

Terms and Conditions

Software-as-a-Service and Hosting Service

By using any Digital Fruition, LLC ("Digital Fruition") Software-as-a-Service and Hosting Service (collectively known as "Services"), 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. SERVICES

a. SOFTWARE-AS-A-SERVICE

Digital Fruition's Software-as-a-Service are applications that are only able to run on custom configured servers that Digital Fruition provides. Some of Digital Fruition's Software-as-a-Service may include, but are not limited to, Ecommerce System, Card Customizer, Site Palette Web Site System, Apparel Quoting System and Slideshows. In order to use any of Digital Fruition's Software-as-a-Service Customer must have a Digital Fruition Hosting Services plan. The Hosting Service plans are based on the amount of disk space and bandwidth offered for that plan. Customer can use any number of Software-as-a-Service with one Hosing Services plan, as long as Customer uses no more then the disk space and bandwidth specified for that given Hosting Service plan and are in compliance with the other terms and conditions contained herein.

b. HOSTING SERVICE

i. HOSTING UPTIME GUARANTEE

Digital Fruition guarantees the web server on which Customer's web site resides will be up and running, and accessible via the internet 99.9% of the time in a given month. Many factors are outside the reasonable control of Digital Fruition, and therefore are not covered by this guarantee. These factors include: scheduled maintenance, malicious server attacks, actions or inactions of Customer or any third parties not affiliated with Digital Fruition, acts of nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), acts of any governmental body, war, insurrection, terrorism, sabotage, armed conflict or embargo, fire or flood. Upon experiencing downtime above and beyond the 99.9% availability, Digital Fruition will issue a credit of one full day for every full hour of the actual amount of downtime, based on Customer's Hosting Service plan's monthly fee. This means that if the web server on which Customer's web site resides is unreachable for 1 hour (beyond the 00.1% allowed), Customer will receive 1 day of credit. The amount of compensation may not exceed a one month's fee of the Customer's Hosting Service plan. Customer must send their request for the credit within 10 business days in order to be eligible for the credit. This does not apply for any month that the Customer has been in breach of Digital Fruition's terms and conditions or if the account is in default of payment. If Customer fails to comply with these requirements, Customer forfeits its right to receive a service credit.

ii. COURTESY BACKUP SERVICES

Digital Fruition makes a reasonable effort to protect customer's data, including utilizing redundant data storage (RAID 10), daily snapshot-style backups kept for seven days, and allowing customers to request that a backup copy be restored once a week for no additional charge. The Customer hereby understands and agrees that the integrity of data cannot be guaranteed and that Digital Fruition is not liable for any data loss or data integrity. It is the sole responsibility of the Customer to backup any and all of their data on their own.

c. DOMAIN NAME REGISTRATION

Any and all Internet Domain Names acquired by Digital Fruition on Customer's behalf are services Digital Fruition provides as a convenience to Customer only and Customer hereby waives any and all claims that it may have, or which may later arise, against Digital Fruition for any and all damages, losses, claims or expenses arising out of or related to the acquisition, registration and/or use of such Internet Domain Name.

d. CUSTOM DESIGN AND DEVELOPMENT 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 Design and Development Services in accordance with Digital Fruition's then current Custom Design and Development Services terms and conditions.

e. ECOMMERCE SYSTEM PRODUCT IMPORT SERVICES

Digital Fruition's product importing services are only as good as the data the Customer provides, because of this Digital Fruition will not guarantee the accuracy of such an import. The Customer will not hold Digital Fruition liable for the inaccuracy of product data.

f. CHANGES IN SERVICES

Digital Fruition reserves the right to change, amend and/or otherwise alter the Services provided with equivalent or otherwise equal Services. 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.

g. TECHNICAL ACCESS

Customer also acknowledges and agrees that Digital Fruition may access Customer's account and its contents as necessary to identify or resolve technical problems or respond to complaints about the Service, as well as to conduct periodic maintenance and usage audits.

