



## Terms and Conditions of Business

### 1. INTERPRETATION AND APPLICATION

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

#### 1.1 Definitions.

**Supplier:** The People Magic Company Limited, hereinafter referred to as "People Magic", "we", "us", "our".

**Customer:** any individual, organisation or board of Trustees/Directors which purchases services from the Supplier, and hereinafter referred to as "the Client", "you" and "your"

**Affiliate:** any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.

**Applicable Laws:** all applicable laws, statutes, regulations from time to time in force within England and Wales.

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

**Business Hours:** the period from 9.00 am to 5.00 pm on any Business Day.

**Change Order:** has the meaning given in Clause 6.1.

**Charges:** the sums payable for the Services, as set out in the Proposal.

**Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

**Customer's Equipment:** any equipment, including tools, systems, databases, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services including any such items specified in the Proposal at Schedule 1.

**Customer Materials:** all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to the Supplier in connection with the Services, including the items provided pursuant to Clause 4.1(d).

**Data Protection Legislation:** the UK Data Protection Legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications)

**Deliverables:** any output of the Services to be provided by the Supplier to the Customer as specified in the Proposal and any other documents, products and materials provided by the Supplier to the Customer in relation to the Services (excluding the Supplier's Equipment).

**Intellectual Property Rights:** copyrights and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) 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.

**Milestones:** a date by which a part of the Services is to be completed, as set out in the Proposal

**Proposal:** the separate document in which the specific Services to be provided are set out, with timescales, fees, payment terms and other details and any terms and conditions specific to that Service

**Services:** the services that are to be provided by the Supplier to the Client as set out in the Proposal Schedule 1.

**Supplier's Equipment:** any equipment, including tools, systems, databases, cabling or facilities, provided by the Supplier to the Customer and used directly or indirectly in the supply of the Services including any such items specified in the Proposal but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Customer.

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/ 679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**VAT:** value added tax chargeable in the UK.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 The Proposal forms part of this agreement and shall have effect as if set out in full in the body of this agreement.

1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

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

1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.8 This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

1.9 A reference to a statute or statutory provision is a reference to it as amended,

re-enacted or extended at the relevant time.

1.10 A reference to **writing** or **written** includes fax and email.

1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.12 A reference to **this agreement** or to any other agreement or document referred to in this agreement is a reference of this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.

1.13 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Proposal.

1.14 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.

1.15 In the event of conflict between these Terms and Conditions and any other terms and conditions of the Client, the former shall prevail unless expressly agreed by us in writing. Where the conflict is between these and any other terms and conditions provided by us in a Proposal or email, the most recent terms will apply.

1.16 If you request Services from us and your request is accepted, our acceptance of your request is conditional on your agreement to these Terms and Conditions in full. For the avoidance of doubt, such agreement will be deemed to be given through the signing and return of the Proposal or a written confirmation including email from an officer of your organisation instructing the commencement of work.

1.17 These Terms and Conditions may be varied by us from time to time. In the event of any such variation we will notify you of the new terms. If you do not accept the revised terms and you notify us accordingly, then the existing terms will apply to any already contracted Services for the duration of the current period of Service provision. In requesting further Services after we have notified you of changes, then you will be deemed to have accepted the revised terms in full.

### 2. COMMENCEMENT AND DURATION

2.1 Services to be supplied to you in accordance with this agreement and the Proposal shall commence on the date agreed in the Proposal or the date we receive instruction from you, whichever is the sooner, and shall continue, unless terminated earlier in accordance with Clause 14 (Termination), until either the Services in the Proposal have been completed OR the first anniversary of the commencement of this agreement, whichever is the sooner, when it shall terminate automatically without notice.

### 3. SUPPLIER'S RESPONSIBILITIES

3.1 With effect from the commencement date of this document or from the commencement date as set out in the Proposal, and in consideration of the fees or relevant charges being paid in accordance with the Payment terms, we shall:

(a) use reasonable endeavours to manage, complete and supply the Services in accordance with this agreement and the Proposal in all material respects. Unless expressly agreed in writing, no further conditions, warranties or representations are given by us in relation to the Services.

