PinkDylan Terms and Conditions as at 1st April 2014

"We" "Us" and "Our" (or similar) refer to Graham and Lynn Cullimore trading as pinkdylan (PinkDylan) (a partnership). "You" "Yourself" and "Your" (or similar) refers to the client with whom we have a contract. PinkDylan also owns and operates a sub-brand 'BlueHendrix' which is a trading style only, not a separate entity.

This document contains 14 pages.

Our head office contact details are: pinkdylan, Badgers Rest, Lower Farm Court, Kinnersley, Worcester, WR8 9JR. Tel 01905 371041 Email support@pinkdylan.co.uk. If these details change then the new details will be available on our website (www.pinkdylan.co.uk)

1)   Revision to Terms and Conditions.

pinkdylan shall be entitled to revise these terms and conditions from time to time. Current terms are available at www.pinkdylan.co.uk/terms.htm. If we do revise terms and conditions we will email all clients with whom we have ongoing monthly or annual (or any other regular interval) contracts at info@domainname where "domainname" is the clients 'prime' domain name based on our records. Clients with multiple domain names known to us may or may not receive one advice per domain name. It is not always possible for us to be aware of what email addresses a client uses (even when hosted on our servers), it is essential that clients do accept emails at info@ and that this address is received by a responsible official entitled to commit you to entering a contract. We shall be entitled to assume that clients have received emails sent to this address. Clients who do not wish to accept mail at info@ should frequently check our web site for updated terms. We will supply a copy of current terms to clients and potential clients at any time on request. In the event that you are not happy with any changes in terms that we impose you must notify us in writing to the above address within 30 days of us publishing revised terms and us sending advice emails out to your info@ address(es) (whichever is later). In this event we shall have the option of allowing you to continue under the previously published terms or terminating the contract with 30 days notice at our absolute discretion.

2)   Contract Terms

a.   Pinkdylan terms and conditions
pinkdylan only supply goods or services in accordance with the terms and conditions contained herein (whether a formal written quotation is provided or a simple verbal contract is entered into) unless we specifically state otherwise in writing directly to you. All quotations will refer to these terms and you understand that if you accept our quotation and this is evidenced by you issuing a purchase order (verbal or otherwise) (or by you paying any deposit or other monies due under terms of quotation, or by you supplying us with material necessary for us to start or complete work) then you agree to our terms and accept that any contradictory terms quoted on any purchase order you may raise are waived by mutual agreement no matter what else is contained therein. By issuing a purchase order based on our quotation you accept that the fact your purchase order is raised at a later date than our quotation does in no way entitle terms thereon to take precedence over terms herein unless agreed by us in writing. On occasions our quotations may include terms in addition to the terms contained herein, and where this is the case such terms shall apply as if they were contained herein. On occasions we may include terms within our quotation that contradict terms contained herein; where this is the case then, errors excepted, the terms stated in our signed quotation shall take precedence over the relevant terms herein but the remainder of terms contained herein shall still apply.

b.   Third party terms and conditions
The provision of services to you necessarily involves us entering contracts with third parties. This includes (but is not limited to) the provision of domain names, broadband and hosting facilities together with software licenses and third party copyright and similar. These contracts may themselves have terms that may impose limitations or obligations on us and/or on you, and you will be bound by these obligations and limitations (and rights) in the same way as if you had entered the contract directly with the third party. There may also be rights, obligations and restrictions under legislation, and both parties may be compelled to comply with current legislation.

c.   Where legislation or third party terms have legal precedence over our terms then such legislation or third party terms will take priority over any contradictory terms contained herein (and may impose additional rights, responsibilities and exclusions not referred to herein at all), but all other terms contained herein shall still apply.

3)   Waived or Agreed Variation of Terms

From time to time pinkdylan may at its absolute discretion waive or agree to vary terms in writing, or we may not impose all terms that we are entitled to impose. Where this is the case any such action or lack of action shall not prevent us from fully imposing terms contained herein on another occasion not specifically covered by any variations agreed in writing.

4)   Transfer of Rights and Obligations

a.   Transfer of our rights and obligations
The partners of pinkdylan also own pinkdylan limited which at the date these terms were written is dormant. At some point in the future a decision may be taken to transfer part or all of the business of pinkdylan (partnership) to pinkdylan limited (or indeed to any other limited company or business entity or sole trader, including taking on additional partner(s) into 'pinkdylan' and regardless of ownership of such entity) and in this event pinkdylan (partnership) may transfer all rights and obligations under pinkdylan contracts to such other limited company, individual or business entity for reason of restructuring or change of ownership or control (including partial) of pinkdylan. We may only do this if we transfer all of our sales/service contracts entered into within a definable date range and/or within one or more of our main categories (or clearly defined sub-category) of business (currently including but not limited to Design, Content Creation, Programming, Hosting, Domain Names, Content Management and E-Commerce software provision, Broadband, Web Marketing and Search Engine Consultancy) to pinkdylan limited (or other limited company or business entity/individual). Should we transfer contracts in this way then the partners shall have no further personal liability under contracts that have been transferred (unless such change is simply taking on additional partner(s), removing one or more individuals from the partnership, or becoming a sole trader in which case the remaining/new partner(s) (or sole trader if only one individual remaining) will take on all transferred responsibilities), all rights and obligations will transfer to the new owner of the contracts. In this event we will publish revised terms in the new business name (if there is a name change, otherwise simply detailing new partnership/business structure) to the web site and assuming we still have control of www.pinkdylan.co.uk, and advise all clients

with whom we have ongoing contracts by email to "info@" [as in 1) above].

In the event of the death or incapacity of one of our partners all rights and responsibilities under this contract shall be automatically transferred to the remaining partner(s) on a sole trader or revised partnership basis, and the remaining partner(s) shall have the right to enter a new partnership with one or more other people as yet unknown (or to transfer business to a limited company or other business entity or sole trader) and all rights and obligations under pinkdylan contracts shall be transferred to the new partnership or other business entity. In the event of death or incapacity of all current partners, then all contracts will automatically be transferred to pinkdylan limited.

We have the right to sell or otherwise transfer our business or any part of it to other individual, partnership or company and to take on additional partners, and our rights and obligations will be transferred with ownership of the contracts.

We must advise you in writing to your last known address and also by email to "info@" [as in 1) above]. as soon as reasonably possible of any such changes. This must be in advance of such change where such change is planned. Where such change is not planned (such as the death or incapacity of a partner) you must allow reasonable time under the circumstances.

b. Transfer of your rights and responsibilities
You have fundamentally the same rights (and obligations) to transfer your rights and obligations under this contract as we do as in 4 a. above.

Notice (retrospective where circumstances dictate such as death of proprietor/owner/partner) must be sent to BOTH our head office address as then shown on our web site at www.pinkdylan.co.uk and ALSO by email to support@pinkdylan.co.uk.

5) Existence of a Contract

pinkdylan will usually formally quote in writing, and where this is the case no contract shall exist until you accept our quotation and we also confirm the acceptance of your order. You may verbally accept our quote or accept in writing (including email or by completing our order form if supplied) with or without a purchase order, by simply paying any deposit due or supplying us with content and/or information enabling us to commence the design and build of a website (or to commence with work on any other service). We will accept your order by raising an invoice for the deposit (or banking any deposit cheque received if received before a related invoice is raised), or if no deposit due by confirmation email. We shall not be under any obligation to commence work until any deposit due has been received and cleared.

