



ARCLID.COM Limited

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Services Frame Agreement

This Agreement is between the Customer named below, herein referred to as "Customer," and Arclid.com Ltd., which is referred to below as "Arclid". This Agreement may be executed by facsimile and/or in multiple counterparts. Once Executed by both parties this Agreement is effective from the Effective Date shown below.

CUSTOMER NAME:	_____	Arclid.com Ltd.	

Authorised Signature	_____	Authorised Signature	_____
Print Name	_____	Print Name	_____
Title	_____	Title	_____
Company Address	_____		

Telephone	_____		
Fax	_____	Effective Date	____ / ____ / ____

Terms & Conditions

1. Definitions

In this Contract unless the context otherwise requires:

"Service" or "Services" means Website design and development, Program Development, Domain name registration, Virtual Server hosting, bandwidth provision, email and any other service or facility provided by Arclid to Customer.

"Server" means the computer server equipment operated by Arclid or for Arclid, or provided by Customer in connection with the provision of the Services.

"Delivery" means provision of source code and/or executable code to Customer for the purposes of Service commencement or final customer testing. Such Delivery will be notified to Customer in writing either by letter, email or facsimile.

"Contract" means the agreement between Arclid and the Customer incorporating these conditions, the Arclid Service Order Form (where completed) and Arclid's charges for the provision of its services; References to "Agreement" shall, where the context admits, be read as referring to the Contract.

"Specification" means documentation detailing the work to be done by Arclid and will include detail of the exact requirements as agreed by Customer.

"Charges" means the charges as agreed on the Service Order Form (where completed) and Arclid's latest prices for products and services requested or incurred by you.

"bandwidth" means the allocated transmission capacity, measured in bits per second, of the network connection as specified in the Contract.

"data transfer" means all traffic that passes through the Virtual Server including specifically but not exclusively web traffic, email, FTP transfers and any telnet session data.

"Site" means the premises or location at which Service is or is to be provided under this Contract.

"Equipment" means equipment which is supplied by or on behalf of Arclid to the Customer or placed at or on a Site for the purpose of providing Service.

"Internet" means the global data network comprising Internet connected networks using TCP/IP (Transmission Control Protocol/Intermit Protocol) Internet Standards means the protocols and standards defined in the following Internet documents: RFC 1009, 1122, 1123 and 1250 and any future such protocols and standards as appropriate.

2. Fees and Billing

- 2.1. **Service Charges.** Customer agrees to pay the monthly charges for Service and any setup, programming and other charges indicated on the Service Order(s) or otherwise due hereunder (collectively, "Service Charges"). Service Charges do not include any applicable taxes, including Value Added Tax, all of which shall be billed in addition to the Service Charges and shall be the responsibility of the customer. If a Service Order provides for deferred payment of set-up costs over time, Customer acknowledges that it is responsible for paying in full the remaining balance of such set-up costs in the event of any early termination of the Service Order or this Agreement for any reason whatsoever.
- 2.2. **Billing and Payment Terms.** Beginning on the date of commencement of the Services, as set forth in the Service Order or otherwise documented, Customer will be billed monthly in advance for the contracted Services; except for specified one-time Services ordered by Customer, which will be billed after the end of the month. All Service Charges and other fees will be due in Pounds Sterling within thirty (30) days of the date of invoice, or on such other terms as Arclid may require if Customer has not satisfied a credit check. Late payments will accrue interest at a rate of one and one-half percent (1½%) per month or the highest rate allowed by applicable law, whichever is lower. If Customer fails to make payments when due and does not cure such failure pursuant to the terms hereof, Arclid may require payment in advance of further Services.
- 2.3. **Acceptance.** Where Website design or other Programming Services are supplied, Customer will notify Arclid of any errors or omissions for rectification within a period of 7 days from Delivery. After 7 days from Delivery, Customer is deemed to have accepted that the Delivery is provided to an acceptable level of quality and further changes will be chargeable.

