

DIFFERENTIAL[®]

Master Services Agreement – The Apollos Project

This Master Services Agreement (this "Agreement") governs Customer's acquisition and use of The Apollos Project software and Consultant's services.

BY ACCEPTING THIS AGREEMENT THROUGH EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

This Agreement was last updated on June 15, 2021. It is effective between Customer and Differential Dev Shop, LLC (Consultant) as of the date of Customer's accepting this Agreement (the "Effective Date").

WHEREAS, Consultant is the managing member of The Apollos Project LLC which has developed a certain software platform which will facilitate certain applications and technology services for churches and parachurch organizations (the "Apollos Services"); and

WHEREAS, Customer desires to be integrated into and use the Apollos Services, and to retain Consultant to perform consulting/programming services to implement and integrate the Apollos Services for Customer's own application and technology platform upon the terms, covenants, and conditions contained herein; and

WHEREAS, Consultant, as managing member of Apollos, desires to integrate Customer into the Apollos Services; and

WHEREAS, in addition to the Apollos Services, Consultant also desires to design and provide certain custom features and other consulting and design services in support of Customer's integration into the Apollos Services ("Additional Services"), and desires to execute this Agreement to establish in writing the terms and conditions related to the Additional Services.

NOW, THEREFORE, in consideration of good and valuable consideration and of the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

1. **Apollos Services**

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(a) Consultant will provide initial implementation and monthly platform support for the Apollos Services as set forth in the Apollos Customer Agreement, from which this Master Services Agreement is referenced, and which is incorporated by reference into this Agreement.

(b) Customer shall receive a full, unlimited license to use and access the Apollos Services designed and customized for Customer by Consultant in accordance with the terms and conditions of [The Apollos Project Open Source License](#) (the "Apollos License"). Notwithstanding anything to the contrary in this Agreement or the Apollos Customer Agreement, Customer shall not have any right of ownership of any intellectual property that exceeds the scope of the license contained in this Agreement and/or the Apollos License.

2. Consultant's Additional Services

(a) Consultant shall provide consulting services to Customer, as Customer may reasonably require, as set forth in the Apollos Customer Agreement.

(b) The Additional Services rendered by Consultant shall be provided by Consultant as an independent contractor, and not as an employee, partner, or joint venturer.

3. Ownership Of Work

(a) Customer will own all right, title and interest in and to the Deliverables. For purposes of this Agreement, the term "Deliverables" shall mean any deliverables created by Consultant during the performance of the services as identified in this Agreement. Deliverables excludes any Consultant Intellectual Property (defined below), and any intellectual property related to the Apollos License. All Deliverables shall be considered a work made for hire, to the fullest extent permitted by law and all right, title and interest therein, including the intellectual property rights, shall be the property of Customer. In the event that any said Deliverables or portion thereof shall not be legally qualified as a work made for hire, or shall subsequently be so held to not be a work made for hire, Consultant and/or Apollos agrees to assign, and does hereby so assign to Customer, all right, title and interest in and to said work or portion thereof, including, but not limited to, the intellectual property rights, extensions of such rights and renewal rights therein. Consultant, without charge to Customer, shall duly execute, acknowledge and deliver to Customer all such further papers, including assignments and applications for intellectual property registration or renewal, as may be necessary to enable Customer to publish or protect said works by copyright, patent or otherwise in any and all countries and to vest title to said works in Customer, or its nominees, their successors or assigns, and shall render all such assistance as Customer may require in any proceeding or litigation involving the rights in said works.

(b) Consultant will own right, title, and interest in all Consultant Intellectual Property. To the extent the Deliverables contain or include any Consultant Intellectual Property, Consultant hereby grants to Customer and its affiliates a perpetual, revocable (being irrevocable upon payment in full for the Deliverables), worldwide, royalty-free, non-exclusive, limited, right and license to use, execute or copy, the Consultant Intellectual Property solely for its internal business purposes and solely in connection with Customer's use of the Deliverables.