(b) use reasonable endeavours to meet the Milestones specified in the Proposal but any such dates shall be estimates only and time for performance by us shall not be of the essence of this agreement.

(c) appoint a point of contact for the Services, such person as identified in the Proposal. That person shall have authority to contractually bind us on all matters relating to the Services (including by signing Change Orders). We may replace that person from time to time where reasonably necessary in the interests of our business but will endeavour to ensure that this point of contact remains allocated to your account or work for the duration of the Services.

(d) conduct its dealings in accordance with the Code of Professional Conduct of the Chartered Institute of Personnel and Development.

(e) keep and maintain records of work completed and make them available to you in line with the terms of the specific Proposal.

(f) raise any issues or concerns that may become apparent during the term of the service.

### 4. CUSTOMER'S OBLIGATIONS

4.1 You shall:

(a) co-operate with us in all matters relating to the Services; including the provision of proper, necessary and timely instructions and authority.

(b) appoint a point of contact for the Services, such person as identified in the Proposal. That person shall have the authority to contractually bind the Customer on matters relating to the Services (including by signing Change Orders);

(c) provide, to us, our agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to your premises, office accommodation, data and other facilities as reasonably required by us including any such access as is specified in the Proposal;

(d) provide to us in a timely manner all documents, information, items and materials in any form (whether owned by you or third party) required under the Proposal or otherwise reasonably required by us in connection with the Services and ensure that they are accurate and complete in all material respects;

(e) inform us of all health and safety and security requirements that apply at any of your premises.

(f) ensure that all your Equipment is in good working order and suitable for the



## Terms and Conditions of Business

purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements

(g) obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable us to provide the Services, including in relation to the use of Customer Materials and the use of your data insofar as such licences, consents and legislation relate to your business, premises, staff and equipment, in all cases before the date on which the Services are to start;

(h) promptly notify us if any further information, documentation, or data comes to your attention which renders any earlier information provided untrue or misleading.

(i) keep, maintain our Equipment in accordance with our instructions from time to time and shall not dispose of or use our Equipment other than in accordance with our written instructions or authorisation;

4.2 If our performance of its obligations under this agreement is prevented or delayed by any act or omission of you, your agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy we may have, we shall be allowed an extension of time to perform our obligations equal to the delay caused by you.

### 5. NON-SOLICITATION

5.1 You shall not, without our prior written consent, at any time from the date of this agreement to the expiry of 18 months after the termination or expiry of this agreement, solicit or entice away from us or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of us in the provision of the Services.

5.2 Any consent given by us in accordance with Clause 5.1 shall be subject to you paying to us a sum equivalent to 30% of the then current gross annual remuneration of our employee, consultant or subcontractor.

### 6. CHANGE CONTROL

6.1 Either party may propose changes to the scope or execution of the Proposal but no proposed changes shall come into effect until a **Change Order** has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:

- (a) the Services/Proposal;
- (b) our existing charges;
- (c) the timetable of the Proposal; and
- (d) any of the terms of this agreement.

6.2 If we wish to make a change to the Services we shall provide a draft Change Order to you.

6.3 If you wish to make a change to the Services:

- (a) you shall notify us and provide as much detail as we reasonably require of the proposed changes, including the timing of the proposed changes; and
- (b) we shall, as soon as reasonably practicable after receiving the information at Clause 6.3(a), provide a draft Change Order to you.

6.4 If the parties:

- (a) agree to a Change Order, they shall sign it and that Change Order shall amend this agreement; or
- (b) are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in Clause 28.

6.5 We may charge for the time we spend on preparing and negotiating Change Orders which implement changes proposed by you pursuant to Clause 6.3 on a time and materials basis.

