

L7 Creative Terms & Conditions

This project is approved to proceed under the terms outlined in the following pages under “Service Agreement”.

Note: This estimate is submitted as a cost forecast based on information currently available about the project. Actual costs may vary by as much as 15% from estimated costs. If client changes and/or revisions are requested or the scope of the project changes, new cost estimates will be prepared and presented to you. Tax applies to certain costs per individual state sales tax and will be added where applicable. All files will be transferred electronically. All invoices are due upon receipt. Please make checks payable to L7 Creative Communications, Inc. In signing this estimate, client authorizes L7 Creative Communications, Inc. to proceed with work described herein. Costs do not include travel expenses and other related hard costs.

Service Agreement

The following agreement is by and between L7 Creative, Inc., a California corporation, as well as any sub-contractors and/or employees retained by L7 Creative, Inc. (hereinafter L7 Creative); and Client (hereinafter “Client”). We the undersigned agree to the following:

1. Deliverables and Services to be Provided:

L7 Creative will provide the Services outlined in an accompanying document.

1A. Fees

Fees will be payable as follows:

- Project-based fees will be billed as follows: 50% of estimated fees will be billed as a deposit, with work commencing upon receipt and clearance of payment; 50% will be due upon midpoint of the work.
- Monthly fees will be billed on the first day of each month.
- In the event that additional hours beyond the estimated costs are needed, L7 Creative will estimate and invoice these tasks before proceeding.

The parties agree that interest at the rate of one and one-half percent (1½%) per month, 18% annual percentage rate, or the maximum permitted by law, whichever is less, shall be added to any past due sums.

1B. Changes in Scope

Both parties acknowledge that the scope of this agreement may change during execution. Should any such change be required, both parties agree to memorialize such change in writing, including any change in the payments resulting therefrom. Client acknowledges that any services not detailed in the attached scope of work may require additional payments on a “time and materials” basis, with hourly rates equal to those outlined in the scope of work. L7 Creative will provide written documentation and will inform Client before beginning any such additional work.

2. Agency

It is agreed that L7 Creative’s services are made available to Client on the basis that L7 Creative will retain individual professional status and therefore, both parties acknowledge that L7 Creative is an agency contractor. In the performance of its duties, L7 Creative shall use materials and information provided by Client and shall rely on and utilize representations about the operations and financial status of Client as Client alone shall provide. It being understood that the manner and means by which L7 Creative chooses to perform the

Services are in L7 Creative’s sole discretion and control. L7 Creative agrees to exercise the highest degree of professionalism, and to utilize its expertise and creative talents in completing the Services. L7 Creative shall have the right to employ qualified employees, agents and sub-contractors of its choosing and shall remain responsible for the actions of such persons. Under no circumstances shall L7 Creative, or any of L7 Creative’s sub-contractors, agents or employees, look to Client as their employer, or hold themselves out as employees of Client. L7 Creative understands and acknowledges that as an agency contractor it will be fully responsible for paying all required state and federal taxes, and/or any foreign taxes on income or revenue, as applicable, and that compensation received from Client will be in a lump sum amount and will not reflect any withholdings or deductions. L7 Creative also understands and acknowledges that it is not eligible to receive any benefits of employment, including, but without limitation, health and welfare benefits and worker’s compensation insurance. L7 Creative agrees to indemnify and hold Client harmless for any wage, tax or similar liabilities imposed on Client with respect to L7 Creative or any of L7 Creative’s sub-contractors, agents or employees.

3. Agreement Termination

If either party defaults in the performance of any of its material obligations hereunder and if such default is not corrected within sixty (60) days after written notice thereof by the other party, then the non-defaulting party, at its option and in addition to any other remedies it may have, may immediately terminate this agreement by giving written notice of termination to the defaulting party; provided that, if Client defaults in the payment when due of any amount due to L7 Creative, then L7 Creative, at its option and in addition to any other remedies it may have, may immediately terminate this agreement by giving ten (10) days prior written notice of termination to Client. In addition to the above, L7 Creative may also terminate this Agreement immediately if Client (i)terminates or suspends its business, (ii)becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority, or (iii)becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes. Upon termination the rights and responsibilities of each party under this Agreement shall cease except that the following provisions will survive termination according to their terms: Sections 1 (to the extent of accrued but unpaid amounts), 2, 3, 4, 5, 6, 7 and 8 and 9.

4. Ownership of Work Product

Subject to full payment by Client for all services rendered by L7 Creative, L7 Creative hereby irrevocably assigns to Client all right, title and interest worldwide in and to any work product created by L7 Creative, or to which L7 Creative contributes, pursuant to this Agreement (“Work Product”) and all applicable intellectual property rights related to the Work Product except as outlined in 4a and 5 below. Nothing herein shall be deemed to restrict L7 Creative’s use of any pre-existing materials of L7 Creative’s or any general know-how gained from this engagement that does not constitute Confidential Information development, and to utilize the same in promotional messaging including but not limited to website content, press releases, and social media announcements.

