
The Pink Pigeon Website Builder and CMS: Terms & Conditions

In Short

We (the team at Pink Pigeon Digital) are on a mission to make the web a better place. We see no reason that small businesses shouldn't benefit from great websites and marketing materials that don't cost the Earth. We hope you enjoy using our products and services as much as we have enjoyed creating them.

These terms and conditions describe our commitments to you, and your rights and responsibilities when using our services. By signing up to use our tools, you accept these terms and conditions. Please read them carefully and get in touch with us if you have any questions. We recommend that you save or print a copy of them for future reference.

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### PARTIES

**(1)** Pink Pigeon Digital Ltd incorporated and registered in England and Wales with company number 08127475 whose registered office is at F25 Waterfront Studios, 1 Dock Road, London, E16 1AH. **(Supplier)**

**(2)** You, the user; who is based in the UK, and who has signed up and paid the initial term payment, to use the Pink Pigeon Website Building and CMS (content management platform) platform via the Supplier's website and has agreed to abide by these terms and conditions, privacy policy and cookie policy. **(Client)**

### BACKGROUND

The parties have agreed that the Supplier shall provide the Client with access to the Pink Pigeon Website Builder and CMS (content management system), in order to use the Supplier's website module designs and development on the terms and conditions set out in this agreement.

### AGREED TERMS

#### 1. INTERPRETATION

The definitions and rules of interpretation in this clause apply in this agreement.

##### 1.1 Definitions:

**Business Day:** a day other than a Saturday or Sunday or public holiday in England when banks in London are open for business.

**Charges:** the charges in respect of the Services set out in Schedule 1.

**CMS (Content Management System):** the content and design management system operated by the Supplier and which will be used by the Client, known as the Pink Pigeon Website Builder, and Pink Pigeon CMS. The Client has access to this system online.

**Confidential Information:** all information, whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, uploaded to the CMS, orally or by inspection of documents or during discussions between the parties), where the information is:

- a. identified as confidential at the time of disclosure; or
- b. ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.

**Data Protection Legislation:** the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) (GDPR) and any other directly applicable European Union regulation relating to privacy.

**Data Subject:** has the meaning set out in Article 4(1) of the GDPR.

**Effective Date:** The date the client signs up to use the Pink Pigeon Website Builder and CMS.

**Heightened Cybersecurity Requirements:** any laws, regulations, codes, guidance from regulatory and advisory bodies (whether mandatory or not), international and national standards, [industry schemes] and sanctions, which are applicable to the Customer [(but not the Supplier)] relating to security of network and information systems and security breach and incident reporting requirements, which may include the Cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151) and Data Protection Legislation, all as amended or updated from time to time.

**Initial Term:** means the initial period of one month for the provision of the Services as specified in the Schedule(s). The Initial Term shall be fixed for one month.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Materials:** the content uploaded to the Pink Pigeon Website Builder and CMS by the Client, for incorporation in the Site.

**Personal Data:** has the meaning set out in Article 4(1) of the GDPR.

**Project:** the provision by the Supplier of the Services as set out in this agreement.

**Renewal Term(s):** means the one month period after the expiry of the Initial Term and each subsequent one month period as set out in the Schedule(s). The Renewal Term(s) shall be fixed for one month.

**Services:** access to the Pink Pigeon Website Builder and CMS. This allows the client to access a range of pre-designed and pre-built modules that can be rearranged (as detailed in the documentation) by the client.

**Site:** the site created by the Pink Pigeon Website Builder and CMS platform, to be hosted by a Third Party Product pursuant to this agreement.

**Third Party Products:** those third party software products set out in this document.

**UK Data Protection Legislation:** any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.

Website Builder: see CMS (Content Management System) above.

**Visitor:** a visitor to the Site.

**Vulnerability:** a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.

**1.2** Clause and Schedule headings do not affect the interpretation of this agreement.

**1.3** References to clauses and Schedules are (unless otherwise provided) references to the clauses and Schedules of this agreement.