Where formal fixed quotations are not provided (typically sundry web updates to be charged at an hourly rate or registration of domain names and similar sundry tasks typically dealt with over the phone including pay per click (ppc) advertising and changes to ppc schemes) we will provide verbal or casual email prices or hourly rates and your verbal instructions to proceed shall be sufficient commit you to a contract.

You understand that once a contract exists you are liable to pay all fees chargeable under it and shall not be entitled to cancel the contract or receive refund of any deposit paid unless there is a fundamental and major breach of contract on our part. If you do consider that we are not meeting our obligations under a contract you must advise us as such in writing, with full and justifiable details, and give us a reasonable time to rectify the situation (the timescale will vary depending on the nature of the work in question).

6) Limit of Liability

a. Our Limit Of Liability
Under no circumstances whatsoever (excepting potentially for personal injury or death as a direct and exclusive result of our actions or as otherwise specifically stated herein) shall pinkdylan have any liability over and above potential refund of any fees received from you for goods or services that we have fundamentally and totally failed to provide (or that contain catastrophic and genuine bugs that we are unable to fix) regardless of reason for such failure.

i. Total Failure to Supply Goods or Services:
Should we totally fail to deliver goods or services contracted for, our maximum liability is to refund fees received in respect of the goods or services we have totally failed to supply.

We shall not be financially liable to refund you for failure of services we provide where such failure is due to failure of a supplier/provider further "upstream" from ourselves, and where we ourselves are unable to receive appropriate compensation for such third party failures (whether technical or financial).

ii. Bugs and programming errors (CMS [Content Management Systems], e-commerce , database and other programming work):

Our maximum liability in the event of programming errors or omissions (including mathematical, logic or reporting errors) shall be to fix such errors (or refund the fees, or part thereof as appropriate, received for the job at our discretion). We shall not be liable for any consequential losses resulting from such errors or omissions.

It is ESSENTIAL that you fully understand that programming and mathematical errors (and similar) could potentially have significant financial implications for you. Whilst pinkdylan undertake reasonable levels of testing on all programming and mathematical logic, it is ESSENTIAL (and a condition of contract) that you also perform comprehensive tests on the final installation of all aspects of any work we have undertaken for you (with special care for anything with potential financial or legal implications) under all combinations of situations you will encounter with your precise needs (some solutions are based on core programming provided as the basis of applications delivered to many clients, and as such may have virtually infinite combinations of possibilities and it may well be impractical for us to establish and test every possible combination of events and features, whereas it is relatively straightforward for you to test the combination of features and settings that you intend to use from the features available to you) and satisfy yourself that all is correct before this work is made available to the outside world for live orders etc.

You must advise us of any problems you discover during these tests even if you feel they are of no significant consequence. Any genuine bugs or errors reported to us immediately in writing following these tests (but in no event later than 60 days from date we make the site available to you for testing) will be rectified free of charge (or a refund / partial refund provided at our discretion). Any such bugs and errors reported more than 60 days from the date we give

you physical access for testing will be liable to a charge from us to fix (at our discretion).

With e-commerce sites and any other site with potential financial, legal or other important implications, you must perform adequate and regular full audit checks at frequent intervals designed to ensure that all calculations and functionality continue to perform as they should. Any correction work necessary after your initial tests (as above) will normally be chargeable.

It is ESSENTIAL that where e-commerce payments are processed using a third party payment provider that you do not rely entirely on the payment status message as displayed within your site admin. You should confirm that all payments you believe to have been received have in fact been correctly credited to your account and not subject to a chargeback – before you dispatch goods. You must perform regular reconciliations between orders received and payments actually received.

Owners of e-commerce sites must be aware of the fact that fraudulent orders are not uncommon, and the fact a card payment is recorded as "approved" (or similar) is no proof that the card is valid and has not been stolen. You must take adequate fraud and security precautions with all orders and extreme caution with "unusual" orders including those with delivery addresses that differ from the card holders address, deliveries outside the UK, or orders for unusually large values or multiples of the same item (including repeat orders) especially if not the norm.

iii.   Partial Failure to Provide Services Contracted For:
Where we have partially failed to provide a service then any potential refund shall be limited to the proportion of fees received equivalent to the proportion of contracted services we have failed to provide (e.g. if you have paid for a service for 30 days and we fail to provide that service on 3 of those days, then our maximum liability shall be one tenth of the fee paid for the 30 days).

We shall not be financially liable to refund you for failure of services we provide where such failure is due to failure of a supplier/provider further "upstream" from ourselves, and where we ourselves are unable to receive appropriate compensation for such third party failures (whether technical or financial).

iv.   Agreed Value of Goods and Services and Consequential Loss:
The services we provide shall not be deemed to have any greater value to you than the fees paid to us in respect of such services and we shall not be liable for any consequential loss following our failure to supply, or failures or errors in the goods or services that have been supplied by us to you.

v.   Cancellation by you part way through a project
Should you accept a quotation from us for a project and pay your deposit, but subsequently render us unable to complete the work by failing to provide us with information and materials necessary for us to fully complete the work, or you simply cancel the contract, cease trading or sell your business then under no circumstances shall we be liable to refund your deposit or any portion thereof, and if we have been able to commence work and have completed more than the proportion covered by the deposit, then in these circumstances you will be fully liable to pay us in full for the work actually done (based on actual hours spent in relation to our estimate for the entire job to completion), less any deposit already paid by you to us.

vi.   Credit Card Processing and Security – e-commerce and similar applications.

pinkdylan shall have no liability in respect of misuse of credit card details that have been obtained from your account on our servers (or any account on any third party server).

You will be fully responsible (to the extent you are held responsible by the banks or other entities) for any misuse of your customers credit cards (or similar) resulting from unauthorised access to the card details on your own systems (including hard copy paperwork), and through unauthorised access to our servers using log on details we have supplied you, or otherwise.

Although any e-commerce solution we supply utilising our own software and hosted on our own servers will usually be PCI compliant at delivery, there can be exceptions and you must advise us in advance of any security requirements you may have in relation to any goods or services we are to supply, and ensure that our quotation covers these requirements. Any security guaranties we offer (such as PCI Compliance) can only apply at date of delivery, requirements (of the relevant authorities and testing organisations) can change over time for a number of reasons and any work necessary to deal with these changes after delivery may be chargeable.

Additionally, any undertaking that we may make within our quotation relating to PCI compliance shall only relate to our servers and the website/software we supply to you, PCI compliance also requires compliance "your end" including network security and we shall have no involvement or responsibility with this which is outside of our control and scope of the services we provide you with.

Where PCI compliance is required (and detailed within quotation), any 'pass' issued by Security Metrics or any other recognised testing organisation of our choice after delivery shall suffice as evidence of initial compliance. It is your responsibility to pay for any such testing of your site or hosting facilities (e.g. with Security Metrics), we cannot formally test your site and server for PCI compliance unless you have signed up with Security Metrics (or other as specified by us from time to time). If you require PCI compliance at delivery, and our quote mentions this, then you must sign up with Security Metrics (or another company if advised by us) in advance in order that we may run tests at date of delivery. You should advise is immediately if a subsequent test (by Security Metrics or similar) fails, and a fee may be payable for necessary work to achieve subsequent compliance.

Should you have any concerns whatsoever at any stage that your customers credit cards have been misused, or that your site or server does not meet recognised requirements you must advise us immediately (regardless of whether you feel this is related in any way to your site).

