

## TERMS AND CONDITIONS

### **Our Commitment to you**

- i) We respect our CLIENT's confidentiality (Item 7).
- ii) We use open-source solutions wherever possible. This means there is no vendor lock-in and software costs are charged at 'fair and reasonable rates' or in some cases, costs are not applicable (Item 12.1).
- iii) If the CLIENT determines that the website does not comply with the project components agreed to in the proposal document, ArcPro Media Inc. agrees to carry out any necessary and reasonable modifications without charge. Where there are disagreements in the project components discussed, or changes in specification, ArcPro Media Inc. may invoice the Client at a nominal charge and the CLIENT agrees to pay such nominal charge as invoiced.
- iv) If the CLIENT is not happy with our service, the CLIENT is free to move their domainname, website and data in its entirety to another service provider (Item 21.1) at their own cost, providing at least one (2) month's advance written notice of such move.

### **Introduction**

This document defines the terms and conditions of the working relationship of the Parties to the Agreement as an addition to the project proposal received. Unless otherwise agreed to in writing by both the parties, the terms of the Agreement will commence on the date specified on the proposal agreement.

All services that ArcPro Media Inc. may be contracted to produce or provide for (referred to as) the CLIENT will be subject to the following:

### **Definitions**

As used herein and throughout the Agreement:

"Agreement" means the entire content of this Basic Terms and Conditions document, the Proposal document(s), Schedule(s), together with any other Supplements designated below, together with any exhibits, schedules or attachments hereto.

"Content" means all materials, information, photography, writings and other creative content.

“Copyrights” means the property rights in original works of authorship, expressed in a tangible medium of expression, as defined and enforceable under Canadian and USA Copyright Laws (or other International Copyright laws where applicable).

“Deliverables” means the services and work product specified in the Proposal to be delivered by ArcPro Media Inc. to the Client, in the form and media specified in the Proposal.

“Services” means all services and the work product to be provided to the Client by ArcPro Media Inc. as described and otherwise further defined in the Proposal.

“Trademarks” means trade names, words, symbols, designs, logos or other devices or designs used in the final Deliverables.

“Open-Source Software” means computer software that is available in source code form for which the source code and certain other rights normally reserved for copyright holders are provided under a software licence that permits users to study, change, and improve the software.

“Ongoing Management” means the ongoing work to keep the website functioning and secure. This includes, but is not limited to data management, backups, maintenance, upgrade(s) and software patches.

## **General Terms**

### **1. Authorization**

The CLIENT authorizes ArcPro Media Inc. to perform the services outlined in the Proposal Agreement for the CLIENT, which may include, but is not limited to, accessing their hosting account and disk space, creating databases and applications, and submitting the project to search engines.

### **2. Agreement Scope and Period**

Services supplied, costs and rates are limited to what is set forth in the proposal agreement for the period specified. Any additional services will require an additional proposal agreement. ArcPro Media Inc. reserve the right to adjust our service(s) and rates after the period specified in the Agreement.

### **3. Costs**

3.1 Professional services are billed at \$150 per hour plus HST or other applicable taxes for the duration of the Agreement, unless otherwise specified in the proposal agreement. ArcPro Media reserves the right to adjust rates after the period of the Agreement. Small tasks are in billed in 15-minute blocks.

3.2 Costs for professional services do not include outside purchases such as, but not limited to, software licensing, software plugins, copyright licensing, printing, photography, color printouts, laminating, illustrations, shipping and handling or courier

service, except as otherwise set forth herein. Expenses are itemized on each invoice. Expenses are subject to HST or other taxes where applicable. Outside purchases will be notified and approved by the CLIENT before purchase. Annual outside purchase renewals will be automatically renewed unless cancelled by the client in writing.

#### **4. Meetings and Production Schedules**

4.1 Production schedules will be established and adhered to by both the CLIENT and ArcPro Media Inc. Where production schedules are not adhered to by the CLIENT, final delivery date or dates will be adjusted accordingly. Additional costs may be incurred due to delays caused or increases in delivery time to manage or deliver the services. To the extent ArcPro Media Inc. is delayed in any of its delivery of deliverables, hereunder, ArcPro Media Inc. will communicate the reasons for the delay to the CLIENT within at least five (5) days. If the project delay is unreasonable, the CLIENT shall have the right to terminate this Agreement.

