

## Appendix A – General Terms and Conditions

1. Good Faith Cooperation. The Client shall cooperate with Differnt in good faith. The Client shall promptly return telephone calls, emails, and requests for information, including providing all relevant information in the possession of the Client. The Client shall be available for teleconferences or in-person conferences with representatives of Differnt upon reasonable notice from Differnt. Additionally, the Client shall promptly pay invoices when presented and due.

Client agrees to perform all tasks assigned to Client as set forth in this Agreement or as requested by Differnt to complete the services. Client agrees to provide all assistance and cooperation to Differnt in order to complete the services ordered in a timely and efficient manner. If any failure or delay is caused by Client, then: (i) all of Differnt's time-frames, milestones, and/or deadlines shall be extended as necessary (including, but not limited to, the project completion date); and (ii) Client shall continue to make timely payments to Differnt as set forth in this Agreement as if all time frames, schedules, or deadlines had been completed by Differnt. Unless otherwise agreed, Client shall be responsible for initially populating any data, as well as providing all content for their requested service.

2. Change Orders. Any modifications to Differnt services as described in the Agreement will require execution of a written change order by both parties to this Agreement (a "Change Order"). Each Change Order shall be deemed to be an amendment to and will become part of this Agreement.

This Agreement constitutes the entire understanding of the parties, and revokes and supersedes all prior agreements between the parties and is intended as a final expression of the parties' Agreement. It shall not be modified or amended except through Change Orders. This Agreement, as amended by any Change Orders, shall take precedence over any other documents which may conflict with this Agreement.

3. Non-Solicitation. Unless otherwise mutually agreed to by the parties in writing, Client agrees not to hire, retain, or seek to retain any current and/or former employee, consultant, agent, or other personnel of Differnt during the term of this Agreement and for a period of twelve (12) consecutive months thereafter.
4. Publicity. Unless otherwise mutually agreed, Differnt may disclose in general terms its role in providing services to Client, and Client can include mention of Differnt as its service provider in any press release or public announcement.
5. Technological Changes. Differnt shall exercise good faith and use reasonable business diligence in fulfilling its obligations under this Agreement. Differnt makes no

representations or warranties regarding the long-term sustainability of the technologies or components utilized to fulfill ordered products and/or services, including any open-source technologies, which may be utilized.

Client understands that technologies and components become outdated, and that Differnt is not responsible for updating, repairing, or patching outdated technologies or components after project delivery and/or deployment set forth in the Agreement. However, if a technology or component fails within six (6) months of the delivery and/or deployment, Differnt shall, at the request of the Client, take reasonable measures to repair it.

Client understands that It is expected that bugs will occur in technology and Differnt will fix bugs the Client notifies Differnt of within six (6) months of the project delivery and/or deployment. After six (6) months, Differnt makes no warranties or promises that products that it designs or develops will continue to function, and no warranties that it will repair any bugs in the products designed or developed.

Client has been informed that Client can purchase a maintenance package from Differnt which, at an additional cost, will extend the warranty beyond the initial six (6) months.

6. Disclaimer of All Other Warranties. DIFFERNT DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN ITS SERVICES OR PRODUCTS PROVIDED UNDER THIS AGREEMENT WILL MEET THE CLIENT'S REQUIREMENTS OR THAT THE OPERATION WILL BE UNINTERRUPTED OR ERROR-FREE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE PRODUCT IS WITH CLIENT EXCEPT AS OTHERWISE SPECIFIED IN THIS AGREEMENT.

DIFFERNT PROVIDES ITS SERVICES AND PRODUCTS "AS IS" AND WITHOUT WARRANTY OF ANY KIND. THE PARTIES AGREE THAT (A) THE LIMITED WARRANTIES SET FORTH IN THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES PROVIDED BY DIFFERNT, AND (B) DIFFERNT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. DIFFERNT MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH REGARD TO ANY THIRD- PARTY PRODUCTS/SERVICES, THIRD-PARTY CONTENT OR ANY SOFTWARE, EQUIPMENT, OR HARDWARE OBTAINED FROM THIRD-PARTIES.

7. Termination of Agreement. In the event of a material breach of this Agreement, the party shall provide written notice to the other of the material breach and shall give the other thirty (30) days to cure the material breach from the date of receipt of such notice. If such breach is not cured within thirty (30) days, the contract may be terminated.

Notwithstanding the preceding, this Agreement may be terminated by Differnt, without having to give Client an opportunity to cure, and immediately if: (i) Client fails to pay any fees hereunder, or (ii) if Client fails to cooperate with Differnt or hinders Differnt's ability to perform the services hereunder.