We recommend that clients use third party payment providers such as SagePay or PayPal in order to minimise their

exposure to problems associated with card security and eliminate the need for website or server PCI compliance (as neither would ever see card details). If card details are stored on our servers (rather than use SagePay, PayPal or similar) then you must request (and pay) for a SSL (Secure) certificate, and ensure that all card details are removed from the server as soon as possible (on downloading order details and processing payment).

    b.   Your Limit Of Liability
Under normal circumstances you have no liability to us over and above paying for goods services we provide you with (including any third party services). However there are certain specific exceptions as follows:

        i.   If we incur costs (including time costs or loss of business as a consequence of us being unable to provide contracted services to other clients for whatever reason) as a result of you using our servers other than in accordance with permitted use defined herein, or other than accepted good practice, you shall be liable to compensate us in full for any resulting costs including consequential loss and loss of business.

        ii.   If you copy, duplicate, resell or otherwise distribute pinkdylan work or software (or any part of our work or software) including admin and database systems made available to you for your own use only in any way other than that specifically permitted herein (or you allow to be copied etc. through negligence or otherwise) then you shall be liable to pay us a fee equivalent to the fee we would charge to re-create from scratch all work that has been illegally copied (including any admin systems and databases), plus a surcharge of 100% and that this fee (including surcharge) shall be payable for each and every copy made whether by yourself or by someone you have directly or indirectly passed our work on to (or that have obtained copies of our work through your negligence).

        iii.   If any action (or lack of) on your part renders us liable to pay any additional fees or costs to third parties properly contracted or subcontracted to provide your services or software licenses then you shall be liable to compensate us in full.

        iv.   Should you accept a quotation from us and pay your deposit, but subsequently render us unable to complete the work by failing to provide us with information and materials necessary for us to fully complete the work, or you simply cancel the contract, then should we have completed a greater proportion of our work (based on anticipated hours necessary to undertake the job) than the deposit you have paid is in relation to the total contract price, then you shall be liable to pay a total fee (including any deposit paid) based on the proportion of the job completed.

7)   Our Satisfaction Guarantee

    a.   We offer a genuine Satisfaction Guarantee on all of our services. Obviously we need to protect ourselves from theoretical abuse and unreasonableness, so this guarantee is subject to the terms contained herein which will be implemented at our discretion. We genuinely aim to provide clients with a high level satisfaction with all of our services, with due regard to the nature of the services we have undertaken to provide and realistic expectations with due regard to the level of fees paid.

    b.   The limit of the extent of this guarantee is the refund of any fees paid in respect of the specific service for which dissatisfaction exists, and continues to exist after you and we have worked together in good faith to try and resolve the issue.

    c.   In order to claim under this guarantee, you must act reasonably with us at all times, advising us immediately in writing (and with full detail) of any dissatisfaction as soon as such dissatisfaction occurs. You may not claim dissatisfaction simply because you have changed your mind or because we have not provided a level of sophistication, functionality or performance not specifically covered by our quotation in the first place. You must allow us time to correct any issues, working closely with us with a genuine determination to achieve satisfaction.

    d.   In addition to the general points above, the following specific terms apply:

        i.   The guarantee only applies to services provided directly by us, it does not cover refund of any element that relates to services that we buy on your behalf from third parties (such as Google) unless we too are able to claim a refund from the third party.

        ii.   The guarantee only applies to services we have supplied following us providing you with a formal written quotation

        iii.   You must satisfy yourself that services detailed within our quotation fundamentally cover all of your expectations and requirements and in sufficient detail to enable evaluation before placing an order

        iv.   You must at all stages provide us with all the information and help we reasonably require in order to adequately deliver a satisfactory solution to you

        v.   You must not have commissioned other suppliers (paid or not) to present alternative designs (or similar principle for other services) with either the intention of, or the effective result that, you simply select your preferred solution (and effectively claim dissatisfaction with the other(s)). This situation would always result in some supplier(s) not getting paid and would therefore be considered unfair

        vi.   You must not expect a level of sophistication, design, functionality or performance that a reasonable person with knowledge of the industry would not assume to be a natural expectation of yours with due regard to the details of the quotation and the price level

        vii.   You must immediately advise us verbally, and follow this up in writing within 48 hours, of any dissatisfaction as soon as it becomes (or should have become) known to you (certainly no more than 7 days after you have a means of evaluating our work) and this advice must refer to the specific section of our quotation that details the service(s) concerned, and explain in detail why you are not satisfied

        viii.   Your dissatisfaction must relate directly to the standard of our work or services, not (for example) the level of benefits gained from such work or services (for example, level of business done through an e-commerce site) as these factors include elements completely outside of our control

        ix.   Your dissatisfaction must not be a result of any change of opinion or instructions on your part, or be related to anything that has been done for good technical, security or similar reasons that are generally known, understood and respected within our trade or wider

        x.   You must actively work with us to resolve all issues, and allow a reasonable time period to achieve this (typically not less than a period equal to the lead time stated in the original quote)

        xi.   Your dissatisfaction must relate to services or events over which we have full control. Your dissatisfaction must relate to the professionalism and fundamental standard of our work and efforts rather than ultimate success of such work in terms of achieving a specific goal that involves interaction with third party solutions with which many others are also interacting and have the same fundamental tools available to them as we do. (For example, it would not be reasonable to be dissatisfied simply with us failing to achieve a specific or general search engine results position for a specific phrase unless we have formally offered a specific guarantee for example achieving a specified position on Google with a specified

phrase, whereas it would be reasonable to be dissatisfied if we had not undertaken, with reasonable levels of skills and judgement any task that could reasonably be expected to be necessary in order to stand a fair chance of achieving the desired result, and is also within the scope of the work that had been quoted for

xii.   You must continue to pay all fees due under the contract until we have had a reasonable chance to resolve any issues

xiii.   In the event of a valid claim, any refund will be limited to refund of all fees paid after dissatisfaction was first reported to us, plus refund of fees paid for the initial work that lead to dissatisfaction. Where dissatisfaction relates to an ongoing service that involves a monthly (or other periodical) charge, no refund will be due in respect of invoices older than the one immediately preceding the date at which we were first notified of a dissatisfaction

xiv.   We reserve the right (typically exercised if we think you are being either unreasonable or unrealistic) to ask you to demonstrate that you have been reasonable and realistic with us in your expectations by you commissioning a third party within our trade who then clearly succeeds within a similar timescale where we have failed for a fee not in excess of 15% more than we had charged.

xv.   If we offer a refund under our satisfaction guarantee, no element of the work that we have done within the fee that is to be refunded may be used by you or any third party in any shape or form.

8) Copyright

No element of copyright, or rights of use shall pass to you until such time as we have received full payment for work done.

a. Third Party Copyright

pinkdylan will never knowingly infringe third party copyright when undertaking work for you, however in the event that we unknowingly do so our maximum liability shall be to remove such material from the work we have undertaken.

You will provide us with material necessary to design and populate your web site (if that is the service we are providing you with). We are entitled to assume that you have the right to use such text, images and other material and in the event that this is not the case we will be entitled to charge you based on our standard hourly rates for removing offending material. Furthermore, in the event that our using such material supplied by you causes us to incur additional costs (financial or time) then you agree to pay us such costs in full.

Sometimes we or you may knowingly and legitimately use material that is subject to third party copyright, in which case both we and you will be bound by the terms or licence granted permitting use of such material.

