

Designtourney Services Agreement

The use of the online services provided by Designtourney.com—(“**Designtourney**”) is governed by the terms and conditions set out below (“**this Agreement**”). Without limiting the way in which you may be bound by this Agreement, by signing a document agreeing to be bound by this Agreement, by clicking a button or checkbox on your computer screen including your acceptance of this Agreement, or by proceeding to use the Services (as defined below) you will be deemed to have accepted and will be bound by the terms and conditions of this Agreement.

1. 1. Definitions and Interpretation

1. **1.1** In this Agreement, the following terms will have the following meanings, unless the context otherwise requires:

Designtourney Means the business run through the website Designtourney.com

Designtourney.com means the Designtourney website and underlying software and infrastructure which permits the holding of Design Contests

Ammendment Date: has the meaning given in clause 17.1

Commission means 10% of a designtourney’s total prize amount

Customer means a person who hosts a Design Contest for one or more Designers to create a Design to fulfill the requirements of the person’s Design Brief

Customer Payment has the meaning given in clause 7.3(a)

Design means a graphic design or image which a Customer engages a Designer to create

Design Brief means a Customer’s requirements for their Design

Design Concept means a proposed Design submitted by a Designer as part of a Design Contest

Design Contest means a tender held by a Customer to invite one or more Designers to submit Design Concepts for the provision of a Design to the Customer. The winner(s) of the Design Contest will be the successful tenderer(s). For the avoidance of doubt, more than one Designer may win a Design Contest

Designer means a person who elects to participate in a Design Contest to create a Design in response to a Customer’s Design Brief

Designer Fee has the meaning given in clause 7.3(a)(i)

Dollar Credits means credits for the purchase of goods or services from Designtourney, which may be redeemed for US dollars or other currencies

Guaranteed Contest means a Design Contest held by a Customer whereby the Customer guarantees that they will choose a winning design for their Design Contest

Indemnified has the meaning given in clause 15

Intellectual Property Rights means all intellectual property rights of any type whatsoever throughout the world including all rights which subsist in copyright, patent rights, trademark rights, designs and plant breeder rights, whether or not such rights are registered or able to be registered

IP Transfer Agreement means the document by that name (or a similar name) which sets out a default set of terms and conditions governing the separate agreement between the Customer and Designer described in [clause 6](#)

Personal Information has the meaning given in [clause 10.1](#)

Prepaid Contest means the default Design Contest type offered by Designtourney and is a Design Contest which is not a Guaranteed Contest

Services means the services provided by Designtourney which are described in [clause 2](#)

Stock Images means images, logos or other artistic works which may be purchased from a third party website or directly from a third party

Taxes means any applicable duties, sales taxes, GST, VAT or other taxes which may be levied in respect of a transaction contemplated by this Agreement

Third Party Work means any image, logo, artistic work, literary work or other item or thing (including a Stock Image) in which the Intellectual Property Rights are owned by a Third Party

User Account means an online account with Designtourney which enables you to use Designtourney.com

1.2 In the interpretation of this Agreement, unless the contrary intention appears:

- a. a reference to this Agreement means a reference to an agreement between you and Designtourney on the terms and conditions of this document and includes an amendment or supplement to, or replacement or notation of this Agreement;
- b. the words “includes” or “including” mean “includes without limitation” or “including without limitation”;
- c. a reference to a person includes a reference to a corporation, firm, association or other entity, and vice versa;
- d. the singular includes the plural and vice versa;
- e. a reference to any gender includes a reference to all other genders;
- f. a reference to any legislation or to any provision of any legislation includes a reference to any modification or re-enactment of or any provisions substituted for such legislation or provisions;
- g. an agreement, representation or warranty made by two or more persons is made by them jointly and by each of them severally;
- h. where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
- i. headings are inserted for convenience only and do not affect the interpretation of this Agreement.

2. Services Offered by Designtourney

2.1 Designtourney provides an online service, in accordance with and subject to, the terms and conditions of this Agreement, whereby (“**Services**”):

. Customers may, by way of a Design Contest, tender their Design for creation by Designers (in which case, pursuant to [clause 7](#), Customers will make an upfront payment of the Customer Payment at this time);

- a. Designers may bid for the tender to provide a Design to a Customer;
- b. Upon one or more successful Designs being chosen:

- i. Designtourney effects the delivery of the successful Designs to the Customer; and
- ii. Designtourney separately pays each Designer for their successful Design.