**1.4** In the event and to the extent only of any conflict between the clauses and the Schedules, the clauses shall prevail.

**1.5** Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

**1.6** A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.

**1.7** A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.

**1.8** Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term

preceding those terms.

**1.9** References to **content** include any kind of text, information, image, or audio or video material which can be incorporated in a website for access by a Visitor to that website.

**1.10** **Writing** or **written** includes fax and email.

## **2. SCOPE OF THE AGREEMENT**

The Supplier shall:

**(a)** provide the Pink Pigeon Website Building Platform and CMS (content management system) to allow the Client to develop the look and feel of the Site.

**(b)** provide pre-designed and developed website modules for the client to use when arranging their website within the Supplier's platform; and

**(c)** provide the Services and use a third party to host the Site on their servers. For the avoidance of doubt, you will not be able to choose your own hosting company.

## **3. CLIENT RESPONSIBILITIES**

**3.1** The Client acknowledges that the Supplier's ability to provide the Services is dependent upon the full and timely cooperation of the Client (which the Client agrees to provide). Accordingly, the Client shall:

**(a)** create its own website using the supplied pre-built modules of the Pink Pigeon Website builder and CMS.

**(b)** amend and update its website as required, using the platform for the duration of their subscription.

**(c)** be responsible for renewing its own domain for the Site;

**(d)** be responsible for ensuring payment to any Third Party Product to renew the domain;

**(e)** be responsible for ensuring that the content of the Site is accurate and complete;

**(f)** ensure that the Supplier is provided with full details of any Third Party Product that they are using; and

**3.2** The Client shall be responsible for the accuracy and completeness of the Materials on the Site in accordance with Clause 9.

**3.3** The Client fully acknowledges that the Site may not work on all web-based browsers. The Supplier's browser compatibility specifications can be found [here](#).

**3.4** The Client fully acknowledges that the Website Building Platform only functions if all DNS management occurs through the platform. This may require support requests with an attached fee, should DNS entries need amending while the Client's domain is under the management of the Website Building Platform.

#### **4. THIRD PARTY PRODUCTS**

For any third party services outside the scope of that agreed under Schedule 1 to this agreement, the Client will contract with those Third Party Products independently of this agreement and will be responsible and liable to pay their costs without any involvement from the Supplier whatsoever and the Client will be responsible for setting up any accounts with any Third Party Products independently of this agreement.

#### **5. CHARGES AND PAYMENT**

**5.1** The Supplier shall issue an invoice with relevant invoice reference numbers in respect of the Charges, and the Client shall pay to the Supplier the Charges set out in such Supplier's invoice within 14 days of the date of the Supplier's invoice.

**5.2** All Charges are exclusive of VAT.

**5.3** If the Client fails to make any payment due to the Supplier under this agreement by the due date for payment, then, without limiting the Supplier's remedies under Clause 13, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 6% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%.

**5.4** The Supplier uses Stripe to process their payments and are bound by their Restricted Businesses list. By using the Client's Services, the Supplier also agrees that their Site is not promoting one of the activities listed on their restricted list [here](#).

#### **Monthly Retainers**

**5.5** The Supplier charges recurring subscription fees (the 'Monthly Fees') for the Monthly Retainer Services, the charges of which are listed under Schedule 1.

**5.6** In the case of Credit or Debit card payments, the Client will receive an initial confirmation of the dates that their payments will be taken. The Client will always receive an invoice in advance of the payment being taken from the Client's account, but the Client will not need to take any action to make the payment.

**5.7** The Supplier uses Stripe to process their Credit and Debit Card payments and as such, their company name may appear on their bank statements (Pink Pigeon Digital Ltd will appear as the main reference, but Stripe may be secondary). The Supplier will send invoices via their accounting tool Quickbooks, and Stripe.

**5.8** The Supplier reserves the right to increase the recurring subscription fees (the 'Monthly Fees') for the Monthly Retainer Services in line with at minimum the Consumer Price Index ('inflation'), or more, at any time, giving at least one months' notice before doing so.