Any third party software employed will render you and us both liable to adhering to licence terms.

b. pinkdylan created site design

This section relates to all aspects of the cosmetic design of a site, and the fundamental layout of its contents. It does NOT include coding or software utilised to create the display of the design, layout or contents in a browser [these items covered in d) and e) below].

i.   pageStart and cartStart design solutions

These are entry level sites based on customised design based on pre-existing core design layouts. All aspects of copyright of these sites shall remain with pinkdylan at all times, and these sites may not be copied in any way or hosted other than on pinkdylan servers.

ii.   site4now and site4life design solutions

These solutions are Rental based, no element of ownership of design, structure or layout will ever pass from pinkdylan to you. When the contract is terminated all services supplied under it will no longer be available and no element of the site other than copy and images created by yourselves may be copied, used or hosted elsewhere.

iii. pageGo, cartGo, pageXtra, cartXtra, dbaseXtra, pagePro, cartPro design solutions.

Once paid for in full, you may copy (or duplicate or re-create) any element of the cosmetic design of the site for use by yourself as a web based design, or any other medium subject to below:

Certain elements of design (typically but not exclusively background texture or pattern images) may be subject to third party licences and these may limit use to the web, although we will not impose any formal limits where all rights are 100% with us.

pinkdylan will never deliver cosmetically identical sites under these solutions to other clients, we are however free to use all individual elements of design or layout (or similar) again as we see fit.

c. pinkdylan created site content

This section relates to content placed within a website, rather than the core design of the site or its layout.

We will usually create content based on material supplied by you, and copyright in relation such content, in the form supplied, shall remain with you to the full extent you owned it in the first place. We have a right to assume you own adequate copyright or reproduction rights to all content material you supply us, and will charge an additional fee should we need to undertake additional work to deal with any issues in this respect.

Once the site is paid for in full, you are free to use any text content written (copywriting) or re-formatted by us (almost always fundamentally based on information supplied by you) as you so wish, but subject to any third party trademark or other similar considerations. You must advise us if there are any inaccuracies or other potential issues with content we have written, and our maximum liability will be to remove any offending material from the website. We have no responsibility at all for the consequences

of you reproducing site content elsewhere.

Where content includes images or other contents (such as Video or third party booking systems for example) that have been sourced externally (image libraries etc.), then the licence we purchase on your behalf (or you purchase directly) will probably be restricted to web use, and you must abide by license terms.

d. <u>Standard pinkdylan server based software, web and database applications (including CMS and E-Commerce)</u>

This section covers pinkdylan developed server based software (and associated database structures) that is used for site generation, management, functionality and data storage where such software is used to maintain and generate the sites of multiple clients (as opposed to being written entirely from scratch for a specific client). MOST clients will be delivered a site that relies on such software for its functionality and administrative maintenance.

This section also covers any paid updates or extensions to pinkdylan software, any such updates and extensions will become an integrated part of our software because they will be entirely reliant on our existing software.

This includes (but is not limited to) software and server applications called cmsXtra and cartXtra, and all solutions that include these as part of a larger solution. These are predominantly (though not exclusively) CMS (Content Management) and E-Commerce applications. This includes all programming, cosmetic appearance and database structure relating to our software. It should be noted that most sites will rely on this software for generation of the site for display in a browser.

Unless specifically stated otherwise within a written quotation issued by us to you, all copyright in respect of pinkdylan developed content management, database application and ecommerce software which may be provided to you by us as part of a solution shall remain with us at all times.

The fee quoted for a website covers the design, (and usually) population of the site and (usually) the technical integration of our design with our site management/functionality software, but not the site and server management/functionality software itself (unless specifically stated otherwise).

You will (if relevant, and detailed in quotation) be granted a FREE of charge licence to use such software for the natural life of the site we develop for you subject to the on-going purchase by you of a pinkdylan hosting contract (paid monthly or annually). It is the hosting fee that includes provision of, and support with pinkdylan software (as well as the provision of server hosting facilities).

If (and only if) specifically stated within our written quotation is it acceptable for you to install our software on a third party server of your choice. If this is the case then this is offered on a single site basis, and if this is done then you must not copy our software other than for normal backup purposes and must not allow our software to be used with any site other than the original pinkdylan developed site that it was delivered with. Where we have agreed that you may install our software on a third party server, this software must be used "as is", and may not be altered in any way. Any support you require from us in relation our software will be chargeable at our standard hourly rates when being run on a third party server (support is free of charge when installed on our servers).

Where any site developed by us relies on our server based software (including cmsXtra and cartXtra) for its management and functionality, and you continue to purchase pinkdylan hosting for your site (without a break), then with the exception of pageStart, cartStart, site4now and site4life solutions (where this shall not apply) in the event of pinkdylan ceasing to trade (and where the business is NOT transferred to a new owner or operator) AND also pinkdylan or its successor is unable or unwilling to offer you on-going hosting facilities, pinkdylan guarantee to provide you free of charge with a copy of the software that a competent technician could use to get your site up and running on a suitable alternative server (subject to you having taken adequate backups of your site using the backup facility provided within the software). This software is then subject to the same terms (as above) as would be the case if we had agreed for the software to be installed on a third party server from the outset.

e. <u>Bespoke software</u>

This section covers software and databases built 100% from the ground up to meet a specific clients specific written specification, and where our quotation clearly states that it covers bespoke software development leading to your ownership on receipt of full payment.

Where we are requested to develop software from the ground up for a specific client, this will always be based on a written specification provided by the client.

Copyright and rights of use will remain with pinkdylan until such time as we receive full payment from you for the development costs. Thereafter copyright of the software as a "whole single unit" will pass to you. You may copy or sell it as you wish and update or expand as you wish.

pinkdylan will not re-sell without your express permission the software as delivered to you, but we may retain and re-use individual elements of the coding, logic and database structure as we feel fit.

f. <u>Site Updates</u>

Where we update a website, no copyright shall pass to you until paid for in full, thereafter updated design and content shall be treated the same as if it were a new site (above)

9) Service Specific Terms:

a. Web Sites (including e-commerce sites, database applications and all associated data, scripts and programming)

i. Copyright depends on the solution provided, and is dealt with in 8) above.

ii. Design and Functionality
Our quotation will detail all key areas of design and functionality to be provided. If you have specific ideas or requirements in terms of either design or functionality you must check that these are mentioned clearly in our quotation, we will be happy to clarify in writing. It important that if you have specific requirements in terms of HOW certain functionality works (rather than simply that a function exists), you must ensure that our quotation provides sufficient and adequate details, or request written clarification before accepting our quote.

iii. Browser Compatibility:
All sites developed by pinkdylan are optimised for the versions of Microsoft Internet Explorer, Google Chrome and Microsoft Windows in most common use as at date site initially developed (simply because this combination covers the significant majority of users, should this situation change then our policy will evolve as necessary). In practice there will normally (but not necessarily always) be only minor cosmetic issues (if indeed there are any issues at all) with any other major up to date browser or platform in common use as at that date. Certain desirable features may require modern browsers, but we never use these features (unless there is no alternative in order to achieve essential functionality) where not supported by the then current most commonly used browser/platform. We are obviously unable to guarantee compatibility with future browsers/platforms (although historically this has not been a significant problem in practice) and any work needed to update a site for future hardware/software would be chargeable unless included in an updated release of our own software for sites hosted on our servers.

iv. W3C (World Wide Web Consortium) Compliance:
pinkdylan are able to develop sites that comply with the latest W3C standards, both for HTML and CSS, however this is not regarded an essential requirement and is not formally included in our quotations as standard. If you do require 100% compliance you must advise us in advance of quotation and ensure that our quotation does specifically cover this. (Ask for a re-quote if necessary.) You should be aware that any site that meets compliance when we deliver it may lose compliance as additional content is added (through content management tools for example).

