructure, hardware and software and other facilities as reasonably required to provide the IT Consultancy and Ad-Hoc Support and provide office and administrative facilities at the Customer’s expense, where required.

5.1.3 Provide the Company promptly with information the Company reasonably requires so that the Consultant is not delayed in performing its obligations. The Customer acknowledges that the Company’s ability to provide the IT Consultancy and Ad-Hoc Support is dependent upon the Customer’s full and timely co-operation as well as the accuracy and completeness of Customer Data;

5.1.4 Ensure that Customer Data and Websites do not infringe any applicable laws, regulations or third party rights (including, without limitation, IPRs) and that Customer Data and Websites do not include any Inappropriate Content;

5.1.5 Comply with the Content Standards when using the IT Consultancy and Ad-Hoc Support;

5.1.6 Maintain backups of all Customer Data and Websites.

5.2 Where IT Consultancy and Ad-Hoc Support is to be provided on-site i.e. not remotely via the Internet or telephone:

5.2.1 The Customer must have a representative on site at all times;

5.2.2 The Customer must give at least 24 hours notice to cancel or re-schedule the on-site visit;

5.2.3 Fees will be payable in full for any “failed” visits where the Customer cannot access the premise as agreed to carry out the IT Consultancy and Ad-Hoc Support requested.

6. Fees, Invoicing and Payment

- 6.1 Time estimates will be provided for work requested but the Company shall invoice the Customer all Fees on a Time and Materials basis for the time actually spent on each matter, unless a fixed fee is agreed in any individual case prior to the work commencing.
- 6.2 Fees shall be calculated as set out in the Order Form for the provision of the IT Consultancy and Ad-Hoc Support.
- 6.3 All Fees shall be invoiced as set out in the Order Form.
- 6.4 The Company shall in addition to the Fees, charge for any expenses reasonably incurred by the Company or Consultant providing the IT Consultancy and Ad-Hoc Support, including but not limited to travelling expenses, congestion fee charges, parking fees, accommodation costs, subsistence and associated expenses and all costs for services provided Suppliers and required by the Company to provide the IT Consultancy and Ad-Hoc Support and for the cost of any materials required in the provision of the IT Consultancy and Ad-Hoc Support.

7. Intellectual Property

- 7.1 All Content is provided to the Customer ("as is"). The Company is not responsible for any breaches of IPRs of a third party caused by the Customer using any Content the Company provides to the Customer as part of the IT Consultancy and Ad-Hoc Support. It is the sole and exclusive duty of the Customer to check and ensure that use of any Content does not breach the IPRs of a third party.
- 7.2 Where Content contains software, data, programs, materials, data or other IPRs of the Company or its licensors, the Company and its licensors retain exclusive ownership, title and rights therein, including, without limitation possession.
- 7.3 Subject to payment in full of all Fees due for the IT Consultancy and Ad-Hoc Support, the Company grants the Customer a non-exclusive, non-transferrable, royalty-free, worldwide, perpetual licence to use and reuse the Content created by the Company or its Consultants, for its own internal business purposes.
- 7.4 The Customer or its licensors owns all IPRs in Customer Data on terms which entitle the Customer to provide the same to the Company and its Consultants in connection with the IT Consultancy and Ad-Hoc Support and which entitles the Company to use the same in the provision of the IT Consultancy and Ad-Hoc Support and as otherwise permitted in these Special Terms – IT Consultancy and Ad-Hoc Support.

8. Consultants

- 8.1 The Company must ensure that its Consultants comply with the Customer's usual staff and security policies if attending the Customer's premises.

9. Indemnity

- 9.1 The Customer shall defend, indemnify and hold harmless the Company, its, officers, employees and Consultants from and against any claims, actions, proceedings, losses, damages, fines, expenses and costs (including without limitation court costs and reasonable legal fees) arising directly or indirectly from:
- 9.1.1 Use by the Company of any Customer Data or third party provided item that is imported or used by Consultants in providing the IT Consultancy and Ad-Hoc Support; or
- 9.1.2 Any breach of Content Standards.

10. Miscellaneous

- 10.1 In the event of any inconsistency between the content of these Special Terms – IT Consultancy and Ad-Hoc Support and the remainder of the terms of the MSA, the terms of the Order Form shall prevail followed by these Special Terms – IT Consultancy and Ad-Hoc Support in relation to the IT Consultancy and Ad-Hoc Support, then the remainder of the terms of the MSA.

Schedule I Content Standards

Customer Data must not:

- breach the terms of a third party to whom the Company sub-contracts the IT Consultancy and Ad-Hoc Support (or any part of it) as such terms are amended from time to time;
- be unlawful or fraudulent, or have any unlawful or fraudulent purpose or effect;
- harm or attempt to harm minors in any way;
- be defamatory of any person, obscene, offensive, hateful or inflammatory, sexually explicit, promoting violence, be discriminatory based on race, sex, religion, nationality, disability, sexual orientation or age, be likely to deceive any person, be made in breach of any legal duty owed to a third party such as a contractual duty or a duty of confidence, promote any illegal activity, be threatening, abusive or invading another's privacy, or causing annoyance, inconvenience or needless anxiety, be likely to harass, upset, embarrass, alarm or annoy any other person, impersonate any person, misrepresent your identity or affiliation with any person, advocate, promote or assist any unlawful act such as (by way of example only) copyright infringement or computer misuse.

Customer Data must not be used:

- to transmit, or procure the sending of, or comprise any unsolicited or unauthorised advertising or promotional material or any other form of similar solicitation (spam);
- to knowingly transmit any data, send or upload any material that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware.