Terms and Conditions
Custom Design and Development Services

By using any Digital Fruition, LLC ("Digital Fruition") Custom Design and Development Services (collectively known as "Custom Services", or "Development"), you ("Customer") are agreeing to be bound by the following terms and conditions.

DIGITAL FRUITION IS WILLING TO PROVIDE SERVICES TO YOU ONLY UPON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT. PLEASE READ THIS AGREEMENT CAREFULLY. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS HEREIN, DIGITAL FRUITION IS UNWILLING TO PROVIDE SERVICES TO YOU.

Digital Fruition reserves the right to change or modify any of Digital Fruition's terms and conditions from time to time. Your continued use of Digital Fruition's Services after changes or modifications are published will constitute your acceptance of such changes or modifications. Digital Fruition will make a reasonable effort to give a 30 day notice of such changes via email and/or post the notice in the Customer's web site admin; however Digital Fruition can not guarantee Customer will receive a notice every time. Digital Fruition's most up-to-date version of all of all current terms and conditions can be viewed at the following URL: http://www.digitalfruition.com/terms

1. CUSTOM SERVICES
   At Customer's request, and subject to Digital Fruition's acceptance of Customer's request and Customer's payment of applicable fees, Digital Fruition will provide Custom Services in accordance with this Agreement.

2. COMMENCEMENT OF CUSTOM SERVICES
   Digital Fruition shall commence Custom Services following:
   a. the complete execution of this Agreement by both parties,
   b. upon payment of the initial fee payment provided for in this Agreement,
   c. and Digital Fruition has received the Customer supplied elements ("Customer Supplied Elements") contained in this Agreement.
   Such Custom Services shall be created substantially in conformance with the "Statement of Work" contained in this Agreement.

3. ACCEPTANCE PERIOD
   Customer shall have a period of 5 days following delivery of the final Custom Services described by the "Statement of Work" during which Customer may engage in testing and evaluating of Digital Fruition's work. Customer shall notify Digital Fruition no later than the 5th day following delivery of any items that do not conform to the "Statement of Work". In the event that the Customer does not so notify Digital Fruition within the 5 day period, Customer shall be deemed to have accepted completion of Custom Services described by the "Statement of Work" in all respects.

4. CHANGES TO STATEMENT OF WORK
   Requests for changes shall not be effective without the written consent of both parties. Prior to acceptance of any change requests, the parties shall cooperate to equitably determine the impact on pricing, time commitments, scheduling and deadlines and other project factors and reflect these changes in the change order. All change orders must be approved and executed by both parties.

5. COMPLETION
   Customer acknowledges and agrees that any changes or deviations in the specifications, site plan, mockups, graphics, or any other element of the Web Site or Custom Services, requested revisions of redesign by the Customer, unforeseen circumstances, and Customer delays in fulfilling Customer's responsibilities, include delivering Customer Supplied Elements and promptly reviewing and commenting on completed work will lead to delays in the completion schedule.

   If the "Statement of Work" involves Digital Fruition building a web site ("Web Site") for the Customer, the Web Site will be published at Customer's URL address to the world wide web after the following obligations have been fulfilled:
   a. Customer has approved the final Custom Services for the Web Site,
   b. Customer has paid all fees contained in this agreement,
   c. Customer has complied with all terms and conditions contained in this Agreement,
   d. if Customer is using Digital Fruition's Software-as-a-Service and/or Hosting Service then Customer must be in compliance with Digital Fruition's then current Software-as-a-Service and Hosting Service terms and conditions.

6. CUSTOM SERVICES FEE
   In consideration of the services to be performed by Digital Fruition hereunder, including the delivery of a completed Web Site meeting the specifications set forth and referred to herein, the Customer shall pay to Digital Fruition a total Custom Services fee

("Custom Services Fee"). The parties have agreed to special terms relative to the payment of the fees to be paid to Digital Fruition for the services provided hereunder as set forth in the "Statement of Work".

7. CUSTOM SERVICES DEPOSIT
Upon acceptance of this Agreement, the Customer shall deliver to the Digital Fruition a deposit in an amount equal to 50% of the total estimated project costs.

8. PASS THROUGH EXPENSES
The parties acknowledge and agree that all expenses payable to third parties associated with the development process, including but not limited to payment of any licensing fees, software procurement, search engine submission fees, pay-per click search engine account fees, costs of purchasing graphics, photographs and other web content, materials, supplies, and all other elements of the web site development shall be the responsibility of Customer. Notwithstanding the above, Customer is responsible for all costs and expenses not related to the design and development services, such as domain name registration, marketing, search engine placements, payment gateways and any other service that is not described or covered by this Agreement.

