



**PROFESSIONAL
CLOUD PUBLISHING**

PROFESSIONAL CLOUD PUBLISHING LTD

- TERMS AND CONDITIONS (V0518) -

www.pcpl.tech



1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions and the Order the following expressions will have the following meanings unless inconsistent with the context:

“Professional Cloud Publishing” and “PCPL”

are trading names of Professional Cloud Publishing Ltd (hereinafter called “PCPL”) which is a limited liability company registered in England and Wales with Registered Number 08728908 whose registered office is situated at 4 The Willows, Mill Farm Courtyard, Beachampton, Milton Keynes, MK19 6DS.

“Agreement” and “PCPL”

any contract made between PCPL and the Customer for the provision of the Services comprising the Terms and Conditions, the Order or any other request or order for goods or services accepted by PCPL and any other documents referred to therein.

“Associated Company”

any company which is, in relation to another company, its holding company or its subsidiary or a subsidiary of its holding company. “Holding Company” and “subsidiary” will have the meanings attributed to them in section 1159 and 1160 of the Companies Act 2006. Associated Company may also mean any company or business under the same ultimate control as PCPL.

“Business Day”

any day other than a Saturday or Sunday or a public or bank holiday in England.

“Charges”

such sums payable by the Customer to PCPL for the provision of the Services as set out in the Order.

“Commencement Date”

the date set out in the Order upon which the Agreement is to commence.

“Confidential Information”

any information expressed in any form regarding the business of either party which is commercially sensitive or of a confidential nature including but not limited to any ideas, business methods, finance, prices, customer / supplier lists or details, computer systems and software, products or services and any other information of a confidential nature.

“Customer”

the person(s), firm or company procuring the services whose Order for the Services is accepted by PCPL.

“Documentation”

in relation to the Customer; specifications, instructions or procedures and other information including but not limited to details of the nature of the business including information recorded or stored by any means whatsoever on any media whatsoever (including: in writing or other visible form; on tape or disc; by mechanical or electrical, electronic, magnetic or optical means; and whether or not such reproductions will result in a permanent record being made).

“Force Majeure”

any cause preventing PCPL from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable contemplation and control of PCPL including, without limitation, strikes, lockouts or other industrial disputes (whether involving the work force of PCPL or otherwise), protest, act of God, war, or national emergency, an act of terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, explosion, flood, storm, epidemic or default of suppliers or subcontractors.

“Intellectual Property Rights”

all intellectual and industrial property rights including patents, know-how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world together with all renewals and extensions.

“Order”

the Order forming part of the Agreement and incorporating these Terms and Conditions or any other request or order for goods or services accepted by PCPL which shall be deemed to include these Terms and Conditions.

“Services”

the services to be provided by PCPL to the Customer as more particularly described in the Order and subject to the terms and conditions of the Agreement.

“Specification”

the specification of the Services to be provided by PCPL to the Customer as more particularly described in the Order.

“Terms and Conditions”

the standard terms and conditions for the supply of the Services as set out in this document together with any special terms agreed in writing between the Customer and PCPL as more particularly set out in the Order or any Schedule to the Order signed by the customer and PCPL.

“Term”

the period commencing on the Commencement Date and ending on the completion of the Services unless otherwise set out in the Order.

“VAT”

value added tax.

1.2 The headings in these Terms and Conditions are for convenience only and will not affect their construction or interpretation.



2. APPOINTMENT

- 2.1 The Customer engages PCPL to provide the Services for the Customer and PCPL agrees to provide the Services upon the terms and conditions of the Agreement.