## **6. WARRANTIES**

**6.1** Each of the parties warrants to the other that it has full power and authority to enter into and perform this agreement.

**6.2** The Supplier shall perform the Services with reasonable care and skill.

**6.3** The warranty set out here shall not apply to the extent that any failure of the Site is caused by any Materials.

**6.4** This agreement sets out the full extent of the Supplier's obligations and liabilities in respect of the supply of the Services. All conditions, warranties or other terms concerning the Services which might otherwise be implied into this agreement or any collateral contract (whether by statute or otherwise) are hereby expressly excluded.

**6.5** The Supplier:

**(a)** does not warrant that:

- (i) the Client's use of the Services or the Site will be uninterrupted or error-free;
- (ii) the Site will work or function on all devices;
- (iii) the Site will work or function on all browsers;
- (iv) it is responsible for renewing a font or image licence used on the Site which expires as this is the sole responsibility of the Client;
- (v) it is responsible for licensing any Material(s), images, videos or general content used on the Site as this is the sole responsibility of the Client and the Client remains liable for any liability arising from its failure to appropriately license any Material(s), images, videos, or general content ;
- (vi) the Services or the Site will be free from Vulnerabilities; or
- (vii) the Services or the Site will comply with any Heightened Cybersecurity Requirements.

## **7. LIMITATION OF REMEDIES AND LIABILITY**

**7.1** Nothing in this agreement shall operate to exclude or limit the Supplier's liability for:

- (a)** death or personal injury caused by its negligence; or
- (b)** any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (c)** fraud; or
- (d)** any other liability which cannot be excluded or limited under applicable law.

**7.2** The Supplier shall not be liable to the Client for any damage to software, damage to or loss of data, loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage.

**7.3** The Supplier shall not be liable for any losses, loss of profit and/or revenue, defects, and/or damages that are attributable (either in part or in whole) to any third party, including as a result of any failure(s) of any Third Party Product(s).

**7.4** Subject to Clause 7.1, the Supplier's aggregate liability in respect of claims based on events in any calendar year arising out of or in connection with this agreement or any collateral contract, whether in contract or tort (including negligence) or otherwise, shall in no circumstances exceed 50% of the total Charges payable by the Client to the Supplier under this agreement in that calendar year.

## **8. INTELLECTUAL PROPERTY RIGHTS**

**8.1** All Intellectual Property Rights in the Site (including in the content of the Site and the Site Software), but excluding the Materials, arising in connection with this agreement shall be the property of the Supplier, and the Supplier hereby grants the Client a non-exclusive licence of such Intellectual Property Rights for the purpose of operating the Site.

**8.2** The Client shall indemnify the Supplier against all damages, losses and expenses arising as a result of any action or claim that the Materials infringe the Intellectual Property Rights of a third party.

**8.3** The Supplier shall indemnify the Client against all damages, losses and expenses arising as a result of any action or claim that the Site infringes any Intellectual Property Rights of a third party in the UK, other than infringements referred to in Clause 8.2.

**8.4** The indemnities in Clause 8.2, Clause 8.3 and Clause 9.4 are subject to the following conditions:

- (a)** the indemnified party promptly notifies the indemnifier in writing of the claim;
- (b)** the indemnified party makes no admissions or settlements without the indemnifier's prior written consent;
- (c)** the indemnified party gives the indemnifier all information and assistance that the indemnifier may reasonably require; and
- (d)** the indemnified party allows the indemnifier complete control over the litigation and settlement of any action or claim.

**8.5** The indemnities in Clause 8.2, Clause 8.3, Clause 9.4 and Clause 9.5 may not be invoked to the extent that the action or claim arises out of the indemnifier's compliance with any designs, specifications or instructions of the indemnified party.

## **9. SITE CONTENT**

**9.1** The Supplier may update the Site code from time to time, and occasionally update the site with Materials provided by the Client. The Client shall ensure that the Materials do not infringe any applicable laws, regulations or third party rights (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous or in breach of any third party Intellectual Property Rights) (**Inappropriate Content**).