9. EARLY TERMINATION
In the event that this Agreement is terminated by its terms prior to completion of the Custom Services, Digital Fruition shall be compensated for such work that has been completed prior to the date of termination.

10. TAXES ON FEES
The fees set forth above are exclusive of taxes. Customer shall be responsible for all taxes, levies, and assessments, excepting taxes based on the net income of Digital Fruition, and shall, upon receipt of notice from Digital Fruition, promptly pay, or if Digital Fruition has paid any such amounts, reimburse Digital Fruition for all such taxes, levies, or assessments.

11. LICENSES TO CUSTOM SOFTWARE
Upon payment in full of all amounts due to Digital Fruition and subject to the terms and conditions of this Agreement, Digital Fruition shall grant to the Customer a non-exclusive, non-transferable, limited license to remotely use the software created using Digital Fruition's Custom Services ("Custom Software") on servers supplied by Digital Fruition for the purpose of creating and maintaining a web site. This Agreement shall not provide Customer with the right of ownership or title in and to the software programs or software-as-a-service software (collectively known as "Software") containing the Custom Software but rather, Customer's rights shall be limited to the scope of license provided herein. Customer shall not take any action or permit any occurrence that would create a lien or encumbrance on the Software containing the Custom Software or the copyright thereto, or create any cloud on Digital Fruition's title thereto. Customer shall not use the Software containing the Custom Software in such a manner that may infringe upon the rights of any other party.

12. PRE-EXISTING WORKS
In the event that the Custom Services include any pre-existing works created by Digital Fruition or any other party, Digital Fruition hereby grants, and shall arrange for applicable third parties to grant, a perpetual, non-exclusive, royalty free license to use such pre-existing works in connection with the Custom Services.

13. INVENTIONS
The parties intend that all inventions and creations developed by Digital Fruition in the course of the development project, conditioned on full and complete payment of all amounts due to Digital Fruition hereunder, shall be the property of Digital Fruition, subject only to the license granted hereunder. For purposes of this Agreement, Inventions shall mean and include any and all ideas, concepts, discoveries, designs, improvements, and creations, regardless of whether the same are patentable or protected under any Federal of State law, rule or regulation or under the common law of any state, or under International law.

14. RESERVATION OF PROPRIETARY RIGHTS IN DIGITAL FRUITION
Customer acknowledges and agrees that the Fee applicable to this project was negotiated based upon Digital Fruition retaining the copyright and all other proprietary rights in and to the Software and other Inventions created hereunder and that the Fee would have been substantially greater had Digital Fruition not retained the copyright in and to such items. Therefore, Customer represents, acknowledges and agrees that the Custom Software are valuable trade secrets and proprietary property of Digital Fruition. Customer further acknowledges and agrees that Digital Fruition retains all copyrights and proprietary rights in and to the Custom Software. Customer agrees to refrain from any copying, distribution, or other infringements on the exclusive rights of Digital Fruition as the copyright owner of the Custom Software, except as specifically permitted in the license granted hereunder. Customer agrees to maintain the confidentiality of the Custom Software and to protect the same as trade secrets of Digital Fruition. Customer further agrees to immediately notify Digital Fruition of any third party infringement on Digital Fruition's rights of which the Customer may

become aware.

15. CONFIDENTIAL INFORMATION
Customer shall not, at any time, disclose or disseminate the trade secrets embodied in the Custom Software or any supporting program documentation to any other person, firm, organization, or employee who does not need to obtain access thereto consistent with Customer's rights under this Agreement. Under no circumstances may Customer modify, reverse compile, or reverse assemble any object code contained within the Custom Software. Under no circumstances may Customer disclose or disseminate such trade secrets to any competitor of Digital Fruition. Customer shall devote Customer's best efforts to ensure that all persons afforded access to the Custom Software and all supporting program documentation protect Digital Fruition's trade secrets against unauthorized use, dissemination, or disclosure. Any information Digital Fruition publishes on its web site about Custom Software is not considered confidential.

16. CUSTOM SOFTWARE SUPPORT
For a period of two (2) months following delivery of the Custom Software and final acceptance thereof by the Customer, Digital Fruition shall provide certain support services to the Customer related to the Custom Software including the following:
    a. technical support of Custom Software during Digital Fruition's normal business hours of 9:00 am until 6:00 pm EST Monday through Friday and
    b. such further programming services to correct any demonstrated errors in the operation of the Custom Software which are necessary to enable the Custom Software to operate substantially in accordance with the Statement of Work.
Technical support by phone past the two month Custom Software Support period can be purchased for $50 per hour for a minimum of a half hour during normal business hours.