2.2 You, as a user of the Services, may use the Services in the capacity as a Customer, Designer or both a Customer and a Designer. The terms and conditions of this Agreement will apply to your use of the Services in either or both of those capacities.

3. Creating a User Account to Use the Services

3.1 Creating a User Account

- You agree to create a User Account with Designtourney in order to use the Services.
- a. Your User Account will be created using Designtourney's online sign up process, or any other method specified by Designtourney from time to time.
 - b. Your User Account will permit you to login to Designtourney.com to manage your User Account, make use of Designtourney.com and to manage other details involving your relationship with Designtourney.
 - c. You agree to keep confidential and secure any username or password used to access your User Account.
 - d. You warrant that all information provided to Designtourney in the setup of your User Account is true and correct in every detail.
 - e. You agree to only maintain one User Account in relation to your use of the Services and Designtourney.com.
 - f. You agree to provide Designtourney with all identification documents (including copies of passports and drivers licences) which Designtourney requests from you from time to time for the purposes of verifying your identity.

3.2 Use of your User Account and Designtourney.com

You agree that you will only use your User Account and Designtourney.com for the purposes of using the Services and for no other purpose. In particular, in using your User Account and accessing Designtourney.com, you will not:

- a. resell or sublicense the use of Designtourney.com or your User Account to any other person;
- a. use your User Account in a fraudulent or illegal manner, or email or send any materials from your User Account which are offensive, unlawful, harassing, libelous, defamatory, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable;
- b. use your User Account to stalk or harass another person;
- c. use your User Account to impersonate any person in any way whatsoever;
- d. use your User Account to infringe the copyright, trademark, patent or other Intellectual Property Rights of any person;
- e. use your User Account for sending advertising, chain letters, junk mail, "spamming" or any other type of unsolicited email;
- f. forge or alter the header or address information contained in any email or communication which you send from your User Account or in relation to the Services;
- g. use your User Account to send or deliver viruses, spyware, malware or other harmful, disruptive, or destructive files;
- h. use your User Account in such a way which damages Designtourney.com or denies access to Designtourney.com to other users of Designtourney.com;
- i. intentionally or recklessly use your User Account in a way that degrades the performance of Designtourney.com for other users; and
- j. cancel a Design Contest initiated by you for the purpose of contracting separately with a Designer you meet through Designtourney.com which results in you avoiding paying Designtourney any Customer Payment or any fees and charges of Designtourney. In these circumstances, without limiting Designtourney remedies against you, Designtourney may recover its lost fees and charges and the

Customer Payment from you by suspending your User Account and/or deducting its loss from any Designtourney Credits in your User Account.

4. Hosting a Design Contest

4.1 When This Clause Applies

This **clause 4** will apply if you use the Services in the capacity as a Customer.

4.2 Hosting a Design Contest

. You may, as a Customer, host a Design Contest for the provision of a Design. A Design Contest is hosted using Designtourney.com.

- a. To host a Design Contest, you, as a Customer must, via Designtourney.com:
- . choose the type of Design Contest you wish to hold. The types of Design Contests available will be determined by Designtourney from time to time. As at the date of this Agreement, a Design Contest will by default be a Prepaid Contest, unless you, as the Customer, with the express approval of Designtourney, select that the Design Contest is a Guaranteed Contest;
 - i. advertise your Design Brief to Designers;
 - ii. specify the total Customer Payment you wish to pay for the Design (which will need to be greater than a minimum amount specified by Designtourney from time to time);
 - iii. specify how long the Design Contest will be open for (subject to any maximum period specified by Designtourney from time to time);
 - iv. specify any other details relating to the Design Contest as required from time to time by Designtourney; and
 - v. pay Designtourney the Customer Payment in accordance with **clause 7**.

4.3 Designtourney's obligations to Customers who host Design Contests

If you, as a Customer, host a Design Contest, then:

- . Designtourney will, via Designtourney.com, invite Designers to enter the Design Contest to bid to produce your Design as required by your Design Brief. Such Designers will be engaged and invited by Designtourney, to submit Design Concepts to you. The actual Designers who are invited to enter the Design Contest will depend on the type of Design Contest you select;
- a. Designtourney will deliver Design Concepts which it receives from Designers to you via Designtourney.com. You acknowledge that such Design Concepts will be submitted in a low resolution file format; and
- b. Designtourney will, via Designtourney.com, deliver the completed Design to you once:
- . you choose a winning Design Concept; and
 - i. Designtourney has confirmed receipt of your Customer Payment. Payments will be processed in accordance with **clause 7**.