v. Screen Resolution
You should be aware that how a web site looks on the screen will vary depending on the resolution of the screen in use. Unless otherwise agreed in writing we will develop all sites such that (assuming a full size window in use, and standard settings in all other respects) there is no need for "horizontal scrolling" when viewed at a resolution of 1024 wide or greater. Users on a lower resolution will need to scroll sideways to see the full width of the site (mobile responsive sites excepted), and users on a higher resolution will observe blank unused space (other than possible background colour/image) either side of the site. This is "normal" and should not be considered a fault or poor design. The minimum resolution we design to may increase over time as screen trends change. Clients wishing us to design to a specific (or minimum/maximum) resolution must advise us in advance and ensure our quote reflects their requirements.

vi. Mobile Devices
Many modern mobile devices are capable of rendering most websites very well. Apple (and potentially other newer) devices may not support Flash (which has long been an industry standard). We will not deliver a website that requires Flash in order to function, but sometimes Flash may still form part of the content on occasions (although alternatives are usually available and will be employed where practical). We are able to create mobile optimised sites (often referred to as "mobile responsive" sites), and many of our sites will be mobile responsive by default. If this is important to you however, you must ensure that this is clearly stated in our quotation.

vii. Fonts
Clients should be aware that there are only a relatively small number of fonts that are fully Internet Safe. We always use Internet Safe fonts unless requested to do otherwise. If non "safe" fonts are used then users without the chosen font installed will see something completely different, and we shall have no liability in respect of this.

viii. Intended Audience and Legal Issues
pinkdylan will never develop a site that, at time of development, fails already established tests which have resulted from the creation of established, well publicised and generally accepted UK case law determining that similar sites (in terms of functionality, size, intended audience and level of technology) fail to meet essential legal requirements and where this has also resulted in the site owners being fined. If we do, then our liability is limited to making your site comply with established case law that existed at date of first delivery, or refunding/part refunding at our discretion. However, certain areas of law may be unclear or not fully tested or not adequately publicised and if you have any concern regarding this you must discuss this with us and ensure that our written quotation clearly and specifically satisfies you in this respect. The law requires that limited companies now include their registered office, country of registration, registration number and VAT number (if registered). If we are aware of the fact you are a limited company we will ensure these details are included (or add them later at no cost if omitted). Should a change or clarification of law occur after your site is first published or delivered to you (either new law or new case law based on previously existing law) and this dictates any changes or additions to your site then these updates or re-designs are chargeable.

b. Domain Names:
i. Applicable Terms:
If we register, or take over administration and renewals of, a domain name for you then you are bound by the terms of the issuing Registry or Naming Authority as well as the terms herein (as are we). Should these be mutually exclusive then the terms of the Registry shall prevail.
ii. In the case of .uk derived names (including but not limited to .co.uk, .org.uk, .me.uk and .uk) the Naming Authority/Registry is Nominet. Please visit www.nominet.org.uk for Nominet Terms and Conditions regarding Domain Name Registration.
iii. "Ownership":
Unless requested by you to do otherwise, we will always register names in your name – with the sole exception of site4now solutions. With site4now you pay a monthly rental to cover all services including a .co.uk domain name which we will register in our name for your use. Should you wish to take ownership of a site4now domain then a fee will be payable which will be clearly indicated within our quotation (or appendix thereof).
iv. Assumed Renewal:
We are entitled (but not required) to assume that you wish to renew your name(s) at each renewal without reference to you and you are obliged to pay for domain renewals at our then current rate even if you no longer require the name

unless you have advised us in writing at least 45 DAYS before the name is due to expire that you wish to cancel the name (some names auto renew a month or more before expiry and we are unable to claim a refund past that time). We will confirm receipt of your request to cancel in writing and you must ensure you receive such confirmation at least 40 DAYS before renewal is due (else contact us on 01905 371041).

v. Renewal Invoicing:
We will invoice forthcoming domain renewals between 75 and 100 DAYS before renewal is due (and send by either email or post to last known address). Payment MUST be received by us at least 45 days before renewal is due. If we do not receive payment at least 50 days before renewal then we will attempt to contact you by phone and email (at last known contact details) in an attempt to ensure you have received the invoice are able to make payment or indicate renewal is not required. Despite iv above we shall not be obliged to renew the domain name and shall have no liability whatsoever if we do not do so if we have not received payment in line with details above. Note that all domain names are chargeable with the sole exception of site4now solutions, no domain names are included in hosting packages (as may have been the case prior to January 2009).

vi. Renewal Term:
We usually (but not necessarily) invoice domain name renewals two years at a time. You should note that with some names we invoice 2 years at a time but the name is actually renewed for one year at a time. In these cases the second year renewal is performed for you free of charge at the due date. (This is due to limitations of certain automated renewal systems, not because of policy.)

vii. Your Awareness:
You must make yourself aware of all of your domain names and the dates they are due to expire. If you do not receive an invoice from us for renewal at least 65 Days before a name expires you must contact us and query why. (We can give you information on expiry dates of names we manage for you if you enquire).

viii. Loss of a Domain Name:
In the event of the loss of a domain name that you have paid for on time through a failure on our part we will attempt to retrieve the name for you but you must advise us immediately you become aware of the problem. Our absolute maximum liability in respect of the total and permanent loss of a domain name solely through our negligence alone shall be limited to an absolute maximum of £500.00 (in respect of perceived values of the name itself together with any consequential losses). If you feel your domain name has a value to you greater than this (or you would suffer greater consequential losses) then you must move it to a Registrar that will accept liability for high value domain names.

ix. Changes to Domain Name Record, DNS or general Domain Name Support (including abuse and complaints):
If you require changes or support with regard to your domain names please email support@pinkdylan.co.uk (or call 01905 371041). We will usually reply to your contact within a matter of hours, but in any case within 2 business days (Monday to Friday, Holidays excluded) and carry out any necessary action within a further 2 business days (usually quicker).

x. Transferring a Domain Name away from pinkdylan:
Any domain name registered in your name is available to you for transfer to an alternative registrar. If you wish us to transfer a name you must advise us in writing on a letter heading of the registrant ("owner" - usually you) and signed by either the individual recorded as registrant (where this is an individual) or an authorised official (where this is a company or organisation). You must give precise instructions as to what action you wish us to take and you understand that once we have followed your instructions we may no longer have any control over your name and have no liability in the event of following incorrect instructions. We will action your request as soon as possible, but not later than 2 business days (Monday to Friday excluding holidays) after receipt of your written request. We do not normally charge for transferring your name although we reserve the right to do so if you would be charged for transferring the name in the opposite direction (roles reversed). We will not normally perform any work for you if your account in respect of the domain name or hosting thereof includes outstanding invoices, but will at all times honour our obligations as defined by the relevant naming authority (Nominet in the case of ".uk" names).

xi. Services Provided Within Cost of a Domain Name:
Domain name registrations and renewals do not include hosting or email facilities on our servers, but do include running DNS if required (which could facilitate provision of hosting and email on a third parties server) and you provide us with the required DNS Settings (where you optionally purchase hosting from ourselves you will not need to provide us with information in order for us to provide services).

xii. Pricing Variation:
Prices for domain name renewals may be updated from time to time to reflect any changes in costs (from suppliers, our time or otherwise). Example rates as at 1st April 2014 are £30+vat per 2 years for .co.uk, £40.00+vat per 2 years for .com. Exchange rates may also affect costs from time to time, current prices are based on exchange rates 1st April 2014.

xiii. Payment terms:
Domain name registrations and renewals are payable in advance (major credit cards may be accepted where immediate registration requested subject to a 5% surcharge).

c. Hosting and/or E-mail

i. Facilities:
Facilities available and bandwidth/disk allowance will be detailed in our quotation – but packages are upgraded from time to time or amended as dictated by security or similar issues. Depending on the package you are on (and the facilities you actually need), your package may be upgraded or downgraded at any time at your request and this will be reflected in a revised charge..

ii. Term:
Hosting and Email facilities are available on either monthly or annual contracts (if quoted monthly and require annual, please contact us).