**9.2** The Supplier shall grant the Client access to the Pink Pigeon Website Builder and CMS (content management system) platform in order create their website and to to update information held on the Site.

**9.3** The Supplier shall include only Materials on the Site. The Client acknowledges that the Supplier has no control over any content placed on the Site by Visitors, or content pulled into your website using a social media integration; and does not purport to monitor the content of the Site. The Supplier reserves the right to remove content from the Site where it reasonably suspects such content is Inappropriate Content. The Supplier shall notify the Client promptly if it becomes aware of any allegation that any content on the Site may be Inappropriate Content.

**9.4** The Client shall indemnify the Supplier against all damages, losses and expenses arising as a result of any action or claim that the Materials constitute Inappropriate Content.

**9.5** The Client agrees for the Supplier to include the statement "Designed by Pink Pigeon Digital Ltd" and a hyperlink to the Supplier's website on each and every page of the Site unless the Client has subscribed to a tier that authorises this.

## **10. DATA PROTECTION**

**10.1** Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this Clause 10, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

**10.2** The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the data controller and the Supplier is the data processor (where **Data Controller** and **Data Processor** have the meanings



as defined in the Data Protection Legislation).

**10.3** Without prejudice to the generality of Clause 10.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.

**10.4** Without prejudice to the generality of Clause 10.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:

**(a)** process that Personal Data only on the written instructions of the Client unless the Supplier is required by Applicable Laws to otherwise process that Personal Data. Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Client;

**(b)** ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

**(c)** not transfer any Personal Data outside the European Economic Area unless the following conditions are fulfilled:

**(i)** the Client or the Supplier has provided appropriate safeguards in relation to the transfer;

**(ii)** the Data Subject has enforceable rights and effective legal remedies;

**(iii)** the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

**(iv)** the Supplier complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;

**(d)** assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

**(e)** notify the Client without undue delay on becoming aware of a Personal Data breach;

**(f)** at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on

termination of the agreement unless required by Applicable Law to store the Personal Data; and

**(g)** maintain complete and accurate records and information to demonstrate its compliance with this Clause 10.

**10.5** The Client consents to the Supplier appointing any third-party processors if this is necessary to do so pursuant to the services provided under this agreement and any third-party processors used by the Supplier will be outlined specifically in the Supplier's privacy policy of Personal Data under this agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business. As between the Client and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this Clause 10.

**10.6** The Supplier may, at any time on not less than 30 days' notice, revise this Clause 10 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

## **11. TERM AND TERMINATION**

**11.1** Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a)** the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment;
- (b)** the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (c)** the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the Court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
- (d)** the other party commences negotiations with all or any class of any of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (e)** a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party;
- (f)** an application is made to Court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- (g)** the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (h)** a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver

is appointed over all or any of the assets of the other party;

**(i)** a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

**(j)** any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 11.1(c) to Clause 11.1(h) (inclusive);

**(k)** the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

**(l)** any warranty given by the other party in Clause 6 of this agreement is found to be untrue or misleading.

**11.2** On termination of this agreement by the Supplier under Clause 11.1, all licences granted by the Supplier under this agreement shall terminate immediately.

**11.3** On expiry or termination of this agreement otherwise than on termination by the Supplier under Clause 11.1, the Client can request to retain an electronic copy of the Site (including all content on the Site) for a fee. However, the Client acknowledges that the Site is static, which means that the Site is specifically built and designed using the Design Platform and that any Third Party Products used may not function when the Site is separated from the Design Platform. The Supplier shall provide such assistance as is reasonably requested by the Client in transferring the Site to the Client or another service provider, subject to the payment of the Supplier's expenses reasonably incurred for this transfer process and subject to this transfer being technically possible.

**11.4** On expiry or termination of this agreement, all provisions of this agreement shall cease to have effect, except that any provision which can reasonably be inferred as continuing or is expressly stated to continue shall continue in full force and effect.