4.2 ArcPro Media Inc. reserves the right to adjust project milestones during the project.

4.3 The project milestones set do not factor in extensions of time resulting from client's internal decision-making/information gathering processes, delays in the client providing information to ArcPro Media, changes requested to the original project proposal, delays due to website host companies and absence of the CLIENT.

4.4 Both the CLIENT and ArcPro Media Inc. are required to provide the other party with at least 24 hour's notice to re-schedule meetings.

#### **5. Overtime**

Estimates are based on a reasonable time schedule and may be revised to take into consideration the CLIENT's requested "priority scheduling". Requested priority schedules that require overtime and weekend work will be subject to 50% markup at an hourly rate and need to be agreed to before hand by both parties.

Overtime is defined as between 6.00pm - 9.00am Monday to Friday, all day Saturdays, Sundays and US/Canadian public holidays, unless otherwise agreed.

#### **6. Payment**

6.1 The CLIENT agrees to pay ArcPro Media in accordance with the terms specified in each proposal/ estimate. The CLIENT will be required to pay 50% of the project cost or the full monthly cost, before commencement of work unless otherwise specified in writing. Unless otherwise specified, all subsequent balances due are payable upon completion of key stages of the project.

6.2 Unless otherwise specified, the CLIENT is required to pay milestone payments within 14 days of invoicing or as agreed to in the proposal agreement. ArcPro Media reserves the right to pause work after 10 days on late payment, pending payment or negotiation.

6.3 Websites and commissioned work will be published live or transferred to the Client's server upon payment of all project costs.

6.4 In the event of cancellation of the project prior to completion, the CLIENT must pay ArcPro Media costs for work completed, based on the contract price and the expenses already incurred.

## **7. Confidentiality and Privacy**

7.1 ArcPro Media Inc. will not disclose to any third party or use, other than for the purposes of the Agreement, any knowledge or information imparted to or obtained by it during or in connection with the fulfilment of the Agreement, which is of a secret or confidential nature relating to the business, equipment, processes, products, service(s) or business strategies offered or employed by the CLIENT.

7.2 This obligation of confidence will cease to apply in relation to information that ArcPro Media is required to disclose by any law, or which becomes part of the public domain other than as the result of a breach by ArcPro Media of its obligations of confidence under the Agreement.

## **8. Subcontractors**

ArcPro Media reserves the right to assign subcontractors or 3<sup>rd</sup> party vendors. Any subcontractors or external 3<sup>rd</sup> party vendors will be bound to the terms of the Agreement.

## **9. Promotion**

ArcPro Media is confident that the CLIENT's expectations will be exceeded and as such is notifying the CLIENT that ArcPro Media reserves the right to use the CLIENT's website, associated graphics and any unused ideas and development, but only for the sole purpose of promotion of ArcPro Media services. The CLIENT agrees to allow ArcPro Media to retain a credit and link from the footer of the website, throughout the Term.

## **10. Copyright**

The CLIENT is responsible for all trademark, service-mark, copyright and patent infringement clearances. The CLIENT is also responsible for arranging, prior to publication, any necessary legal clearance of materials provided to ArcPro by it. The CLIENT indemnifies ArcPro Media against any loss or damage arising directly or indirectly from any unauthorised use of photographs, text, or other IntellectualProperty provided by CLIENT or cleared by the CLIENT.

## **11. Project Copyright**

11.1 After acceptance of the website and payment of all sums due by the CLIENT, ArcPro Media agrees to assign any and all exclusive rights in and to the website, including, but not limited to, the website code, pictures and other copyrightable subject matter to CLIENT; provided, however, that no exclusive rights in any proprietary materials owned by ArcPro Media which are incorporated into the website, separately, shall be assigned to CLIENT.

11.2 ArcPro Media reserves all rights to licence (open source) and release all software code including website templates developed under the Agreement.

### 11.3 **Open-Source Software**

ArcPro Media makes extensive use of open-source software and components to supply websites and services to the CLIENT. ArcPro Media will not charge additional licencing costs on open-source software.

11.4 All software and components not developed by ArcPro Media retain the original licence and terms associated with them. ArcPro Media cannot assign any rights to the CLIENT and the CLIENT agrees to be bound by the original Author's terms.

