

Psand is the owner of software enabling management of content for publication for multiple websites using its content management system entitled “*Changing Pages Enterprise Platform*” (“the Platform”). Psand also provides services for the hosting of websites utilising such software and supplies maintenance, support and training in respect to websites hosted on the Platform.

The Company wishes to procure the services of Psand, including the hosting, development, maintenance, and support of numerous websites and to that end obtain access to the Platform and associated services.

Psand has agreed to provide the services to the Company upon the terms and conditions set out below.

1 Definitions

1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

“this Agreement” means these Standard Terms and the Quote which refers to these Standard Terms.

“Additional Services” means any services in addition to the Services set out in a Quote which Psand performs.

“Charges” means the charges for the Services payable by the Company to Psand as set out in the Quote and such further charges of Psand at its standard rates arising from performance of Additional Services.

“Company” means the customer of Psand named in the Quote.

“Customer” means the customer of the Company named in the Quote, if any.

“Company Materials” means any Domain Names, trade names, trade marks, literary works, artistic works, movies, films, photographs, logos, artwork, source code, software, information, materials or assets supplied to Psand by the Company or on behalf of a Customer.

“Deliverable” means a discrete product of the Services pursuant to a Quote (if any).

“Intellectual Property Rights” means all patents, rights in inventions, rights in designs, trade marks, trade and business names and all associated goodwill, rights to sue for passing off, copyright, moral rights and related rights, rights in databases, Domain Names, rights in information (including know how and trade secrets) and all other similar or equivalent rights subsisting now or in the future in any part of the world, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights for their full term.

“Project” means the Services undertaken pursuant to a Quote.

“Psand Software” means software owned or used by Psand in the course of providing the Services and the Intellectual Property Rights vested in such software which are owned by Psand or its third party licensors.

“Quote” means a quote which refers to these Standard Terms.

“Services” means the services to be provided by Psand to the Company as set out or described in the Quote and any Additional Services which may be agreed between the parties.

1.2 In this Agreement:

a. words importing the singular include the plural, words importing any gender include every gender and words importing persons include bodies corporate and unincorporate; and (in each case) *vice versa*;

b. the headings to the Clauses are for ease of reference only and shall not affect the interpretation or construction of this Agreement;

c. writing means facsimile, letter or email, and in the case of a variation to this Agreement, facsimile or letter, excluding email; and

d. unless otherwise expressly provided in the Quote by specific reference to this clause if there shall be any inconsistency or conflict between the provisions of these Standard Terms and the Quote the provisions of these Standard Terms shall prevail.

2 This Agreement

2.1 The Services supplied by Psand shall be as set out in Quote (“the Quote”). This Agreement shall commence on the date of execution hereof for the term set out in the Quote and thereafter renew for the same term subject to the terms of this Agreement.

2.2 Psand shall not be required to perform any services unless such services are provided for in the Quote.

2.3 Each Quote shall form a separate contract between the parties in respect to the Services to be supplied and shall be deemed to incorporate and be subject to the terms of this Agreement unless otherwise expressly stated in the Quote. No further terms or conditions of any purchase order shall form part or vary this Agreement in the absence of written agreement signed under the hand of a director of each party. Such agreement may not be concluded in electronic form.

2.4 If Psand shall undertake any work at the Company’s request which is not the subject of a Quote then unless the parties otherwise agree in writing the provisions of this Agreement shall apply thereto (so far as the same are capable of applying) and if no fee is agreed for such work in advance, Psand shall be paid in accordance with its standard rate card.

3 Services to be Provided

3.1 For the duration of this Agreement, Psand will provide the Services in accordance with the terms of this Agreement.

3.2 Psand will comply with reasonable directions provided by the contract manager. Psand will be entitled to perform such services as may be reasonably required to maintain the performance standards of the Platform and Psand reasonably expected by the parties at the date of this Agreement.

3.3 The Company may request that Psand performs Additional Services. Such Additional Services shall be subject to further agreement made in writing by the parties. If the Company wishes to engage a third party to provide services related to the Services, Psand will provide reasonable assistance to such third parties to enable such third party to provide services to the Company at its standard rates, provided that Psand shall not be required in any circumstances to disclose the source code of any part of the Psand Software, confidential information or trade secret of Psand to the Company or its consultants.

