

# Presentation Magic Terms and Conditions

## 1. DEFINITION OF TERMS

**Presentation Magic:** Randall Reiserer trading as Presentation Magic.

**The Client:** The entity which enters into an Agreement with Presentation Magic.

**Agreement:** The Agreement for goods and/or services entered into by the Client and Presentation Magic. This document may be in complete form or composed of separate communications that reference a particular project.

**Browser, Internet Browser, Web Browser:** The software with which websites can be viewed. Examples include Mozilla Firefox and Microsoft Internet Explorer.

**Domain Name:** The root address of a website, e.g. www.webaddress.com. All such names must be registered with the appropriate naming authority. A fee will apply for this service.

**Downtime:** Time when the website is not accessible via the Internet. Downtime may be because of a technical failure of the Host or because work is being carried out on the site.

**Host:** The company on whose system the Website physically resides.

**Link, Hyperlink:** A 'clickable' link embedded in the code of a web page which may take the form of a graphic or text.

**Main Browsers:** A selection of the most widely-used web browsers used by Presentation Magic for the purposes of testing of the Work. These are currently defined as the software versions of Internet Explorer and Mozilla Firefox current on the date the Agreement is signed by the Client.

**Search Engine:** A website which contains a directory of websites on the Internet enabling users to find websites by subject matter classification.

**Website:** A collection of web pages and associated code which forms an integrated system for displaying and/or manipulating information.

**The Work:** The subject matter of the Agreement between the Client and Presentation Magic.

## 2. FEES

### 2.1 Fee Payable

A non-refundable deposit of 50% of the total fee payable under the Agreement is due prior to initiation of the Work unless other payment options have been specified in writing. The remaining 50% shall become due when the Work is completed to the reasonable satisfaction of the Client but subject to the terms of Clause 4.3, Approval of Work, and Clause 4.4, Rejected Work, and any additional terms specified in writing. Presentation Magic reserves the right not to

begin the Work until the initial deposit has been paid in full. Unless otherwise stated, the fee quoted in the Agreement does not include the cost of domain registration, hosting set up fee, or hosting. Work not included in the original Agreement is usually billed separately, but may be appended to an existing payment schedule, as covered by Clause 2.4, Financing.

## **2.2 Maintenance Fees**

Maintenance, if included in the Agreement, shall be on a monthly basis, with a minimum of \$20.00 payable in any month where updating is necessary. Fees will be assessed on an hourly basis (\$75/hour for text and formatting changes; \$150/hour for graphic design work). No fee will be required in a month where no updating is necessary. Search engine re-submissions, other than the original submission included in the Agreement fee, shall be included in the maintenance fee.

## **2.3 Payment Schedule**

Unless an alternative payment schedule has been referred to in the Agreement, the payment schedule defined in Clause 2.1 Fee Payable applies.

## **2.4 Financing**

Financing is available at the discretion of Presentation Magic. All financing plans must be agreed to in writing. During the term of any financing agreement, Presentation Magic must be granted full and continuous access to the files on the website server. This means that Presentation Magic must be supplied any changed login and password information for access to the Work files through the Host's system. Presentation Magic reserves the right to disrupt public access to the Client's website if payment is more than 30 days delinquent, and to demand full payment of the balance before public access is restored. Except when paid in accordance with Clause 2.1, Fee Payable, Presentation Magic reserves the right to assess interest on amounts owed, and to add or increase interest in accordance with law when payment is more than 30 days delinquent.

# **3. DISCLAIMERS**

## **3.1 Third Parties**

Presentation Magic can take no responsibility for services provided by third parties through us or otherwise, including the Host of the Client's Website, although Presentation Magic will endeavor to ensure that Website downtime is kept to a minimum during the tenure of our service to the Client. After the Work is complete, it is up to the Client to maintain their service with the Host.

## **3.2 Maintenance and Correction of Errors**

Presentation Magic takes no responsibility for the functionality or maintenance (unless a maintenance Agreement is in place) of the Website after the Work has been completed. Errors (both technical and typographical) solely attributable to Presentation Magic will be corrected free of charge, but Presentation Magic reserves the right to charge a reasonable fee for correction of errors for which Presentation Magic is not responsible, including, but not limited to malicious modification of the Website by a third party and typographical errors contained in materials provided to Presentation Magic by the Client.