### 7. CHARGES AND PAYMENT

7.1 In consideration of the provision of the Services by The People Magic Company Limited, you shall pay the Charges.

7.2 Where the Charges in the Proposal are calculated on a time basis:

- (a) Our hourly rates are set out in the Proposal document
- (b) we shall be entitled to charge an overtime rate of 150% of the daily fee rate set out in the Proposal on a pro rata basis for any time worked by individuals whom we engage on the Services outside Business Hours; and
- (c) we shall ensure that every individual whom we engage on the Services completes time sheets to record time spent on the Services, and we shall indicate the time spent per individual in our invoices.

7.3 Where the Charges in the Proposal are calculated on a fixed-fee basis, the Proposal will list the basis on which we agree to provide the Services and the fee will be agreed in advance. Any additional work required which is not covered in the Proposal will be agreed with you and result in a new Proposal or addendum

7.4 The Charges exclude the following which shall be payable by you monthly in arrears, following submission of an appropriate invoice:

- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom we engage in connection with the Services; and
- (b) the cost to us of any materials or services procured by us from third parties for the provision of the Services as such items and their cost are approved by you in advance from time to time.

7.5 Where the expenses under clause 7.4 are expected to be of a significant value, we will make every endeavour to seek your agreement prior to incurring such costs.

7.6 We shall invoice you for the Charges at the intervals specified, or on the achievement of the Milestones indicated, in the Proposal. If no intervals are so

specified we shall invoice you at the end of each month for Services performed during that month.

7.7 You shall pay each invoice submitted to you by us within 7 days of receipt to a bank account nominated in writing by us from time to time.

7.8 You agree to adjust all payments to take into account any charges levied incidental or arising from the transfer of money, including but not limited to currency exchange charges and bank charges.

7.9 You agree to pay all government taxes and duties, regardless of origin, that may apply to payments made to us. Each party will be responsible for recovering their own entitlements in respect of pre-payments (such as in respect of VAT or sales tax).

7.9.1 Without prejudice to any other right or remedy that it may have, if you fails to pay us any sum due under this agreement on the due date:

(a) you 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 8% per month above the HSBC Bank rate from time to time, but at 8% a year for any period when that base rate is below 0%;

(b) we may suspend all or part of the Services until payment has been made in full.

7.9.2. All sums payable to the Supplier under this agreement:

- (a) are exclusive of VAT, and you shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
- (b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

### 8. INTELLECTUAL PROPERTY RIGHTS

8.1 We reserve all intellectual property rights including copyrights, design rights, trade marks and any other rights (if any) which may subsist in the products of, or in connection with, the provision of our Services, which includes but is not limited to, generic and tailored documents, analysis, reports, presentations, and training materials stored electronically or on other medium.

(a) we and our licensors shall retain ownership of all Intellectual Property Rights in the provision of the Services, excluding the Customer Materials;

(b) we grant to you a licence during the term of this agreement to copy and modify the products (excluding the Customer Materials) for the purpose of receiving and using the Services and the Deliverables in its business; and

(c) you shall not sub-license, assign or otherwise transfer the rights granted in Clause 8.1(b) to your Affiliates and customers unless we have given our prior written approval

(d) you shall keep all materials created by us confidential and not publish, copy or distribute any such information, materials or documents to any third party without our prior written consent (except where such information is in the public domain or you are required to disclose such information by law).

(e) we reserve the right to take such action as may be appropriate to restrain or prevent infringement of such copyright intellectual property.

8.2 In relation to the Customer Materials, you:

(a) and your licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and

(b) grant us an irrevocable licence to copy and modify the Customer Materials for the term of this agreement for the purpose of providing the Services to you.

8.3 The People Magic Company Limited:

(a) warrants that the receipt, use and supply of the Services by us shall not infringe the rights, including any Intellectual Property Rights, of any third party or any rights of third parties to the extent that infringement results from copying;

(b) warrants that your interests in respect of this clause and any materials provided by you to us are protected by People Magic's blanket confidentiality commitment in respect of the dissemination of any and all materials related specifically to your business outlined in 12 below.