17. CUSTOMER RESPONSIBILITIES
Customer shall not attempt to correct any errors in the Custom Software or do anything to alter or modify any programming code. Customer shall promptly report any errors in the operation of the Custom Software to Digital Fruition and shall not take any actions that would increase the severity of the error. Customer shall use the Custom Software only for its intended purpose and only in the manner intended. In the event that the Customer violates any of the requirements of this Section, Digital Fruition shall have no responsibility to provide support services, these requirements being express preconditions to the availability of Digital Fruition support services hereunder.

18. PERFORMANCE
Digital Fruition represents and warrants that service hereunder shall be performed in a workmanlike manner consistent with industry standards, that all Custom Software shall function substantially in compliance with agreed specifications, and that its shall perform all development tasks in compliance with all applicable state, federal and local laws, rules and regulations.

19. PRE-EXISTING WORKS
Digital Fruition represents and warrants that Customer, upon payment in full of all amounts due hereunder, shall have a perpetual, royalty free, worldwide license to use and pre-existing works, whether developed by Digital Fruition or by and other party, which are used in connection with the Custom Software.

20. WARRANTY DISCLAIMERS
Other than as specifically set forth in this Agreement, THE CUSTOM SOFTWARE IS DELIVERED TO CUSTOMER ON AN "AS IS" BASIS, WITHOUT ANY WARRANTIES OR REPRESENTATIONS EXPRESS, IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, QUALITY, PERFORMANCE OR NONINFRINGEMENT UPON THE RIGHTS OF ANY OTHER PARTY. DIGITAL FRUITION MAKES NO WARRANTY THAT THE CUSTOMER SOFTWARE WILL MEET CUSTOMER'S SPECIFIC OBJECTIVES OR NEEDS OR THAT THE CUSTOMER SOFTWARE WILL BE FREE FROM ERRORS OR BUGS. DIGITAL FRUITION MAKES NO WARRANTY THAT THERE WILL BE UNINTERUPTED OPERATION OF THE CUSTOMER SOFTWARE. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE FOREGOING EXCLUSIONS AND DISCLAIMERS OF WARRANTIES ARE AN ESSENTIAL PART OF THIS AGREEMENT AND FORMED THE BASIS FOR DETERMINING THE PRICE CHARGED FOR THE PRODUCTS.

21. LIMITATION ON DAMAGES
In no event will Digital Fruition be liable for any incidental, special or consequential damages in spite of the fact that the Customer acknowledges that Customer has been fully advised that such damages are possible. Under no circumstances will damages assessed against Digital Fruition exceed the Custom Services fee (exclusive of costs and expenses) actually paid to Digital Fruition.

22. THIRD PARY CLAIMS
Digital Fruition shall not be liable for claims made against the Customer or Digital Fruition arising out of Customer's use or ownership

of the Custom Software and Customer hereby indemnifies and holds Digital Fruition harmless from and against any and all claims, of every nature or type, that may be brought or asserted by any other party.

23. TERM AND TERMINATION
   a. TERM
   This Agreement shall be effective upon execution hereof by both parties and shall remain in full force.

   b. TERMINATION FOR CAUSE
   Either party may terminate this Agreement for cause in the event that the other party substantially defaults under any term or condition contained herein; provided that if the termination is against Digital Fruition based upon the performance or lack of performance of Digital Fruition's development responsibilities, Digital Fruition shall first be given thirty (30) days advanced written notice specifying the alleged deficiency in detail and Digital Fruition shall have such thirty (30) day period to reasonably cure the alleged default.

   c. TERMINATION PRIOR TO COMPLETION
   Upon any early termination prior to completion of Custom Services, Digital Fruition shall immediately cease work on the relevant project and shall issue an invoice to the Customer for all work performed through the date of termination. The final invoice shall be due and payable by the Customer upon receipt thereof.

   d. SURVIVAL OF CERTAIN PROVISIONS
   In the event of any termination, the following provisions shall continue in full force and affect:
      i.   the obligation of the Customer to make payments due hereunder to Digital Fruition,
      ii. confidentiality provisions, and
      iii. representations and warranties as to proprietary rights of the Custom Software.