For purposes of this Agreement, the term "Consultant Intellectual Property" means, collectively, (i) all "Pre-Existing Works," which shall mean all work product created, conceived, developed or first reduced to practice by Consultant, either solely or in collaboration with others, prior to Consultant's delivery of the services under the Customer Agreement including, without limitation, designs, inventions, improvements, processes, computer programs, software, source code, object code, graphics, pictorial representations, user interfaces, functional specifications, reports, spreadsheets, presentations and analyses, (ii) all "Derivative Works," which shall mean a work which is based upon or related to one or more Pre-Existing Works such as a revision, modification, translation, abridgement, condensation, expansion or any other form in which such Pre-Existing works may be recast, transformed, or adapted, whether that work stands alone or is combined with other works and which may include processes, methods and procedures, and (iii) methodologies, concepts, know-how and techniques utilized to produce the Deliverables (and any improvements or modifications thereto developed in the course of providing the services) and any ideas, concepts, text, formats and industry best practices which are of a generally applicable nature and do not include or reference the confidential information of Customer.

(c) Customer shall not own, nor have any claim of interest in any intellectual property contained in the Apollos License. To the extent the Deliverables contain or include any aspects of the intellectual property contained in the Apollos License, Customer shall have the license to use the same as set forth in Paragraph 1(b) of this Agreement and further limited by the terms and conditions of the Apollos License.

4. Term. Customer hereby agrees to retain Consultant, and Consultant hereby agrees to provide all services hereunder, until terminated by either party as set forth in the Apollos Customer Agreement.

5. Compensation. Customer shall pay to Consultant and Apollos the fees set forth in the Apollos Customer Agreement ("Fees"). Fees shall be due in full as identified on the invoice from Consultant. If Fees are not paid by the due date set forth on an invoice, Customer shall pay to Consultant an administrative charge of \$175 in addition to the amount of the invoice. If Fees are not paid in full, with the accrued administrative charge, within thirty (30) days of the due date on the invoice, the delinquent balance shall accrue interest of five percent (5%) each subsequent month until the total amount outstanding is paid. Consultant reserves the right to remove product from viewing on the internet or other medium until final payment is made. If case collection proves necessary, Customer agrees to pay all fees incurred by that process.

6. Severability. The parties hereto intend all provisions of this Agreement to be enforced to the fullest extent permitted by law. Accordingly, should a court of competent jurisdiction determine that the scope of any provision is too broad to be enforced as written, the parties intend that the court should reform the provision to such narrower scope as it determines to be enforceable. If, however, any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future law, such provision shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision were never a part hereof, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance.

7. Assignment. Customer may only assign its rights under this Agreement with written consent from Consultant, such consent not to be unreasonably withheld. The rights and duties of, and benefits to, Consultant hereunder are personal, and no such right, duty, or benefit may be assigned by Consultant without the prior written consent of Customer.

8. Confidentiality. During the term of this Agreement and afterward, Consultant will use reasonable care to prevent the unauthorized use or dissemination of Customer's confidential information. Reasonable care means at least the same degree of care Consultant uses to protect its own confidential information from unauthorized disclosure. All information of Customer's not specifically deemed as 'public' by Customer shall be considered confidential by Consultant. Confidential information does not include information that is or becomes public knowledge through no fault of Consultant.

9. Non-Solicitation/Non-Circumvention. Customer and Consultant agree that Customer will have direct contact with employees of Consultant, but will not solicit any employee or contractor of Consultant to work for Customer directly. Neither Customer, nor any of Customer's affiliates, subsidiaries, agents or principals, shall hire, retain, or otherwise solicit any employee of Consultant during the term of this Agreement and for a period of one (1) year following the termination of this Agreement. In the event Customer violates this covenant without express written consent of Consultant, Customer shall pay liquidated damages equal to one month of Fees under this Agreement.