4.4 Customer's obligation to choose a winning Design

. If you, as a Customer, hold a Guaranteed Contest, then you must, by a certain time specified by Designtourney, select one or more winning Design Concepts as the winner of your Design Contest. If you fail to choose a winning Design Concept in accordance with this clause then:

- . your Customer Payment will be retained by Designtourney and, notwithstanding **clause 7.3(c)**, the Designer Fee will then distributed to a Designer who participated in the Guaranteed Contest at the sole discretion of Designtourney; and
 - i. you as the Customer, will however have no right to a refund or to use or reproduce the Designs or Design Concepts submitted by those Designers.
- a. If you, as a Customer, hold a Prepaid Contest and fail to select a winning Design Concept by the time that your Prepaid Contest closes, then your Customer Payment will be retained by Designtourney and no winning Design will be chosen and you will have no right to reproduce the Designs or Design Concepts submitted to you. In some circumstances, you may however seek a refund of your Customer Payment pursuant to your rights arising under **clause 8**.

4.5 Customer's ability to withdraw a Prepaid Contest

Subject to [clause 4.4](#), you, as a Customer, may not withdraw your Prepaid Contest (including a Guaranteed Contest) before a winning Design Concept is chosen or before the close of the Prepaid Contest.

4.6 How the Design is delivered

Once the requirements of [clause 4.3\(c\)](#) are fulfilled, the winning Design will be delivered to you, as the Customer, in a file format specified by Designtourney from time to time. Your ownership rights as a Customer in relation to the Design are specified in the separate agreement between you and the Designer described in [clause 6](#).

4.7 Usage of losing Design entries

You, as a Customer, must not reuse or reproduce any Design Concept which is not chosen by you as a winning Design.

5. Using the Services as a Designer

5.1 When this clause applies

This [clause 5](#) applies when you use the Services in your capacity as a Designer.

5.2 Participating in Design Contests

You will have the opportunity to participate, as a Designer, in Design Contests hosted by Customers.

a. Design Contests will be advertised by Designtourney via Designtourney.com. As a Designer, you may elect to participate in a Design Contest via the methods available in Designtourney.com and otherwise specified by Designtourney from time to time.

5.3 Submitting Design Concepts

To participate in a Design Contest as a Designer, you must submit a Design Concept to the Design Contest being hosted by a Customer. The Design Concept, as submitted, must meet the Customer's Design Brief.

a. The Design Concept must be submitted via Designtourney.com and/or using any methodology, file format or technology specified by Designtourney from time to time.

b. If you, as a Designer, submit a Design Concept:

you undertake and warrant that the Design Concept will not infringe or be a derivative of the Intellectual Property Rights of a third party nor will it be a derivative of any Design or Design Concept submitted to Designtourney.com by another Designer;

i. your Design Concept must not include a Third Party Work unless the inclusion of the Third Party Work is authorised by Designtourney policies relating to the use of Third Party Works (as those policies exist from time to time);

ii. subject to [clause 5.3\(c\)\(ii\)](#), if your Design Concept includes a Third Party Work, you must at the time of submitting the Design Concept:

i. specify that a Third Party Work has been used in the Design Concept; and

ii. set out the license and/or usage rights which apply to the Third Party Work including whether the Customer is required to purchase a license for the Third Party Work;

5.4 Being chosen as the winning Design

If your Design Concept is selected by a Customer as a winning Design, then:

you must upload the high resolution version of the Design to Designtourney.com for delivery to the Customer;

a. Designtourney will deliver the winning Design to the Customer; and

b. once the Customer has confirmed its acceptance of the winning Design, Designtourney will pay you, as the Designer, the Designer Fee in accordance with [clause 7](#).

5.5 No guarantee of winning a Design Contest or being included

You acknowledge and agree that as a Designer:

- . you may not have the ability to enter each and every Design Contest;
- a. Designtourney or a Customer may restrict your ability to enter any one Design Contest and/or invite only specific Designers to a Design Contest; and
- b. Designtourney has not made any representation or warranty that you will win any minimum number of Design Contests or earn any income, or any minimum amount of income, from entering Design Contests.

6. Separate Agreement between Designers and Customers

6.1 Once a Customer selects a winning Design Concept, the Customer and the Designer will be deemed to have entered into a separate binding agreement in relation to the provision of the Design and the Customer's rights in relation to the Design. Designtourney and its third party providers will not be a party to this separate agreement and will have no liability whatsoever in relation to the performance or failure to perform of a Customer or Designer under the terms of the separate agreement.