### **3.3 Extent of Work**

Installation on the Internet is limited to the uploading of all necessary files to the Host, and testing of functionality. Design work may involve the delivery of electronic files, and sometimes printed materials, CDs, or DVDs.

### **3.4 Consequential Loss**

Under no circumstances will Presentation Magic be responsible or liable for financial or other loss or damage caused by the failure of or use or misuse of its software. The Client should ensure that data on the Website is regularly backed up and that a contingency plan is in place to minimize possible losses as a result of software failure.

### **3.5 Status and Duration of Offers**

Proposals and offers are valid for a period of one month from the date issued. Presentation Magic is not bound to honor offers that have expired. Offers are not legally binding until an acceptable timetable for the work has been agreed to by both parties and the initial deposit is made. This timetable must be agreed to within the month that the offer is valid. If an acceptable timetable has not been approved by both parties within one month of the offer being made, the offer is deemed to have expired.

### **3.6 Search Engine Listings**

Presentation Magic will undertake reasonable measures to ensure that the Website is listed in Search Engine results, but this does not constitute a guarantee that the site will appear for any given position or rank for any given search term within a Search Engine's results, that a currently unlisted site will appear in the Search Engine's results, or that a currently listed Website will remain listed within the Search Engine results indefinitely. The Client accepts that it is Search Engines and not Presentation Magic who determine which websites that the Search Engines list. The Client further understands there is no guaranteed placement or rank on the Search Engines and that it is possible that a new website may never appear within Search Engine results at all. Presentation Magic does not control Search Engine's algorithms and the Client accepts that changes in Search Engine ranking and listings may occur.

## **4. COMPLETION OF WORK AND PAYMENT**

### **4.1 Completion of Work**

Presentation Magic warrants completing the Work in accordance with its Standard Terms and Conditions to the specifications previously agreed upon with and by the Client. Presentation Magic will not charge more than the amount previously agreed unless the Client has varied the specifications of the Work from the original Agreement, or ordered additional Work not covered by the original Agreement. Without prior authorization from the Client, Presentation Magic will not undertake changes to the specifications of the Work which would increase the cost, but Presentation Magic may present ideas or materials for demonstration that are incorporated into the agreed upon Work, but are not included in the Agreement. In such cases, the Client is under no obligation to accept the demonstration materials. If the Client wants said materials, however, the additional work will be appended to the Agreement. If the Client has varied the specifications of the Work since the original Agreement, but does not authorize Presentation Magic to increase the cost accordingly, Presentation Magic reserves the right to terminate the

Agreement and invoice the Client for any part or parts of the Work already completed. When the Work is complete according to the original specifications, Presentation Magic will deem the Agreement complete and will invoice the Client in full.

#### **4.2 Supply of Materials**

The Client is to supply all materials and information required for Presentation Magic to complete the Work in accordance with the agreed specification. Such materials may include, but are not limited to, photographs, written copy, logos, and electronic or printed materials. If the Client's failure to supply such materials leads to a delay in completion of the work, Presentation Magic has the right to extend previously agreed deadlines for the completion of the Work. Such deadline extensions may take into account further unforeseen and/or predicted delays, and/or commitments to other projects such that the deadline extension added by Presentation Magic may exceed the delay caused by the Client. Where the Client's failure to supply materials prevents progress on the Work for more than 14 days, Presentation Magic reserves the right to invoice the Client for any part or parts of the Work already completed in accordance with Clause 4.5 Payment.

#### **4.3 Approval of Work**

On completion of the Work, the Client will be notified and have the opportunity to review it. The Client should notify Presentation Magic, preferably in writing, of any unsatisfactory issues within 7 days of receipt of such notification. Any of the Work which has not been either resolved or reported in writing to Presentation Magic as unsatisfactory within the 7 day review period will be deemed to have been approved. Once approved, or deemed approved, Work cannot subsequently be rejected, and the Agreement will be deemed to have been completed and the balancing payment under Clause 2.3, Payment Schedule, will become due, unless superceded by a financing agreement referenced in Clause 2.4, Financing. The Agreement will remain in effect until all obligations have been completed in terms of the above referenced Clauses.