10. Warranties. Consultant warrants that all services performed under this Agreement shall be performed consistent with generally prevailing professional or industry standards. Customer must report any deficiencies in Consultant's services to Consultant in writing within 30 days of performance to receive warranty remedies. Consultant warrants that to the best of its knowledge, there are no viruses in any portion of the deliverables and software, that it has used commercially reasonable efforts to ensure that the deliverables and software are free of computer viruses and has undergone virus checking procedures consistent with industry standards. Customer's exclusive remedy for any breach of the above warranty shall be the reperformance of Consultant's services, to include correcting, re-performing, repairing, or replacing any nonconforming software or Deliverables. If Consultant is unable to reperform the services, Customer shall be entitled to recover only the Fees paid to Consultant for non compliant services. Any remedy permitted under this Section 10 shall only apply during the term of the Apollos Customer Agreement.

Consultant warrants that it owns and possesses all rights and interests in the deliverables and software necessary to enter into this Agreement, and/or has the license rights, legal permission and authority with respect to any software used by Consultant to deliver any of the services or work called for under this Agreement, and that Consultant has the authority to convey and grant the licenses granted to Customer by Consultant under this Agreement, free and clear of any liens and encumbrances, and that the use of any deliverable, software and any and all of the other products, and work produced by Consultant for Customer as described in this Agreement will

not infringe upon or violate any patent, copyright, trade secret, trademark, service mark, or other proprietary or intellectual property rights of any third party.

11. Limitations of Liability.

(a) In no event shall any party to this Agreement be liable to any other party for lost profits, or special, incidental or consequential damages (even if the party has been advised of the possibility of such damages).

(b) Apollos/Consultant's total liability under this Agreement for damages, costs and expenses, regardless of cause, shall not exceed the total amount of Fees paid by Customer under this Agreement.

(c) Customer and Apollos/Consultant shall indemnify each other against all claims, liabilities and costs, including reasonable attorney fees, of defending any third party claim or suit arising out of or in connection with either party's performance or non-performance under this Agreement. Customer and Apollos/Consultant shall promptly notify each other in writing of such claim or suit and the accused party shall have the right to fully control the defense of the claim or suit and the right to consent to the entry of judgment with respect to, or otherwise settle, an indemnified claim without the prior written consent of the other party so long as the judgment or settlement does not impose any unreimbursed monetary or continuing non-monetary obligation on the other party, does not contain an admission of guilt or liability, and includes an unconditional release of the other party.

12. Amendment to Scope of Work. In the event Customer desires to amend the scope of work of this Agreement, either with respect to the Apollos Services and/or the Additional Services, such amendment must be in writing executed by the parties to this Agreement. Under no circumstances shall any oral representation be considered an amendment to this Agreement or the Apollos Customer Agreement.

13. Miscellaneous Provisions.

(a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(b) Neither this Agreement, nor the Apollos Customer Agreement, may be amended or modified in any respect except by a written instrument signed by all parties hereto.

(c) The failure by either party to insist upon or enforce any of its or his rights under this Agreement shall not constitute a waiver by such party or a waiver of any subsequent breach of the same or a different provision. No waiver of any provision of this Agreement shall be enforceable unless it is in writing and signed by the party against whom it is sought to be enforced.

(d) THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO.

THIS AGREEMENT IS PERFORMABLE, AND VENUE OF ANY LITIGATION PURSUANT HERETO, SHALL BE IN HAMILTON COUNTY, OHIO.

(e) Any notices, consents, demands, requests, approvals, and other communications to be given under this Agreement by any party to the other shall be deemed to have been duly given if given in writing and personally delivered or sent by mail, registered or certified, postage prepaid with return receipt requested, or emailed to sean@differential.com.

(f) This Agreement supersedes any and all other agreements, either oral or written, between the parties hereto with respect to the subject matter hereof and contains all the covenants and agreements between the parties with respect thereto.

(g) If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which she or it may be entitled.