3. Services

3.1. Specification and Design

- 3.1.1. Where the Service requires programming or Website design, Customer and Arclid will agree, prior to commencement of any work, a Specification for the required work. Where certain design elements are unclear at time of Specification, Customer and Arclid agree that:
 - 3.1.1.1. Arclid will use its reasonable best efforts to ensure a satisfactory design within the estimated cost.
 - 3.1.1.2. Where a solution cannot be designed within the estimated cost, Arclid will discuss any additional costs associated with the Customer's requirements for agreement with the Customer prior to commencement of additional work.
- 3.1.2. Arclid will provide to Customer a copy of the Specification for Customer's agreement. A copy of the Specification will be signed by Customer prior to commencement of work.
- 3.2. The Services will be provided to Customer on the terms set forth in the Service Order(s), subject to the provisions of this Agreement. Requests for additional services may be made to Arclid's staff and will be effective when accepted by Arclid. Such additional Services shall result in an increase in the Service Charges as set forth in the Service Order. For additional services outside the scope of this Agreement (including any Service Order), Arclid must receive 72 hours advance notice before commencement of such services, or may bill Customer a £500 rush services charge.
- 3.3. This Contract, unless specifically stated on the Order Form, does not include the provision of telecommunications services necessary for connection to the Service.
- 3.4. Requests relating to the provision of Service are, unless otherwise agreed, to be made or confirmed in writing, or by electronic mail.
- 3.5. Arclid will use all reasonable endeavours to adhere to any dates proposed by either Arclid or Customer for the provision of Service; however any such date is to be treated as an estimate only and Arclid accepts no liability for failure to meet such dates.
- 3.6. Arclid will use all reasonable endeavours to provide reliable Service; however, it is not practicable to provide Service free of faults and Arclid does not undertake to do so. In the event of a fault in Service, you must report the fault by telephone, telefax or electronic mail to Arclid's Technical Support at the appropriate numbers or addresses or other such numbers or addresses that Arclid may from time to time provide. Upon receipt of the fault report, Arclid will take all proper steps without undue delay to correct the fault. Arclid shall not, in any event, be liable for interruptions of Service or downtime of a Server.
- 3.7. Arclid make no representation and give no warranty as to the accuracy or quality of information received by any person via the Server and we shall have no liability for any loss of or damage to any data stored on the Server.
- 3.8. Customer shall effect and maintain adequate insurance cover in respect of any loss of or damage to data stored on the Server.
- 3.9. Customer represents, undertakes and warrants to Arclid that Customer will use the Service allocated to you only for lawful purposes. In particular, Customer represents, warrants and undertakes to us that it:
 - 3.9.1. will not use the Service in any manner which infringes any law or regulation or which infringes the rights of any third party, nor will it authorise or permit any other person to do so;
 - 3.9.2. will not post, link to or transmit:
 - 3.9.2.1. any material which is unlawful, threatening, abusive, malicious, defamatory, obscene, pornographic, blasphemous, profane or otherwise objectionable in any way;
 - 3.9.2.2. any material containing a virus or other hostile computer program;
 - 3.9.2.3. any material which constitutes, or encourages the commission of, a criminal offence or which infringes any patent, trade mark, design right, copyright or any other intellectual property right or similar rights of any person which may subsist under the laws of any jurisdiction.

- 3.10. Customer shall keep secure any identification, password and other confidential information relating to its account and shall notify Arclid immediately of any known or suspected unauthorised use of its account or breach of security, including loss, theft or unauthorised disclosure of any password or other security information.
- 3.11. Customer shall procure that all email is sent in accordance with applicable legislation (including data protection legislation) and in a secure manner.
- 3.12. While Arclid will use every reasonable endeavour to ensure the integrity and security of the Server, it does not guarantee that the Server will be free from unauthorised users or hackers or from corruption by virus and Arclid shall be under no liability for non-receipt or misrouting of email or for any other failure of email or damage to data or operations.
- 3.13. **Bandwidth and Storage.**
 - 3.13.1. **Bandwidth.** The bandwidth per month allowed under this Agreement will be stipulated in the Service Order. Any additional bandwidth will be charged according to Arclid's published prices.
 - 3.13.2. **Data Storage.** The data storage space allocated to Customer will be stated in the Service Order. Any additional space used will be charged at Arclid's published prices.