3. FORMATION

- 3.1 Subject to any variation under **Condition 3.6**, the Agreement will be upon these Terms and Conditions to the exclusion of all other terms and conditions, including any terms or conditions which the Customer purports to apply under any confirmation of order, specification or similar document, whether or not such document is referred to in the Agreement.
- 3.2 Each Order or acceptance of a quotation for Services will be deemed to be an offer by the Customer to acquire the Services upon these Terms and Conditions. The Contract is formed when the Order is accepted by PCPL.
- 3.3 By submitting an order the Customer acknowledges that the Customer has received notice of and has read and accepted these Terms and Conditions. All Orders must be on the PCPL standard order form unless PCPL in its absolute discretion accepts an order or request in another form.
- 3.4 Any quotation is valid for a period of 30 days only from its date, provided PCPL has not previously withdrawn it.
- 3.5 The Customer must ensure that the terms of the Order and any applicable specification are complete and accurate.
- 3.6 Without Prejudice to clause 3.3 above acceptance of delivery of any part of the Services or commencement of performance of the Services or any part thereof will be deemed conclusive evidence of the Customer's acceptance of these Terms and Conditions.
- 3.7 Save as set out in the Agreement, these Terms and Conditions may only be varied or amended in writing and signed and acknowledged by a Director of PCPL signing for and on behalf of PCPL.
- 3.8 Save as provided for in **Condition 12**, the Customer may not terminate all or any part of the Services. Should the Customer purport or attempt to terminate all or any part of the Services in contravention of this clause, PCPL may refuse to carry out any remaining Services and the Customer shall in all circumstances pay within 5 working days the Charges or the balance outstanding of the Charges.

4. THE SERVICES

- 4.1 The description of the Services will be as set out in the Order. PCPL will perform the Services in accordance with the terms of the Agreement and the Customer shall give PCPL all such assistance as PCPL may reasonably expect or request from time to time to enable PCPL to perform and complete the Services.

- 4.2 All samples, descriptive matter, specifications and advertising issued by PCPL and any descriptions contained in PCPL's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services represented by or described in them, and will not form part of the Agreement.

- 4.3 PCPL may make any changes to the Specification, design or provision of the Services which:

4.3.1 is required to conform with any applicable statutory or regulatory requirement; or

4.3.2 does not materially affect the performance or use of the Services or any part thereof.

- 4.4 In providing the Services PCPL may engage any Associated Company under its control and/or engage or involve such third parties as it deems appropriate to enable it to properly perform and complete the Services and any charges incurred may be billed as if PCPL had carried out such work or functions itself.

- 4.5 PCPL will use reasonable endeavours to perform the Services within any time agreed in writing when the Customer places an Order and specified in the Order and, if no time is agreed, then within a reasonable time, but the time of performance will not be of the essence. If, PCPL is unable for any reason to deliver the Services by a date that has been agreed, PCPL will be deemed not to be in breach of the Agreement, and will not have any liability to the Customer for direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused (including as a result of negligence) by any delay or failure in performance except as set out in this Condition 4.5 (save that PCPL will be liable for death or personal injury caused by its negligence). Any delay in performance will not entitle the Customer to cancel the Order unless and until the Customer has given 28 days' written notice to PCPL requiring performance to be made and PCPL has not fulfilled the performance within that period. If the Customer cancels the Order in accordance with this **Condition 4.5** then:

4.5.1 PCPL will refund to the Customer any sums which the Customer has paid to PCPL in respect of that Order or part of the Order which has been cancelled; and

4.5.2 the Customer will be under no liability to make any further payments under **Condition 5.1** in respect of that Order or part of the Order which has been cancelled.

5. CHARGES

- 5.1 In consideration of the provision of the Services by PCPL the Customer shall pay to PCPL the Charges. Such Charges shall be exclusive of VAT (if applicable) which shall be payable in addition to the Charges at the prevailing rate from time to time in force.
- 5.2 PCPL will be entitled to increase the Charges following any changes in the Specification made at the request of the Customer and agreed by PCPL or to cover any extra expense as a result of the Customer's instructions or lack of instructions or the failure to provide information or documents reasonably required by PCPL.

- 5.3 PCPL will be entitled to increase the Charges for the provision of the services of the Services by a fair and reasonable amount when the Company's costs in performing the Services are increased, however such increase may be caused.
- 5.4 Where the Term exceeds 6 calendar months, PCPL (acting reasonably) will be entitled to increase the Charges of the Services (at any time) with the consent of the Customer (such consent shall not be unreasonably withheld or delayed).
- 5.5 The Charges and any VAT payable shall be paid to PCPL in cleared funds by the Customer no later than 30 days following the date of an invoice from PCPL in accordance with **Condition 5.6** below. All payments shall be made by BACS transfer to the account of PCPL at the bank to be notified in writing by PCPL from time to time.
- 5.6 The parties agree that prior to the payment of the Charges PCPL should submit an invoice in respect of the Services setting out the work undertaken and payment claimed including VAT where properly chargeable.
- 5.7 If any sum payable under this Agreement is not paid when due then, without prejudice to PCPL's other rights under this Agreement, that sum will bear interest from the due date until payment is made in full both before and after any judgement at the rate set out under the Late Payment of Commercial Debts (Interest) Act 1998 or 4% above the base rate of Lloyds Bank PLC whichever is the higher.
- 5.8 All payments to be made by the Customer under the Agreement shall be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Customer is required by law to make any such deduction or withholding
- 5.9 Time shall be of the essence with regard to payment of the Charges
- 5.10 A deposit in cleared funds may be required at the sole discretion of PCPL at the time of submission of the Order and PCPL will not be obliged to commence work on the Services until the deposit is received.