4 Payment

4.1 In consideration of the Services rendered by Psand, the Company shall pay to Psand fees in the amounts and at the rates set out in the Quote. Unless otherwise agreed in the Quote (a) such fees shall be invoiced monthly in advance and Psand shall render monthly invoices to the Company in respect of such fees, and (b) invoices will be paid by the Company within 30 days of the Company’s receipt of such invoice, the expiry of such period therefore being the due date. All fees shall be payable to Psand without deductions or set-off. The fees are exclusive of Value Added Tax and any other tax duty or levy for which the Company is legally liable which shall be paid by the Company at the rate and in the manner for the time being prescribed by law.

4.2 Psand shall be entitled to alter the Charges or any part of them from time to time on 7 days notice in writing to maintain availability of the Platform to public, to cater for increased demands on the Platform, and/or any other resources of Psand whatsoever.

4.3 If any sum payable under this Agreement which is not the subject of a *bona fide* dispute is not paid within 14 days after the due

date then (without prejudice to Psand's other rights or remedies), Psand reserves the right to (1) suspend the provision of the Services in whole or in part without notice from time to time, and/or (2) to charge interest on such sum on a day to day basis (after as well as before any judgment) from the date or last date for payment thereof to the date of actual payment (both dates inclusive) at the rate of 8 per cent above the base rate of HSBC Bank plc (and at a minimum of 10% per annum) from time to time in force compounded monthly.

5 Acceptance

5.1 Each Deliverable supplied by Psand pursuant to this Agreement shall be subject to acceptance by the Company, pursuant to this clause.

5.2 Where no acceptance tests are specified in the Quote, acceptance of any Deliverable shall be deemed to take place on (1) delivery, or (2) incorporation of the Deliverable into production.

5.3 If the Company uses the Deliverable, except for testing purposes, then the Deliverable shall be deemed to have been accepted on the date of such use.

5.4 Acceptance of the Deliverable pursuant to this clause shall constitute the completion of the implementation of the deliverable in accordance with the Quote.

5.5 Psand shall provide the Company with such assistance as it may reasonably require in connection with the conduct of the acceptance tests at the standard rates of Psand.

6 Intellectual Property Rights

6.1 Psand and its third party licensors shall retain ownership of all Intellectual Property Rights in Psand Software and without limitation all other materials produced or supplied to the Company pursuant to this Agreement, and nothing in this Agreement shall operate as an assignment to the Company of Intellectual Property Rights of the said software and associated materials. Ownership of all Intellectual Property Rights in Company Materials shall remain vested in the Company or its third-party licensors, and nothing in this Agreement shall operate as an assignment to Psand of Intellectual Property Rights in Company Materials. The Company grants to Psand, for the duration of this Agreement, a non-exclusive, non-transferable licence to use and make adaptations of Company Materials as it may reasonably require to host websites in accordance with the provisions of this Agreement. Psand reserves the right to use in any way it thinks fit any programming tools, skills and techniques acquired or used by Psand or its consultants in the performance of the Services provided that in doing so it does not disclose any confidential information of the Company or otherwise contravene any Intellectual Property Rights owned by the Company or third parties.

6.2 The Company shall indemnify Psand against any claim by any third party for infringement of any copyright or other Intellectual Property Rights which arises as a result of the storage or processing of any information, materials or other assets supplied to Psand by the Company or any Customer provided that (1) the Company is notified promptly in writing of any claim, (2) the Company is given immediate and complete control of any such claim, (3) Psand does not make any public statement related to the claim or in any way prejudice the Company's defence of such claim, and (4) Psand gives the Company all reasonable assistance with such claim at the cost of the Company.

7 Project Management

Psand shall forthwith appoint a project manager for each Project who shall act as the point of contact for Psand in respect of all day-to-day matters relating to the supply of Services pursuant to a Quote. The Company shall forthwith appoint a contract manager

for each Customer who shall act as the main point of contact for the Company in respect of all day to day matters relating to the supply of the Services pursuant to a Quote. The project manager and the contract manager shall meet at such intervals as agreed between the parties in order to discuss the provision of the Services.