4. **Warranty.**

- 4.1. Arclid warrants that it will provide the Services at a professional level of quality conforming to generally accepted industry standards and in compliance with all applicable laws and regulations. **EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, CUSTOMER'S USE OF THE SERVICES ARE AT CUSTOMER'S OWN RISK, AND ARCLID DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND IMPLIED WARRANTIES OR CONDITIONS, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES OR CONDITIONS ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THERE IS NO WARRANTY THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.**

5. **Disclaimer of Third Party Actions and Control**

- 5.1. Arclid does not and cannot control the flow of data to or from the Internet. Such flow depends on the performance of Internet services provided or controlled by third parties. At times, actions or inactions caused by these third parties can produce situations in which Customer connections to the Internet (or portions thereof) may be impaired or disrupted. It cannot be guaranteed that such situations will not occur and, accordingly, Arclid disclaims any and all liability resulting from or related to such events.
- 5.2. In the event that Customer's use of the Service or interaction with the Internet or such third parties is causing harm to or threatens to cause harm to the Arclid Network or its operations, Arclid shall have the right to suspend the Service. Arclid shall restore Service at such time as it reasonably deems that there is no further harm or threat of harm to the Arclid Network or its operations.

6. **Limitations of Liability.**

- 6.1. **Damage to Customer Business.** Arclid shall not be liable by reason of any representation, warranty, condition or other term, whether express or implied by statute, common law or otherwise or of any statutory provision for contribution or of limitation any other statutory duty or duty or common law or under the express terms of a contract, for any loss (including, without limitation, loss of profit, income, business, revenue, or goodwill, costs, expenses or other claims whatsoever) damage or injury of any kind, direct or indirect and consequential loss, howsoever arising and whether as a result of any loss of technology, loss of data, or interruption or loss of use of Service or otherwise, or any other similar claims by Customer or related to Customer's business, and even if Arclid is advised of the possibility of such damages.
- 6.2. **Maximum Liability.** Notwithstanding anything to the contrary in this Agreement, Arclid's maximum aggregate liability to Customer related to or in connection with this Agreement whether under theory of contract, tort (including negligence), strict liability or otherwise will be limited to the total amount due to Arclid from Customer hereunder for the first twelve (12) month period of the Agreement.

7. **Indemnification**

- 7.1. **Covered Claims.** Each party (the "Indemnifying Party" for the purposes of this Section) will indemnify, defend and hold harmless the other party (the "Indemnified Party"), its directors, officers, employees, and affiliates (collectively, the "Indemnified Entities") from and against any and all claims, actions or demands brought against any of the Indemnified Entities alleging (a) infringement or misappropriation of any intellectual property rights by the indemnifying party except to the extent caused by the Indemnified Party, (b) defamation, libel, slander, obscenity, pornography, or violation of the rights of privacy or publicity, or spamming or any other tortious or illegal conduct, (c) any property loss suffered by any other customer of Arclid resulting from acts or omissions by the Indemnifying Party or its representative(s) or designees, or (d) any personal injury suffered by any representatives, employee or agent of the Indemnified Party's negligence or willful misconduct (collectively, the "Covered Claims").
- 7.2. **Notice Procedure.** The Indemnified Party will provide the Indemnifying Party with prompt written notice of each covered claim of which the Indemnified Party becomes aware. At the Indemnified Party's sole option, it may elect to participate in the defence and settlement of any covered claim, provided that such participation shall not relieve the Indemnifying Party of any of its obligations under this section. The Indemnifying Party shall have the right to control the defence of any Covered Claim.

8. **Term.**

- 8.1. This Agreement will commence on the Effective Date and will expire upon the expiration of all Service Orders hereunder, unless sooner terminated as provided herein. Each Service Order will have the term specified therein and will automatically renew for additional one-year terms unless Customer notifies Arclid in writing prior to the expiration of the then current term that it had elected to terminate the Services under such Service Order at the end of such term.

9. **Termination**

- 9.1. **Non-payment.** Service to Customer may be suspended, without prior notification, if any amount due hereunder is not paid in full within thirty days (30) days after the due date for payment of the same. Reinstatement of Services may involve costs, for which a reconnection fee may be required. Arclid may terminate this agreement (or at its option, only the relevant Service Order) if any amount due hereunder is not paid in full within fifteen (15) days after Customer is sent notice of non-payment.