Monthly Contracts:
Contracts run on a rolling calendar monthly basis (regardless of which precise date within a month they an account was first set up). Either party may terminate the contract by giving one complete calendar months' notice in writing by post to last known address. Notice received by either party during one month shall mean that the contract ends on the last day for the following month. Contracts will automatically continue on a rolling basis until such time one party delivers notification of termination as above.

Annual Contracts:
A small discount is available for paying annually in advance. Here the contract shall run from the first day of the month

during which date first set up to the end of the eleventh month following the month of set-up. Contracts will automatically be renewed annually for a further 12 months unless either party delivers IN EXCESS OF 1 full calendar months' notice to the other in writing by post to the last known address.

iii. Start Date:
Where the start of service provision is other than on the 1st of a month, the contract term, invoicing and payment will be the same as had the service provision commenced on the 1st of month during which services were first made available to you.

iv. Automatic Renewal:
Your hosting and/or email contract will be automatically renewed at the end of each term (monthly or annual) for a further period (month or year) unless terminated in line with vi, vii or viii below.

v. Payment Terms and Invoicing:
All prices quoted are exclusive of VAT.
Monthly hosting must be paid monthly in advance on or around the 23rd of each month to cover the forthcoming month, and we will issue a VAT invoice shortly after (before the month end).
Annual hosting will be invoiced in advance of renewal and is payable by return.

vi. Termination at end of Term:
Either party may terminate the contract by delivering notice in writing to the other party arriving not later than 32 (thirty two) days prior to the forthcoming renewal date. This (for example) means that if termination is required at the end of March, notice must be received before the end of February.

vii. Termination or Suspension by pinkdylan:
pinkdylan shall also be entitled to suspend or terminate the contract as follows:

1. Suspension following Non Payment/Late Payment:
We shall be entitled to suspend our services immediately in the event we do not receive a payment by the due date and you fail to rectify this situation within 7 days of us sending you a reminder (by post, email, fax or over the phone). If we do suspend an account in line with the above, a "Suspended" message will replace your web site and email facilities will not be available.

2. Re-activation Following Suspension:
If your account is suspended in accordance with these terms then the account will only be re-activated on receipt of the overdue payment plus a re-activation fee of £75.00+vat. These may be paid by credit card subject to a 5% surcharge.

3. Termination Following Suspension:
Should we suspend your services as 9.c.vii.2. above, then should we not receive payment for re-activation (as detailed above) within 7 days we shall be entitled (but not obliged) to permanently terminate your account. Should we terminate your account in this way then any material you may have on our server will be permanently deleted and it will not be possible to recover such material.

4. Suspension and Termination following Change in your trading or legal status:
   a. If you cease trading or enter receivership:
   Cessation of trading or entering receivership shall be regarded as a fundamental and catastrophic breach of contract. We shall be entitled to suspend or terminate (or first suspend and later terminate) your hosting and email facilities without notice or compensation (even if you have paid in advance) and you must have taken safe backup of any material on our servers that belongs to you immediately prior to your change in status.

   In the event that you cease trading or enter receivership and we opt to suspend rather than terminate your account then we may at our discretion re-activate facilities on receipt of full payment covering all outstanding invoices on the account plus an equitable payment for any work undertaken but not yet completed or invoiced.

   b. If you enter administration:
   If you are a limited company and you enter administration then this shall be regarded as a fundamental and catastrophic breach of contract. We shall be entitled to suspend your account without notice unless you have paid in full up to the end of the current contract term and also that there are no other outstanding pinkdylan invoices for other goods or services and that there is no current work in progress yet to be invoiced. We shall be entitled to allocate any prepayment on your hosting account as at date of entering administration against any outstanding invoices for other pinkdylan goods or services and/or the value of any work in progress as yet not invoiced.

   If we do suspend your hosting and email account as above, then we will advise you by post within 7 working days of suspension full details of your current account status (including hosting fees up to the end of the current contracted period and the value of any work in progress). If you pay in full all outstanding invoices, contract commitments and the value of work in progress within 7 days of receiving these details from us we will re-activate your account up to the end of the current contracted period. If we do not receive such payment within this time frame your account will be permanently terminated. If the account is terminated as such then this shall not affect in any way our rights as an unsecured creditor.

5. Your abuse of server:
We may terminate the hosting contract immediately without notice and without refund of any pre-paid fee should you use the server other than in accordance with the permitted use as in ix below.

6. If we cease trading:
We may terminate the hosting contract if we cease trading, where this is planned then we must give at least 30 days notice in writing to your last known address, where this is not planned (for example sudden death of all partners or shareholders) no notice need be given, but we shall be liable to refund any prepaid element in respect of services paid for but not provided (you would be an unsecured creditor).

viii. Termination by yourselves:
In addition to termination at the end of the contract term as detailed above you shall also be entitled to terminate the contract immediately if:
1. pinkdylan cease trading

2. pinkdylan totally fail to provide usable hosting/mail services contracted for for a period of 20 consecutive days or longer measured from the date you formally advise us of a problem and where such failure is due to a failure of our services, not a failure (technical or business) of data centre or infrastructure further "upline" from us.

3. we fail to renew a domain name on which the hosting contract relies and for which you have paid us, and where are unable to recover the name within 20 days.

ix. Permitted Use, and expressly Prohibited Use (only facilities provided within the package purchased will be available to you):

We may suspend or terminate accounts without notice or compensation should they in our opinion breach our Permitted and Prohibited usage policy.

1. Web Site (including associated databases, scripts and programming)

   a. Pinkdylan developed Web Sites
   You are free to use (on pinkdylan servers) all functionality provided by pinkdylan developed websites including all associated databases and admin facilities.

   All page content created by pinkdylan may also be used on our servers as long as where such content is based on material you have supplied to us, such material is accurate, can be substantiated and is your copyright (or you have express permission to use it).

   You may not add content to your site that is illegal, immoral or promotes any political or religious belief or viewpoint unless we have given express permission in writing. Similarly you may not add content that is designed to offend, criticise or otherwise harm any individual, organisation or political or religious viewpoint or belief without first receiving written approval from us.

   We may remove, or require to be removed content that does not, in our opinion, conform to these requirements.

   b. Third Party developed Web Sites and third party programming/scripts and data (including third party scripts you may utilise within a pinkdylan developed website).
   You may publish web sites and data created by third parties to our servers but you may not include content to your site that is illegal, immoral or promotes any political or religious belief or viewpoint unless we have given express permission in writing. Similarly you may not include content that is designed to offend, criticise or otherwise harm any individual, organisation or political or religious viewpoint or belief without first receiving written approval from us. All information published must be accurate and able to be substantiated.

   You may run scripts necessary to provide required functionality as long as such scripts do not, in our opinion, present potential security issues and as long as such scripts are efficient and do not cause performance degradations to other users or otherwise compromise the server in any way. Our opinion on whether any functionality breaches this rule shall be final.