2. FEES

a. SETUP FEES

No refunds are given for Setup Fees, SSL Certificates, Domain Name Registration, Ecommerce System, Card Customizer, Site Palette Web Site System, Apparel Quoting System, Slideshows or other Setup Fees.

b. CHANGE IN FEES

Digital Fruition may change its fees for Services from time to time. Digital Fruition's fee changes are effective after a sixty (60) days notice is posted on Digital Fruition's web site, and/or posted in the Customer's web site admin and/or email of the notice is sent to Customer.

c. MONTHLY PAYMENT

Unless otherwise stated, all fees are quoted in U.S. Dollars. Digital Fruition's monthly subscription Services (Software-as-a-Service) are due the first of each month for the Services of that month. A refund for the first month of Services is given if the account is cancelled within 30 days of the initial purchase. Digital Fruition's Services are on a month to month basis, Customer may cancel at any time. There will be no refunds or credits for partial months of service, upgrade/downgrade refunds, or refunds for months unused with an open account. Customer is required to pay monthly Services fees by recurring charges to a credit card or Paypal Account. Customer authorizes Digital Fruition to setup recurring charges directly from a credit card or PayPal account Customer designates.

d. OPTIONAL YEARLY PAYMENT

If Customer wishes to pay fees for Services a year in advance instead of in monthly payments Customer may do so. Fees for Services paid one year in advance get the last month (12th month) free. If Customer has paid for a full year of Services and wishes to cancel their account before the that prepaid year is up, they may do so with a 30 day notice. After the 30 day notice has been received, a refund for the remainder of that prepaid year will be prorated starting the next complete month after the cancellation date and excluding the free 12th month. There will be no refunds or credits for partial months of service, upgrade/downgrade refunds, or refunds for months unused with an open account. Digital Fruition will refund the prorated balance minus any outstanding balances within 30 days.

e. LATE FEES

It is Customer's responsibly to make sure Digital Fruition receives Services payments on time. If payment is not received by the first of the month Customer will have 5 days to make a payment. If after 5 days a payment is still not received, Digital Fruition will assess a late fee of 10% of the monthly payment or \$25 (which ever is greater). If after 15 days Customer still has not made the payment plus late fees then Customer's Services will be interrupted or terminated and Customer shall be deemed to be in default of this Agreement. Digital Fruition, at its discretion, may reactivate Customer's account for a reactivation fee of \$75, plus the remaining balance and late fees.

Accounts and all amounts in default are subject to a late payment charge of 1.5% per month, or the maximum amount permitted by law, whichever is less, until fully paid. If Customer defaults, Customer agrees to pay Digital Fruition its reasonable expenses,

including attorney and collection agency fees, incurred in enforcing its rights.

f. TAXES

All fees under this Agreement exclude all applicable sales, use, and other taxes and government charges, whether federal, state or foreign, and Customer will be responsible for payment of all such taxes except taxes based on Digital Fruition's income from Customer.

3. MAINTENANCE & UPGRADES

Digital Fruition will use reasonable efforts to provide Services 24 hours a day, seven days a week. Customer acknowledges that from time to time Services may be inaccessible or inoperable for various reasons, including periodic maintenance procedures or upgrades ("Scheduled Maintenance"); or service malfunctions, and causes beyond Digital Fruition's control or which are not reasonably foreseeable by Digital Fruition including: malicious server attacks, actions or inactions of Customer or any third parties not affiliated with Digital Fruition, acts of nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), acts of any governmental body, war, insurrection, terrorism, sabotage, armed conflict or embargo, fire or flood. Digital Fruition will make a reasonable effort to provide at least 48 hours advance notice to the Customer for Scheduled Maintenance and to minimize any other disruption in Services.

4. SUPPORT

a. TECHNICAL SUPPORT

Digital Fruition provides phone and email technical support during the normal business hours of 9:00 am until 6:00 pm EST Monday through Friday for the Services it provides during the life of the Customer's account.

Urgent technical support is available 24/7 (24 hours a day, 7 days a week) by phone. An urgent technical support issue is when a web site and/or Ecommerce System is down and not available via the web.

b. CUSTOMER SUPPORT

Digital Fruition provides customer support during normal business hours.

5. TRAINING

The training that Digital Fruition provides for each Software-as-a-Service setup is as follows: Site Palette Web Site System, 30 minutes of training; Ecommerce System, 1 hour of training; and Apparel Quoting System, 1 hour of training. Training is available for 30 days after the service is setup and activated. Additional training can be purchased for \$50 per hour for a minimum of a half hour.

6. WEB SITE AND ECOMMERCE DATABASE COPY

If the Customer is paid in full, they may request an html copy ("Copy") of their web site and a Copy of their Ecommerce System database. This Copy of the web site shall work as a standard static web site; the Copy will NOT include: Ecommerce System, Card Customizer, Site Palette Web Site System, Apparel Printing Quoting and Ordering System, Slideshows, any custom code written for the Site Palette Web Site System, or other Services. The client will need to have a third party developer install a third party web site editor or other third party online applications if they want those functions or features. If installed properly by the third party developer, the web site Copy should work like a standard web site. Customer understands that Digital Fruition can not guarantee the performance of the Customer's web site Copy and Ecommerce System database Copy on a third party server. The Customer shall be subject to the License terms in this agreement which will survive the termination of this agreement.

