

ArixMedia Content License

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Background

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1. Definitions.

1.1. "You" means you, your client, or, if you are accepting on behalf of your employer or member account entity, then "you" means that employer or entity and affiliates.

1.2. "ArixMedia" or "we" or "our" means ArixMedia, LLC, your template supplier and operator of

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1.3. "Client" means the person or entity whose website you are designing if you hold yourself out to be a web designer whose services have been purchased at cost.

1.4. "Content" means any template, design, logo, photographic image, illustration, animation, Flash file, film or video footage, visual representation generated optically, electronically, digitally or by any other means or in any media or other material that you are downloading from the Site, together with any accompanying material.

1.5. "End Use" means the final work product created with the Content as authorized herein.

1.6. "Editorial" means publishing (in any format print or electronic) Content that is: (i) newsworthy or of public interest; (ii) used for criticism or comment; or (iii) used as an illustration in educational material.

2. Terms of License

2.1. We hereby grant to you a perpetual, non-exclusive, non-transferable license to use the Content for the Permitted Uses (as defined below). All other rights in and to the Content, including, without limitation, all copyright and other intellectual property rights relating to the Content, are retained by ArixMedia or the supplier of the Content. You may only use the Content for those advertising, promotional and other specified purposes which are Permitted Uses.

2.2. For the sake of clarity, and as detailed in Section 2.5 Prohibited Uses herein, you may not use the Content in products for resale, license or other distribution.

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2.4. **Permitted Uses.** Permitted uses of the Content differs depending upon the Content. Subject to the restrictions described under Prohibited Uses below, the following are the various "Permitted Uses" of the Content:

2.4.1. Templates:

2.4.1(a). **Website Templates:** You may use these templates to design your own

website or the website of your client and may make modifications necessary to fit the requirements of you or your client with respect to the website with the full knowledge that any modified template remains subject to this license agreement.

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2.4.1(c). **WordPress Themes:** You may use these templates to design your own website or the website of your client and may make modifications necessary to fit the requirements of you or your client with respect to the website with the full knowledge that any modified template remains subject to this license agreement. Your use of the graphics, cascading style sheets ("CSS"), JavaScript and any other non-PHP code elements incorporated into these templates are subject to the terms and conditions of this Agreement. However, your use of the WordPress/PHP code elements incorporated into these templates are subject to the terms and conditions of the GNU Global Public License ("GPLv2") pursuant to which WordPress is distributed. The full text of the GPLv2 license can be read at the following link: <http://wordpress.org/about/gpl/>.

2.4.2. **Third Party Content Templates:** Certain designated templates utilize content, such as photographic elements, licensed from third-party providers.

2.4.2(a). **Templates using ArixMedia Photography Content:** You may use the content with the template to which this license applies as well as with template(s) previously licensed to you from ArixMedia and may make modifications necessary to fit your requirements with the full knowledge that any modified template remains subject to this agreement.

2.4.3. **Stock Photos/Sound Loops:** You may use this content for:

2.4.3(a). You may use the content for advertising and promotional projects, including printed materials, product packaging, presentations, film and video presentations, commercials, catalogues, brochures, promotional greeting cards and promotional postcards (i.e. not for resale or license).

2.4.3(b). You may use the content for entertainment applications, such as books

and book covers, magazines, newspapers, editorials, newsletters, and video, broadcast and theatrical presentations.

2.4.3(c). You may use the content for online or electronic publications, including web pages to a maximum of 800 x 600 pixels; prints, posters (i.e. a hardcopy) and other reproductions for personal use, but not for resale, license or other distribution.

2.4.3(d). You may use the content for any other uses approved in writing by ArixMedia.

Any and all doubt regarding the scope of a Permitted Use and/or whether a proposed use is a Permitted Use must be clarified by contacting an ArixMedia sales representative for guidance at information@arixmedia.com.

2.5. Prohibited Uses. You may not use the Content or do anything with the Content that is not expressly permitted in the preceding section, including but not limited to, the following

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2.5.1. You may not use the Content in design template applications intended for resale, whether on-line or not, including, without limitation, website templates, Flash templates, business card templates, electronic greeting card templates, and brochure design templates;

2.5.2. You may not use or display the Content on websites or other venues designed to induce or involving the sale, license or other distribution of "on demand" products, including postcards, mugs, t-shirts, posters and other items;

2.5.3. You may not use the Content in any posters (printed on paper, canvas or any other media) or other items for resale, license or other distribution for profit;

2.5.4. You may not use any of the Content as part of a trade-mark, design-mark, trade-name, business name, service mark, or logo;

2.5.5. You may not incorporate the Content in any product that results in a re-distribution or re-use of the Content (such as electronic greeting card web sites, web templates and the like) or is otherwise made available in a manner such that a person can extract or access or reproduce the Content as an electronic file;