4a. Promotional Use

Client agrees to include a development credit and “backlink” to L7 Creative in any web properties created under this agreement, in a discreet and appropriate location for promotional purposes.

5. File Transfer

In the process of providing services L7 Creative will create numerous digital files (the "Files"). These Files include, but are not limited to, creative designs, audio and video materials, and photographic assets. Except as otherwise documented in writing, L7 Creative will deliver to Client only those Files included in the final work product. This does not include editable working files, drafts, or any other digital assets created which are not directly incorporated into the final work product. In the event that Client wishes to obtain all Files generated by L7 Creative, this service can be provided for an additional flat fee of \$250. Client must supply the physical medium (external hard drive or similar) to facilitate delivery of files. Please note that when multiple creative concepts are presented, L7 Creative retains ownership of concepts which are not chosen for implementation. L7 Creative does not have any obligation to retain Files, and in any event Files older than 12 months may not be provided due to storage limitations.

6. Acceptance and Warranties

L7 Creative represents, warrants and covenants that (a) its obligations under this Agreement do not and will not conflict with or cause a breach of any other contract or obligation of L7 Creative or its employees and (b) it will not knowingly violate any law or regulation or knowingly commit any intentional tort in the performance of this Agreement. Client represents, warrants and covenants that (a) its obligations under this Agreement do not and will not conflict with or cause a breach of any other contract or obligation of Client (b) it will not violate any law or regulation or commit any intentional tort in relations to its dealings with L7 Creative (c) it has the authority to enter into this Agreement (d) any materials of any nature contributed by it are wholly original material not published elsewhere, will not infringe any copyright, trademark, patent or any other intellectual property right, and will not constitute an infringement of any other kind, of any third party. Client further represents and warrants that it is not relying upon L7 Creative for legal advice and that it is solely responsible (a) for adoption and implementation of strategies recommended by L7 Creative as part of the services, and (b) for obtaining independent legal advice with respect to such adoption and implementation. THE WARRANTIES IN THIS PARAGRAPH ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY ARISING BY COURSE OF DEALING OR PERFORMANCE, CUSTOM OR USAGE IN THE TRADE.

As used herein, "acceptance" is defined as Client confirmation that the work performed in a given phase of the project meets requirements for general release. Release of website code a publicly accessible environment shall constitute acceptance under this agreement, as shall placement of advertising in any public media.

Both parties understand that thorough testing by both Client and L7 Creative is a vital part of this agreement. L7 Creative will provide quality assurance and user acceptance testing prior to release. Any bugs discovered after completion of a given phase and acceptance by client will be considered new tasks and would be completed on a time and materials basis with hourly fees consistent with the original scope of work

7. Indemnification

With regard to the services to be performed by L7 Creative pursuant to the terms of this Agreement, L7 Creative shall not be liable to Client, or to anyone who may claim, any right due to its or their relationship with Client, for any acts or omissions in the performance of said services on the part of L7 Creative or on the part of the agents,

consulting associates, employees or sub-contractors of L7 Creative; except when said acts or omissions are due to their willful misconduct. Client shall indemnify and hold L7 Creative free and harmless from any obligations, costs, claims, judgments, attorney's fees, and attachments arising from or growing out of the services rendered to Client pursuant to the terms of this Agreement or in any way connected with the rendering of such services, except when the same shall arise due to the willful misconduct of L7 Creative, and L7 Creative is adjudged to be guilty of willful misconduct by a court of competent jurisdiction. Client shall advance to L7 Creative any expenses incurred in defending any such proceeding brought by a third party to the maximum extent permitted by law.

L7 Creative agrees to indemnify and hold Client harmless from any breach of L7 Creative's warranties under this Agreement, unless the violation of law or regulation or commission of an intentional tort was at the express direction of Client.

8. Limitation of Liability

L7 Creative's liability in the execution of the services detailed in the above agreement is limited as follows: L7 Creative will be liable to correct any error or omission in any work product promptly, should such error be brought to its attention by Client. L7 Creative WILL NOT BE LIABLE TO CLIENT FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF DATA OR USE, LOST PROFITS OR INTERRUPTION OF BUSINESS. In the event L7 Creative does not, or cannot, adequately remedy or correct such error, its liability shall be limited to the total amount paid by Client to L7 Creative from the date of this agreement to the date of such occurrence.