8.4 The Customer:

(a) warrants that the receipt and use of the Customer Materials in the performance of this agreement by us, our agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party

(b) shall indemnify People Magic in full against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by us arising out of or in connection with any claim brought against us, our agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this agreement of the Customer Materials.

### 9. COMPLIANCE WITH LAWS AND POLICIES

9.1 In performing our obligations under this agreement, we shall comply with:

- (a) the Applicable Laws; and
- (b) the Mandatory Policies, provided that you shall give us not less than 3 months' notice of any change to such policies.

9.2 Changes to the Services required as a result of changes to the Applicable Laws or the Mandatory Policies shall be agreed via the change control procedure set out in Clause 6 (Change control).

### 10. DATA PROTECTION



## Terms and Conditions of Business

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 or rights under the Data Protection Legislation.

10.2 We will control and process personal and sensitive data provided to us in the course of our work with you (e.g. employee personal data) in line with the requirements of the Data Protection Act 2018.

10.3 We will use personal information which we hold about personnel within your organisation to

(a) provide our Services and products and  
(b) for market research purposes and to inform you about our Services and products, legal developments and training sessions or events which we believe may be of interest.

10.4 Without prejudice to the generality of Clause 10.1, you will ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of the personal data us for the duration and purposes of this agreement.

10.5 In providing personal data relating to your employees, organisation or others to us, you confirm that you are entitled to disclose that data to us under the terms of the Data Protection Act 2018 and related legislation, and that we are entitled to process such data for the purposes of providing the Services as set out in the Proposal.

10.6 Copies of case documents we acquire or accumulate through our work will be provided to you upon request on the proviso that our invoices have been paid in full.

10.7 Without prejudice to the generality of Clause 10.1, we shall, in relation to any personal data processed in connection with the performance by us of our obligations under this agreement:

(a) process that personal data only on the documented written instructions of the Customer unless we are required by Applicable Laws to otherwise process that personal data.

(b) ensure that we have in place appropriate technical and organisational measures, reviewed or approved by you, 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;

(c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and

(d) not transfer any personal data unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

- (i) you or we have provided appropriate safeguards in relation to the transfer;
- (ii) the data subject has enforceable rights and effective legal remedies;
- (iii) we comply with our obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
- (iv) we comply with reasonable instructions notified to us in advance by you with respect to the processing of the personal data;

(e) assist you, at your cost, in responding to any request from a data subject and in ensuring compliance with your obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) notify you without undue delay on becoming aware of a personal data breach;

(g) at your written direction, delete or return personal data and copies thereof to you on termination of the agreement unless required by Applicable Law to store the personal data.

### 11. CONFIDENTIALITY

11.1 Each party undertakes that it shall not at any time during this agreement, and for a period of five years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 11.4

11.2 All data, documentation and information provided by you and advice given by us is treated in the strictest confidence, disclosed only to those who need access to it in order to deliver Services and stored, whether in hard copy or electronically, under strictest security at our offices.

11.3 We agree to use reasonable procedures to check for commonly known viruses in information sent and received electronically, but we recognise that such procedures cannot be a guarantee that transmissions will be virus free. Likewise, you agree to use reasonable procedures in pursuit of the same preventative measures.

11.4 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.5 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection

with this agreement.

### 12. PUBLICITY

We shall have the right, without further reference to you, to publicise the fact that your organisation is, or was, a Client and to utilise your organisation's name in publicity materials in this respect unless you specifically inform us in writing that we may not do this. We may also describe in general terms the type of work conducted for you, but shall not be permitted to link your organisation and the work undertaken without your prior permission.

### 13. LIABILITY

13.1 Where any loss or damage occurs as the result of you providing misleading, incomplete or false information, no liability will be accepted.

13.2 We provide information, advice and services in good faith based upon information available to us at the time. We do not warrant the accuracy of information provided. It is for you to decide whether or not to accept our advice in making your own management decision. We advise that any data critical to a decision should be independently verified prior to being acted upon. We accept no liability for the consequences of its information, opinions and advice, whether direct or indirect.