Client understands that much of Differnt's work depends on hiring outside contractors to provide services on behalf of Differnt. If the client notifies Differnt after the work has begun, but before its completion, that Client no longer wants Differnt to complete the product, then Differnt is entitled to keep the actual costs expended by Differnt (or which Differnt is obligated to expend) plus a 20% surcharge (calculated as 100% of actual costs + an additional 20% of actual costs).

In addition to the preceding, if after repeated attempts to begin, continue, or finalize the delivery of services, Client fails to participate, or becomes otherwise unresponsive to Differnt's requests for a period of sixty (60) days, the project may be considered abandoned, and Differnt may reduce any refund the Client may otherwise be entitled to hereunder to zero, and Client will have forfeited all rights to receive any refund for services purchased. On the sixtieth (60th) day, all data will be completely removed from Differnt's system(s), with no ability for recovery or project resumption. Any suspension or termination of services will not relieve Client from paying past due fees plus late fees, interest, or any other costs or fees available under the terms of this Agreement.

8. Limitation of Liability. Neither party shall have any liability to the other with respect to its obligations under this Agreement or otherwise for special, incidental, consequential, punitive or exemplary damages, even if that party has been advised of the possibility of such damages. In no event shall Differnt's liability for any reason and upon any cause of action arising from this Agreement, or otherwise, exceed the amounts paid to Differnt by the Client under this Agreement.
9. Third-Party Issues. Client understands and agrees that third-party issues, including (but not limited to): outages, security breaches, Client cancellations from third party hosts, and other third-party services are beyond the control of Differnt. Client agrees that Differnt is not responsible or liable for any such third-party issues, and agrees not to bring any action against Differnt for any issues that arise due to third parties, that are beyond the control of Differnt. If a third-party issue occurs, Client agrees to extend the project timelines and/or deadlines as necessary to allow for the resolution of the third-party issue.
10. Client Representations. Client represents and warrants that client has permission, authority, or license to use all information, pictures, photographs, illustrations, audio clips, video clips, text, data, content, copies, components, writings, graphics, code, or

anything else whatsoever which Client requests or provides to Differnt to utilize (hereafter "Client Materials"). If Client provides or requests Differnt use any Client Materials, Client warrants that it has the right and/or authorization to utilize such materials, that such materials do not infringe upon anyone else's intellectual property rights, and Client agrees to indemnify and hold Differnt harmless for utilizing any materials for which it does not have rights to use. Client shall indemnify, defend, protect, and hold harmless Differnt from and against any and all damages, costs, and liabilities, including but not limited to, all attorneys' fees and costs, that may be incurred by Differnt in connection with its performance of services with respect to this Agreement, including, but not limited, to any claims arising from the Client's violations of this provision.

11. Data Retention. Differnt will back-up any project data for Client for six (6) months after the project delivery and/or deployment. Client understands that it is Client's responsibility to back-up and maintain back-ups and that six (6) months after the project completion date, all projects may be deleted by Differnt, and Client will have no access to them through Differnt.
12. Copyright Ownership. Client acknowledges, understands, and agrees that Differnt may use its own and/or may purchase third party licenses for products or services that are necessary for Differnt to fulfill ordered service/product. Such products may include, but are not limited to server-side applications, clip art, "back-end" applications, music, stock images, or any other copyrighted work ("Outside Content") which Differnt deems necessary to purchase on behalf of Client to fulfill the ordered service/product.

Client and Differnt agree that upon payment in full of the fees associated with the design and development, Client shall own a worldwide right, title, and interest in and to the final product/service (including, its source code and documentation) (the "Custom Programming").

Client and Differnt also agree that Custom Programming may include source code, documentation, and/or application programs that were previously written or developed by Differnt and/or modified to meet Client's specific requirements (the "Code Content"). Differnt shall maintain all rights, title, interest, and the ability to utilize the Code Content in other projects. Differnt and its contractors and subcontractors retain the right to display graphics, logos, and other site/application design elements of the Custom Programming as examples of their work in their respective portfolios.

13. Relationship Between the Parties. This Agreement does not constitute and shall not be construed as constituting a partnership or joint venture among or between Differnt and the Client, or any of the signatories hereto. Differnt is an independent contractor.

## 15. Dispute Resolution, Jurisdiction, Venue, and Remedies.

15.1 Mediation. Except where equitable remedies are available or for matters that may be asserted in a New Jersey small claims court, the parties agree to attempt to resolve any disputes under this Agreement in good faith through mediation with a mutually acceptable mediator and shall equally divide the costs of such mediation. Mediation may be initiated by either party by making a written demand for mediation on the other party. Mediation must be held within fifteen (15) days of the non-initiating party's receipt of such demand at a time mutually acceptable to the parties.