24. GENERAL
   a. CONTROLLING LAW
   In interpreting the terms of this Agreement, the parties agree that the laws of the State of North Carolina shall be applicable. All suits permitted to be brought in any court shall be venued in Wake County, State of North Carolina USA.

   b. ELIGIBILITY CRITERIA
   Each party warrants and represents to the other party that it has the complete right and authority to enter into and perform its responsibilities under this Agreement and is at least 18 years old. If Digital Fruition, in its sole discretion, believes the information supplied to it by Customer has been falsified, it reserves the right to suspend or terminate Customer's Services and Software licenses.

   c. LEGAL COMPLIANCE
   Customer shall comply with all applicable domestic and international laws, statutes, regulations, and ordinances pertaining to the Customer's use, products for sale, or content posted using the Custom Services Digital Fruition provides.

   d. FORCE MAJEURE
   Neither Party shall be liable nor be able to terminate this contract for any failure to perform any duties or obligations under this Agreement caused by force majeure occurrences; force majeure occurrences shall include: acts of nature, fire, flood, earthquake, hurricane, riots, illness, war, invasion, terrorists acts, government sanction or embargo, labor disputes, failure of electricity or other telecommunications service or any other event not under the control of the party.

   e. SEVERABILITY
   In the event any provision of this Agreement is deemed to be void, invalid, or unenforceable, such provision shall be struck and the remainder of this Agreement shall then continue in full force and effect.

   f. MEDIATION AND ARBITRATION
   Except as specifically provided in this Agreement, the parties agree that any dispute or controversy arising out of, relating to or in connection with the interpretation, validity, construction, performance, breach or termination of this Agreement, Customer and Digital Fruition agree to first try to resolve the dispute with the help of a mutually agreed-upon mediator located in Raleigh North Carolina USA. Costs and fees associated with the mediation, other than attorney fees, shall be shared equally by Customer and Digital Fruition.

   If mediation does not produce a mutually satisfactory resolution, the parties agree that any dispute or controversy arising out of,

relating to or in connection with the interpretation, validity, construction, performance, breach or termination of this Agreement shall be submitted to binding arbitration to be held in Raleigh North Carolina USA in accordance with the rules of the American Arbitration Association (the "Rules"). The decision of the arbitrator shall be final, conclusive and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court of competent jurisdiction. The parties shall each bear their own attorney fees with respect to such Arbitration but shall share equally the other costs and expenses of arbitration.

g. ATTORNEY FEES
If any legal action is necessary to enforce this Agreement, the prevailing party shall be entitled to reasonable attorney fees, costs and expenses.

h. EXCUSABLE DELAYS
Any delay or nonperformance of any provision of this Agreement caused by conditions beyond the reasonable control of Digital Fruition shall not constitute a breach of this Agreement, provided that Digital Fruition has taken reasonable measures to notify Customer of the delay in writing and uses reasonable efforts to perform in accordance with this Agreement notwithstanding such conditions. The delayed party's time for performance shall be deemed to be extended for a period equal to the duration of the conditions beyond its control. Conditions beyond a party's reasonable control include, but are not limited to, natural disasters, acts of government after the date of the Agreement, power failure, fire, flood, acts of God, labor disputes, riots, acts of war and epidemics.

i. NOTICES
All notice and other communications given in connection with this Agreement shall be in writing. Written notice may be delivered by either electronic mail (email) or through the U.S. Postal Service or delivered by private courier. Notice is not effective until it is confirmed via written receipt that the other party received the notice. Notices to Digital Fruition shall be sent to the following:

Digital Fruition, LLC
2501 Blue Ridge Rd., Ste 250
Raleigh, NC 27560

Email: support@digitalfruition.com

Customer and Digital Fruition agree to promptly notify the other of any change of address. Notice given by electronic mail, must also have a duplicate hard copy sent by U.S. Postal Service or private courier.

j. NO AGENCY
Customer and Digital Fruition are independent contractors, nothing contained herein will be construed as creating any agency, employee-employer, franchiser-franchisee relationship, partnership, joint venture or other form of joint enterprise between the parties.

k. ASSIGNMENT
This Agreement may not be assigned by Customer without Digital Fruition's prior written consent. Digital Fruition may assign this agreement, in its sole discretion, which shall be effective when Customer is provided a written notice.

l. INDEPENDENT CONTRACTOR STATUS
The parties agree that Digital Fruition shall be an independent contractor and not an agent, employee or representative of Customer.

m. TITLES
Section titles in this Agreement are for convenience only; they do not serve any legal purpose.

n. ADDITIONAL TERMS
Customer shall be subject to additional terms and conditions contained in Digital Fruition's Acceptable Use Policy and Privacy Policy. If Digital Fruition is providing Software-as-a-Service and/or Hosting Services to Customer, then Customer agrees they are subject to the terms and conditions of Digital Fruition's Software-as-a-Service and Hosting Service Terms & Conditions. Digital Fruition's terms and conditions may change from time to time, such changes are hereby incorporated into this Agreement. Digital Fruition's most up-to-date version of all of all current terms and conditions can be viewed at the following URL: http://www.digitalfruition.com/terms