13.3 The advice we give you is not to be used by a third party without our written consent. We also accept no legal responsibility from third party use of the information and advice provided by us.

13.4 We will not by reason of any representation, implied warranty, express condition or other term, or any duty at common law be liable for any loss of profit or any indirect, special or consequential loss (such as lost profit, lost opportunity, lost reputation, lost data), damage, costs, expenses or other claims in connection with the provision of Services or with the use by you of the Services supplied.

13.5 You shall indemnify us against all damages, costs, claims and expenses suffered by us arising from loss or damage to any equipment (including that of third parties) caused by you, your agent or members of your workforce.

13.6 Without prejudice to other more restrictive limitations elsewhere in these Terms and Conditions, liability on the part of People Magic is limited to £1,000.00 or the value of the loss, whichever is the smaller.

13.7 You accept that the limitations of our liability set out in this clause are reasonable in all the circumstances.

13.8 Nothing in this agreement limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

13.9 Unless you notify us that you intend to make a claim in respect of an event within the notice period, we shall have no liability for that event. The notice period for an event shall start on the day on which you became, or ought reasonably to have become, aware of the event having occurred and shall expire 3 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

### 14. TERMINATION

14.1 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 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;

(b) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;

(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 Insolvency Act 1986;

(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 that other party (being a company)

(f) an application is made to court, or an order is made, for the appointment of an administrator, or 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 (being a company) 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



## Terms and Conditions of Business

jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 14.1(c) to Clause 14.1(i) (inclusive); or  
(k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

14.3 Without affecting any other right or remedy available to it, we may terminate this agreement with immediate effect by giving written notice to you if:

- (a) you fail to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment; or
- (b) there is a change of control of the Customer;
- (c) a conflict arises between our duties to you and to another client if, in our judgement, we are unable to proceed with the Services and maintain our fiduciary duty.

14.4 Either party may terminate the engagement under this Agreement and Proposal by giving 90 days' written notice.

14.5 Where a termination is by us, you shall be entitled to a refund of that proportion of any advance of fees that relate to the time not worked at that time.

14.6 Where you terminate a Proposal of work, we reserve the right to retain any prepayment received in respect of the Proposal. As a minimum, you shall pay for all stages of the work in the Proposal that have been commenced. Should you choose not to have work completed on that stage underway prior to termination, you remain liable for payment in full of this stage. You also agree to pay all expenses incurred, whether or not these relate to the stages terminated or to any prior stages.

14.7 In the event of termination, expenses incurred shall be interpreted as including all monies spent on your behalf plus all spending irrevocably committed to on your behalf by us up to the date of termination plus any cancellation charges that may be levied by third party suppliers as a result of the termination.

14.8 If we terminate this agreement under any of the reasons under 14.1 (a) to (k) inclusive, we shall retain any sums already paid by you without prejudice to any other rights we may have.

### 15. CONSEQUENCES OF TERMINATION

15.1 On termination or expiry of this agreement:

- (a) you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, we may submit an invoice, which shall be payable immediately on receipt;
  - (b) you shall, within a reasonable time, return all of our Equipment. If you fail to do so, then we may enter your premises and take possession of our Equipment. Until they have been returned or repossessed, you shall be solely responsible for their safe keeping;
  - (c) we shall on request return any of the Customer Materials not used up in the provision of the Services; and
  - (d) the following clauses shall continue in force: Clause 1 (Interpretation), Clause 5 (Non-solicitation), Clause 8 (Intellectual property rights), Clause 11 (Confidentiality), Clause 13 (Liability), Clause 15 (Consequences of termination), Clause 20 (Waiver), Clause 21 (Rights and Remedies), Clause 22 (Severance), Clause 23 (Entire Agreement), Clause 24 (Conflict), Clause 28 (dispute resolution), Clause 29 (Governing law) and Clause 30 (Jurisdiction).
- 15.2 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

### 16. CONFLICTS OF INTEREST

16.1 We will bring to your attention any conflict of interest that may arise between your instructions and the terms under which we are acting, or have acted, for another client at the time that it becomes apparent to us (where such third party instructions were received prior to your instructions). Such a declaration by us will be general in nature so as not to prejudice the confidentiality with the third party.

