

## PROJECT 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 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). Note that we cannot always verify the authors and/or source of the software but will make every effort to use our own custom coding or a widely used licenced plugin where needed.
- 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 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 the ArcPro service, the Client is free to move their domain name, and website, in its entirety to another service provider (Item 21.1) at their own cost, providing at least 1-month advance written notice of such move. ArcPro will provide the Client with their domain name, and website files subject to the Client paying all outstanding balances due to date.

### **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 parties, the terms of the Agreement will commence on the date specified in the proposed agreement.

All services that ArcPro may be contracted to produce or provide for 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.

“Deliverables” means the services and work product specified in the Proposal to be delivered by ArcPro Media 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 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.

“Third-party plugins” means software invented, developed, and provided in the open market by 3<sup>rd</sup> party suppliers for the use of website enhancements and sold under a licence or provided free of charge.

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

## **General Terms**

### **1. Authorization**

The Client authorizes ArcPro to perform the services outlined in the Proposal Agreement for the Client, which may include, but are 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 agreement for the period specified. Any additional services will require an additional agreement. ArcPro reserves the right to adjust its services and rates after the period specified in the Agreement, or from time to time as market conditions determine.

### **3. Costs**

3.1 Professional services are billed as per the proposal provided to the Client plus HST or other applicable taxes for the duration of the Agreement. ArcPro reserves the right to adjust rates after the period of the Agreement. Small tasks may be billed in 15-minute blocks.

3.2 Costs for professional services do not include outside purchases such as, but are 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 within a proposal. Expenses are itemized on each invoice. Expenses are subject to HST or other taxes where applicable. Outside purchases will be approved by the Client before purchase.

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

4.1 Production schedules will be established and adhered to by both the Client and ArcPro. Where production schedules are not adhered to by the Client, the final delivery date or dates will be adjusted accordingly. Additional costs may be incurred due to increases in time to manage or deliver the services. To the extent ArcPro is delayed in any of its delivery deliverables, it will notify the Client before the deadline, and provide a reason and a new delivery date. If ArcPro misses more than two delivery dates without providing a reason or fails on more than two occasions to notify the Client about a delay before the deadline, the Client shall have the right to terminate this Agreement, with no further obligation owed, other than to pay any outstanding balances for work to date.

4.2 ArcPro Media reserves the right to adjust project milestones during the project with just cause.

4.3 The project milestones set do not factor in extensions of time resulting from the Client's internal decision-making/information gathering processes, delays in the Client providing information to ArcPro (such as content), 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 are required to provide the other party with at least 24 hours' 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 a 50% markup at an hourly rate and need to be agreed to beforehand by both parties.

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

#### **6. Payment**

6.1 The Client agrees to pay ArcPro 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 the commencement of work unless otherwise specified in the Proposal. 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. ArcPro Media reserves the right to pause work after 10 days upon 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 costs for work completed, based on the contract price and the expenses already incurred.

## **7. Confidentiality and Privacy**

7.1 Either Party 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, services, or business strategies offered or employed by the other Party.

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

## **8. Subcontractors**

ArcPro reserves the right to assign subcontractors or external suppliers. Any subcontractors or external suppliers will be bound to the terms of the Agreement.

## **9. Promotion**

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

## **10. Copyright**

The Client is responsible for all trademark, servicemark, 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 the Client. The Client indemnifies ArcPro against any loss or damage arising directly or indirectly from any unauthorized use of photographs, text, or other Intellectual Property provided by the Client or cleared by the Client.

## **11. Project Copyright**

11.1 After acceptance of a WordPress, Magento or Shopify website and payment of all sums due by the Client, ArcPro 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 the Client; provided, however, that no exclusive rights in any proprietary materials owned by ArcPro which are incorporated into the website, separately, shall be assigned to the Client, but rather, ArcPro shall provide the Client with a perpetual, world-wide, fully paid up license to such subject matter for its use in connection with the website. Note that this does not include 3<sup>rd</sup> party plugin licences which may require payments for licence renewals to the original 3<sup>rd</sup> party vendors, for example for paid plugins.

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

## **12. Open-Source Software**

12.1 ArcPro makes extensive use of open-source software and components to supply websites and services to the Client. ArcPro will not charge additional licensing costs on open-source software.

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

## **13. Dispute Resolution / Arbitration**

Except as otherwise set forth herein, in the event of any dispute, claim or controversy arising out of or relating to this Agreement or the breach thereof (a "Dispute"), the Parties shall first attempt to resolve the Dispute, without formal proceedings, through a telephone conference between ArcPro President or other designated representative and Client's President or other designated representative. If the Parties do not reach a solution within a period of thirty (30) days, then upon notice by either Party to the other, the Dispute shall be finally determined and settled by binding arbitration to be conducted in Toronto, Ontario. The arbitration shall be conducted pursuant to the *Arbitration Act, 1991 S.O. 1991 c.17* by a single arbitrator with suitable expertise, to be agreed upon by the parties. If the parties cannot agree on the arbitrator, any party may request a judge of the Ontario Superior Court of Justice to appoint the arbitrator. The arbitration shall be conducted, and the procedural rules for the arbitration shall be determined by the arbitrator. The arbitrator shall render his or her decision in writing. The arbitrator shall have no right to modify the provisions of this Agreement or any Exhibit. The powers of the arbitrator shall not include the granting of injunctive relief. The Parties agree to permit reasonable discovery proceedings as determined by the arbitrator. The Parties agree that the arbitrator shall have no jurisdiction to consider the evidence with respect to or render an award or judgment for punitive damages (or any other amount awarded for the purpose of imposing a penalty), incidental or consequential damages against either party. The arbitrator shall award all costs of the arbitration, including arbitrator's fees, arbitration filing fees, travel costs of witnesses, costs of depositions and reasonable attorney fees to the substantially prevailing Party; provided, however, that the arbitrator's award for the costs of the arbitration shall not exceed the actual amount paid by the substantially prevailing Party.