6.2 Unless separately agreed between a Customer and Designer, the terms of the separate agreement will be on the basis of the IP Transfer Agreement. A copy of the **IP Transfer Agreement** is located on Designtourney.com at <http://designtourney.com/>

6.3 By entering into this Agreement but subject to **clause 6.2**, you agree that you will be bound by the IP Transfer Agreement in your capacity as both a Customer who purchases a Design or a Designer who provides a Design and/or a Design Concept.

7. Payments

7.1 Designtourney Credits

. You may pay for goods and services provided by Designtourney by exchanging Designtourney Credits in return for those goods and services.

- a. You may purchase Designtourney Credits at any time in which Designtourney decides, at its sole discretion, to make these services available via Designtourney.com. Designtourney Credits may be purchased by any method of payment specified from time to time by Designtourney.
- b. There are two types of Designtourney Credits:
 - . Dollar Credits; and
 - i. Bonus Credits.
- c. Each Dollar Credit is equivalent to one United States dollar.
- d. Bonus Credits are not equivalent to any currency. They may however be used to purchase or obtain discounts on certain specified goods and services from Designtourney.
- e. Designtourney Credits are not legal tender and cannot be traded or sold to third parties. Designtourney Credits are only exchangeable for goods and services provided by Designtourney in accordance with pricing and rules specified by Designtourney from time to time.
- f. Any Dollar Credit which includes a fraction of a cent may be truncated by Designtourney down to the nearest whole number.
- g. The balance of any Designtourney Credits held by you may be reduced at any time by Designtourney for any amount owing by you to Designtourney on any account whatsoever including in relation to compensating Designtourney for any loss that it determines (in its sole and absolute discretion) it has suffered as a result of any breach of this Agreement by you.

7.2 Converting Dollar Credits to amounts payable to you

. You may at any time, convert Dollar Credits which you hold in your User Account to US dollars or any other currency permitted by Designtourney.com and request payment of those amounts to you. Any such payments will be made via the payment method nominated by you in your User Account. Any such payment by Designtourney to you may be reduced by any amount owing by you to Designtourney on any account whatsoever and may also be reduced by any related administration fees and charges imposed by Designtourney from time to time.

- a. Any payment to you in a currency other than US dollars will be made at an exchange rate determined by Designtourney in its sole discretion. You will bear all risk in relation to any loss you may make as a result of the exchange of US dollars to another currency.
- b. Any withdrawal of Dollar Credits in accordance with this clause may be subject to minimum or maximum withdrawal amounts specified by Designtourney from time to time.
- c. Designtourney may refuse to permit you to withdraw Dollar Credits where it considers that as at the date of withdrawal you are in breach of this Agreement or Designtourney considers that you or another Customer or Designer who is a party to the separate agreement described in **clause 6** is in breach of the terms of that agreement.

7.3 The amount payable by a Customer

When you, as a Customer, set up a Design Contest, you will pay Designtourney a total amount ("Customer Payment") which is comprised of:

- the price or portion of the Customer Payment which will be paid to the Designer for their winning Design awarded through your Design Contest ("Designer Fee");
 - i. any fees and charges imposed by Designtourney;
 - ii. fees and charges imposed by a third party on Designtourney in respect of the Design Contest;
 - iii. any Taxes which may be levied on the provision of the Design to you;
 - iv. any Taxes which may be levied on the provision of any other goods or services by Designtourney; and
 - v. any portion of the Customer Payment retained by Designtourney after deduction or payment of the above amounts.

a. The total amount of the Customer Payment will be specified by you under **clause 4.2(b)** when you create a Design Contest.

b. If you, as a Customer, select more than one Design Concept as a winning Design for your Design Contest, then the Customer Payment payable by you will be increased by:

- the amount of the Designer Fee in respect of each winning Design chosen by you (which will be the same for each winning Designer); and
 - i. any applicable fees and charges imposed by Designtourney (as they exist from time to time).

7.4 How is the Customer Payment paid?

The Customer Payment is paid using either Designtourney Credits and/or any other method of payment which is specified by Designtourney from time to time which may include credit card, PayPal, direct debit, or telegraphic transfer. If Designtourney Credits are used for payment, then Designtourney may specify a maximum number of Designtourney Credits (which may be zero) which may be used towards payment.

7.5 What amounts are paid to Designers?

If you, as a Designer, win a Design Contest, then Designtourney will pay you the amount of the Designer Fee minus a 10% prize commission (subject to having first received payment from the Customer).

a. The Designer Fee will be paid to you in either Designtourney Credits, cash, paypal or another form of payment specified by Designtourney from time to time but may be reclaimed by Designtourney if any refund is payable to the Customer under **clause 8**. You may redeem Designtourney Credits into cash as described in **clause 7.2**.

