

TERMS AND CONDITIONS OF USE

Last Updated: February 18, 2021

The following Terms and Conditions of Use (“Terms”) are entered into by and between You and Durian Digital, LLC (“Company,” “we” or “us”).

These Terms, together with our Privacy Policy, Disclaimer, and any other documents expressly incorporated by reference, govern your use of the website www.duriandigital.com (“Website”), including all materials, resources, information, and services on the Website, whether as a guest or registered user.

Your access to and use of the Website is conditioned on your acceptance of and compliance with these Terms. These Terms apply to all visitors, users, customers, and others who access or use the Website.

By accessing or using the Website you agree to be bound by these Terms, without modification, and acknowledge reading them. If you disagree with any part of the Terms, you may not access the Website.

PRIVACY POLICY

Your use of the Website is also subject to the Company’s Privacy Policy www.duriandigital.com/policy. Please review our Privacy Policy, which also governs the Website and informs users of our data collection practices. Your agreement to the Privacy Policy is hereby incorporated into these Terms.

DISCLAIMER

Your use of the Website is also subject to the Company’s Disclaimer www.duriandigital.com/disclaimer. Please review our Disclaimer, which also governs the Website and informs users of various limitations regarding the information provided on the Website. Your agreement to the Disclaimer is hereby incorporated into these Terms.

USE OF THE WEBSITE

To access or use the Website, you must be 18 years of age or older and have the requisite power and authority to enter into these Terms. Children under the age of 18 are prohibited from using the Website. Information provided on the Website and any resources provided on or available for download from the Website are subject to change. The Company makes no representation or warranty that the information provided, regardless of its source, is accurate, complete, reliable, current, or error-free. The Company disclaims all liability for any inaccuracy, error, or incompleteness in the information provided.

The Company reserves the right to withdraw or amend this Website and any service or material provided on the Website in its sole discretion without notice. The Company will not be liable if, for any reason, all or any part of the Website is unavailable at any time or for any period. From time to time, the Company may restrict access to some parts of the Website, or the entire Website, to users, including registered users.

LAWFUL PURPOSES

You may use the Website for lawful purposes only. You agree to be financially responsible for all purchases made by you or someone acting on your behalf through the Website. You agree to use the Website and to purchase services or products through the Website for legitimate, non-commercial purposes only. You shall not post or transmit through the Website any material that violates or infringes the rights of others, or that is threatening, abusive, defamatory, libelous, invasive of privacy or publicity rights, vulgar, obscene, profane, or otherwise objectionable, contains injurious formulas, recipes, or instructions, that encourages conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any law.

ACCOUNT CREATION AND SECURITY

In order to use the Website or make a purchase on the Website, you may be required to provide information about yourself including your name, email address, username and password, and other personal information. You agree as a condition of your use of the Website and any resources downloaded from the Website that any registration information you give to the Company will always be accurate, complete, and up to date. You must not impersonate someone else or provide account information or an email address other than your own. Your account must not be used for any illegal or unauthorized purpose.

You agree that all information you provide to register with this Website or otherwise, including but not limited to through the use of any interactive features on the Website, is governed by our Privacy Policy, and you consent to all actions we take with respect to your information consistent with our Privacy Policy.

If you choose, or are provided with, a username, password or any other piece of information as part of our security procedures, you must treat such information as confidential, and you must not disclose it to any other person or entity. You also acknowledge that your account is personal to you and agree not to provide any other person with access to this Website or portions of it using your username, password or other security information. You agree to notify us immediately of any unauthorized access to or use of your username or password or any other breach of security. You also agree to ensure that you exit from your account at the end of each session. You should use particular caution when accessing your account from a public or shared computer so that others are not able to view or record your password or other personal information.

We have the right to disable any user name, password or other identifier, whether chosen by you or provided by us, at any time in our sole discretion for any or no reason, including if, in our opinion, you have violated any provision of these Terms of Use.

REFUSAL OF SERVICE

The products and services available on the Website are offered subject to our acceptance of your order or request. We reserve the right to refuse service to any order, person or entity, without cause or explanation. No order is deemed accepted by us until payment has been processed. We may at any time change or discontinue any aspect or feature of the Website, subject to us fulfilling our previous responsibilities to you based on acceptance of your payment.

ORDER CONFIRMATION

We will email you to confirm placement of your order and with details about product delivery. If you do not receive email order confirmation, it is your responsibility to inform us as soon as possible.