7. TERM AND TERMINATION

a. TERM

This Agreement shall be effective upon execution hereof by both parties and shall remain in full force in effect on a month to month basis, unless either party gives the non-terminating party a 30 day notice of it decision to terminate this Agreement.

b. TERMINATION FOR BREACH

Each party shall have the right to terminate this Agreement after a 15 day written notice if the other party is in breach of this Agreement and the breaching party does not resolve such breach within the 15 day notice time period. Upon the termination of this Agreement all amounts due for Services will be paid to Digital Fruition by Customer.

c. CANCELING ACCOUNTS

Customer can cancel the Services by emailing a 30 day cancelation notice to Digital Fruition. Customer shall receive an email from Digital Fruition confirming the receipt of such cancelation notice. The Customer's account will be terminated on their requested cancelation date and any outstanding balances must be paid by Customer. Digital Fruition does not pro-rate the remaining duration left in the month Customer canceled the account. Customer agrees it's their responsibility to make sure they

have a copy of their data (content); all Customer's data (content) will be deleted immediately upon cancellation.

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,
- iii. disclaimer of warranties,
- iv. customer's indemnification,
- v. limitation of liability and
- vi. representations and warranties as to proprietary rights of the Services and Software.

8. ACCEPTABLE USE POLICY

Customer agrees to abide by Digital Fruition's then-current Acceptable Use Policy ("AUP") posted on Digital Fruition's web site. Digital Fruition may from time to time modify its AUP. The newly modified AUP will be effective upon posting. Digital Fruition may terminate the end user's access to Customer's web site if the end user violates Digital Fruition's AUP.

9. ANTI-SPAM POLICY

Customer agrees that they will not upload, post, host, or transmit unsolicited email ("Spam"). Digital Fruition at its sole discretion, has the right to suspend or terminate Customer's service if Customer has violated this Anti-Spam Policy. If Customer's Spamming has caused any of Digital Fruition's IP addresses or web servers to be banned from any internet services, Digital Fruition has the right to charge the Customer that caused the ban \$75 per hour to resolve the issue with the internet service provider(s).

10. SECURITY

Digital Fruition shall take actions Digital Fruition deems reasonable to protect Customer's web site from attack, but Digital Fruition makes no warranty that Customer's web site Content will be secure against or that there will be no service interruptions because of any form of attacks by third parties.

11. ECOMMERCE SYSTEM

Customer will be solely responsible for all aspects of their Ecommerce System, including creating, configuring, operating, managing, editing, reviewing, deleting, maintaining, setting up banking relationships and payment gateways, accepting orders, processing orders, fulfilling orders and handling all of the customer's relationship management needs.

12. CUSTOMER'S CONTENT

a. OWNERSHIP OF CONTENT

Customer warrants it owns or has the right to use the content it publishes to its web site or content it supplies to Digital Fruition for the purpose of publishing to its web site. All aspects of Customer's Content, information, graphics, text, data, are the sole responsibility of the Customer, regardless of whether Digital Fruition provides any design, product import services or customization Services to Customer under this Agreement. Digital Fruition claims no ownership of Customer's Content unless stated elsewhere in writing.

b. PROTECTION OF CONTENT

Although Digital Fruition provides data backup services, Customer is advised that Digital Fruition in no way is responsible for any damages resulting from the loss of Customer's Content, regardless of the reason for such loss. Customer agrees that it is solely responsible the integrity of its Content and for backing-up its Content.

c. CONTENT LICENSE

During the period that Digital Fruition provides Services to Customer, Customer hereby grants Digital Fruition and its subcontractors a non-exclusive, irrevocable, royalty-free, worldwide license to transmit, reproduce, distribute, create derivative works of, publicly perform, digitally perform, and publicly display Customer's Content solely for the purposes provided in this Agreement.

13. DIGITAL FRUITION'S CONTENT

Upon payment of any and all fees charged for the development of Digital Fruition's Content, Digital Fruition hereby provides Customer with a world-wide, nontransferable, non-exclusive, royalty-free license to use Digital Fruition's Content as part of Customer's web site. Digital Fruition represents, BUT DOES NOT WARRANT, that to the best of its knowledge the Software the Customer is using under this Agreement will not infringe any valid and existing intellectual property right of any third party. Customer agrees to allow Digital Fruition to maintain a link to Digital Fruition's web site located at the bottom of each page of Customer's web site, 12 pixels tall, contrasted in color to the background, and clearly readable to web site visitors. The link shall be similar to:

"Web Site Development by Digital Fruition, LLC."