#### Monthly Retainers

**11.5** The Supplier's Services are on a Monthly Retainer basis so subject to receipt of the applicable Monthly Fee, the Supplier will provide the Services as set out under Schedule 1 of this agreement to the Client during the Office Hours on Business Days during the Initial Term and each subsequent Renewal Term unless or until the provision of the Services are terminated in accordance with the terms of this Agreement. This Agreement is dated on the date that Pink Pigeon Website Builder and CMS sign up and initial term payment is completed. Any work outside the scope of work agreed under Schedule 1 to this agreement for the Monthly Retainer will be chargeable separately as may be agreed between the parties in writing from time to time.

**11.6** This Agreement will commence on the Effective Date and shall continue, unless terminated earlier in accordance with clause 11.2, for a fixed period of one month (**Initial Term**). The term of this Agreement shall automatically extend and renew for further fixed periods of one month upon the expiry of any Initial Term (**Renewal Terms**), unless the Supplier agrees otherwise in writing or until either party gives written notice to the other of at least two calendar weeks prior to the end of any fixed one month period (Initial Term or Renewal Terms(s)) to not automatically extend and renew for a further fixed period of one month, and otherwise subject

to the termination provisions in this Agreement.

## **12. FORCE MAJEURE**

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 10 weeks, the party not affected may terminate this agreement by giving 7 days' written notice to the affected party.

## **13. CONFIDENTIALITY**

**13.1** Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

**13.2** Confidential Information may be disclosed by the receiving party to its employees, affiliates and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.

**13.3** The obligations set out in this Clause 13 shall not apply to Confidential Information which the receiving party can demonstrate:

- (a) is or has become publicly known other than through breach of this Clause 13; or
- (b) was in possession of the receiving party prior to disclosure by the other party; or
- (c) was received by the receiving party from an independent third party who has full right of disclosure; or
- (d) was independently developed by the receiving party; or
- (e) was required to be disclosed by a governmental authority, stock exchange or regulatory body, provided that the party subject to such requirement to disclose gives the other party prompt written notice of the requirement.

**13.4** The obligations of confidentiality in this Clause 13 shall not be affected by the expiry or termination of this agreement.

## **14. NOTICES**

**14.1** Any cancellation to this agreement is considered valid if the client has cancelled its subscription in Stripe or deleted its account.

**14.2** Any other notice or communication given to a party under or in connection with this contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

**14.3** Any other notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00am on the second Business Day after posting or at the time recorded by the delivery service; and
- (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 17.2(c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt. The Supplier's email is [support@pinkpigeon.co.uk](mailto:support@pinkpigeon.co.uk).

**14.4** This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**14.5** A notice given under this agreement is valid if sent by email with a valid read receipt.

## **15. PUBLICITY**

By agreeing to work with the Supplier under this agreement, the Client accepts that the Supplier may use their published website for the Supplier's marketing purposes, which includes but is not limited to sharing the Client's Site on the Supplier's social media channels such as LinkedIn, Facebook, Twitter, Instagram and YouTube. All media releases, public announcements and public disclosures by the Client, relating to this agreement or its subject matter, including promotional or marketing material, shall be coordinated with the other party and approved jointly by the parties prior to release.

## **16. PINK PIGEON WEBSITE BUILDER AND CMS (CONTENT MANAGEMENT SYSTEM)**

**16.1** The Supplier's Services requires the Client to provide the Supplier with complete and accurate information when the Client registers for an account. The Client will be solely responsible and liable for any activity that occurs under their username. The Client is responsible for keeping their account information up-to-date and for keeping their password secure.

**16.2** Access to and use of the Supplier's Services is only for those over the age of 18 and those based in the UK. The Client reserves the right to request appropriate proof of identity on a case by case basis. If the Services are procured by someone under the age of 18 then parental consent will be required.