CANCELLATIONS, REFUNDS & RETURNS

We allow refunds for any reason for 7 days after date of purchase, we will refund your total purchase price, minus a \$20.00 administrative fee. After you start the refund process, please be advised that we will cancel any and all licenses and access to any included products. Once refund is issued, it can take up to 10 business days for you to receive your funds. If you would like to cancel your products or services and are within your 7 day time period, please go to the <https://www.portal.duriandigital.com> and go to the Support Center.

Upon determining that you are entitled to a cancellation/refund pursuant to this policy, the Company will promptly issue an instruction to its payment processor to issue the refund. The Company does not control its payment processor and will not be able to expedite any refunds.

If you receive a refund of any purchase through the terms and conditions, that shall immediately terminate any and all licenses granted you to use the material provided to you under these Terms of Use or any other agreement. You shall immediately cease using the material and shall destroy all copies of the information provided to you, including without limitation: video recordings, audio recordings, forms, template documents, slide shows, membership areas, social media groups limited to paying members, and other resources.

PRODUCT DESCRIPTIONS

We try to describe and display any products and services available for purchase on the Website as accurately as possible. While we try to be as clear as possible in explaining the product or service, we do not guarantee that the Website is entirely accurate, current, or error-free. From

time to time we may correct errors in pricing and descriptions. We reserve the right to refuse or cancel any order with an incorrect price listing.

USE OF FREE DOWNLOADABLE CONTENT

The Company may make resources on this Website accessible to users in exchange for providing an e-mail address ("Gated Content"). The Company grants you a limited, personal, non-exclusive, non-transferable license to use the Gated Content for your own personal or internal business use. Except as otherwise provided, you acknowledge and agree that you have no right to modify, edit, copy, reproduce, create derivative works of, reverse engineer, alter, enhance or in any way exploit any of the Gated Content in any manner.

By accessing or downloading the Gated Content, you agree that the Gated Content you may only be used by you for your personal or internal business use and may not be sold or redistributed without the express written consent of the Company.

By accessing downloading the Gated Content, you further agree that you shall not create any derivative work based upon the Gated Content and you shall not offer any competing products or services based upon any information contained in the Gated Content.

MATERIAL YOU SUBMIT TO THE WEBSITE

By posting, uploading, submitting, inputting, providing, or otherwise making available any artwork, photos, written works, or other media, including feedback and suggestions (collectively, "Submissions"), you are granting the Company, our affiliated companies, and any necessary sub-licensees a worldwide, nonexclusive, irrevocable license to use your Submission for promotional, business development, and marketing purposes including, without limitation, the right to: copy, distribute, transmit, publicly display, publicly perform, reproduce, edit, translate, and reformat your Submission; and to publish your name in connection with your Submission.

We claim no intellectual property rights over the Submissions you supply to the Company. You retain copyrights and any other rights you may rightfully hold in any Submissions that you submit through the Website.

You shall not upload, post, submit, input or otherwise make available on the Website any Submissions protected by copyright, trademark, or other proprietary right without the express written permission of the owner of the copyright, trademark, or other proprietary right, and the burden of determining that any Submissions are not so protected rests entirely with you. You

shall be liable for any damage resulting from any infringement of copyrights, trademarks, or other proprietary rights, or any other harm resulting from such a Submission.

For all Submissions submitted by you to the Website, you automatically represent or warrant that you own or otherwise control all the rights to your Submission described herein including the authority to use and distribute the Submission, and that the use or display of the Submission as contemplated in this section will not violate any laws, rules, regulations, or rights of third parties. You agree to hold the Company harmless from and against all claims, liabilities, and expenses arising out of any potential or actual copyright or trademark misappropriation or infringement claimed against you arising from Submissions you submit through the Website.

You further you grant us the right to use your Submission for the purpose of improving our Website, products or services (and for any other purpose we deem necessary or desirable) without being obliged to pay you any compensation for our use of your Submission. The Company is under no obligation to post or use any Submission you may provide and may remove any Submission at any time in the Company's sole discretion. If you do send us unsolicited ideas, such ideas will be deemed non-confidential, and we will not be required to provide any acknowledgement of their source.

OUR INTELLECTUAL PROPERTY

The Website contains intellectual property owned by the Company, including trademarks, copyrights, proprietary information, and other intellectual property. We reserve all rights in and to our common law and registered trademarks, service marks, copyrights, and other intellectual property rights, including but not limited to text, graphics, photographs, video, design, and packages, belonging to the Company or to our licensors ("IP"). You may not modify, publish, transmit, participate in the transfer or sale of, create derivative works from, distribute, display, reproduce or perform, or in any way exploit in any format whatsoever any of our IP in whole or in part, without our prior written consent. We reserve the right to immediately block your access to the Website and remove you from any service, without refund, if you are caught violating this intellectual property policy.

