

SPECIAL TERMS - WEBSITE DESIGN SERVICES

These Special Terms – Website Design Services apply to the MSA between the Customer and the Company where Website Design Services are purchased. These Special Terms – Website Design Services apply in addition to the terms of the MSA in relation to the Website Design Services 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.

“Acceptance Tests”	means the acceptance tests referred to in clause 10 which test whether the Website provides the functions and meets the performance criteria set out in the Documentation;
“Content Standards”	means any content standards of the Company and/or Supplier;
“Customer Data”	means any and all materials, including without limitation any text, images, brand names or logos, copy material for uploading to the Website supplied by the Customer to the Company and all content displayed on the Website;
“Documentation”	means the written description of the functions and features of the Website to be provided by the Company;
“Domain Names”	means any domain names to be acquired by the Company on behalf of the Customer included in the Website Design Services set out in an Order Form;
“Effective Date”	means the effective date set out in the Order Form for the commencement of the Website Design Services;
“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;
“Personnel”	means employees, agents and contractors of the Company;
“Ready for Use”	has the meaning set out in clause 11;
“SLA”	means the service level agreement of the Company published at https://www.speakdigital.co.uk/legal , as amended from time to time, setting out the support and maintenance services provided for the Website(s) by the Company;
“Supplier”	means the third party supplier who hosts the Website(s) and or provides domain names on which the Website operates on behalf of the Customer;
“Term”	means the fixed term set out in each Order Form for the provision of the Website Design Services;
“Visitor”	means a visitor to the Website.

“Warranty Period”	means a period of 90 days starting from the date the Website is Ready for Use.
“Website Design Services”	means the Website Design Services included in an Order Form;
“Website(s)”	means the website(s) to be developed and delivered by the Company as part of the Website Design Services set out in an Order Form.

2. Scope of Website Design Services

- 2.1 The Customer engages the Company and the Company agrees to provide the Website Design Services to the Customer in accordance with these Special Terms – Website Design Services and the terms of the MSA.
- 2.2 Website Design Services do not include website hosting services or domain name services. Website hosting services and domain name services will not be provided by the Supplier unless they are included in any SaaS Reseller Services, set out in an Order Form.

3. Term and Termination

- 3.1 The Website Design Services shall begin on the Effective Date set out in the Order Form and shall be provided during the Term set out in the Order Form for the Website Design Services.

4. Company Obligations

- 4.1 The Website Design Services will be:
 - 4.1.1 Provided in accordance with the SLA; and
 - 4.1.2 Provided with reasonable skill and care.
- 4.2 The Company and its licensors shall have the right to make any changes to the Website Design Services which are necessary to comply with any applicable law, regulation or safety requirement, or which do not materially affect the nature or quality of the Website Design Services.
- 4.3 The Company shall develop the Website to provide:
 - 4.3.1 The functions and meet the performance criteria set out in the Documentation; and
 - 4.3.2 The Website Ready for Use.
- 4.4 The Company shall use reasonable endeavours to meet any performance or delivery dates agreed with the Customer in writing, but any such dates shall only be ^[SEP]estimates and time shall not be of the essence for performance or delivery of the Website Design Services.
- 4.5 The Company has right to make any changes to the Website which are necessary to comply with any applicable law or safety ^[SEP]requirement, or which do not materially affect the nature or quality of the Website.
- 4.6 Where performance of any Company obligations is prevented or delayed by any act or omission of the Customer of failure of the Customer to perform any of its obligations:
 - 4.6.1 The Company shall without limiting its other rights or remedies, have the right to suspend provision of the Website Design Services 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;
 - 4.6.2 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 in clause 4; and
 - 4.6.3 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 default.