#### **4.4 Rejected Work**

If the Client rejects the Work within the 7 day review period and refuses to approve subsequent Work performed by Presentation Magic to remedy the points reported by the Client as unsatisfactory, or Presentation Magic considers the Client to be unreasonable in his/her repeated rejection of the Work, the Agreement will be deemed to have expired and Presentation Magic can take any legal measures to recover both payment for the completed Work and reasonable expenses incurred in recovering payment.

#### **4.5 Payment**

Presentation Magic will invoice the Client for the balancing payment in accordance with Clause 2.3 Payment Schedule, which, in the absence of a written agreement to the contrary, is to be paid by the Client within 14 days of the date that the invoice was issued. Invoices are generally delivered via email, unless otherwise requested by the Client.

#### **4.6 Remedies for Overdue Payment**

If payment has not been received by the due date, Presentation Magic has the right to suspend ongoing work for Client, until such time that full payment of the outstanding balance has been received. If full payment has still not been received 30 days after the due date, Presentation

Magic has the right to replace, modify or remove the Website and revoke the Client's license of the Work until full payment has been received. By revoking the Client's license of the Work or removing the website from the Internet, Presentation Magic does not remove the Client's obligation to pay any outstanding balances.

## **5. INTELLECTUAL PROPERTY**

### **5.1 Offers and Proposals**

Offers and proposals made by Presentation Magic to potential clients should be treated as trade secrets and remain the property of Presentation Magic. Such offers and proposals or the information contained within them must not be passed to third parties or publicly disseminated without prior written authorization from Presentation Magic. This information includes, but is not limited to, technical features, functionality, design features, and pricing information.

### **5.2 Warranty by Client as to Ownership of Intellectual Property Rights**

Unless stated in the Agreement, the Client will obtain all the necessary permissions and authorities for the use of all copy, graphic images, registered company logos, names and trademarks or any other material it supplies to Presentation Magic for inclusion on the Website. The conclusion of an Agreement between Presentation Magic and the Client shall be regarded as a guarantee by the Client to Presentation Magic that all such permissions and authorities have been obtained and that the inclusion of such material on the Website would not constitute a criminal offence or infringement. By agreeing to these terms and conditions, the Client removes the legal responsibility of Presentation Magic and indemnifies the same from any claims or legal actions related to the content of the Client's website.

### **5.3 Domain Name and Hosting**

Any Domain Name obtained through Presentation Magic will belong to the Client. The Client agrees to indemnify Presentation Magic, including any incidental costs, against any claims that a Domain Name applied for, or obtained, violates the intellectual property rights of a third party. The Client warrants that the domain name sought is not a trademark of a third party.

### **5.4 Licensing, Copyrights, and Ownership of the Work**

Once Presentation Magic has received full payment of all outstanding invoices and the Work has been approved by the Client in accordance with Clause 4.3 hereof, the Client will be granted a license to use the Website and its contents. Full ownership of the Work, if desired by the Client, must be expressly negotiated. In this case, Clause 5.6 and Clause 5.7 do not apply. In most cases, however, full ownership of the Website and all of its contents is not signed over because the client prefers to license the use of design elements rather than purchase them.

Unless expressly stated in the Agreement, images and design elements appearing on a website created by Presentation Magic are the property of Presentation Magic and may not be used in printed materials or in any other context without written permission. Such design elements include, but are not limited to, website header art, custom backgrounds, flourishes, custom bullets, insignias, stock photos, and photos supplied by the Client that have been digitally altered by Presentation Magic. Images from a stock photo source must not be used in other contexts. They do not belong to the Client unless purchased separately. If a stock image supplied by the

client is digitally altered or part of a graphic created by Presentation Magic, the altered version or graphic may not be used outside of the Website without permission from Presentation Magic. Presentation Magic and its subcontractors retain the right to display graphics and other web design elements as examples of their work in their respective portfolios.