You are granted a non-exclusive, non-transferable, revocable license to access and use the Website and the resources available for download from the Website (the "Content") strictly in accordance with these Terms of Use.

As a condition of your use of the Website, you warrant to the Company that you will not use the Content for any purpose that is unlawful or prohibited by these Terms. You may not use the Content in any manner that could damage, disable, overburden, or impair the Website or interfere with any other party's use and enjoyment of the Website. You may not obtain or attempt to obtain any materials or information through any means not intentionally made available or provided for through the Website.

All content included as part of the Content, such as text, graphics, logos, images, as well as the compilation thereof, and any software used on the Website, is the property of the Company or its suppliers and protected by copyright and other laws that protect intellectual property and proprietary rights. You agree to observe and abide by all copyright and other proprietary notices, legends or other restrictions contained in any such content and will not make any changes thereto.

You will not modify, publish, transmit, reverse engineer, participate in the transfer or sale, create derivative works, or in any way exploit any of the Content, in whole or in part.

The Content is not for resale. Your use of the Content does not entitle you to make any unauthorized use of any protected content, and in particular you will not delete or alter any proprietary rights or attribution notices in any Content. You will use protected content solely for your individual use and will make no other use of the Content without the express written permission of the Company and the copyright owner. You agree that you do not acquire any ownership rights in any protected content. We do not grant you any licenses, express or implied, to the intellectual property of the Company or our licensors except as expressly authorized by these Terms.

The Company name, the Company logo, the Company slogan, and all related names, logos, product and service names, designs, and slogans are trademarks of the Company or its affiliates or licensors. You must not use such marks without the prior written permission of the Company. All other names, logos, product and service names, designs and slogans on this Website are the trademarks of their respective owners.

CHANGED TERMS

We may at any time amend these Terms, including our Privacy Policy and Disclaimers. The date of the last revision will be indicated by the "Last updated" date at the top of this page. Such amendments are effective immediately upon notice to you by us posting the new Terms on this Website. We reserve the right to update any portion of our Website, including these Terms, at any time. If you continue to use our Website after we have made revisions, your continued use constitutes consent to the revised Terms, Privacy Policy and Disclaimers.

WARRANTIES

While we make every effort to ensure that the content on this Website is free from errors, we do not give any warranty or other assurance as to the accuracy, completeness, timeliness or fitness for any particular purpose of the content and materials on this site beyond reasonable efforts to maintain the site. To the maximum extent permitted by law, we provide our website and related information and services on an "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY WARRANTIES, REPRESENTATIONS, OR GUARANTEES OF ANY KIND (WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE) INCLUDING BUT NOT LIMITED TO WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

LIMITATION OF LIABILITY

YOU AGREE THAT UNDER NO CIRCUMSTANCES SHALL WE BE LIABLE FOR DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY, OR ANY OTHER DAMAGES ARISING OUT OF YOUR USE OF THE WEBSITE OR RESOURCES, PRODUCTS OR SERVICES AVAILABLE THROUGH THE WEBSITE.

ADDITIONALLY, THE COMPANY IS NOT LIABLE FOR DAMAGES IN CONNECTION WITH (I) ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, DENIAL OF SERVICE, ATTACK, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS, OR LINE OR SYSTEM FAILURE; (II) LOSS OF REVENUE, ANTICIPATED PROFITS, BUSINESS, SAVINGS, GOODWILL OR DATA; AND (III) THIRD PARTY THEFT OF, DESTRUCTION OF, UNAUTHORIZED ACCESS TO, ALTERATION OF, OR USE OF YOUR INFORMATION OR PROPERTY, REGARDLESS OF OUR NEGLIGENCE, GROSS NEGLIGENCE, FAILURE OF AN ESSENTIAL PURPOSE AND WHETHER SUCH LIABILITY ARISES IN NEGLIGENCE, CONTRACT, TORT, OR ANY OTHER THEORY OF LEGAL LIABILITY, EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN THE DAMAGES.

IN THOSE STATES THAT DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR THE DAMAGES, OUR LIABILITY IS LIMITED TO THE FULLEST EXTENT PERMITTED BY LAW. IN NO EVENT SHALL THE COMPANY'S TOTAL LIABILITY TO YOU EXCEED THE TOTAL PURCHASE PRICE OF ANY PRODUCTS OR SERVICES YOU HAVE PURCHASED FROM THE COMPANY.