15.2 Arbitration. Except where equitable remedies are available or for matters that may be asserted in a New Jersey small claims court, any controversy or claim ("Controversy") arising out of or relating to this Agreement or the breach thereof which cannot be resolved or concluded within thirty (30) days of the non-initiating party's receipt of such demand for mediation, shall be settled by arbitration in Atlantic County ("Applicable County") in accordance with the rules of the American Arbitration Association ("AAA"). Client can obtain the AAA Rules from the AAA by visiting its website ([www.adr.org](http://www.adr.org)) or calling its toll-free number (1-800-778-7879). If there is a conflict between this Arbitration Provision and the rest of this Agreement, this Arbitration Provision shall govern. If there is a conflict between this Arbitration Provision and the AAA Rules, this Arbitration Provision shall govern. If the AAA will not administer a proceeding under this Arbitration Provision as written, Client and Differnt shall agree on a substitute arbitration organization. If Client and Differnt cannot agree, we shall mutually petition a court of appropriate jurisdiction to appoint an arbitration organization that will administer a proceeding under this Arbitration Provision, as written, applying the AAA Rules. A single arbitrator will resolve the Controversy. Judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Such Arbitration may be initiated by either party by making a written demand for arbitration on the other party within ten (10) days of the expiration of the foregoing thirty (30) day period. The parties agree that either party must assert any Controversy within six (6) months of the date which such Controversy occurred, and in the event that either party fails to assert such Controversy within such period, they shall be barred from raising such Controversy, and shall waive all of their rights relating thereto, notwithstanding the applicable statute of limitations.

15.3 Small Claims. Notwithstanding the preceding, the parties agree that any claims that may be brought in small claims court in New Jersey, may be so brought in small claims without proceeding to mediation or arbitration first, and such claims may be brought in small claims at any time within the applicable statute of limitations and are not limited to the six-month rule for Controversies subject to Arbitration in the preceding provisions.

15.4 Jurisdiction and Governing Law. For any matters not subject to Arbitration under the preceding provisions, the parties consent to the jurisdiction of the courts of the State of New Jersey. Such claims may only be brought in New Jersey courts.

15.5 Remedies. If any action is brought for the enforcement of this Agreement whether through Arbitration, Small Claims, or otherwise, or because of an alleged dispute, breach, or default in connection with any of the provisions of this Agreement, the successful or prevailing party will be entitled to recover its attorneys' fees and costs, as well as all other costs that it incurred in connection with the action, in addition to any other relief which the prevailing party may be entitled, subject to the limitations of liability identified in paragraph 9 of this Agreement.

15.6 Waiver of Jury Trial. WHETHER ANY DISPUTE OR CONTROVERSY IS RESOLVED IN SMALL CLAIMS COURT OR IN ARBITRATION, BOTH CLIENT AND Differnt UNDERSTAND THAT THEY ARE AND CONSENT TO WAIVING THE RIGHT TO A TRIAL BY JURY IN RELATION TO THE DISPUTE OR CONTROVERSY.

16. Entire Agreement and Governing Law. This Agreement comprises the entire Agreement between the parties. This Agreement can be executed in counterparts delivered by email, electronic means, or fax and all such email, electronic, and faxed counterparts, collectively, shall be deemed, for all purposes, to constitute one original executed Agreement. This Agreement shall be governed by, interpreted under, construed and enforced in accordance with the laws of New Jersey, excluding conflict of laws principles that might cause application of laws of any other jurisdiction.
17. Force Majeure. Neither party will be liable for or will be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any causes or conditions that are beyond such party's reasonable control and that such Party is unable to overcome through the exercise of commercially reasonable diligence. If any force majeure event occurs, the affected Party will give prompt written notice to the other Party and will use commercially reasonable efforts to minimize the impact of the event. Such events include, but are not limited to, delays in the provision of services or products caused by pandemics, natural disasters, acts of god, or declarations of war.
18. Execution. Each party to this Agreement represents and warrants to the other party that the execution of this Agreement and the performance of such party's obligations hereunder have been duly authorized and that this Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

19. Assignment and Binding Effect. The provisions of the Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, administrators, successors and assigns. However, Client may not assign this Agreement or the rights and obligations thereunder to any third party without the prior express written approval of Differnt. Differnt reserves the right to assign subcontractors as needed to ensure on-time completion of the promised services to Client.
20. Waiver. No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same or other provisions of this Agreement.
21. Severability. If any term, clause, or provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement.
22. Notices. All notices under this Agreement shall be sent to the addresses contained in this Agreement, or by email to the Client or the Client's assigned account representative's email address. Differnt and Client agree to promptly notify each other in the event of a change of address or email address.

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