



Terms and Conditions

WHEREAS, Bright Peak provides design and creative solutions for marketing activities, and Client desires to purchase design and creative services from Bright Peak.

NOW, THEREFORE, in consideration of the mutual agreements made herein, and for other good and valuable consideration, the parties hereby agree as follows:

1. Term. The term of this Agreement shall commence as of the Effective Date and shall expire on (the "Term"), unless terminated earlier or renewed in accordance with this Agreement. This Agreement may be terminated at any time during the Term by Bright Peak or Client pursuant to the provisions of Section 9 below. Prior to the expiration of the Term, the parties may agree in writing to extend the Term.
2. Services.
 - (a) Scope of Services. Bright Peak shall provide to Client the services set forth on Exhibit A hereto (the "Projects") in accordance with, and during the times specified in, this Agreement. Each party shall cooperate fully with the other party in carrying out the obligations pursuant to this Agreement in a timely and efficient manner and in accordance with the terms hereof. This Agreement contemplates up to three (3) revisions of each Project during the initial development stage. Any additional revisions shall be subject to additional fees.
 - (b) Timing of Services. Bright Peak will use best efforts to provide initial proofs of the Projects based on the following timeframes, provided that such time frames are not binding and are subject to adjustment based on the specific Projects required. The following turnaround times refer to standard business days and begin after this Agreement has been signed by Bright Peak and Client and Bright Peak has received the Project Deposit (as defined below) and all materials required for the Projects from Client.
 1. Branded Email Template/Basic Assembly - First proof in 3 business days
 2. Basic Email Template/Basic Assembly - First proof in 3 business days
 3. HTML Email Template/Basic Assembly - First proof in 5 business days
 4. Business Cards/Basic Assembly - First proof in 3 business days
 5. HTML Landing Page/Basic Assembly - First proof in 5 business days
 6. Header Image Assembly - First proof in 2 business day
 7. Web Banner Ad Set - First proof in 5 business days
 8. Custom Survey Design (Creation, Formatting, Background Page) - First proof in 3 business day
 9. Microsite (2 HTML web pages)/Basic Assembly - First proof in 5 business days
 10. Direct Mail/Basic Assembly - First proof in 3 business days
 11. Logo/Basic Assembly - First proof in 4 business days

Each additional concept for any Project - Additional 1 business day (in addition to "Basic Assembly" of such Project) Bright Peak will provide an original graphical layout, color and typography solution for each concept requested based on the creative brief and

materials provided by the client. Bright Peak does not provide copywriting services or assistance.

Each additional revision for any Project - Additional proof provided within 1 business day (in addition to time for initial proof for such Project)

- (c) Changes to Projects. Each party may request changes that affect the scope or duration of the Projects, provided that no such changes shall take effect until agreed to in writing by both parties. If Client requests a change to the Projects, Bright Peak shall notify Client if it believes that an adjustment in the Project Fee is required. Bright Peak shall continue to perform pursuant to the existing description of the Projects then in effect, and neither party shall be bound by any change requested by the other party, until such change has been accepted in writing by the other party.
- (d) Refusal of Projects. Client acknowledges that Bright Peak reserves the right to refuse any Projects (or any portion thereof) for any reason, provided that if Bright Peak refuses a Project, Bright Peak shall refund any fee paid by Client with respect to such Project (or applicable portion thereof).

3. Compensation.

- (a) Project Fee. Client agrees to pay Bright Peak the amount set forth on Exhibit A for the Projects (the "Project Fee").
- (b) Payment Terms.

Bright Peak Creative Services: Client shall pay Bright Peak 60% of the Project Fee upon the execution of this Agreement as a non-refundable deposit (the "Project Deposit"). Bright Peak shall not begin work on the Projects prior to receipt of the Project Deposit. The remainder of the Project Fee shall be payable by Client upon the completion of the services contemplated by the Projects to the reasonable satisfaction of Client.

Logo/Basic Assembly and Additional Logo Concepts (if applicable): Client shall pay Bright Peak in full for entire Logo project, including any fees such as additional concept(s) before project is sent to the designer.

- (c) Client Failure to Provide Content. In the event that Client does not provide Bright Peak with the required content to complete the Projects within 30 days of the Effective Date, the full Project Fee shall become due and payable.
- (d) Expenses. Bright Peak may invoice Client for, and Client shall be responsible for, the reasonable costs and expenses incurred in creating the Projects solely to the extent such costs and expenses have been approved in advance by Client; provided that Client hereby approves Bright Peak to incur reasonable costs related to the procurement and finding of fonts and images for the Projects.

4. Marks. Subject to the terms of this Agreement, Client hereby grants to Bright Peak a limited, royalty-free, non-exclusive, non-transferable, non-sublicensable, world-wide license to use its artwork, logos, trademarks, trade names, service marks, symbols, designs, graphics, copyrights or other proprietary marks (collectively, the "Marks") solely as is necessary to perform the Projects. Client represents and warrants that it has good and valid title to or licenses to use the Marks for

use as contemplated in the Projects and that Bright Peak's use of the Marks in completing the Projects will not infringe on the intellectual property rights of any third parties. Bright Peak acknowledges that Client is the owner or licensee of the Marks.