### **5.5 Trade Secrets**

Any code that is not freely accessible to third parties and not in the public domain, and to which Presentation Magic or their suppliers owns the copyright, may not be copied, published, distributed or passed to any third parties in any form without prior written consent from Presentation Magic. Unless previously agreed otherwise in writing, no modifications may be made by the Client or any third party to code to which Presentation Magic or their suppliers owns the copyright. Presentation Magic acknowledges the intellectual property rights of the Client. Information passed in written form to Presentation Magic, and that the Client has indicated is confidential or a trade secret, will not be published or made available in any other way to third parties without the prior written consent of the Client.

### **5.6 Third Party Development**

The Client agrees that resale or distribution of the completed files is forbidden unless prior written agreement is made between the Client and the Presentation Magic.

### **5.7 Credits**

The Client agrees that Presentation Magic may include development credit(s) and/or link(s) displayed on the Client's web page, unless this is otherwise defined in the foregoing Specification of Work. These development credit(s) and/or link(s) may not be removed or modified, by the Client or by a Third Party authorized by the Client, without written authorization from Presentation Magic.

## **6. RIGHTS AND RESPONSIBILITIES**

### **6.1 Right to Terminate**

Presentation Magic reserves the right to refuse or break an Agreement without prior notice if it is believed that the Client is acting illegally or any supplied material is illegal, obscene, indecent, defamatory, offensive, or violates the rights of others.

### **6.2 Events Beyond the Control of Presentation Magic**

Presentation Magic will not be liable for breach of Agreement where that breach was due to software, hardware or electrical failure, natural events such as fire or other events beyond the control of Presentation Magic.

### **6.3 Supply and Pricing of Services**

Presentation Magic reserves the right to use whomever it deems appropriate at the time for third party software and services, without affecting existing contractual and pricing agreements. Presentation Magic reserves the right to alter its prices as necessary and without prior notice. Such changes will not affect existing contractual and pricing agreements.

### **6.4 Privacy Policy**

Presentation Magic and any third party associates shall use information provided by the Client in relation to this agreement in accordance with the Data Protection Act 1998 and also to identify the Client in communications with them.

### **6.5 Nondisclosure**

Presentation Magic and any third party associates agree that, except if directed by the Client, it will not at any time during or after the term of this agreement disclose any confidential information. Likewise, the Client agrees that it will not convey any confidential information about Presentation Magic to another party. Both parties agree to define in writing prior to disclosure which information should be considered confidential and subject to this clause.

### **6.6 Indemnification**

Client agrees to defend, indemnify, save and hold Presentation Magic harmless from any and all demands, liabilities, costs, losses and claims including but not limited to attorney's fees against Presentation Magic or its associates that may arise directly or indirectly from any service provided or agreed to be provided or any product or service sold by the Client or its third parties. Client agrees that this indemnification extends to all aspects of the project, including but not limited to website content and choice of domain name. Client also agrees to defend, indemnify and hold Presentation Magic harmless against any liabilities arising out of injury to person or property caused by any service provided or agreed to be provided or any product or service sold by the Client or third parties, including but not limited to, infringement of copyright, infringement of proprietary rights, misinformation, delivery of defective products or services which is harmful to any person, business, company or organization.

## **7. INTERPRETATION**

### **7.1 Jurisdiction**

This Agreement shall be governed by the laws of the state of Tennessee and the federal laws of the United States of America, which shall claim venue and jurisdiction for any legal action or claim arising from the Agreement between Presentation Magic and the Client. The said Agreement is void where prohibited by law.

### **7.2 Survival of Agreement**

Where one or more terms of the said Agreement are held to be void or unenforceable for whatever reason, any other terms of the Agreement not so held will remain valid and enforceable by law.

### **7.3 Change of Terms and Conditions**

These terms and conditions may change from time to time. Where an Agreement exists, the Client will be informed of revisions as and when they are issued.