6. STAGES

- 6.1 PCPL may perform any Services in stages. Each separate stage will be invoiced and paid for in accordance with the provisions of the Agreement.
- 6.2 Each stage will be a separate Agreement and no cancellation or termination of any one Agreement relating to a particular stage will entitle the Buyer to repudiate or cancel any other Agreement or stage.
- 6.3 PCPL shall be entitled to invoice monthly or at other intervals agreed in writing between the parties or specified in the Order for work carried out or Services provided under the Agreement.

7. DURATION

- 7.1 The Agreement shall commence upon the Commencement Date and shall continue (subject to earlier termination pursuant to Condition 12) for the duration of the Term or such other period as may be agreed between the parties in writing.

8. THE CUSTOMER'S OBLIGATIONS

- 8.1 The Customer shall throughout the Term:
- 8.1.1 use its best endeavours to promptly provide such Documentation, details of Intellectual Property Rights, Confidential Information and other information as may reasonably be required by PCPL for the proper performance of the Services, and in relation to any Intellectual Property Rights it provides to PCPL, the Customer shall indemnify PCPL against all costs and liabilities that PCPL may incur as a result of any third party bringing an action that the Intellectual Property Rights infringe the intellectual property rights of the third party;
- 8.1.2 promptly co-operate with PCPL in all matters relating to the Agreement and the provision of the Services;
- 8.1.3 notify PCPL on or before the Commencement Date of any specification to which the Services are to be performed;
- 8.1.4 supply all information and act at all times in compliance with all data protection legislation; and
- 8.1.5 will be responsible for proceeding with any particular Services given to it by PCPL and will ensure that the Services carried out by PCPL comply with all regulatory, legal and statutory compliance.
- 8.1.6 use its best endeavours to ensure that it recognises its responsibilities and the requirements and standards for the sending and receiving of emails (either in isolation or as part of a campaign) as set out in the USA CAN-SPAM Act of 2003 regulations and that all information received and passed to PCPL has been obtained and processed legally and with all the necessary permissions required to send email marketing material and data.

9. PCPL'S OBLIGATIONS

- 9.1 PCPL shall throughout the Term:
- 9.1.1 provide the Services to the Customer using all reasonable care and skill and the method of carrying out the Services shall be at PCPL's sole discretion unless otherwise agreed in writing between the parties;
- 9.1.2 use all reasonable endeavours promptly to provide the Customer on request with all information and assistance that the Customer may reasonably require in relation to the Agreement and/or the provision of the Services;
- 9.1.3 ensure that the Services meet any specifications given by the Customer;



9.1.4 keep true and accurate records of all things done in relation to the provision of the Services; and

9.1.5 provide additional services if agreed.

10. CONFIDENTIAL INFORMATION

10.1 Both parties agree:

10.1.1 to keep confidential all Confidential Information of the other (whether written or oral) which they have obtained or received as a result of the discussions leading up to or the entering into, or obtain or receive in performance of, the Agreement;

10.1.2 not to disclose the Confidential Information of the other in whole or in part to any person without the other's written consent, save to those third parties, agents and sub- contractors of PCPL involved in the negotiation of, the implementation of or the carrying out of the Services and who have a need to know the same and are bound to keep it confidential;

10.1.3 to use the Confidential Information of the other solely in connection with the performance of the Agreement and not otherwise or for the benefit of any party.

10.2 Each party shall procure that their respective employees shall maintain the other party's Confidential Information in strict confidence and shall not use the same at any time for any purpose except in performance of their duties under the Agreement.