7.6 Expiry of Designtourney Credits

The balance of Dollar Credits held by you will expire 12 months from the date that you last spent any Dollar Credits to purchase any goods or services from Designtourney. Balances of your Dollar Credits which are not spent within this 12 month period are lost.

a. The balance of Bonus Credits held by you will expire 48 months from the date that you last spent any Bonus Credits to purchase any goods or services from Designtourney. Balances of your Bonus Credits which are not spent within this 48 month period are lost.

7.7 Designtourney is not an escrow service

Designtourney is not an escrow service and does not hold property on behalf of any person. All amounts deposited or paid to Designtourney are property of Designtourney and Designtourney may use those funds as it

sees fit. The only rights that you have to receive payment of any amounts held by Designourney are as set out in this [clause 7](#) or under [clause 8](#).

8. Processing of Refunds

8.1 How refunds are paid

If Designourney issues you a refund, that refund will be paid by a method chosen by Designourney in its sole and absolute discretion.

8.2 Withdrawn Design Contests

Subject to [clause 4](#), if you, as a Customer, are permitted to, and do withdraw a Design Contest, then you may be refunded any amount of the Customer Payment paid in respect of the Design Contest minus any fees administered by Designourney and set from time to time.

8.3 Designourney money back guarantee for Prepaid Contests

If you as a Customer, host a Prepaid Contest, then you may seek a refund of the Customer Payment paid by you at any time up to 30 days after the date of the Customer Payment but only if:

- i. a successful Design Concept was not chosen by you; and
- ii. a Designer is yet to be paid by Designourney for the provision of their Design; and
- iii. less than 25 entries were submitted to your Design Contest.
 - i. For the avoidance of doubt the money back guarantee described in this [clause 8.3](#) does not apply to Guaranteed Contests.

b. 8.4 Refunds for “defective” Designs

If a refund is paid to a Customer as a result of a defective Design (as determined under [clause 8.5](#)) or if a refund is paid for any reason set out in clauses [8.2](#), [8.3](#) or [8.6](#):

- a. if the Design is provided by you, in your capacity as a Designer, then you must reimburse Designourney for the amount of the Designer Fee you received in respect of that Design. The reimbursement will first be paid out of any Designourney Credits you hold and any remaining debt will be payable by you to Designourney on demand; or
- b. if the refund is paid to you as a Customer, then you will initially receive the amount of the Customer Payment paid by you, less the Designer Fee. You will receive the Designer Fee only once the Designer Fee is reimbursed by the Designer to Designourney as contemplated in [clause 8.4\(a\)](#) above.
- c. Designourney reserves the right to retain any administration fees that it deems appropriate in its sole and absolute discretion. These fees may include currency fees, paypal transfer fees, Designourney employee fees or any other type of fee that Designourney may set from time to time.

8.5 When is a Design deemed to be “defective”?

- A Design will be deemed to be “defective” if:
- both a Customer and the winning Designer agree it is defective and notify Designourney of this fact;
 - i. Designourney receives a demand or claim from a third party who claims ownership of the Design or the Intellectual Property Rights in the Design and Designourney accepts (to be determined by Designourney in its sole and absolute discretion) that there may be grounds for the third party's claim; or
 - ii. Designourney deems (in its sole and absolute discretion) that it is defective.
- a. You agree that any determination by Designourney that a Design is defective is final and conclusive, is not subject to challenge by you, and is binding on you.
 - b. If Designourney determines that a Design is not defective, this will not restrict a Customer from pursuing a Designer separately for amounts paid by Designourney to the Designer.

8.6 Other circumstances in which a refund may be paid

Designourney may refund an amount paid by a Customer in respect of a Design supplied by a Designer if:

- Designourney is required by law or considers that it is required by law to do so;

- i. Designtourney determines that issuing a refund to the Customer will avoid any dispute or increased costs to Designtourney;
 - ii. Designtourney issues the refund to the Customer in accordance with any refund policy specified by Designtourney from time to time;
 - iii. the order placed by the Customer is found to be fraudulent;
 - iv. the Customer placed a duplicate order in error; or
 - v. in Designtourney's sole opinion, Designtourney considers that it is likely that the refund is necessary to avoid a credit card charge back.
- a. Designtourney's determination as to whether a refund is required by this **clause 8.6** is final and conclusive and may not be challenged by you.