AVAILABILITY

Your use of the Website and any associated services may sometimes be subject to interruption or delay. Due to the nature of the Internet and electronic communications, we and our service providers do not make any warranty that our Website or any associated resources or services will be error-free, without interruption or delay, or free from defects in design. We will not be liable to you should our Website or the resources or services supplied through our Website become unavailable, interrupted or delayed for any reason.

MALICIOUS CODE

Although we endeavor to prevent the introduction of viruses or other malicious code ("malicious code") to our Website, we do not guarantee or warrant that our Website, or any data available on the Website, does not contain malicious code. We will not be liable for any damages or harm attributable to malicious code. You are responsible for ensuring that the process you employ for accessing our Website does not expose your computer system to the risk of interference or damage from malicious code.

SECURITY

The security of your contact information is of utmost importance to us. However, you acknowledge the risk of unauthorized access to, or alteration of, your data. We do not accept responsibility or liability of any nature for any losses you may sustain as a result of such unauthorized access or alteration. All information transmitted to or from you is transmitted at your own risk, and you assume all responsibility and risks arising in relation to your use of this Website and the internet. We do not accept responsibility for any interference or damage to your computer system that may arise in connection with your access of this Website or any outbound hyperlinks.

THIRD PARTY RESOURCES

The Website contains links to third party websites and resources. You acknowledge and agree that we are not responsible or liable for the availability, accuracy, content, or policies of third-party websites or resources. Links to such websites or resources do not imply any endorsement by or affiliation with the Company. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites or resources.

The Company may, from time to time, provide information from a third party in the form of a guest post or interview, in written, audio, video, or other medium. The Company does not control the information provided by such third-party guests, is not responsible for investigating the truth of any information provided and cannot guarantee the veracity of any statements made by such guests.

INDEMNIFICATION

You shall indemnify and hold us harmless from and against any and all losses, damages, settlements, liabilities, costs, charges, assessments, and expenses, as well as third party claims and causes of action, including, without limitation, attorney's fees, arising out of your breach of any of these Terms, your use of the Website, its content, and any product or service purchased from the Website, or your failure to maintain the confidentiality and/or security of your password or access rights to this Website and its resources. You shall provide us with such assistance, without charge, as we may request in connection with any such defense, including, without limitation, providing us with such information, documents, records, and reasonable access to you, as we deem necessary. You shall not settle any third-party claim or waive any defense without our prior written consent.

EFFECT OF HEADINGS; SEVERABILITY

The subject headings of the paragraphs and subparagraphs of this Agreement are included for convenience only and shall not affect the construction or interpretation of any of its provisions.

If any portion of these Terms are held to be unenforceable or contrary to law, such portion shall be construed in accordance with applicable law so as to best accomplish the objectives of the

original provision to the fullest extent allowed by law, and the remainder of the provisions shall remain in full force and effect.

ENTIRE AGREEMENT; WAIVER

These Terms, together with the Privacy Policy and Disclaimers, constitute the entire agreement between you and the Company pertaining to the Website and supersedes all prior and contemporaneous agreements, representations, and understandings between us. Any waiver by us of a breach of or right under these Terms will not constitute a waiver of any other or subsequent breach or right. No waiver shall be binding unless executed in writing by the Company.

GOVERNING LAW; JURISDICTION; MEDIATION

These Terms, including with the Privacy Policy and Disclaimers shall be construed in accordance with, and governed by, the laws of the State of [your state], and the courts of Indiana shall have jurisdiction to hear and determine any dispute arising in relation to these Terms. You agree that any proceeding relating to use of this site must be filed exclusively in the appropriate courts located in Indiana and you submit to the jurisdiction of those courts and waive any objection based on an inconvenient forum or other reasons.

The parties agree to attempt to resolve any dispute, claim, or controversy arising out of or relating to these Terms by mediation. The parties further agree that their respective good faith participation in mediation is a condition precedent to pursuing any other available legal or equitable remedy, including litigation, arbitration, or other dispute resolution procedures.

ALL RIGHTS RESERVED

All rights not expressly granted in these Terms are reserved by us. If you do not see a usage scenario here that applies to your intended usage contact us at support@huriandigital.com.

CONTACT INFORMATION

The owner of this website is Durian Digital, LLC. You may contact us by phone at 260-202-2240, by email at support@huriandigital.com, or by mail at 921 East Dupont Road, Ste 866, Fort Wayne, IN 46825.