10.3 The provisions of **Condition 10.1** shall not apply to the whole or any part of the Confidential Information which is:

10.3.1 lawfully obtained free of any duty of confidentiality otherwise than directly or indirectly from the other party to the Agreement;

10.3.2 already in the recipient's possession which the recipient can show from written records other than as a result of a breach of this **Condition 10**;

10.3.3 in the public domain (other than as a result of a breach of this **Condition 10**);

10.3.4 necessarily disclosed pursuant to a statutory obligation; or

10.3.5 disclosed with the prior written consent of the other party.

10.4 The parties agree that the provisions of this **Condition 10** shall apply following the termination of the Agreement (however such termination should occur) for a period of 2 years or such longer period as is allowed by law from the date of such termination.

11. INTELLECTUAL PROPERTY

11.1 Both parties hereby authorise and agree to allow the other party to use the Intellectual Property Rights of the other for the purposes only of exercising either party's rights and performing its obligations under the Agreement. The parties will have no other rights whatsoever in respect of the Intellectual Property Rights of the other party.

11.2 The Customer shall not use or make any reference to any Intellectual Property Rights of PCPL without obtaining the prior written consent of PCPL.

11.3 PCPL retains title in all its Intellectual Property Rights..

11.4 The Intellectual Property Rights (including but not limited to copyright) in all Services and reports are the property of and shall remain the property of PCPL.

12. TERMINATION

12.1 Either party may by written notice served on the other, terminate the Agreement immediately if the other:-

12.1.1 Is in material breach of any of the terms of the Agreement and where the breach is capable of remedy the other party fails to remedy such breach within 30 Business Days service of written notice from the party not in breach specifying the breach and requiring it to be remedied. Failure to pay any sum in accordance with Condition 5 is a material breach of the terms of the Agreement which is not capable of remedy; or

12.1.2 suffers an event of insolvency, ceases to trade or is otherwise unable to pay its debts (including without limitation liquidation, administrative receivership or bankruptcy).

12.2 Termination of the Agreement howsoever arising will be without prejudice to the rights, duties and liabilities of either party agreed prior to termination. The provisions of the Agreement which expressly and impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

12.3 PCPL shall be entitled to suspend any performance of the Services otherwise due to occur following service of a notice specifying a breach under **Condition 12.1** until either the breach is remedied or the Agreement terminates, whichever occurs first.

13. WARRANTY AND INDEMNITY

13.1 The Customer warrants to PCPL that to the best of its knowledge and belief, all Documentation, Intellectual Property Rights, Confidential Information and any other information supplied to PCPL pursuant to or in connection with the performance of the Services represents a true and accurate reflection of the Customer.

13.2 In accordance with **Condition 13.1**, the Customer shall indemnify, keep indemnified and hold harmless PCPL in full from and against all costs (including the cost of enforcement), expenses, liabilities (including any tax liability) injuries, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgements which PCPL incurs or suffers as a consequence of performing the Services.

14. LIABILITY

- 14.1 PCPL does not exclude its liability (if any) to the Customer:
- 14.1.1 for breach of PCPL obligations arising under section 12 Sale of Goods Act 1979 or section 2 Sale and Supply of Goods and Services Act 1982;
 - 14.1.2 for personal injury or death resulting from PCPL's negligence;
 - 14.1.3 under section 2(3) Consumer Protection Act 1987;
 - 14.1.4 for any matter which it would be illegal for PCPL to exclude or to attempt to exclude its liability; or
 - 14.1.5 for fraud.
- 14.2 Subject to **Condition 14.1** and other than expressly set out in the Agreement PCPL excludes to the fullest extent possible in law all misrepresentations conditions, warranties and stipulations expressed or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer.
- 14.3 Except as provided in **Condition 14.1**, PCPL will be under no liability to the Customer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any loss of profits (whether direct or indirect) or indirect or consequential loss (both of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused arising out of or in connection with:
- 14.3.1 any performance of the Services, or failure or delay in performance by PCPL or on the part of PCPL's employees, agents or sub-contractors;
 - 14.3.2 any breach by PCPL of any of the express or implied terms of the Agreement;
 - 14.3.3 any representation (unless fraudulent) made or not made, or advice given or not given, by or on behalf of PCPL; or
 - 14.3.4 any other reason under or in connection with the Agreement.
- 14.4 Subject to **Condition 14.1** and **14.3**, PCPL's aggregate liability under the Agreement whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any direct loss or damage including loss of or damage to tangible property howsoever caused, shall not in any circumstances exceed the price of the Services. In particular PCPL shall not be liable for any costs, claims or damage arising out of any act of tort or omission or breach of contract or statutory duty calculated by reference to profits, income production or accruals or loss of such profits, income production or accruals or by reference to accrual or such, claims, damages or expenses on a time basis.