9. Suspension of the Services

9.1 Without limiting Designtourney's other rights arising under this Agreement, Designtourney may suspend your User Account and your use of the Services at any time, with or without notice to you, and for any reason in its sole and absolute discretion, including if:

- . Designtourney considers that you have breached any of your obligations to Designtourney under this Agreement;
- a. Designtourney considers that:
 - . you are using your User Account in bad faith;
 - i. you have colluded in relation to the awarding of a winner in a Design Contest or awarding a separate User Account held by you as the successful Designer in a Design Contest; or
 - ii. you and a Designer in a Design Contest are not dealing on an arms length basis;
- b. you are using the Services to participate in a Design Contest (either as Customer or Designer), which in Designtourney's sole and absolute opinion is offensive, immoral, unethical or is likely to bring Designtourney into disrepute;
- c. you are using your User Account or the Services for illegal or fraudulent means or in a manner which Designtourney in its sole discretion considers offensive, unlawful, harassing, libelous, defamatory, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable; or
- d. in Designtourney's sole and absolute opinion, the provision of the Services to you is resulting in an unreasonable load on Designtourney's servers or Designtourney's other services.

9.2 You agree:

-
- . Designtourney may suspend the Services where permitted under **clause 9.1** at any time including without limitation, during or after a Design Contest;
 - a. Designtourney's suspension of the Services may, in Designtourney's sole discretion, apply to only some of the Services and/or for a fixed or indefinite period of time; and
 - b. Designtourney may in its sole discretion reactivate the Services and your User Account for you at any time following their suspension.

9.3 For the avoidance of doubt, you may not make withdrawals of, or spend any Designtourney Credits during any period of suspension of your User Account. Further Designtourney may in its discretion retain the balance of all Designtourney Credits in your account towards compensating Designtourney for any loss and damage it may have suffered as a result of your breach of this Agreement which lead to the User Account suspension.

10. Privacy

10.1 Designtourney will collect your personal information including your name, contact details and payment details (including, without limitation, credit card details) ("**Personal Information**"). All Personal Information will be handled, used, maintained and disclosed by Designtourney in accordance with all applicable privacy laws and data protection laws as well as its privacy policy which applies from time to time.

10.2 You agree that you will only use the Personal Information of other Customers or Designers for the purposes of this Agreement and for the purposes of interacting with them in relation to Design Contests. Unless separately agreed between you and another Customer or Designer, you must not use their Personal Information for any other purpose.

10.3 You warrant to Designtourney and its third party providers that you will comply with all privacy laws and data protection laws (including, without limitation, the *applicable Canadian Privacy Laws* in relation to the storage, use and transfer of Personal Information.

11. Relationship of the Parties

11.1 Designtourney is an independent service provider to you and is not your partner, employee or agent. You do not have the power to bind Designtourney in relation to any obligation owing to a third party.

11.2 You agree that by entering a Design Contest (either as Customer or Designer) that Designtourney, in providing the Services and your access to Designtourney.com, is providing a platform for you to enter into a separate agreement with other Customers or Designers (as the case may be). Designtourney is not a party to that separate agreement and is not responsible for any act or omission of the other parties to that separate agreement.

12. Your General Obligations

You agree that:

12.1 you will not use the Services for any illegal or fraudulent purpose or for any purpose other than holding or entering into Design Contests as a Customer or Designer;

12.2 you will comply with all laws which must be complied with in relation to a Design Contest or the supply of a Design;

12.3 you will comply with any export restrictions which may apply to the export or import of Designs or other Intellectual Property Rights to locations inside or outside Canada or the territory in which you are located;

12.4 you warrant that you will not, by engaging Designtourney to provide the Services, place Designtourney in breach of any law or obligation owing to a third party;

12.5 you will not undertake any act or cause any omission which will bring Designtourney, its brand or other Customers and Designers into disrepute;

12.6 you will not use the Services in a manner that may lead to the suspension of the Services under **clause 9.1**; and

12.7 you will provide Designtourney with all information requested by Designtourney which Designtourney requires to provide the Services.

13. Term and Termination

13.1 This Agreement will commence on the date that you first create a User Account with Designtourney and will terminate at the later of the date that:

- . the User Account is terminated or closed; or
- a. you otherwise cease using the Services.

13.2 If after termination or closure of your User Account, your User Account is reactivated or a new User Account is opened, you will again become bound by this Agreement at that time.

13.3 This Agreement and your User Account may be terminated by Designtourney at any time for any reason whatsoever with or without notice to you.