5. Customer Obligations

The Customer shall:

- 5.1 Ensure that the description of the Website is complete and accurate.
- 5.2 Provide the Company promptly with all information the Company reasonably requires and co-operate with the Company so that the Company is not delayed in performing the Website Design Services.
- 5.3 Provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required to carry out the Website Design Services.
- 5.4 Provide the Company with such information and materials as it may reasonably require in order to supply the Website Design Services, and ensure that such information is accurate in all material respects. The Customer acknowledges that the Company's ability to provide the Website Design Services is dependent upon the Customer's full and timely co-operation as well as the accuracy and completeness of Customer Data.
- 5.5 Obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Website Design Services are to commence, including, without limitation, those required in respect of all Customer Data.
- 5.6 Keep and maintain all Company Materials, at the Customer's premises in safe custody at its own risk and maintain all Company Materials in good condition until returned to the Company, and not dispose of, or use, the Company Materials other than in accordance with the Company's written instructions or authorisation.
- 5.7 Ensure that Customer Data does not infringe any applicable laws, regulations or third party rights (including, without limitation, IPRs) and that Customer Data does not include any Inappropriate Content.
- 5.8 Communicate all modifications or request for changes to the Website to the Company in writing (which includes email).
- 5.9 Maintain backups of all Customer Data.

6. Fees, Invoicing and Payment

- 6.1 The Company shall invoice the Customer the Fees set out in the Order Form for the provision of the Website Design Services.
- 6.2 All Fees shall be invoiced as follows:
 - 6.2.1 20% of the Fees on the Effective Date;
 - 6.2.2 60% of the Fees on delivery of the Website for Acceptance Tests (prior to "go live");
 - 6.2.3 20% of the Fees on completion of the Acceptance Tests.
- 6.3 The Company shall in addition to the Fees, charge for any expenses reasonably incurred by Personnel in providing the Website Design Services, including but not limited to travelling expenses, accommodation costs, subsistence and associated expenses and the costs of services provided by third parties and required by the Company to provide the Website and for the cost of any materials.

7. Intellectual Property Rights

- 7.1 To the extent that the Company, its subsidiaries or affiliates or Personnel shall have created, developed or used software, data, programs, Company Materials, content or other IPRs in connection with providing the Website Design Services to the Customer, the Company, its subsidiaries or affiliates shall have and retain exclusive ownership and other rights therein, including, without limitation possession.
- 7.2 Subject to payment in full of all Fees due for the Website Design Services, the Company grants the Customer a non-exclusive, non-transferrable, royalty-free, worldwide, perpetual licence to use and reuse the source code and object code of the Website and other materials created by the Company or its Personnel, for its own internal business purposes.
- 7.3 The Customer owns all IPRs in Customer Data or is licensed to use Customer Data on terms which entitles the Customer to provide the same to the Company in connection with the Website Design Services and which entitles the Company to use the same in the provision of the Website Design Services and as otherwise permitted in these Special Terms – Website Design Services.

8. Personnel

- 8.1 The Company shall ensure that it has sufficient, suitable Personnel to perform its obligations under this Agreement.

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

9. Systems Testing

9.1 The Company shall prepare and submit to the Customer:

10.1.1 Sufficient tests, test results and test data to indicate whether the Website provides the functions and meets the performance criteria set out in the Documentation, which tests will include at least those tests which assess the performance of the Website as against the agreed criteria; and

10.1.2 The results expected to be achieved by carrying out the tests on the Hardware using the Website and the applicable system software.

9.2 The Company will provide the Customer with access to the Website in order for the Customer to carry out the Acceptance Tests.

10. Acceptance Testing

10.1 The Customer shall within 10 Business Days of being granted access to the Website (the "**Acceptance Testing Period**") perform the Acceptance Tests.

10.2 If the Customer believes that the Website does not materially comply with the Documentation it shall notify the Company in writing setting out full reasons for this view, with specific examples prior to the expiry of the Acceptance Testing Period.

10.3 The Company shall determine whether or not the failure of the Website to pass the Acceptance Tests is based upon non-compliance with the Documentation or results from a defect which is caused by an act or omission of the Customer, or its subcontractors or agents for whom the Company has no responsibility ("**Non-Supplier Defect**"). Where the failure is due to A Non-Supplier Defect the Website will be deemed to have been accepted.

10.4 The Company shall provide assistance reasonably requested by the Customer to remedy any Non-Supplier Defect by supplying additional services or products. The Customer shall pay the Company on a Time and Materials basis for all such additional services and products at the rates set out in the Order Form.

