

SPECIAL TERMS – MANAGED IT SUPPORT

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

I. Definitions

I.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 any content standards of the Company set out in Schedule 1 of these Special Terms - Managed IT 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 Managed IT 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 or contained in Software or stored on any Hardware;
“Documentation”	means the written description of the Managed IT Support to be provided by the Company;
“Effective Date”	means the effective date set out in the Order Form for the commencement of the Managed IT Support;
“Hardware”	means the hardware of the Customer;
“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;
“Managed IT Support”	means the Managed IT Support included in an Order Form;
“SLA”	means the service level agreement of the Company published at https://www.speakdigital.co.uk/legal , as amended from time to time;
“Software”	means software owned or licenced to the Customer;
“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 Managed IT 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 Managed IT Support to the Customer using its Consultants in accordance with these Special Terms – Managed IT Support and the terms of the MSA.
- 2.2 The Managed IT Support will be provided to the Customer for the agreed number of supported users and Hardware and Software set out in the Documentation and/or Order Form, which can be adjusted from time to time, in writing by the parties during the Term.

3. Term

- 3.1 The Managed IT Support shall begin on the Effective Date set out in the Order Form and shall be provided until the Managed IT 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 Managed IT Support to the Customer:
 - 4.1.1 On a continual basis during the Term on Business Days during Business Hours;
 - 4.1.2 Remotely, unless the Company agrees that this is not possible, then on premises at the sole discretion of the Company, at such locations as the Company agrees to work;
 - 4.1.3 For Hardware and Software that is business standard i.e. Microsoft, Adobe, Google etc. and such assistance shall be provided for licensed third party software in conjunction with the Supplier.
- 4.2 Managed IT Support excludes:
 - 4.2.1 All repairs to printers and monitors;
 - 4.2.2 Any most replacement parts for desktops, laptops or PCs unless specifically agreed in any individual case;
 - 4.2.3 Any personal devices;
 - 4.2.4 Support or maintenance for bespoke or customised Hardware or Software.
- 4.3 The Managed IT Support shall be provided by the Company or its Consultants with reasonable skill and care.
- 4.4 The Company shall keep records of all acts and things done by the Consultant in relation to the provision of the Managed IT Support and shall make such records available for inspection by the Customer and/or provide copies to the Customer, on request.
- 4.5 Where delivery of any Managed IT Support is prevented or delayed by any act or omission of the Customer of 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 Managed IT 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 ^(SEP)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 ^(SEP)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 Managed IT 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 Managed IT 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 Managed IT 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 Have a representative of the Customer on-site during Business Hours on Business Days;
 - 5.1.5 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;
 - 5.1.6 Comply with the Content Standards when using the Managed IT Support;
 - 5.1.7 Maintain backups of all Customer Data and Websites.
- 5.2 Where Managed IT Support is to be provided on-site i.e. not remotely via the Internet or telephone:
- 5.2.1 The Customer must give at least 24 hours notice to cancel or re-schedule any on-site visit;
 - 5.2.2 Fees will be payable in full for any “failed” visits where the Customer cannot access the premise as agreed to carry out the Managed IT Support requested.

6. Fees, Invoicing and Payment

- 6.1 The monthly Fee paid for the Managed IT Support includes the following services:
- 6.1.1 Daily monitoring of backup reports and providing notifications of any issues;
 - 6.1.2 The option of having broadband connection uptime monitored;
 - 6.1.3 Carrying out of software checks i.e. maintenance of patches and updates if requested;
 - 6.1.4 Carrying out an on-site physical checkup once per calendar year on a scheduled date.
 - 6.1.5 All support provided to the Customer for the above during Business Hours.
- 6.2 No hardware and software costs are included in the monthly Fees and the Customer shall be responsible for paying these in addition.
- 6.3 Upon payment of additional Fees, the Company can provide the following add on services to support Customer’s existing infrastructure:
- 6.3.1 Provision of additional hardware or upgrades to Hardware;
 - 6.3.2 Relocation or re-arrangement of the Customer’s offices.

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 Managed IT 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 Managed IT 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 Managed IT Support and which entitles the Company to use the same in the provision of the Managed IT Support and as otherwise permitted in these Special Terms – Managed IT 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 Software or third party provided item that is imported, used or accessed by Consultants in providing the Managed IT 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 – Managed IT Support and the remainder of the terms of the MSA, the terms of the Order Form shall prevail followed by these Special Terms – Managed IT Support in relation to the Managed IT 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 Managed IT 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.