### **7.4 Termination of Agreement**

Presentation Magic reserves the right to terminate a project with a Client at any time without prior notification if it finds the Client in breach of these Terms and Conditions. Presentation Magic shall be the sole arbiter in deciding what constitutes a breach. No refunds are given in such a situation.

## **8. LIABILITY AND WARRANTY DISCLAIMER**

Presentation Magic provides its own website and the contents thereof on an “as is” basis and makes no warranties with regard to the site and its contents, or fitness of services offered for a particular purpose. Presentation Magic does not guarantee the functionality or operations of its website or that it will be uninterrupted or error free, nor does it warrant that the contents are current, accurate or complete.

Presentation Magic endeavors to provide Work within given delivery timescales to the best of its ability. However, the Client agrees that Presentation Magic is not liable for any claims, losses, costs incurred or compensation due to any failure to carry out services within a given delivery timescale. Presentation Magic, at its sole discretion, may offer a full or partial refund and/or additional services in light of any failure to carry out services within a given delivery timescale in accordance with Clause 4.2 Supply of Materials.

The Client agrees Presentation Magic is not liable for absence of service as a result of illness or holiday time. Presentation Magic reserves the right to assign the work to a third party associate should there be the need to do so. In such cases, Presentation Magic warrants the work of its affiliate and agrees to make reasonable reparations for performance failure.

The Client agrees that Presentation Magic is not liable for any failure to carry out services for reasons beyond its control including but not limited to natural disasters, telecommunication problems, software failure, hardware failure, third party interference, government, emergency on major scale or any social disturbance of extreme nature such as industrial strike, riot, terrorism and war, or any act or omission of any third party services.

Presentation Magic is not liable for any consequences or financial losses such as, but not limited to, loss of business, profit, revenue, contract, data, or potential savings relating to services provided.

On handover of files from Presentation Magic to Client, the Client shall assume entire responsibility in ensuring that all files are functioning correctly before use. While every effort is made to make sure files are error free, Presentation Magic cannot guarantee that the display or functionality of the Work will be uninterrupted or error free. Presentation Magic will endeavor to make sure that display and functionality of the Work is error free in the Main Browsers before handover of the completed Work. If after handover of files errors are found in code that Presentation Magic has created using the Main Browsers, and domain name setup and hosting setup are the same as when work began, then Presentation Magic will correct these errors for the Client free of charge.

If after handover of files errors are found in code that Presentation Magic has created, where an updated software version of one or all of the Main Browsers exists, or the domain name setup or hosting setup has been changed, Presentation Magic reserves the right to quote separately for any additional work needed as a result of changes to the browser software, domain name setup or hosting setup.

Should Client go into compulsory or involuntary liquidation or cannot pay its debts in the normal course of business, Presentation Magic reserves the right to cancel forthwith any projects and invoice Client for any work completed.

Presentation Magic shall have no liability to the Client or any third parties for any damages, including but not limited to, claims, losses, lost profits, lost savings, or other incidental, consequential, or special damages arising out of the operation of or inability to operate these web pages or website, even if Presentation Magic has been advised of the possibility of such damages. There are sometimes laws and taxes which affect Internet e-commerce. Client agrees that it is their responsibility to comply with such laws and will hold harmless, protect, and defend Presentation Magic and its subcontractors from any claim, suit, penalty, tax, or tariff arising from the Client's exercise of Internet e-commerce.

Presentation Magic may from time to time recommend to the Client that updates are needed to their site to comply with, including but not limited to, new legislations, software releases and web standards. Presentation Magic reserves the right to quote for any updates as separate work. Client agrees Presentation Magic is not liable for any failure to inform or implement these updates to their site. Client agrees that it shall defend, indemnify, save and hold Presentation Magic harmless from any and all demands, liabilities, costs, losses and claims arising from omission to inform or implement these updates.

## **9. ACCEPTANCE OF TERMS AND CONDITIONS**

By accepting a quotation or making a payment of invoice to use the services supplied, the Client acknowledges that he/she has read, understood, and accepted the Terms and Conditions of this Agreement, and agrees to be legally bound by these Terms and Conditions.