2.5.6. You may not use the Content in a fashion that is considered by ArixMedia (acting reasonably) as, or under applicable law is considered, pornographic, obscene, immoral, infringing, defamatory or libelous in nature, or that would be reasonably likely to bring any person or property reflected in the Content into disrepute;

2.5.7. You may not use or display any Content that features a model or person in a manner that (a) would lead a reasonable person to think that such person uses or personally endorses any business, product, service, cause, association or other endeavour; or (b) that depicts such person in a potentially sensitive subject matter, including, but not limited to mental and physical health issues, social issues, sexual or implied sexual activity or preferences, substance abuse, crime, physical or mental abuse or ailments, or any other subject matter that would be reasonably likely to be offensive or unflattering to any person reflected in the Content;

2.5.8. You may not, to the extent that source code is contained within the Content, reverse engineer, decompile, or disassemble any part of such source code;

2.5.9. You may not remove any notice of copyright, trade-mark or other proprietary right from any place where it is on or embedded in the Content;

2.5.10. You may not sub-license, re-sell, rent, lend, assign, gift or otherwise transfer or distribute the Content or the rights granted under this Agreement except where expressly permitted in the case of a web designer who purchases a template on behalf of his client for his clients website development;

2.5.11. You may not use or display the Content in an electronic format that enables it to be downloaded or distributed via mobile devices or shared in any peer-to-peer or similar file sharing arrangement;

2.5.12. You may not use the Content for editorial purposes.

2.6. **Refunds and Exchanges.** All fees paid to ArixMedia by you for the use of the Content are nonrefundable. However, in its sole and absolute discretion, ArixMedia may permit the exchange of the Content for approved alternate Content should it deem such an exchange necessary.

3. **Term of Agreement**

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5.1.1. You may, upon request to ArixMedia, be permitted to download the Content again,

at a location ArixMedia will provide for you.

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5.3. IN ANY EVENT, THE TOTAL MAXIMUM AGGREGATE LIABILITY OF ARIXMEDIA UNDER THIS AGREEMENT, THE LICENSE PROVIDED HEREUNDER, OR THE USE OR EXPLOITATION OF ANY OR ALL OF THE CONTENT IN ANY MANNER WHATSOEVER SHALL BE LIMITED TO THE FEES ACTUALLY PAID BY YOU TO ARIXMEDIA UNDER THIS AGREEMENT IN RESPECT OF THE USE OF THE RELEVANT CONTENT.

5.4. SOME JURISDICTIONS DO NOT ALLOW FOR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

6. Indemnification. You agree to indemnify, defend and hold ArixMedia, its affiliates, its Content providers and their respective directors, officers, employees, shareholders, partners and agents (collectively, the "ArixMedia Parties") harmless from and against any and all claims, liability, losses, damages, costs and expenses (including reasonable legal fees on a solicitor and client basis) incurred by any ArixMedia Party as a result of or in connection with any breach by you or anyone acting on your behalf of any of the terms of this Agreement.

7. General Provisions

7.1. You specifically agree and acknowledge that you have, in addition to the terms of this

Agreement, reviewed the terms of the Membership Agreement and Terms of Use and any other agreements which may be incorporated by reference therein, and to the extent of their incorporation in this Agreement you agree to be bound by them.

7.2. ArixMedia's failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right.

7.3. This Agreement is personal to you and is not assignable by you without ArixMedia's prior written consent. ArixMedia may assign this Agreement without your consent to any other party so long as such party agrees to be bound by its terms.

7.4. If all or part of any provision of this Agreement is wholly or partially unenforceable, the parties or, in the event the parties are unable to agree, a court of competent jurisdiction, shall put in place of such whole or part provision an enforceable provision or provisions, that as nearly as possible reflects the terms of the unenforceable whole or part provision.

7.5. You agree to pay and be responsible for any and all sales taxes, use taxes, value added taxes and duties imposed by any jurisdiction as a result of the license granted to you, or of your use of the Content, pursuant to this Agreement.

7.6. The parties have requested that this Agreement and all related documents be drawn up in English.

8. **Contact.** If you have concerns relating to this Agreement, please contact ArixMedia at information@arixmedia.com.

9. **Acknowledgement.** YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND HAD AN OPPORTUNITY TO SEEK INDEPENDENT LEGAL ADVICE PRIOR TO AGREEING TO IT. IN CONSIDERATION OF ARIXMEDIA AGREEING TO PROVIDE THE CONTENT, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU FURTHER AGREE THAT IT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN YOU AND ARIXMEDIA, WHICH SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATION BETWEEN YOU AND ARIXMEDIA RELATING TO THE SUBJECT OF THIS AGREEMENT.