## **12. Dispute Resolution**

In the event of unresolved disputes between the parties to the Agreement the following dispute resolution procedure will apply; a) the party claiming that a dispute has arisen in relation to the Agreement shall give the other party written notice specifying the nature of the dispute;

b) within 10 Business Working Days of receipt of that notice the parties must hold discussions and negotiations in good faith in order to amicably resolve the dispute, and...

c) in the event that the parties cannot resolve the dispute through discussions and negotiations for at least thirty (30) days from the initial notice of dispute, the parties shall refer the dispute to an independent mediator or expert on Ontario, Canada, as agreed, and will use their best endeavours to resolve the dispute in mediation;

d) the cost of submission to an independent mediator or expert will be met equally by the parties.

## **13. Force Majeure**

The Client and ArcPro Media shall not be deemed in breach of the Agreement if one party is unable to complete the Services or any portion thereof by reason, of fire, earthquake, labour dispute, act of God, death, illness or incapacity or any local, state, federal, national or international law, governmental order or regulation or any other event beyond ArcPro Media or the Client's control (collectively, "Force Majeure Event"). Upon occurrence of any Force Majeure Event, the party shall give notice to the other party of its inability to perform or of delay in completing the Services and shall propose revisions to the schedule for completion of the Services.

## **14. Limitation of Liability**

In all circumstances, the maximum liability of its Designers, Directors, Officers, Employees, Design Agents, Contractors, and Affiliates ("ArcPro Media parties"), to the CLIENT for damages for any and all causes whatsoever, and the CLIENT's maximum remedy, regardless of the form of action, whether in contract, tort or otherwise, shall be limited to the net cost of this project as specified in the Project Agreement. In no event shall ArcPro Media be liable for any lost data or content, lost profits, business interruption or for any indirect, incidental, special,

consequential, exemplary or punitive damages arising out of or relating to the materials or the services provided by ArcPro Media Inc. or its subcontractors or 3<sup>rd</sup> party vendors, even if ArcPro Media has been advised of the possibility of such damages, and notwithstanding the failure of essential purpose of any limited remedy, unless same is due to an intentional act of ArcPro Media.

## **15. No Software Warranties**

15.1 All software, technical solutions and systems are provided “as is” without warranty of any kind, either expressed or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose. ArcPro Media makes extensive use of third-party solutions and cannot warranty systems that we have no control over.

15.2 If warranties are required, ArcPro Media will attempt to source warranted services and reserve the right to modify the proposal agreement. In this context any warrantee would be provided by a third party and ArcPro Media will assume no liability and CLIENT agrees not to hold ArcPro Media liable of any and all causes whatsoever.

## **16. Purchased themes and other software**

ArcPro Media takes no responsibility for the quality of purchased or leased themes, plugins and other software (defined as purchased software), assumed to be of a professional quality. If software is supplied with bugs and defects, ArcPro Media will not be liable for fixing them. CLIENT agrees that fixes and upgrades will be chargeable and payable by the CLIENT.

## **17. Termination**

Either party may terminate the Agreement by giving 30 days written notice to the other of such termination. In the event that work is postponed or terminated at the request of the CLIENT, ArcPro Media shall have the right to bill pro rata for work completed through to the date of that request, while reserving all rights under the Agreement.

If additional payment is due, this shall be payable within thirty days of ArcPro Media delivering an invoice to the CLIENT after notification by the CLIENT to stop work. In the event of termination, the CLIENT shall also pay any pre-approved expenses reasonably incurred by ArcPro Media pursuant to the Agreement.

## **18. Severance**

Part or all of any provision of the Agreement that is illegal or unenforceable may be severed from the Agreement and the remaining provisions of the Agreement continue in force.

## **19. Assignment**

Neither party may assign the Agreement or any rights under the Agreement without prior written consent of the other party, which consent must not be unreasonably withheld.

## **20. Governing Law and Jurisdiction**

The Agreement is governed by the laws of the Province of Ontario within Canada and each party submits to the jurisdiction of the courts of that Province.

## **21. Data, Security and Ongoing Management**

21.1 Upon the end of the Agreement, The CLIENT is free to transfer their website management to another service provider. ArcPro Media will supply the last backup of the site and associated data. ArcPro Media will take all reasonable actions to transfer the CLIENT'S domain name to a new registrar as requested by CLIENT in writing. Nominal costs may be incurred for this service which the CLIENT agrees to pay.

21.2 Ongoing Management (see definition) is not included in the Agreement and will require an additional agreement.

21.3 If the CLIENT does not proceed with an additional or Ongoing Management agreement, The CLIENT is responsible for and hosting transfers and/or ongoing Management of the website and indemnifies ArcPro Media against any loss or damage arising directly or indirectly from website downtime, hosting removal of files or security breaches.