13.4 This Agreement may be terminated by a party immediately on written notice to the other party if:
. the other party is in default or breach of this Agreement; and
a. the party has provided the defaulting party with **7 days** written notice of the default or breach and where the breach or default is capable of rectification, the defaulting party fails to rectify the breach or default within the period of the notice.

13.5 Upon the termination of this Agreement:

. Designtourney will, within a time period determined by Designtourney, withdraw the use of the Services from you;

a. any Bonus Credits you hold will be cancelled immediately;

b. you may redeem any Dollar Credits held by you to US dollars pursuant to **clause 7**. Designtourney may however withhold a reasonable portion of any amount payable to you (with such amount to be determined by Designtourney in its sole discretion) on account of credit card charge backs, refunds, payments due to third

parties on your behalf or other costs and expenses which may be incurred by Designtourney following termination (including as a result of a breach by you); and

c. within **12 months** following termination of this Agreement, Designtourney will pay to you the amount withheld under **clause 13.5(c)** less any portion of that amount used by Designtourney to satisfy refunds, credit card charge backs, payments due to third parties or other costs and expense incurred by Designtourney either before or after termination.

13.6 Clauses **8, 10, 11, 13.5, 14, 15** and **16** will survive the termination of this Agreement.

14. Limitation of Liability and Implied Terms

14.1 You acknowledge that Designtourney and its third party providers have made no warranties that the Services will be error free.

14.2 You agree that Designtourney and its third party providers will not be liable or responsible for any failure in, or delay to, the provision of the Services or in Designtourney complying with its obligations under this Agreement where such failure or delay has arisen as a direct or indirect result of:

- . fire, earthquake, storm, flood, hurricane, inclement weather or other act of God, war, terrorism, explosion, sabotage, industrial accident or an industrial strike;
- a. denial of service attacks, telecommunications failure, hardware failure or the failure of software provided by a third party to function in accordance with its specifications;
- b. a significant demand is placed on Designtourney's services which is above the usual level of demand and which results in a failure of Designtourney's software and hardware to function correctly;
- c. the failure of any third party (including without limitation, any bank or other financial organization) to fulfill any obligations to Designtourney; or
- d. any other circumstances or event similar to the above which are beyond the reasonable control of Designtourney.

14.3 You acknowledge and agree that Designtourney and its third party providers shall have no liability or responsibility to you whatsoever for any unauthorized withdrawals or unauthorized spend of your Designtourney Credits where such withdrawal or spend arises from:

- . any of the events described in clause **14.2**; or
- a. any unauthorized use or access of your User Account or Designtourney.com.

14.4 You acknowledge and agree that Designtourney and its third party providers have not made and will not make any express or implied warranties in relation to the Services or any other goods or services provided by Designtourney under this Agreement, other than those warranties expressly contained in this Agreement. Subject to clauses **14.7** and **14.8**, any term that would be implied into this Agreement, including without limitation any condition or warranty, is hereby excluded.

14.5 Subject to clauses **14.7** and **14.8**, you agree that Designtourney and its third party providers will not be liable in respect of any claim by you (whether contractual, tortious, statutory or otherwise) for any direct, special, incidental, indirect or consequential damages or injury including, but not limited to, any loss of profits, contracts, revenue or data arising out of or in connection with the provision of the Services or the provision of any other goods or services under this Agreement and whether as a result of any breach or default by, or any negligence of, Designtourney or its third party providers.

14.6 The maximum liability of Designtourney under this Agreement for any and all breaches of this Agreement and for any negligence in relation to this Agreement, will not exceed the lesser of:

- . the amount of the Customer Payments paid for the Services by you; or
- a. the total amount of the Designer Fee received by you.

14.7 The liability of Designtourney is limited, at the option of Designtourney, to:

- . in the case of goods, any one or more of the following:
 - . the replacement of the goods or the supply of equivalent goods;
 - i. the repair of the goods;
 - ii. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - iii. the payment of the cost of having the goods repaired; and
- a. in the case of services:
 - . the supplying of the services again; or
 - i. the payment of the cost of having the services supplied again.

14.8 Any of the terms and conditions of this Agreement which limit or exclude any term, condition or warranty, express or implied, or the liability of Designtourney will apply to the extent permitted by law and will not be construed as excluding, qualifying or limiting your statutory rights or remedies arising by virtue of the breach of any implied term of this Agreement where such exclusion, qualification or limitation would be prohibited by legislation.