   We may remove, or require to be removed content that does not, in our opinion, conform to these requirements.

2. Email

   a. Incoming Email

   You may use our server to receive all normal email addressed to email addresses based on domain names hosted by us. We do not formally and consciously limit the size of any email attachments that you may receive, but it is possible that systems utilised on our servers may from time to time impose such limits.

   You must not use our servers to receive email containing or discussing any illegal or immoral content, and you must advise us immediately should you find that you are receiving such material from unsolicited sources.

   You must NOT set our server or any internal systems "your end" to automatically return any undeliverable mail (mail sent to invalid addresses on your domains) to the sender. Mail addressed to a user (name@) that you have not set up must either be discarded, rejected (failed) or delivered to a valid mail box. (Spam often uses fake "from" addresses, and returning such undeliverable mail to the supposed "sender" often simply forwards the spam to an innocent party who uses/owns the "faked" address. This can result in our servers being blacklisted and potentially prevents other clients from sending valid email). This can also put unreasonable loads on our server when if you are returning large numbers of undeliverable emails back to an address that is itself not valid.

   You must perform good housekeeping on your mailbox(es), deleting old unwanted mail and not exceeding your mailbox size limit (typically 250mb, but otherwise by agreement).

   b. Outgoing Mail

   You should normally use an outgoing mail server provided by your Broadband provider. If we do not supply your broadband then we may still permit you (on request) to use our server as an outgoing server (as long as your chosen broadband provider does not actively prevent or hinder you from using third party outgoing servers).

You may use our server to send all "normal" business and personal email, including attachments (a size limit may apply from time to time as dictated by software and security settings in use).

All mail sent out through our server MUST have a "return address" that is itself hosted on our servers, and that arrives in a mail box that you read.

All email sent out through our server must meet all current legal requirements for email.

No email containing illegal or immoral content may be sent from our servers.

You are permitted to send out reasonable volumes of marketing email at sensible intervals (and where legal) to specifically targeted (i.e. relevant) recipients as long as each and every such email is specifically addressed to its intended recipient and the recipient can see their email address in the "to" field. In addition you must include an "unsubscribe" facility which must be honoured, and you must remove any "undeliverable" addresses form your mailing list before its next use.

When sending out bulk or large emails you must ensure that sending is "throttled back" to avoid your mailing job placing such a demand on the server that performance for other users could be jeopardised.

Should it be established that your actions result in our server being listed on any recognised blacklist, then you must fully indemnify us for all costs (including our time) necessary to re-instate services (without blacklist) to all other clients at the soonest possible opportunity together with any claims form other clients and loss of clients resulting from us being unable to provide services as a result of your actions.

You may use scripts on your web site to send emails (such as form replies, password reminders, etc) as long as such scripts present no security or performance issues. If these scripts are not provided by us as part of a job them you may need to contact us to enable such script to be given appropriate permissions and tested, and there would normally be a charge for this.

We set a limit to the number of outgoing emails you may send per hour (in order to protect for example against spammers who may have compromised a client's PC and be attempting to use it to send bulk spam out through our servers). You should therefore schedule/throttle large mailing jobs accordingly. We reserve the right to change the limits without notice where we consider this necessary for technical, security or performance reasons, as at 1st April 2014 this limit was set to 500.

We set a limit as to the percentage of outgoing emails that are allowed to bounce back to you, if you exceed this limit (typically 25%, but again we may vary this entirely at our discretion for technical, security or performance reasons)) then you will be prevented from sending more email for a period of time. (It is typically only people sending out junk that will exceed this percentage of bounce backs.)

3. Hacked or compromised sites / accounts / or client computers and other attacks and including discovery of security vulnerabilities that have not as yet been exploited.

    We may suspend without notice any account that has or appears to have been hacked, is or appears to be being abused by a hacked or compromised computer, internet users, groups or network or is or appears to have been compromised in some other way or is under some sort of external attack which is or has the potential of causing any form of practical issues to the server as a whole or the datacentre in general. Similarly, we may suspend an account without notice if we become aware of a potentially serious security vulnerability even where this has not yet been exploited.

    Where such attack appears to be as a result of a vulnerability in pinkdylan coding no more than 12 months old we will attempt to rectify the situation without charge as soon as reasonably practical. Where the vulnerability is traced to pinkdylan coding more than 12 months old we reserve the right to charge for rectification work and will consider the merits of this on a case by case basis at our absolute discretion.

    Where compromise is due to software or content created by third parties (such as websites not created by pinkdylan), or due to malicious use of correct log on details (sometimes due to a compromised PC, or a client setting a simple password) we will charge for any time required to rectify the situation at our standard hourly rate during normal office hours or double our standard rate outside of office hours.

    In the event of repeated problems associated with an account and the root cause appears to be outside of our control (such as vulnerabilities in software uploaded by you) then we shall be entitled to permanently terminate the account and delete its entire contents without notice if we consider necessary without compensation for any pre-paid period or loss of data.

x. Bandwidth and Disk Usage

    1. Bandwidth
        All hosting packages include a monthly Bandwidth Allowance (dependent on the package purchased, refer to original quotation). This represents the total amount of data that can be transferred (in and out combined) inclusive of web site traffic, email and any file transfers. Your account will not normally stop working should you exceed the allocated bandwidth limit, however should you regularly exceed the limit then we will be entitled to bill you for the excess usage based on our then current rates.

2. Disk Usage
All hosting packages include an allocated area of the servers hard drive for use by your web site, email and any other files on your account (including log and system files). The size of this area is usually ample for your needs (as long as good housekeeping measures are in place, for example you do not leave old email on the server indefinitely). If your disk allowance (which will have been defined within our original quotation) is full then services such as email and database applications may stop working. We are usually automatically notified when a clients allowance is nearing full, and in this event increase your allowance before services are affected. Should you need more disk space than your allowance on an ongoing basis then we will invoice you at then current prices based on the next package up.

xi. Support (on hosting and our own CMS/E-Commerce systems where supplied)

We will provide you with unlimited email and telephone support during normal office hours (9.00 to 17.00 Monday to Friday excluding holidays). Outside office hours please use support for a **genuine EMERGENCY only**, and send an email to support@pinkdylan.co.uk AND ALSO a SMS (text) message to 078 155 155 22. These are both subject to mobile coverage and other factors outside office hours. In the event of a genuine emergency and you have not received a response to an email or SMS within one hour please make a voice call to 078 155 155 22, if this fails please use our normal number 01905 371041 which is sometimes manned out of hours and if not there is a menu system that can divert you to an alternative mobile number (and if our phone system is down you should automatically be directed to a mobile).