14.5 PCPL will not provide the Customer with (and will therefore not be liable to the Customer for) any financial legal tax or any other professional advice in relation to the Services. In particular, the Customer acknowledges that it is responsible for proceeding with any particular Services given to it by PCPL and for the avoidance of doubt the Customer acknowledges that it is its obligation to ensure that the Services carried out by PCPL comply with all regulatory, legal and statutory compliance.

15. FORCE MAJEURE

15.1 Neither party to the Agreement shall be deemed to be in breach of the Agreement or otherwise liable to the other party in any manner whatsoever for any failure or delay in performing its obligations under the Agreement due to any event beyond its reasonable control ("Force Majeure"), including without limitation and by way of example only, lightning, flooding, exceptionally severe weather, fire, explosion, severe computer virus, war, terrorism, civil disorder, industrial disputes, acts of local or central Government or other competent authority, acts of that party's suppliers or partners.

16. NOTICES

- 16.1 Notices shall be in writing and shall be served on the relevant individual and address (or such other address as may be notified to the other parties from time to time and acknowledged by the recipient) as specified in the Order.
- 16.2 Notices shall be deemed to have been duly served:
- 16.2.1 if sent by personal delivery, upon delivery at the address of the relevant party;
 - 16.2.2 if sent by first class post, two Business Days after the date of posting if posted in the country of destination otherwise after seven days; and
 - 16.2.3 if sent by facsimile, when despatched provided that if any such notice would otherwise be deemed to be served outside working hours, such notice shall be deemed to be served at the start of working hours on the next Business Day and provided always that an original is sent by first class post on the day of transmission.

17. GENERAL

- 17.1 Both parties agree to comply, at their own expense, with all statutes, regulations, rules, ordinances, and order of any governmental body, department or agency that apply to or result from their rights and obligations under the Agreement.
- 17.2 Each of the provisions contained in the Agreement shall be construed as independent of every other such provision and if any provision of the Agreement shall be determined by any such court or competent authority to be illegal, invalid and / or unenforceable then such determination shall not effect any other provision of the Agreement all of which other provisions shall remain in full force and effect.



17.3 The Customer shall not assign the benefit or delegate the burden of the Agreement without the prior written consent of PCPL. PCPL may assign the benefit or delegate the burden of the Agreement without the prior written consent of the Customer.

17.4 No part of this Agreement shall confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply.

17.5 This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in the Agreement and neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party's behalf.

17.6 No variation to the Agreement shall be effective unless in writing and signed by a Director of PCPL or other duly authorised officer of each of the parties.

17.7 No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

17.8 This Agreement and other documents referred to in the Order which are incorporated into and form part of the Agreement contain all the terms which the parties have agreed in relation to the subject matter of the Agreement and those documents and supersede any prior written or oral agreements, representations or understandings between the parties.

17.9 In the event of a conflict between the various documents forming part of the Agreement those documents shall prevail over one another in the following order of priority: the Order (highest priority), Terms and Conditions (lowest priority).

] 17.10 PCPL in the normal course of its business may obtain debtor insurance when it may consider the same appropriate and the Customer hereby agrees and acknowledges that such credit search or review maybe undertaken and consents thereto.

17.11 The parties hereto agree and confirm that for the purposes of this Agreement electronic signatures shall be acceptable evidence and proof of appropriate execution of this and any required documentation.

18. DATA PROTECTION

18.1 The customer agrees to the sharing and disclosure of information between Professional Cloud Publishing Limited, Palladium Solutions, Palladium Results Limited, EIS.Marketing Ltd or any other associated company and/or any other person body or company authorised by PCPL.

18.2 PCPL will comply subject to clause 18.1 with the requirements of the Data Protection Act 1988.

19. LAW

19.1 This Agreement shall be deemed to have been made in England and Wales and subject to English law and the parties agree to submit to the exclusive jurisdiction of the Courts of England and Wales.



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Registered in England and Wales - No. 08728908