15. Indemnity

You indemnify Designtourney, its agents, officers, employees, and third party providers (“**Indemnified**”) against any loss, cost, expense or damage (including legal costs on a full indemnity basis) which any of the Indemnified suffer or incur as a direct or indirect result of:

- . any breach by you of any representation, warranty or term of this Agreement;
- a. any acts or omissions by you which are described in **clause 9.1**;
- b. any breach by you of your obligations to a third party, including another Customer or Designer;
- c. any infringement by you of the Intellectual Property Rights of a third party; and
- d. any legal proceedings threatened or initiated against Designtourney by a third party as a result of the events described in **clause 15(a)** to **(d)** above.

16. Intellectual Property

16.1 You acknowledge that Designtourney is the owner of all Intellectual Property Rights which subsist in your User Account and Designtourney.com (but not your Designs). You acknowledge that you have no Intellectual Property Rights in your User Account or in Designtourney.com.

16.2 You acknowledge that the ownership of the Intellectual Property Rights in any Design or Design Concept provided pursuant to a Design Contest will be set out in the separate agreement described in clause 6 between the Customer and the Designer.

16.3 You acknowledge and agree that:

- . subject to **clause 8.5**, Designtourney will not act as a moderator or adjudicator in relation to any claim by you or another third party that a Design or other content submitted to Designtourney.com infringes any Intellectual Property Rights owned by you or a third party;
- a. Designtourney will not be liable or responsible for any breach by a Designer or Customer of any Intellectual Property Rights held by a third party in relation to any Design Contest, Design or Design Concept or other use of Designtourney.com; and
- b. notwithstanding the above, Designtourney may at any time remove any content, Third Party Work or Designs from Designtourney.com which Designtourney determines, in its sole and absolute discretion, may infringe the Intellectual Property Rights of a third party.

17. Miscellaneous

17.1 Designtourney may amend the terms and conditions of this Agreement at any time. Such amendments will take effect from the date of their notification to you (“**Amendment Date**”). You agree that without limiting the ways in which it may be bound by such amendments, you will be deemed to have agreed to such amendments by making use of or accessing your User Account or Designtourney.com after the Amendment Date.

17.2 Unless otherwise requested in writing by you, Designtourney may use your corporate identity (if applicable) and any Designs submitted to Designtourney.com as part of promoting the Services of Designtourney in the market place.

17.3 Any notice given under this Agreement must be in writing and must be signed by the party or its agent giving the notice. A notice is taken to be received:

- . in the case of a notice delivered by hand, when so delivered;
- a. in the case of a notice sent by prepaid post, on the seventh day after the date of posting;
- b. in the case of a notice sent by facsimile, upon the receipt by the sender of a transmission report from the dispatching facsimile machine which confirms that the facsimile has been successfully sent; or
- c. in the case of a notice sent by email, upon the receipt by the sender of a confirmation from the recipient or the recipient's email server that the email has been received by the recipient.

17.4 This Agreement supersedes all prior representations, arrangements, understandings and agreements between the parties relating to the subject matter of this Agreement and sets forth the entire and exclusive agreement and understanding between the parties relating to the subject matter of this Agreement.

17.5 A provision of or a right created under this Agreement may not be waived except in writing signed by the party or parties to be bound by the waiver. No single or partial exercise by any party of any right, power or remedy under this Agreement will preclude any other or further exercise of that or any other right, power or remedy. The rights, powers or remedies provided in this Agreement are cumulative with and not exclusive of any rights, powers or remedies provided independently of this Agreement.

17.6 If any provision of this Agreement is judged invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such invalidity or unenforceability (unless deletion of such provision would materially adversely affect one of the parties) will not affect the operation or interpretation of any other provision of this Agreement to the intent that the invalid or unenforceable provision will be treated as severed from this Agreement.

17.7 Designtourney may assign its rights and novate or transfer obligations which arise under this Agreement. You must not assign, novate or otherwise transfer your rights or obligations under this Agreement without the prior written consent of Designtourney (which may be withheld).

17.8 The parties acknowledge and agree that no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or part of it.

17.9 This agreement is governed by, and must be construed in accordance with, the laws of the Province of British Columbia, Canada and the parties irrevocably submit to the exclusive jurisdiction of the courts of the City of Vancouver, British Columbia, Canada and their Courts of Appeal.

17.10 Users of Designtourney's affiliate program may only cash out if they have a balance greater than \$50 USD in their account. All \$50 must be generated through the affiliate program to qualify. Designtourney is obliged to pay out these funds within 30 days upon the written request of a Designtourney affiliate.