## **22. Client Responsibilities**

If the CLIENT or their agent or contractor employed by the CLIENT other than ArcPro Media attempts to update, edit or alter the site's pages, infrastructure, source files or hosting management in a way that causes damage to individual pages or the site's architecture, time to repair web pages will be assessed as an additional cost above the costs outlined in the proposal Agreement and at our professional or overtime rates.

## **23. Domain Names**

23.1 All domain names are legally owned by the CLIENT, unless paid for by ArcPro Media and whereby CLIENT has not reimbursed ArcPro Media for the purchase within one (1) month of the purchase date. All domain name registrations are subject to availability and registration rules. The CLIENT manages their domain(s) and payment of costs unless the CLIENT requests in writing that ArcPro Media manage the domain name(s) on behalf of the CLIENT. ArcPro Media will invoice the CLIENT when costs are due.

23.2 ArcPro Media uses **REBEL.COM** (referred to as REGISTRAR) to manage our CLIENTS's domain names. CLIENTS are bound by the REGISTRARS's "Domain name registration terms" which are found on their website.

## **24. Hosting**

24.1 ArcPro is responsible for contacting the chosen host (Siteground.com) for support relating to website hosting matters. ArcPro Media will charge for costs incurred liaising with the hosting company and supporting the CLIENT with hosting related issues above and beyond the standard agreement if such additional charges are incurred. If alternative 3<sup>rd</sup> party hosting is selected by the client, the CLIENT is fully responsible for all hosting matters and costs.

24.2 ArcPro Media will charge for costs incurred due to differences in hosting environment if installation and management exceeds standard time frames. This includes delays caused by slow server speeds and incompatibility with hosting environments.

24.3 If hosting is included in your package, ArcPro Media will use [www.Siteground.com](http://www.Siteground.com) for hosting our CLIENT websites.

## **25. Browser Variance**

ArcPro Media websites are tested against the browsers and devices outlined in the Schedule 2. Support for additional browsers or devices will be quoted by request.

## **26. Colors**

Website visitors use different monitors with different settings. Colors and image quality of the website including graphics and photography may change between computers and monitors.

## **27. Testing and Acceptance of the Website**

Once the project has in the opinion of ArcPro Media been completed, ArcPro Media will notify the CLIENT either verbally or in writing and provide the CLIENT with an opportunity to test and review the website. The website will not be advertised or promoted unless approved by the CLIENT.

## **28. Errors and Omissions**

28.1 ArcPro Media is not liable for content errors or omissions.

## **29. Copy**

All content text must be supplied in digital format (TXT, RTF, HTML, MS Word). The CLIENT is responsible for all content on the website.

## **30. Images & Videos**

Graphics, photographs and videos are to be supplied in hi-res digital format to ArcPro Media. Photographs must not exceed a file size of 5MB each (unless by prior arrangement). Larger files will incur an extra cost due to increased time in processing.

### **31. Branding**

All logos and branding must be provided in an industry standard vector format (preferences are: EPS, PDF, Illustrator).

#### **Schedule 1**

##### **Client setup**

ArcPro Media assumes that the CLIENT has a level of digital business skills that includes:

- Has setup and is fluent using email and attachments
- Has installed and is fluent using an internet browser using the latest version.
- Has installed (with broadband) and is fluent using skype
- Has installed and is fluent using DropBox ([www.dropbox.com](http://www.dropbox.com))

If the CLIENT cannot meet any of these expectations, it is assumed that the CLIENT will set up these tools and systems themselves, commission an external supplier or commission ArcPro Media to assist them in setting up these tools and processes. Failure to do so will significantly increase project management costs.

#### **Schedule 2**

##### **Website Testing**

Due to the vast variance of devices and browsers, testing has become very complex. We provide simple testing using browser-based emulators to test websites. We cannot test using physical devices and setups. We will test on the latest versions of browsers on the latest operating systems at the date of publishing the website. Stats are referenced from [www.browserling.com](http://www.browserling.com) or other similar sites.

- Laptop - Windows 7/OSX – Chrome
- Laptop - Windows 7/OSX – Firefox
- Laptop - Windows 7- Internet Explorer 11
- Laptop - OSX - Safari or above
- Phone - IOS - Safari or above
- Tablet (standard size I-pad) - OSX – Safari
- Phone - Samsung Galaxy S5 – Android - Chrome

ArcPro Media will test and optimise for additional browsers and devices if requested by the CLIENT before commencement of the project.