5. Intellectual Property. Client shall own all intellectual rights, including worldwide copyrights, in all written and other materials supplied by Bright Peak as part of the Projects under this Agreement. Bright Peak shall cooperate with Client in signing any documents necessary to secure such rights. To the extent that any materials provided qualify as "works for hire" it is understood that such materials are being provided by Bright Peak to Client as a work for hire under this Agreement.
6. Indemnification. Client agrees to indemnify, defend, and hold harmless Bright Peak and its affiliates and subsidiaries, and their respective members, managers, directors, officers, shareholders, employees or agents, against any and all losses, costs, liabilities, damages, claims, actions, suits, judgments, fines, expenses (including, without limitation reasonable attorneys' fees and costs), penalties, business loss, damage to property interests or interruption to business, arising out of (i) a breach of the representations, warranties and/or obligations of Client under this Agreement or (ii) any actual or alleged infringement of any third party's intellectual property rights based on any products, deliverables, materials and/or any services furnished by Client or its representatives to Bright Peak under this Agreement. This Section 6 shall survive the termination or expiration of this Agreement, for a period of five years from the date of such termination or expiration.
7. Limitation on Liability. Except in the event of gross negligence, intentional misconduct or fraud on the part of Bright Peak, Bright Peak shall not be responsible for any damages, whether actual or potential, direct or indirect, special, consequential, incidental, indirect or punitive, nor any loss of profits or claims which may arise in any way out of its performance or breach of this Agreement, whether related to Client or to another party, in a sum in excess of the Project Fee actually paid to Bright Peak for the Projects under this Agreement.
8. Warranty Disclaimer. THE EXPRESS WARRANTIES AND EXPRESS REPRESENTATIONS SET FORTH IN THIS AGREEMENT ARE IN LIEU OF, AND EACH PARTY DISCLAIMS, ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT SUCH PARTY KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. IN ADDITION, EACH PARTY EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY PERSON OTHER THAN THE OTHER PARTY.
9. Termination.
 - (a) Either party may terminate this Agreement at any time upon sixty (30) days' prior written notice to the other party.
 - (b) Each of the following events shall constitute an event of default ("Event of Default") under this Agreement: (i) a party materially breaches an obligation, covenant or condition set forth herein and fails to cure such breach within 30 days after the receipt of written notice thereof from the non-defaulting party; or (ii) a party shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief under any bankruptcy,

insolvency or similar law, or shall make a general assignment for the benefit of creditors, or shall have an involuntary case or other proceeding instituted against it seeking similar relief.

- (c) Upon the occurrence of an Event of Default, and at any time thereafter so long as the same shall be continuing, the non-defaulting party may declare, at its option, this Agreement to be in default and (i) may immediately terminate this Agreement, (ii) may seek enforcement by appropriate court action of the terms hereof and recover damages for the breach hereof, (iii) may exercise any other right or remedy available to it under law or in equity and (iv) may seek any permitted combination of such remedies. No remedy is intended to be exclusive, but each shall be cumulative, and the exercise of any such remedy shall not preclude the simultaneous or later exercise of any other remedy.
- (d) In the event of termination or expiration of this Agreement, Bright Peak will cease performing all services related to the Projects and Client will promptly deliver to Bright Peak payment for any unpaid Project Fees for the portion of the Projects completed (such portion to be determined by Bright Peak and Client in good faith) prior to and including the effective date of termination or expiration to the extent not already paid by Client. Client shall not be entitled to any Project source files or other work product from Bright Peak until such amounts are paid.

10. Miscellaneous.

- (a) Independent Contractors. The parties agree that they are independent contractors under this Agreement, and nothing in this Agreement will be construed as being inconsistent with that status or as creating or implying any employer/employee relationship, partnership or joint venture between Bright Peak and Client.
- (b) Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Colorado, without regard to its conflict of laws principles. Each party to this Agreement agrees that any action relating to or arising out of this Agreement shall be exclusively brought in the courts located in Denver, Colorado.
- (c) Notices. Any notice required or desired to be given with respect to this Agreement shall be in writing and shall be sent by overnight express courier (such as Federal Express), in each case sent to or made at the addresses written below and shall be effective upon receipt.
- (d) Assignment. This Agreement is not assignable by either party without the prior written consent of the other party, which may be withheld in such party's sole discretion; provided that either party may assign this Agreement to an affiliated party upon prior written notice to the non-assigning party.
- (e) No Waiver. No failure by either party to exercise any power given it under this Agreement, or to insist upon strict compliance by the other party of any obligation under this Agreement, and no custom or practice of the parties at variance with the terms of this Agreement will constitute a waiver of the party's right to demand exact compliance with the terms hereof. Any waiver must be in writing to be effective.
- (f) Modification/Headings. This Agreement cannot be altered or modified except by a writing signed by both parties. Captions used herein are for convenience only, and are not a part of this Agreement.

- (g) Counterparts. It is contemplated that this Agreement may be executed in a number of counterparts, each of which shall be deemed an original, but all of which shall together constitute a single original instrument.
- (h) Attorneys' Fees. In any action between the parties relating to this Agreement, the substantially prevailing party shall recover its attorneys' fees and costs from the substantially non-prevailing party. Each party shall bear its own costs in the drafting of this Agreement.
- (i) Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties, and no representations, documents, promises or agreements, oral or otherwise, trade usage, or course of conduct between the parties not embodied herein will be of any force or effect. This Agreement supersedes any prior agreements, commitments, and obligations between the respective parties to this Agreement, and any such prior agreement, commitment or obligation is hereby canceled and of no further force and effect.