- 9.2. **Bankruptcy.** Either party may terminate this Agreement upon written notice to the other party if such other party becomes insolvent or files for bankruptcy or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction) or makes any voluntary arrangement with its creditors or becomes subject to administration order, a petition in bankruptcy or any proceeding relating to insolvency, receivership, or liquidation for the benefit of creditors, if such petition or legal proceeding is not dismissed within 60 days of filing.
- 9.3. **For Other Cause.** Except as otherwise stated, either party may terminate this Agreement if the other party breaches any material term or condition of this Agreement and fails to cure such breach within ten (10) days after receipt of written notice of the same.
- 9.4. **Effect of Termination.** Upon expiration or termination of this Agreement (a) Arclid will cease providing the Services, (b) except in the case of termination by Customer pursuant to section 9.3, all of Customer's payment obligations under this Agreement, including but not limited to the Service Charges through the end of the Term indicated on the Service Order(s) will become due in full immediately; and (c) Arclid reserves the right to restrict Customer's physical access to its equipment or data in any facility of Arclid and to hold such equipment or data securely until payment in full has been received or until such equipment is taken in full or partial satisfaction of any lien of judgment.
10. **Survival.**
- 10.1. The Parties respective representations, warranties and covenants, together with obligations of indemnification, confidentiality and limitations on liability will survive the expiration, termination or rescission of this Agreement and continue in full force and effect.
11. **Miscellaneous Provisions**
- 11.1. **Force Majeure.** Other than with respect to failure to make payments due, neither party shall be liable under this Agreement for delays, failures to perform, damages, losses or destruction, or malfunction of any equipment, or any consequence thereof, caused or occasioned by or due to fire, earthquake, flood, water, the elements, labour disputes or shortages, utility curtailments, power failures, explosions, civil disturbances, governmental actions, shortages of equipment or supplies, unavailability of transportation, acts or omissions of third parties, or any cause beyond its reasonable control.
- 11.2. **Confidentiality.** Each party agrees that all information furnished to it by the other party, or information of the other party to which it has access under this Agreement, shall be deemed the confidential and proprietary information (collectively referred to as "Confidential Information") of the Disclosing Party and shall remain the sole and exclusive property of the Disclosing Party (the Party furnishing the Confidential Information referred to as the "Disclosing Party" and the other Party referred to as the "Receiving Party"). Each party shall treat the Confidential Information and the contents of this agreement in a confidential manner, shall use such information only to the extent necessary to perform its obligations hereunder and neither party may directly or indirectly disclose the same to anyone other than its employees on a need to know basis and who agree to be bound by the terms of this section, without the written consent of the Disclosing Party. Information will not be deemed Confidential Information hereunder if such information (i) is known to the Receiving Party prior to the receipt from the Disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (ii) becomes known (independent of disclosure by the Disclosing Party) to the Receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the Receiving Party; (iv) is independently developed by the Receiving Party; or (v) is required to be released by law or regulation, provided that the Receiving Party provide prompt written notice to the Disclosing Party of such impending release, and the Receiving Party cooperate fully with the Disclosing Party to minimise such release.
- 11.3. **Marketing.** Unless Customer at any time requests otherwise, Arclid may refer to Customer by name and with logo in Arclid's marketing materials and website and, subject to Customer's review and approval, may promote Customer's business use of the Services through a press release, advertising and other marketing literature.
- 11.4. **Assignment.** Neither party may assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of the other party, except to an affiliate or a party that acquires substantially all of the assigning party's assets or a majority of its stock as part of a corporate merger or acquisition. Any attempted assignment or delegation without such consent will be void. This Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

12. Entire Agreement

These Terms and Conditions together with any documents expressly referred to in them, contain the entire Agreement between Arclid and Customer relating to the subject matter covered and supersede any previous Agreements, arrangements, undertakings or proposals, written or oral, between us in relation to such matters. No oral explanation or oral information given by any party shall alter the interpretation of these terms and conditions. In agreeing to these terms and conditions, you have not relied on any representation other than those expressly stated in these terms and conditions and you agree that you shall have no remedy in respect of any misrepresentation which has not been made expressly in this Agreement.