8 Psand Warranties

Psand warrants that (a) it has obtained all permissions and consents required by it to enter into this Agreement and to provide the Services, (b) personnel assigned to provide the Services who shall possess the requisite degrees of skill and experience required to fulfil the tasks assigned to them; and (c) ensure that it uses up-to-date virus protection measures in respect of its own IT infrastructures. Psand hereby grants to the Company a licence to use the Platform in accordance with the terms of this Agreement but not further or otherwise.

The Services are supplied to and used by the Company on the following basis that the Company has agreed that (1) there are no undertakings, warranties, terms of agreement between the parties or guarantees by Psand as to the quality, standard and function of the content and the direct and indirect consequences arising from the use of the Services or Platform; (2) there is no assurance that the Services and/or the Platform are free from defects, errors, or omissions, or is accurate, fit for any particular purpose, or suitable to be used in conjunction with any other particular products or systems, or will operate without interruption, delay or will be available or will not be suspended, cancelled or terminated; (3) Psand shall not be liable for any consequences which arise as a result of the use of the Services by the Company or any third party who may use the Services and/or the Platform. All the risk, liability and choice of using the Services and/or the Platform is with the Company and the Company shall not seek to claim any sums from Psand unless the death, or serious injury of a person is directly linked to and arises from their use of the Services and/or Platform and was directly caused by the negligence of Psand.

9 Company Warranties

The Company warrants that (a) it has obtained all permissions, consents and licences reasonably required to enter into this Agreement, (b) it shall provide Psand with all assistance materials and accurate information reasonably required by Psand for the purposes of enabling it to provide the Services and notify Psand of any special requirements of the Customer, (c) it shall ensure that all personnel assigned by it to provide assistance to Psand shall have the requisite skills, qualification and experience to perform the tasks assigned to them, (d) it shall notify Psand of all statutes, laws, regulations, bye-laws and without limitation other relevant considerations as are applicable for the provision of the Services for the Customer, (e) all data or other information provided by it or the Customer shall not be obscene, defamatory or infringe any third party's Intellectual Property Rights, (f) it shall comply with conditions of use of the Platform notified and/or made available for inspection in the Platform by Psand and ensure that any Customers of the Company comply with such conditions from time to time; (g) it and any Customer shall not initiate any spamming or other excessive volume of data on the system such that it may impair the access to the Websites. The Company shall indemnify Psand for any loss or damage caused to Psand arising from breach of this clause.

The Company undertakes not to attempt to obtain access to use or interfere with any programs or data of Psand (other than access to and use of the Platform in accordance with this Agreement) or of any other customer of Psand and shall indemnify Psand against any loss, damage or liability which Psand may sustain or incur as a consequence of a Customer failing to comply with such undertaking.

10 Termination

10.1 This Agreement may be terminated forthwith by either party on giving notice in writing to the other if the other party shall have a liquidator, receiver, administrative receiver or administrator appointed or shall pass a resolution for winding-up (otherwise than for the purpose of a *bona fide* scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into

any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.

- 10.2 This Agreement may also be terminated forthwith by either party on giving 30 days' written notice to the other if the other party is in material breach of the terms of this Agreement and has failed to rectify such breach within 30 days of receiving a written notice requiring it to do so.
- 10.3 Either party may give to the other party at any time notice to terminate this Agreement. The notice to terminate must specify the termination date which must not be less than 6 months from the date of the notice to terminate.
- 10.4 On the termination of this Agreement (a) all rights and obligations of the parties under this Agreement and each Quote shall automatically terminate except (i) for such rights of action as shall have accrued prior to such termination and any obligations which expressly or by implication are intended to come into or continue in force on or after such termination (ii) Psand shall complete any work to be performed under any existing Quote and to that extent and for that purpose the provisions of this Agreement shall continue in effect until the Project under such Quote has been completed; and (b) the Company shall pay Psand for all unpaid fees accrued up to the date of termination, prior to each party returning to the other any property of the other or third parties that it has in its possession or control. Subject to the foregoing, Psand shall forthwith deliver to the Company upon request in writing a copy of the Company's Data in its possession or under its control in such form as it was placed into production.
- 10.5 Any termination under subclauses 10.1 to 10.4 above shall discharge the parties from any liability for further performance of this Agreement, save as may be required pursuant to clauses 4: Payment, 6: Intellectual Property Rights, 8, 9: Warranties, 12: Confidentiality and any other provision which by implication is intended to continue in force on or after such termination.