9. Confidentiality

L7 Creative hereby agrees to hold and maintain in strictest confidence for the exclusive benefit of Client any information disclosed by Client which is clearly marked as confidential or which the disclosing party describes as confidential in writing to the recipient party at disclosure or within 15 days of disclosure (collectively, "Confidential Information").

Confidential Information shall also include, but not be limited to, trade secrets, technical information, operational information, business records, financial records, lists of potential or existing customers and suppliers. Confidential Information shall not include (i) information which becomes public through no breach by the recipient, (ii) information which the recipient had in its possession prior to receiving it from the disclosing party, (iii) information which the recipient develops without reference to the Confidential Information and (iv) information which the recipient receives from a third party who learned such information without restrictions. L7 Creative shall not disclose any Confidential Information to any third party without first obtaining the Client's written consent to such disclosure, except to the extent such disclosure: (a) is in response to a valid order of a court or other governmental body; (b) is otherwise required by law; or (c) is otherwise necessary to establish rights or enforce obligations under this Agreement. In the event recipient is required by law, regulation or order of a court or other authority of competent jurisdiction to disclose the Confidential Information, recipient shall notify the disclosing party as promptly as possible, and reasonably assist in challenging or restricting the scope of such required disclosure and ensuring that any such disclosure is subject to the strictest feasible nondisclosure obligations consistent herewith. Any employees, agents or sub-contractors utilized by L7 Creative in the performance of its services under this Agreement or who will have access to any Confidential Information contemplated by this Agreement shall be required by L7 Creative to sign an agreement containing confidentiality restrictions at least as protective as those contained in this Agreement. L7 Creative shall return to Client any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to



L7 Creative Terms & Conditions

Confidential Information upon request by Client or in the event of any termination of this Agreement.

Miscellaneous Provisions

10. Choice of Law and Venue. This Agreement is governed by, and subject to, the laws of the State of California, without regard to such states conflict of laws rules, as provided in this Agreement. For purposes of litigating any dispute that arises directly or indirectly from the relationship of the parties evidenced by this Agreement, the parties hereby submit to and consent to the exclusive jurisdiction of the State of California and agree that such litigation shall be conducted only in the courts of San Diego County, California, or the federal courts for the United States for the Southern District of California, and no other courts, where this Agreement is made and/or to be performed.

11. Attorney Fees Provision. In any litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded its reasonable attorney fees, and costs and expenses incurred.

12. Notice. Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by facsimile, (d) email with electronic signature, or (e) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

If to L7 Creative: Attention: Tom Gallego, Chief Creative Officer,
L7 Creative: 5297 Balfour Court, Suite 104, Carlsbad, CA 92008;
Email: tom@l7creative.com

If to Client: To be predetermined.

Or to such other address as either party may from time to time specify in writing to the other party. Any notice shall be effective only upon delivery, which for any notice given by facsimile shall mean notice, which has been received by the party to whom it is sent as evidenced by confirmation slip.

13. Modification of Agreement. This Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by all parties.

14. Entire Agreement. This Agreement and all other agreements, exhibits, and schedules referred to in this Agreement constitute(s) the final, complete, and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings or agreements of the parties. This Agreement may not be contradicted by evidence of any prior or contemporaneous statements or agreements. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation, understanding, agreement, commitment or warranty outside those expressly set forth in this Agreement.

15. Severability of Agreement. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this section, then this stricken provision shall be replaced, to the extent possible, with a legal, enforceable,

and valid provision that is as similar in tenor to the stricken provision as is legally possible.

16. Survival. Except as otherwise expressly provided in this Agreement, representations, warranties, and covenants contained in this Agreement, or in any instrument, certificate, exhibit, or other writing intended by the parties to be a part of this Agreement, shall survive for 3 years after the date of this Agreement.

17. Ambiguities. Each party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

18. Waiver. No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, rights, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

19. Headings. The headings in this Agreement are included for convenience only and shall neither affect the construction or interpretation of any provision in this Agreement nor affect any of the rights or obligations of the parties to this Agreement.

20. Necessary Acts, Further Assurances. The parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

21. Execution. This Agreement may be executed in counterparts and by fax.

22. Representation on Authority of Parties/Signatories. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

23. Force Majeure. No party shall be liable for any failure to perform its obligations in connection with any action described in this Agreement, if such failure results from any act of God, riot, war, civil unrest, flood, earthquake, or other cause beyond such party's reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).

24. Assignment. Neither party shall voluntarily or by operation of law assign, hypothecate, give, transfer, mortgage, sublet, license, or otherwise transfer or encumber all or part of its rights, duties, or other interests in this Agreement or the proceeds thereof (collectively, "Assignment"), without the other party's prior written consent. Any attempt to make an Assignment in violation of this provision shall be a material default under this Agreement and any Assignment in violation of this provision shall be null and void.