10.5 If the Website fails the Acceptance Tests due to the Website not materially complying with the Documentation, the Company shall set a date for repeating the Acceptance Tests.

10.6 If following the repeated Acceptance Tests the Website still does not materially comply with the Documentation, (provided that non-compliance does not result from any Non-Supplier Defect which shall be dealt with as in clause 10.4 above) then at the sole discretion of the Company the Company may:

10.6.1 Make further changes to the Website at no charge to the Customer; or

10.6.2 Agree additional charges with the Customer to cover such further work.

10.7 If such additional charges cannot be agreed the Company shall be under no further obligation to the Customer in respect of the Website and shall terminate provision of the Website Design Services with immediate effect without liability to the Customer. Any Fees already paid by the Customer to the Company for Website Design Services shall not be refunded and all outstanding already invoiced Fees shall become immediately payable. However, the Company shall waive its right to invoice and be paid any Fees which were to be invoiced or which were payable on delivery of the Website. In such circumstances, any licence to use the Website will terminate and, for the avoidance of doubt, the Customer shall have no right to access or use the Website.

10.8 The Website will be deemed to have passed any Acceptance Tests in any event if:

10.8.1 The Customer provides the Company with written confirmation of the successful Acceptance Tests of the Website prior to the end of the Acceptance Testing Period; or

10.8.2 The Customer commences use of the Website in a live environment as its primary software system for the provision of the functionality the Website is designed to deliver; or

10.8.3 The Acceptance Testing Period expires without the Customer making any written complaint or incident report to the Company concerning the Website.

11. Ready for Use

11.1 Following acceptance of the Website, the Website will be ready for use ("**Ready for Use**").

- 11.2 Once the Website is Ready for Use if any changes which are not necessary to ensure that the Website complies with the Documentation are requested by the Customer, the Company will charge for making such changes on a Time and Materials basis.
- 11.3 Prior to and/or up to a period of 1 month after the Website is Ready for Use the Company we will provide up to an aggregate of 2 hours of time to make aesthetic changes to the look and feel of the Website at the request of the Customer, at no charge. Any time incurred in excess of 2 hours, or requested more than 1 month after the Website is Ready for Use, will be charged for by the Company on a Time and Materials basis.^[17]

12. Representations and Warranties

- 12.1 The Company warrants that the Website shall materially comply with the Documentation and be free from material defects.
- 12.2 If at any time before the Warranty Period expires, the Company becomes aware of, or the Customer advises the Company of any failure of the Website to comply with the warranties given in clause 12.1, the Company shall promptly correct that failure.
- 12.3 All remedial work or replacement of the whole or any part of the Website carried out by the Company is warranted by the Company to the same extent as the Website from the date the work was completed or the part was replaced as the case may be.
- 12.4 If the Company is unable to correct any failure in accordance with clause 12.2, the Customer may elect:
- 12.4.1 To continue using the Website “as is”; or
- 12.4.2 To reject the Website and terminate the Website Design Services for material breach.
- 12.5 If the Customer elects to continue using the Website the Fees payable for the Website Design Services will be reduced by the Company in an amount attributable to that part of the Website that does not provide the functions and meet the performance criteria set out in the Documentation.

13. Customer Indemnity

- 13.1 The Customer shall defend, indemnify and hold harmless the Company, its officers, employees and Personnel from and against any claims, actions, proceedings, losses, damages, fines, expenses and costs (including without limitation court costs and reasonable legal fees) resulting directly or indirectly from:
- 13.1.1 Any claimed infringement or breach by the Customer or Visitors of any third party’s IPRs relating to use of the Website (excluding any claim resulting from Company Materials of the Company’s IPRs);
- 13.1.2 Use by the Company of any Customer Data or third party provided item that is imported into or used on the Website;
- 13.1.3 Any access or use of the Website by Visitors;
- and the Company shall be entitled to take reasonable measures in order to prevent breaches of third party rights from continuing.

14. Miscellaneous

- 14.1 In the event of any inconsistency between the content of these Special Terms – Website Design Services and the remainder of the terms of the MSA, the terms of the Order Form shall prevail followed by these Special Terms – Website Design Services in relation to the Website Design Services, then the remainder of the terms of the MSA.