11 Liability

The Company shall indemnify Psand and keep Psand fully and effectively indemnified on demand against any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission or breach of this Agreement by the Company its employees, agents or sub-contractors. The Company acknowledges that Psand does not operate or exercise control over, and accepts no responsibility for the content of the Website or of the Customer's Materials received on the Platform. Notwithstanding anything else contained in this Agreement neither party shall be liable to the other party for loss of profits or contracts (other than, in the case of Psand the Charges and fees for work performed) loss of goodwill, or for any direct, special indirect or consequential loss whether arising from negligence breach of contract or howsoever. The respective liability of Psand and the Company under this Agreement in relation to all claims arising out of or in connection with this Agreement shall not exceed £10,000. Psand shall not be liable to the Company for any loss arising out of (and to the extent caused by) any failure by the Customer to keep full and up-to-date security copies of Company Materials.

12 Confidentiality

Neither party shall use divulge or communicate to any person (other than to those whose province it is to know the same or with the authority of the other party) any of information of the other party which may come to the first party's knowledge in the course of providing the Services including any information concerning any Project and shall treat such information received from the other in the course of providing the Services or at any time prior to the commencement of the Services as the confidential information of the other ("Confidential Information"). Each party shall use all

reasonable endeavours to prevent the unauthorised publication, disclosure or misuse of Confidential Information. The provisions of this clause shall survive the termination of this Agreement but the restrictions contained in clause shall not apply to any Confidential Information which is required by any court of competent jurisdiction or by a governmental or regulatory authority to be disclosed or where there is a legal right duty or requirement to disclose provided that where possible and without breaching any such requirements 5 days' notice are given to the other party of any such disclosure. The Company undertakes to ensure that its employees are made aware that the Confidential Information is confidential and that such employees owe a duty of confidence to Psand. The Company shall indemnify Psand against any loss or damage which Psand may sustain or incur as a result of the Company failing to comply with such undertaking or the obligations of confidentiality contained in this Agreement. The Company shall notify Psand promptly if the Company becomes aware of any breach of confidence by any of the Company's employees or subcontractors, and shall give Psand all reasonable assistance in connection with any legal proceedings which Psand may bring against any such employees, subcontractors or any other person for breach of confidence.

13 General

- 13.1 Psand is an independent contractor and nothing in this Agreement shall render it an employee agent or partner of the Company and Psand shall not hold himself out as such. Psand shall not have any right or power to bind the Company to any obligation.
- 13.2 No forbearance delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right power or remedy herein conferred upon or reserved for either party is exclusive of any other right power or remedy available to that party and each such right power or remedy shall be cumulative. Notice of termination must be sent by first class post and registered mail to the registered office of the relevant party.
- 13.3 Save as expressly provided in this Agreement, neither party shall assign or otherwise transfer this Agreement or any of its rights and obligations hereunder whether in whole or in part without the prior written consent of the other.
- 13.4 This Agreement supersedes all prior agreements arrangements and understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof (save that neither party seeks to exclude liability for any fraudulent precontractual misrepresentation upon which the other party can be shown to have relied). No addition to or modification of any provision of this Agreement shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of each of the parties.
- 13.5 Notwithstanding anything else contained in this Agreement, neither party shall be liable for any delay in performing its obligations hereunder if such delay is caused by circumstances beyond its reasonable control including without limitation any delay caused by any act or omission of the other party.
- 13.6 This Agreement shall be interpreted in accordance with English law. The parties irrevocably submit to the jurisdiction of English Courts in respect to any disputes arising from or connected to this Agreement.
- 13.7 The parties confirm their intent not to confer any rights on any third parties by virtue of this Agreement and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.