14. PRE-EXISTING WORKS

In the event that the 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 Services.

15. LICENSES

Digital Fruition shall retain all copyright, patent, trade secret and other worldwide intellectual property rights for Software ("Software" or "Software-as-a-Service") provided by Digital Fruition. All rights to the Software not expressly granted to Customer in this Agreement are reserved by Digital Fruition. Subject to the terms and conditions of this Agreement, Digital Fruition grants Customer a non-exclusive, non-transferable, revocable, limited license to remotely use the Software on servers supplied by Digital Fruition for the purpose of creating and maintaining a web site. Customer agrees that only the Customer and its employees are granted access to their Site Palette administration login side of their web site; third party access is prohibited without Digital Fruition's written consent. Customer acknowledges that the Software and its structure, organization, and source code constitute valuable trade secrets of Digital Fruition. Accordingly the Customer agrees it will not, either directly or through a third party,

- a. modify, alter, adapt, change, translate, or create derivative works from the Software;
- b. copy, distribute, lease, rent, loan, sublicense, or otherwise transfer the Software to any third party;
- c. "mirror" any Content or Software on any other server or wireless or Internet based device;
- d. access the Software if they are a direct competitor or in order to build competitive product or service;
- e. reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Software.

16. CONFIDENTIALITY

For the duration Digital Fruition provides Services to Customer under this Agreement and for one year after Services are terminated, Digital Fruition will use reasonable care to prevent the unauthorized use or dissemination of Customer's "Confidential Information", and Customer will use reasonable care to prevent the unauthorized use or dissemination of Digital Fruition's "Confidential Information". "Confidential Information" shall include, but not limited to the following:

- a. Information pertaining to products or services planned or under development;
- b. Strategies or tactics;
- c. Lists of existing customers;
- d. Customer payment information and/or payment methods
- e. Customer pricing of products/services
- f. Correspondences, letters, email or other forms of communication labeled "Confidential".

17. NON-SOLICITATION

Customer agrees not to knowingly hire or solicit Digital Fruition's employees or subcontractors for the duration Digital Fruition provides Services to Customer and for a period of one year after Services are terminated.

18. CUSTOMER'S INDEMNIFICATION

Customer shall defend, indemnify and hold Digital Fruition harmless from any and all claims, losses, damages, settlements, suits, proceedings, liabilities and expenses (including attorneys fees) arising or resulting from or relating to Customer's content, or an end user's use of Customer's web site, including, without limitation, losses related to any claim for libel, slander, infringement or copyright or other intellectual property rights of third parties, any claim related to failure or interruption of Services, or any dispute between Customer and their customer. Customer's indemnification shall survive termination of this agreement.

19. DISCLAIMER OF WARRANTIES

CUSTOMER'S USE OF SOFTWARE OR SOFTWARE-AS-A-SERVICE OR HOSTING SERVICE PROVIDED BY DIGITAL FRUITION, ITS SUPPLIERS AND SERVICES PROVIDERS, ARE AT CUSTOMER'S OWN RISK. DIGITAL FRUITION, ITS SUPPLIERS AND SERVICES PROVIDERS, PROVIDE SOFTWARE OR SOFTWARE-AS-A-SERVICE OR HOSTING SERVICE TO THE CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND DOES NOT WARRANT THAT THE SOFTWARE OR SOFTWARE-AS-A-SERVICE OR HOSTING SERVICE WILL BE UNINTERRUPTED, ERROR FREE OR SECURE.

20. LIMITATION OF LIABILITY

CUSTOMER AGREES THAT DIGITAL FRUITION, ITS SUPPLIERS AND SERVICES PROVIDERS, SUBSIDIARIES, AFFILIATES, OFFICERS, AND EMPLOYEES SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF DIGITAL FRUITION'S SERVICES, USE, LOSS OF PROFITS, DATA, OR OTHER LOSSES, EVEN IF DIGITAL FRUITION IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES. DIGITAL FRUITION SHALL NOT BE LIABLE FOR MORE THAN THE FEES

PAID BY CUSTOMER FOR SERVICES OVER A THREE MONTH PERIOD.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, THEREBY THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO CUSTOMER.

21. 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 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. 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.

i. 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.

j. 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.

k. TITLES

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

l. 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 Custom Services to Customer, then Customer agrees they are subject to the terms and conditions of Digital Fruition's Custom Design and Development Services 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>