The Parties agree that all facts and other information relating to any arbitration arising under this Agreement shall be kept confidential to the fullest extent permitted by law, provided that ArcPro shall be entitled to disclose the same to its suppliers as it considers necessary in its discretion.

## **14. Force Majeure**

The Client and ArcPro 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, an 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 or the Client's control (collectively, "Force Majeure Event"). Upon the 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.

### **15. Limitation of Liability**

In all circumstances, the maximum liability of its Designers, Directors, Officers, Employees, Design Agents, Contractors, and Affiliates ("ArcPro 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 the project as specified in the Project Proposal and Agreement. In no event shall ArcPro 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 even if ArcPro has been advised of the possibility of such damages, and notwithstanding the failure of essential purpose of any limited remedy.

### **16. No Software Warranties**

16.1 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 makes extensive use of third-party solutions and cannot warranty systems that we have no control over.

16.2 If warranties are required, ArcPro will attempt to source warranted services. In this context, any warrantee would be provided by a third party and ArcPro will assume no liability and Client agrees not to hold ArcPro liable of any and all causes whatsoever.

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

ArcPro takes no responsibility for the quality of purchased or leased themes, plugins and other software (defined as purchased software), assumed to be of professional quality. If the software is supplied with bugs and defects, ArcPro will not be liable for fixing them. However, ArcPro agrees to attempt to resolve issues with the developers. If not successful, ArcPro will discuss resolution options and associated costs with the Client. The client agrees that fixes and upgrades mutually agreed upon will be chargeable and payable by the client.

### **18. 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 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 30 days of ArcPro 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 pursuant to the Agreement.

## **19. 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.

## **20. Assignment**

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

## **21. Governing Law and Jurisdiction**

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

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

22.1 Upon the end of the Agreement, The Client is free to transfer their website management to another service provider. ArcPro will supply the last backup of the site and associated data files. ArcPro Media will take all reasonable actions to transfer the Client's domain name to a new registrar as requested by the Client in writing subject to the Client clearing payment of any outstanding account balance.

22.2 Ongoing Management is not included in the Agreement and will require an additional agreement.

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

## **23. Client Responsibilities**

If the Client or their agent or contractor employed by the Client other than ArcPro 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 Agreement and at the professional or overtime rates of ArcPro.

## **24. Domain Names**

24.1 All domain names are legally owned by the Client, unless paid for by ArcPro and whereby the Client has not reimbursed ArcPro 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

manage the domain name(s) on behalf of the Client. ArcPro will invoice the Client when such costs are due.

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

24.3 The Client indemnifies ArcPro against any loss or damage arising directly or indirectly from any failure of services provided by the REGISTRAR.

## **25. Hosting**

25.1 ArcPro is responsible for contacting the chosen host (SiteGround, MageMojo, Amazon or Shopify) for support relating to hosting matters where hosting is conducted by ArcPro. ArcPro will charge for costs incurred liaising with the hosting company and supporting the Client with hosting-related issues above and beyond the standard hosting agreement. If alternative 3<sup>rd</sup> party hosting is selected by the Client and approved by ArcPro, the Client is fully responsible for all hosting matters and costs incurred.

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

25.3 If hosting is included in your package, ArcPro will use [www.Siteground.com](http://www.Siteground.com) for hosting our Client websites, unless otherwise agreed in writing.

## **26. Browser Variance**

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

## **27. Colors**

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

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

Once the project has, in the opinion of ArcPro been completed, ArcPro 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.

## **29. Errors and Omissions**

29.1 ArcPro is not liable for content errors or omissions.

29.2 The Client indemnifies ArcPro against any loss or damage arising directly or indirectly from any errors and omissions.

### **30. Copy**

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

### **31. Images & Videos**

Graphics, photographs and videos are to be supplied in hi-res digital format to ArcPro. 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, and Illustrator).

### **32. Website Accessibility**

The Client understands that they have been offered a website accessible option by ArcPro and by electing to opt-out and not to include its installation and annual license purchase, under any circumstance, shall hold ArcPro liable for any legal or financial matters incurred which may relate to this exclusion. The Client hereby releases, remises and discharges from any claims and liabilities whatsoever without limitations that the Client might have against ArcPro and its owners due to any circumstance which might occur and declares this waiver on behalf of their self, heirs, executors, assigns and administrators.

### **33. Non-Solicitation**

The Client shall pay ArcPro a fee of \$500,000 USD if, during the period of this Agreement and for a period of two (2) years after the termination of this Agreement, the Client directly or indirectly, solicits or influences or attempts to solicit or influence any staff, customers or suppliers of ArcPro or any of its affiliates to terminate or limit their relationship as staff, customers or suppliers of ArcPro or any of its affiliates, or to divert their labour, purchases, sales, supplies or other activities with respect to ArcPro to any other person or entity,

## **Schedule 1**

### **Client setup**

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

Has setup and is fluent in 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)) or OneDrive.

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 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 iPad) - OSX - Safari

Phone - Samsung Galaxy S5 - Android - Chrome

ArcPro Media will test and optimize for additional browsers and devices if requested by the Client before the commencement of the project launch.

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