



Digital Services Agreement

Additional Terms and Conditions

1. SERVICES PROVIDED

DL will provide to Client Search Engine Optimization (“SEO”) Services in accordance with the SEO Plan (“SEO Plan”), which will be incorporated as part of the Services, as further described in provided SEO proposal documents. The SEO Plan will be configured to market, promote, and optimize Client’s website (“Client Website”). These terms and conditions for services (these “Terms”) are the only terms that govern the provision of services by DL to Client. The accompanying signed proposal, SEO Plan and these Terms comprise the entire agreement between the parties and supersede all prior or contemporaneous understandings, agreements, negotiations, representations, and warranties, and communications, both written and oral. In the event of any conflict between these Terms, the proposal, or the SEO Plan, these Terms will govern unless the SEO Plan expressly states that the terms and conditions or the SEO Plan will control. These Terms prevail over any of Client’s general terms and conditions regardless of whether or when Client submitted its request for proposal, order, or terms. Provision of Services to Client does not constitute acceptance by DL of any of Client’s terms and conditions and does not serve to modify or amend these Terms.

In the fulfillment of Services, writing, images, graphics, logos, infographics, strategy, and other content will be utilized to market and promote Client and the Client Website. This content will either be provided by Client, developed by DL, or created jointly by DL and Client (“Content”).

2. RESPONSIBILITIES OF DL

As specified and described in the SEO Plan, DL will compile, develop, post, and syndicate Content for the purposes of marketing, promoting, and optimizing Client Website. DL will also provide to Client an online Client Dashboard containing current trends, keyword rankings, and other analytics applicable to the SEO Plan.

In keeping with the needs of Client, DL will maintain a designated Account Manager who will serve as Client’s main point of contact for the fulfillment of the Services. If at any time Client desires additional Services outside the scope of their SEO Plan as specified in this Agreement, they may coordinate with their Account Manager to separately purchase those additional Services.

DL will use reasonable efforts to meet any performance dates specified in the SEO Plan, and any such dates will be estimates only.

3. RESPONSIBILITIES OF CLIENT

Client will make available necessary resources and contacts for DL to develop a campaign strategy and perform the Services. This may include all matters relating to the provision of Services reasonably requested by DL, including (but not limited to) scheduled conference calls, webinars, meetings, and timely responses to emails, phone calls, and requested review of Content, deliverables, and developed campaign strategy.

Client will appoint an individual with full authority to provide or maintain any necessary information and approvals as requested by DL (“Client Contact”). The Client Contact will be responsible for coordination and review with the Account Manager, and the consent of the Client Contact for any approvals and decisions will be considered binding upon Client.

Client will provide DL with materials and credentials necessary for DL to perform the Services, including but not limited to access to Content Management Systems (CMS), FTP servers, cPanel logins, social media accounts, business information and strategy including target markets and marketing strategy, a list of all owned domains, access to website analytics services, and other requests listed on the SEO Commencement Form or additionally requested by DL. For any necessary logins that Client has not created, DL will create accounts on behalf of Client with Client’s consent. If Client is unwilling or unable to grant access to any necessary accounts or systems, Client agrees to coordinate with DL to post Content in accordance with DL’s developed release schedule on DL’s behalf.



Client will obtain, or authorize DL to obtain on Client's behalf, and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

If DL's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Client or its agents, subcontractors, consultants, or employees, DL will not be deemed to be in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Client, in each case, to the extent arising directly or indirectly from the prevention or delay.

If either party wishes to change the scope or performance of the Services, it will submit details of the requested change to the other party in writing. DL will, within a reasonable time after such a request, provide a written estimate of the likely time required to implement the change, any necessary variations to the fees and other charges for the Services arising from the Services, the likely effect of the change on the Services, and any other impact the change might have on the performance of this Agreement. Promptly after receipt of the written estimate, the parties will negotiate and agree in writing on the terms of the change (a "**Change Order**"). Neither party will be bound by any Change Order unless mutually agreed upon in writing. And, notwithstanding the above, DL may, from time to time change the Services without Client's consent provided that the changes do not materially affect the nature or scope of the Services or the fees or performance dates set forth in the SEO Plan. DL may in its sole discretion charge for the time it spends assessing and documenting a change request from Client on a time and materials basis in accordance with the SEO Plan.