**16.3** The Client is responsible for maintaining the security of their account and any Service-related the Supplier's Site, store, or other content, and they are fully responsible for all activities that occur under their account and

any other actions taken in connection with The Supplier's Services. The Client shall not share or misuse their access credentials. The Client must immediately notify us of any unauthorised uses of their account, store, or the Supplier's Site, or of any other breach of security. The Supplier will not be liable for any acts or omissions by the Client, including any damages of any kind incurred as a result of such acts or omissions.

**16.4** The Supplier may also contact the Client to ask questions and share account information. The Supplier accepts no responsibility should the Client fail to receive an email notification because the email address the Supplier holds on record for the Client is incorrect / invalid.

**16.5** If the Supplier finds that this agreement and/or the law has been violated, the Supplier may block access to the Client's account and take down their Site.

**16.6** Once an account has been upgraded, it is not possible to downgrade, except for in special circumstances, in which the Client will need to submit a support request, to work out whether this is possible, which may come with attached charges.

## **17. BESPOKE SERVICES**

**17.4** If the Client requires assistance with their Site, the Supplier will provide the Client with an estimate charged at the Supplier's hourly rate (as set out under the Charges Schedule. This cost must be approved in writing before the Supplier commences any further Services. Any amendments and/or changes will not be pushed live until such agreed payment has been received.

**17.5** The Supplier will not provide custom domains.

## **18. CONSUMER RIGHTS**

### **18.1 The Client's Rights To Make Changes**

If the Client wishes to make a change to the Services ordered please contact the Supplier, or upgrade in the 'My Account' dashboard. The Supplier will let the Client know if the change is possible. If it is possible the Supplier will let the Client know about any changes to the price of the Services, the timing of the Services or anything else which would be necessary as a result of the Client's requested change and ask the Client to confirm whether they wish to go ahead with the change. If the Supplier cannot make the change or the consequences of making the change are unacceptable to the Client, the Client may want to end this agreement.

### **18.2 The Client's Rights to End This Agreement**

The Client can always end the Client's contract with the Supplier. The Client's rights when the Client ends the contract will depend on what the Client has bought, whether there is anything wrong with the Services, how the

Supplier is performing and when the Client decides to end the contract:

- (a) If what the Client has bought is faulty or misdescribed the Client may have a legal right to end the contract (or to get the Site repaired or replaced or a Service re-performed or to get some or all of the Client's money back)
- (c) If the Client has changed their mind about the services or the Site, then the Client may be able to get a refund if the Client is within the cooling-off period, but this may be subject to deductions and the Client will have to pay the costs of any assistance in getting a copy of their site, and for any work already performed on the Site or the services;
- (d) In all other cases (if the Supplier is not at fault and there is no right to change the Client's mind), then the Client is not entitled to any refunds.

**18.3** If the Client is ending this contract for a reason set out at (a) to (d) below the contract will end immediately and the Supplier will refund the Client in full for any services which have not been provided. The reasons are:

- (a) the Supplier has told the Client about an upcoming change to the product or these terms which the Client does not agree to;
- (b) the Supplier has told the Client about an error in the price or description of the Site or services the Client has ordered and the Client does not wish to proceed;
- (c) the Supplier have suspended the supply of the services or the Site for technical reasons, or notified the Client that the Supplier are going to suspend them for technical reasons, in each case for a period of more than 3 months; or
- (d) the Client has a legal right to end the contract because of something the Supplier has done wrong.

**18.4** Exercising the Client's right to change the Client's mind (Consumer Contracts Regulations 2013). For most services bought over the telephone or by exchange of emails, the Client has a legal right to change the Client's mind within 14 days and receive a refund. These rights, under the Consumer Contracts Regulations 2013, are explained in more detail in these terms.

**18.5** The Client does not have a right to change the Client's mind in respect of services, once these have been completed / provided, even if the cancellation period is still running;

**18.6** If the Client cancels after the Supplier has already started the services and 14 days have passed since the commencement date of this contract, the Client will pay the Supplier for the Services and the Site provided up until the time the Client tells the Supplier that the Client has changed his/her mind.

