

## WINGNUT TERMS AND CONDITIONS

---

The products and services that The Devine Group (“Provider”) provides you (the “Client”) through its Wingnut platform are subject to the following terms and conditions.

### **Agreement**

No modifications of this contract shall be effective unless it is in writing and signed by both parties. This agreement binds and benefits both parties and any successors. This document, including any attachments, is the entire agreement between The Devine Group and Client.

### **Proposals and updates**

Client shall authorize the performance of any services to be performed by Provider by approving written proposals. Each proposal, together with its exhibits, if any, will define the scope of work for a particular assignment under this agreement. Proposals will be jointly prepared and executed by Provider and Client and delineate the scope of work, approximate length of assignment, applicable third party expenses and provisions for payment of any travel or other out-of-pocket expenses, overall price for services and other information to clearly define the work to be accomplished. If Client or Provider desires to change, modify or supplement the services to be performed under a particular proposal, Client or Provider shall complete a new proposal and present such changes to the other party. The parties shall then mutually agree to the changes or modifications to the services, including any revisions to the cost estimate and scheduled timeline, and sign the new proposal.

### **Invoices and payments**

Provider shall render invoices for services performed for Client in accordance with the charges specified in this proposal. Charges on invoices will be due 30 days from date of invoice.

Provider shall only be entitled to receive fees or other compensation from Client that has been set forth in an authorized proposal. Should unanticipated expenses arise, the Client’s written approval is required for reimbursement. The project costs outlined in this agreement are based on Provider’s current understanding of the project’s requirements. Special ad hoc projects and services not covered under the agreement will be billed separately. Products will be billed at a per item cost. Services will be billed at per diem.

### **Expenses**

If travel is required, Client shall reimburse Provider for all reasonable travel expenses, in accordance with Client’s Expense Reimbursement Policy for external parties.

### **Confidential information**

Neither party or its employees, agents or subcontractors shall use or disclose to any person or entity any confidential information of the other party (whether in written, oral, electronic or other form) which is obtained from the other party or otherwise prepared or discovered either in performance of this agreement, through access to either party’s “information systems” or while on either party’s premises. As used herein, the term “confidential information” includes, but is not limited to, information about each other’s operations, methods, plans, strategies, products, pricing, Clients, employees, assets, contributors, other confidential and proprietary

information, and any information obtained through access to any of either party's information systems which, if not otherwise described above, is of such nature that a reasonable person would believe it to be confidential or proprietary. For purposes of this agreement, information systems shall include, but are not limited to, computers, databases, records systems, logon scripts, passwords and other such hardware or other device as may be used to access such systems/assets.

A recipient of confidential information shall protect such information by using the same degree of care, but no less than a reasonable degree of care, to prevent any unauthorized use, dissemination, or publication as the recipient uses to protect its own confidential information of a similar nature. The recipient shall restrict access to the confidential information to its employees or subcontractors having a need to know. The recipient's obligations to protect confidential information shall continue during the term of this agreement and for three years after its termination, provided that the confidentiality obligations imposed hereunder shall survive forever as to confidential information which is a trade secret. A recipient of confidential information agrees that the disclosure may be irreparably injured by the disclosure of confidential information in violation of this agreement; and in addition to any other remedies available at law or in equity, the discloser may seek an injunction to prevent or stop such disclosure.

Confidential information does not include information that: (i) was in the recipient's legal possession before receipt from the discloser; (ii) is or becomes a matter of public knowledge through no fault of the recipient; (iii) is rightfully received by the recipient from a third party without a duty of confidentiality; (iv) is disclosed by the discloser to a third party without a duty of confidentiality on the third party; (v) is independently developed by the recipient; (vi) is a summary of data trending or similar information with any and all references or other identifying elements related to Client removed; or (vii) is disclosed under operation of law.

### **Independent contractor relationship**

The parties acknowledge and agree that Provider is and at all times during this agreement shall remain, an independent contractor in relation to Client, and neither Provider nor its employees or other representatives are authorized to make any representations or any commitment on Client's behalf unless previously authorized by Client in writing. Neither party shall have the authority to bind the other party. Provider has and hereby retains the right to exercise full control of and supervision over the performance, employment, direction, compensation and discharge of any and all of Provider's employees, agents and subcontractors assisting in the performance of Provider's obligations.

### **Third party providers**

Certain third-party providers offer products and services related to Provider services, such as an Applicant Tracking System. Provider does not warrant any such third-party providers or any of their products or services, whether or not such products or services are designated by Provider as "certified," "validated" or otherwise. Any exchange of data or other interaction between Client and a third-party provider, and any purchase by Client of any product or service offered by other such third-party provider, is solely between Client and such third-party provider.

### Force majeure

Neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this agreement if such delay or failure is caused, in whole or in part, by events, occurrences or forces beyond the reasonable control and without the negligence of such party.

### Notices

Except as otherwise provided herein, all notices or other communications to be given or that may be given by either party to the other shall be deemed to have been duly given when made in writing and delivered in person, sent by overnight delivery Provider, or deposited in the united states mail, postage prepaid and addressed as follows:

#### To Provider:

Name: The Devine Group Inc.

Street address: 7755 Montgomery Rd, Suite 180

City, State, ZIP: Cincinnati, OH 45236

Attention: Todd Young

Fax: (513) 793-8535

\*The address to which notices or communications may be given to either party may be changed by written notice given by one party to the other pursuant to this section.