We will always do our best to deal with any genuine emergencies out of office hours, but you should be aware of the fact our offices will not be manned and we will be relying on mobile coverage and other practicalities. There will be times when no staff are anywhere near a PC and there are limits as to what can be done from a mobile phone. In addition, the support resources available to us at the data centre and further upstream will be slower or restricted outside office hours.

d. Broadband

We supply broadband via a third party, and all contracts are subject to the terms of the third party together with other parties further "upstream" (such as BT who provide the exchange and lines). You agree to be bound by such third party terms.

i. Term:
Unless stated otherwise in writing all broadband contracts are subject to a minimum term of 3 months, thereafter notice may be given that terminates the contract on the last day of the month following the month during which we receive your written notice of termination (or you receive notice from us). Notice sent recorded delivery (and recorded as delivered) to last know address will suffice. Commencement date is deemed to be the 1st of the month during which your connection goes live (regardless of if that is the 1st or the 31st).

ii. Setup Fee
In additional to a monthly connection fee (which may cover less than a month during the calendar month of first connection), if your connection is a "new connection" (i.e you are not moving to us from another supplier, but obtaining broadband for the first time – or after a period without connection - on a line) Then an initial connection fee is payable (£50+vat at date of terms).

iii. Payment:
We invoice monthly on the first of each month to cover your connection for that month (or on date of order for new orders). Payment is due on the same day (1st) by Standing Order.

iv. Non Payment
Should you miss a payment then we may terminate the account without notice and a £50+vat re-activation fee would be payable.

v. Change of Provider:
Subject to the Term above, you may move your broadband to another provider by requesting a MAC code from us. You will still be charged up to the end of the forthcoming month. Should you not use your MAC code then your contract will continue until such time as you give new notice (and that notice expires).

vi. Outgoing Mail:
Will provide outgoing mail facilities (in line with b, Hosting and/or E-mail above) if you also host a domain name with us. If you do not host a domain name with us we will (if required) provide an email address your.name@cleanmail.org.uk for use with both incoming and outgoing email.

vii. Bandwidth:
Depending on the package you have (details on request) you will have a predefined monthly bandwidth allowance (or unlimited). Should you exceed your allowance in any month then you must pay for the excess bandwidth (rounded up to the nearest gigabyte) based on our then current rates.

viii. Support:
We have access to suppliers support lines during normal business hours. Most problems can be resolved by rebooting both your PC and Router – please perform these reboots before contacting us to report a problem. Should a visit by BT be arranged and the fault ends up being with your equipment (i.e. not BT's responsibility) than you will be responsible for paying a fee (£150 at date of terms being written).

e. Search Engine Optimisation

Unless otherwise specifically agreed in writing, search engine optimisation services NEVER include any form of guarantee in achieving specific results with specific phrases. Any on-going service (which typically) includes monthly reporting will be subject to terms as detailed within quotation which will fully detail services to be offered.

In the event that we have quoted to include guaranteed search engine positions, then these services will always be offered on a monthly basis, with payments only due if we have achieved the results promised and you may not terminate without allowing us to first revert your site to the state it was before we undertook our work, and you may not re-create any code or content (either precisely or in general terms that are likely to deliver similar results).

f.   Google Pay Per Click and other paid advertising

These services will be subject to terms imposed by Google or other relevant providers, and our terms will be provided within our quotation.

However, where Monthly spend limits are set these are 'approximate' for practical reasons (due to differing numbers of days in the month and the fact we have to set daily limits even if you are working on a monthly budget, and possibilities of ads being displayed on several screens at once and click through rate proving to be higher than predicted (by Google), for example). This is normal and will not be a real-world issue in percentage terms unless budget is so low that a small number of additional clicks per day would cost a significant of your daily budget.

10)   Delivery Dates and Development Timescales

All dates and timescales quoted to you are sensible estimates based on predicted number of hours required to complete the work together with general workload and planned holiday breaks and the like. These dates and timescales are NOT regarded as fundamental to the contract, and you understand that not only will we from time to time over or under estimate the number of hours required to complete a job (which could be your job or other jobs which have been taken into account when estimating when we can work on your job), but that delays in us being supplied with material and answers to queries by yourselves or other clients for whom we are undertaking work can substantially upset our planned workflow, as can unforeseeable events such as illness or unusually heavy support loads. If we quote you a fixed price for a job then any difference between estimated and actual number of hours to complete the job will not affect the price to be invoiced, but will invariably have a knock-on effect on delivery date.

11)   Your Terms and Conditions and Privacy Statement

You must ensure, where potentially relevant, that your site includes full and adequate terms and conditions that totally eliminate to the fullest extent legally possible any liability you may otherwise have resulting from errors of any kind on your web site including but not limited provision of incorrect information of any nature and regardless of how caused (including but not limited to the inclusion of incorrect pricing, incorrect calculations, incorrect tax and shipping, or any other mathematical and functionality errors of any kind due to programming errors, other technical issues, including data corruption, or incorrect management of the site). It is not our responsibility to ensure that you publish such terms, or to check the validity of such terms. Similarly, where relevant you should ensure than an adequate Privacy Policy is included in your site, it is not our responsibility to write your individual privacy policy or to ensure that it has been included.

12)   Serious and Criminal Improper Use – All services

You are expressly forbidden to use any of our services to send, receive, store, make available, promote, defend or view any material that is factually illegal or in our opinion highly offensive to other reasonable people, is harmful to other people or their belongings, or has any connection whatsoever with you committing or planning to commit a crime or aiding others to commit or plan a crime. Should you do so we may terminate all services without notice or compensation.

Should you use any of our services in any way that is connected with a criminal offence for which you are subsequently convicted in a court in Great Britain or the EU and where the offence of which you are convicted is capable of being punished by a custodial sentence of 12 months or more (regardless of what actual sentence is imposed) then you are contractually committed to pay us an "serious unauthorised usage" fee to £25,000+vat which we will donate (after deducting any tax implications and legal costs) to a charity of our choice but typically related to helping victims of similar crimes.

13)   Actions of your employees and others you interact with

Where you make our services accessible to your employees or any other individuals, companies or other groups or institutions (by providing access directly or through negligence), any actions or failure to act taken by them shall be treated the same as if you had acted or failed to act yourself. We will act with discretion where any such action or inaction takes place in our opinion without your knowledge and where we consider lack of knowledge is not through lack of due care and/or diligence on your part and where we have suffered no direct losses (financial, reputation or otherwise).

14)   Invoicing – All Services

We will send all invoices for regular (such as monthly or annual) fees by email. You may advise us of which email address you wish us to use. It is your responsibility to ensure you receive all invoices due (non payment may interrupt or terminate services). Should you have problems receiving or opening emailed invoices then you may request paper invoices by post subject to a surcharge (£3.00+vat per invoice at date of terms). There is no charge for sending copies by email on request.

Invoicing for one off and non-recurring fees will be sent either by email or by post at our discretion. Should we send an invoice by email then you may request hardcopy by post subject to a surcharge (£3.00+vat per invoice at date of terms). There is no charge for sending copies by email on request.

15)   Cash Allocation – All Services

Unless we have received written details of any dispute that you may have with a specific invoice we reserve the right to allocate all monies received from you against the oldest outstanding invoices on the account. This shall not apply where we take payment from you by credit card or direct debit (in which case this will always be allocated against specific invoices for which payment has been taken).

16)   Privacy

We will not divulge any information you provide us with to any third parties whatsoever without your consent other than as fundamentally

necessary in order to provide the services and support we are contracted to provide you with, other than where required to do so by law.

We may be required to keep copies of emails sent and received or to store other data and where we are legally required to do as such we need not seek permission from you.

You should be aware that from time to time we may see the contents of email you send or receive (typically if dealing server problems). We guarantee to never needlessly read your private mail but you must understand that there are circumstances relating to general server administration or support where contents of email may be visible to us.

17) Force Majeure

We shall not be liable for any failure of or delay in the performance of our obligations under our contract with you for the period that such failure or delay is due in part or entirely to causes beyond our reasonable control, including but not limited to failures of third parties, acts of God, war, strikes or labour disputes, embargoes, government orders or any other force majeure event.

18) Law

All pinkdylan contracts take place in England and are subject to English Law. Certain third party supplies (such as domain names) are subject to terms imposed by suppliers and these terms may be subject to alternative jurisdictions.

End of PinkDylan Terms and Conditions as at 1st April 2014