**18.7 HOW TO END THE CONTRACT WITH THE SUPPLIER (INCLUDING IF THE CLIENT HAVE CHANGED THE CLIENT'S MIND):**

- (a) Tell the Supplier the Client wants to end the contract. To end the contract with the Supplier, please let the Supplier know by doing one of the following:
  - (i) Email or phone. Email the Supplier direct or by using their contact form, or call the Supplier's customer services telephone number. Please provide details of what the Client bought, when the Client registered and the

Client's name and address; or

(ii) By cancelling the Client's subscription in Stripe.

(iii) By deleting the Client's account.

**18.8** The Supplier will refund the Client the price the Client paid for the services, by the method the Client paid the Supplier and the Supplier may make deductions from the price, as described below.

**18.9** Where the product is a service, the Supplier may deduct from any refund an amount for the supply of the service for the period for which it was supplied, ending with the time when the Client told the Supplier the Client had changed the Client's mind. The amount will be in proportion to what has been supplied, in comparison with the full coverage of the contract.

**18.10** The Supplier will make any refunds due to the Client as soon as possible and within 14 days of the Client telling the Supplier that he/she has changed his/her mind.

## **19. ASSIGNMENT**

This agreement is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

## **20. ENTIRE AGREEMENT**

**20.1** This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**20.2** Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

## **21. THIRD PARTY RIGHTS**

**21.1** Unless it expressly states otherwise, this agreement does not give rise to rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

**21.2** The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.



## **22. VARIATION**

No variation of this agreement shall be effective unless it is agreed in writing (usually provided as an email update with 30 days notice). The Supplier considered consent granted by the Client if they continue to use the platform.

## **23. WAIVER**

**23.1** A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

**23.2** A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

## **24. RIGHTS AND REMEDIES**

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **25. DISPUTE**

If any dispute arises in connection with this agreement, we reserve the right to delete the Client's Pink Pigeon Website Builder and CMS account and cease to supply the Client with our services.

## **26. SEVERANCE**

If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

## **27. GOVERNING LAW**

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the

law of England and Wales.

## **28. JURISDICTION**

Each party irrevocably agrees that England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

## SCHEDULE 1

### SCOPE OF SERVICES & CHARGES

#### 1. Monthly Retainer

| <b>Bronze: £7.99</b>                  | <b>Silver: £9.99</b>                  | <b>Gold: £12.99</b>                                 |
|---------------------------------------|---------------------------------------|-----------------------------------------------------|
| 100MB storage                         | 200MB storage                         | 500MB storage                                       |
| 3 Pages                               | 5 Pages                               | 10 Pages                                            |
| 20 Modules                            | 30 Modules                            | 50 Modules                                          |
| Unlimited traffic                     | Unlimited traffic                     | Unlimited traffic                                   |
| SSL Certificate                       | SSL Certificate                       | SSL Certificate                                     |
| Cloudflare CDN                        | Cloudflare CDN                        | Cloudflare CDN                                      |
| Automatic jpeg compression            | Automatic jpeg compression            | Automatic jpeg compression                          |
| Access to all standard modules        | Access to all standard modules        | Access to all standard modules                      |
| Individually named forms              | Individually named forms              | Individually named forms                            |
| Unlimited form submissions            | Unlimited form submissions            | Unlimited form submissions                          |
| Forms: reCaptcha protection           | Forms: reCaptcha protection           | Forms: reCaptcha protection                         |
| Forms: Honeypot field spam protection | Forms: Honeypot field spam protection | Forms: Honeypot field spam protection               |
| Support responses within 5 days       | Support responses within 3 days       | Support responses within 24 hours                   |
|                                       | Google Analytics                      | Google Analytics                                    |
|                                       |                                       | Google Analytics: Individual button clicks recorded |

#### 2. Additional Services

##### (a) Bespoke Modules

- (b) Website Content Updates
- (c) General Support

Please [contact us](#) for a quote if you are interested in any of these services.

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