16.2 You will notify us if you have any reason to believe that such a conflict has arisen or may arise.

16.3 You agree that we may terminate Services to you in line with clause 14 in the event that a conflict arises between our duties to you and to another client if, in our judgement, we are unable to proceed with the Services and maintain our fiduciary duty.

### 17. FORCE MAJEURE

17.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition
- (f) collapse of buildings, fire, explosion or accident; and
- (g) any labour or trade dispute, strikes, industrial action or lockouts

- (h) non-performance by suppliers or subcontractors
- (i) interruption or failure of utility service.

17.2 Provided it has complied with Clause 17.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

17.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

17.4 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event [but no later than 7 days from its start], notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

17.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 6 weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving 2 weeks' written notice to the Affected Party.

17.6 Where the delay caused by events outside either party's control or influence causes such delay that the purpose of these Terms and Conditions is wholly or significantly destroyed, either party shall be entitled in these circumstances to cancel the remaining portion of work set out in the Proposal. In such circumstances, the Customer will not make any further payment of fees but there will be no refund of payments already made (including any payments for any Services that remain unfulfilled) and we will be entitled to recover any costs already incurred.

### 18. ASSIGNMENT AND OTHER DEALINGS

18.1 This agreement is personal to the Customer and you shall not assign, transfer, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

18.2 We shall be entitled to subcontract, delegate or assign the provision of any Services or any of their rights or duties under these Terms. We shall have discretion as to which of our Consultants are assigned to perform the Services.

### 19. VARIATION

Subject to Clause 6 (Change control), no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

### 20. WAIVER

20.1 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.

20.2 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.

### 21. RIGHTS AND REMEDIES

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

### 22. SEVERANCE

22.1 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.

22.2 If any provision or part-provision of this agreement is deemed deleted under Clause 22.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

### 23. ENTIRE AGREEMENT

23.1 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.

23.2 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.



## Terms and Conditions of Business

### 24. CONFLICT

If there is an inconsistency between any of the provisions of this agreement and the provisions of the Proposal, the provisions of the Proposal shall prevail.

### 25. NO PARTNERSHIP OR AGENCY

25.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

25.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

### 26. THIRD PARTY RIGHTS

26.1 This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

### 27. NOTICES

27.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be:

(a) 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); or

(b) sent by email to the address specified in the Proposal.

27.2 Any notice or communication shall be deemed to have been received:

(a) if delivered by hand, on signature of a delivery receipt

(b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am 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 27.2(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.

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

### 28. DISPUTE RESOLUTION PROCEDURE

If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in this agreement or Proposal, the parties shall follow our Dispute Resolution Procedure in force at the time the dispute is notified to us.

### 29. 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.

### 30. JURISDICTION

Each party irrevocably agrees that the courts of 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.

### 31. ESSENCE OF CONTRACT

31.1 In signing the Proposal, or this Agreement, or otherwise confirming acceptance in writing or by email, you accept that all of these terms have been read, understood and agreed.

31.2 Each of the Parties agree that this agreement is intended to be legally binding and the Parties enter this agreement intending to honour their obligations.

31.3 Each of the parties warrants that it has power to enter into this agreement and has obtained all necessary approvals to do so.

31.4 The parties agree that these terms are fair and reasonable in all the circumstances. However, if any part, term or provision of these Terms and Conditions or the Proposal is or becomes or is declared by any court or competent authority to be void, illegal or unenforceable, it will be deemed to be deleted and the remaining provisions will continue in full force and effect.

31.5 Unless otherwise expressly stated, all notices from you to us must be in writing, and posted or emailed to our registered office.

These standard Terms and Conditions apply to all services delivered by The People Magic Company Limited and should be read in conjunction with those which apply to specific services as detailed on the Proposal of Services.