### Waivers and amendments

No provision of this agreement or any written proposal shall be deemed waived, amended or modified by either party unless such waiver, amendment or modification is in writing and signed by the authorized representative of the party against whom it is sought to enforce such waiver, amendment or modification.

### Governing law

This agreement shall be governed by and construed according to the laws of the state of Ohio without regard to its rules on conflicts of law. Venue for any dispute arising hereunder shall be in Hamilton County, Ohio.

### Severability

The provisions of this agreement are severable. If any part, term or provision of this agreement shall be held illegal, unforeseeable or in conflict with any law of a federal, state or local government having jurisdiction over this agreement, the validity of the remaining portion or portions shall not be affected thereby.

### Data security and storage

Client is responsible for maintaining the security of all passwords and for all activities that occur under its account. All Client data remains property of Client and is stored in a multi-layered security architecture database. The database and Client data is consistently monitored for diagnostic and security protection purposes. Upon the execution of this agreement (i.e. project completion) and Client's payment of all fees,

Provider will maintain a backup of Client data for a period of three years from execution date. Provider is not responsible for storage or retention of data for more than three years after execution of this agreement. If Client wants Provider to store its data for longer than three years, discussions can be pursued at that time regarding fees for storage.

### **Privacy and security; disclosure**

Provider reserves the right to modify its privacy and security policies in its reasonable discretion from time to time. Note that because the service is a hosted, online application, the Provider occasionally may need to notify all users of important announcements regarding the operation of the service. By signing this agreement, Client agrees that Provider may publicly disclose that we are providing services to them and may include Client's name in promotional materials including press releases and Provider's website.

### **License grant and restrictions**

Provider hereby grants Client a non-exclusive, non-transferable, worldwide right to use the service, subject to the terms and conditions of this agreement. All rights not expressly granted to Client are reserved by Provider and its licensors. Client shall not provide access to the service to any supplier of a similar application or service, except with Provider's prior written consent. In addition, Client may not access the service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

Client shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the service or the content in any way; (ii) modify or make derivative works based upon the service or the content; (iii) create internet "links" to the service or "frame" or "mirror" any content on any other server or wireless or internet-based device; or (iv) reverse engineer or access the service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the service, or (c) copy any ideas, features, functions or graphics of the service.

Provider may terminate this agreement immediately and/or suspend Client's access to the database and related software upon any breach of this agreement by Client.

### **Client responsibilities**

Client is responsible for all activity occurring under its user accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with its use of the service, including those related to data privacy, international communications and the transmission of technical or personal data. Client shall: (i) notify Provider immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Provider immediately and use reasonable efforts to stop immediately any copying or distribution of content that is known or suspected by Client or its users; and (iii) not impersonate another Provider user or provide false identity information to gain access to or use the service.

### **Account information and data**

Provider does not own any data, information or material that Client submits to Provider in the course of using the service ("Client data"). Client shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and intellectual property ownership or right to use of all Client data, and Provider

shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Client data.

### **Intellectual property ownership**

Provider alone shall own all right, title and interest, including all related intellectual property rights, in and to Provider technology, the content and the service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by client or any other party relating to the service. This agreement is not a sale and does not convey to client any rights of ownership in or related to the service, Provider technology or the intellectual property rights owned by Provider.

### **Term**

This agreement commences on the date Client signs above. Upon acceptance of this signed proposal, Provider agrees to commit to all agreed upon resources to ensure that the project is completed effectively; responding to program requirements in a timely and knowledgeable manner.

### **Termination**

Client may terminate this agreement or any proposal to be performed hereunder, in whole or in part, without cause and for its own convenience, by giving provider written notice of termination at least thirty days in advance, specifying the extent to which the agreement is so terminated (i.e., whether the entire agreement and all subsequent proposals are terminated or whether specific proposals only are terminated) and the date upon which such termination becomes effective. Client shall have no liability for such termination except for liability for services rendered or expenses incurred prior to the effective date of such termination and for which payment has not been made. Client will have no obligation to pay for any services performed or costs incurred by Provider after the effective date of termination.

If the Client breaches or otherwise fails to comply with this agreement, Provider may, in its sole discretion, terminate Client password, account or use of the service. Any breach of Client payment obligations or unauthorized use of Provider technology or services will be deemed a material breach of this agreement. Client further agrees and acknowledges that Provider has no obligation to retain the Client data, and may delete such Client data if Client has materially breached this agreement, including but not limited to failure to pay outstanding fees, and such breach has not been cured within 30 days of notice of such breach. This agreement will automatically terminate upon termination or expiration of all licenses granted hereunder.

### **Representations and warranties**

Each party represents and warrants that it has the legal power and authority to enter into this agreement. Client representative warrants that he/she has not falsely identified himself/herself nor provided any false information to gain access to the service and that Client information is correct.

### **Limitation of liability**

Provider shall perform services using due diligence, best efforts and commercially reasonable judgment, but unless delineated in writing, guarantees no specific outcome to Client. Provider is not responsible for claims, liabilities, damages and detriments in the form of negligence or malfeasance that do not arise from Provider

and its representatives. It is understood that all decisions relative to this project are the sole responsibility of Client and its representatives and that Provider and its representatives are not accountable for decisions made on Client's behalf.

**Internet delays**

The services may be subject to limitations, delays and other problems inherent in the use of the internet and electronic communications. Provider is not responsible for any delays, delivery failures or other damage results from such problems.