4. INTELLECTUAL PROPERTY

Ownership of all intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how, and other confidential information, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith, derivative works, and all other rights (collectively "**Intellectual Property Rights**") in and to all documents, work product, and other materials that are delivered to Client under this Agreement or prepared by or on behalf of DL in the

course of performing the Services, including any items identified as such in the SEO Plan (collectively, the "**Deliverables**") except for any of Client's Confidential Information or client materials, will be as outlined in this Section.

Client hereby grants to DL a revocable, non-exclusive, non-transferable, and royalty-free license to use the Client content in the manner provided in any applicable Statement of Work and as otherwise requested by Client; *provided, however*, DL must first receive Client's written approval of any Deliverable or other material before DL directly or indirectly releases or displays any Deliverable or other material to the public which contains Client content. Client may revoke the license at any time.

Client hereby grants DL a revocable, non-exclusive, non-transferable, and royalty-free license, without the right to sublicense (except to DL's subcontractors as necessary for such subcontractors to provide services to Client) to use the Client content identified in each Statement of Work as necessary for DL to provide services under each such respective Statement of Work, including the right to: (i) modify and create derivative works based upon the Client content; and (ii) reproduce the Client content, modified Client content, and derivative works based upon the Client content; *provided, however*, DL must first receive Client's written approval of any Deliverable or other material before DL directly or indirectly releases or displays any Deliverable or other material to the public.

Each Party hereby acknowledges that, except as expressly provided in this Agreement, it does not have, and will not acquire, any right, title, license, or interest in any of the other Party's products, technology, or intellectual property rights as a result of this Agreement or the performance of any obligations hereunder.

DL hereby assigns to Client all of DL's right, title, and interest, including all intellectual property rights, in the Deliverables and Client content and Client content modifications that are accepted and paid for by Client, including all copyright in any works of authorship documenting or relating the Deliverables; provided that nothing in this Agreement will be deemed to grant Client any right to the know-how, techniques, processes, technology, and methods used in the creation of the Deliverables or Client content or Client content modifications.



Services provided by DL are for Client's exclusive benefit. Client will not utilize any Services to promote other companies, products, or websites outside of this Agreement, and will in no way broker, resell, or distribute any of the Services.

5. CONFIDENTIAL INFORMATION

All non-public, confidential, or proprietary information of either party, including, but not limited to, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing (collectively, "**Confidential Information**"), disclosed by one party to the other, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" in connection with the provision of the Services and this Agreement is confidential, and will not be disclosed or copied by the other party without the disclosing party's prior written consent. Confidential Information does not include information that is: (i) in the public domain; (ii) known to the party at the time of disclosure; or (iii) rightfully obtained by the party on a non-confidential basis from a third party. The Parties agree to use the Confidential Information only to make use of the Services and Deliverables. A party will be entitled to injunctive relief for any violation of this Section.

6. AUTHORIZATION

Client fully authorizes DL to act on its behalf to market Client and Client Website by posting Content on any online medium DL deems appropriate, including but not limited to search engines, blogs, forums, and social media, subject to the approval of Content and strategy by Client in writing or email communication.

7. REPRESENTATION AND WARRANTY

DL represents and warrants to Client that it will perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement. DL will not be liable for a breach of the warranty outlined above unless Client gives written notice of defective Services, reasonably described, to DL within seven (7) days of the time when Client discovers or ought to have discovered that the services were defective. Upon DL's receipt of

adequate notice from Client as described above, DL will, in its sole discretion, either: (i) repair or re-perform the Services (or the defective part of the Services); or (ii) credit or refund the price of the Services at the pro rata contract rate. **THE REMEDIES SET FORTH ABOVE WILL BE CLIENT'S SOLE AND EXCLUSIVE REMEDY AND DL'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH ABOVE.**

8. DISCLAIMER OF WARRANTIES

EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 7 ABOVE, DL MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, INCLUDING ANY: (I) WARRANTY OF MERCHANTABILITY; OR (II) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (III) WARRANTY OF TITLE; OR (IV) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

9. LIMITATION OF LIABILITY

IN NO EVENT WILL DL BE LIABLE TO CLIENT OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER THE DAMAGES OR CLAIMED DAMAGES WERE FORESEEABLE AND WHETHER OR NOT DL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT WILL DL'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS ACTUALLY PAID TO DL FOR SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE THE CLAIM ARISES.



Notwithstanding anything in this Section to the contrary, the limitation of liability in this Section will not apply to: (i) liability resulting from DL's gross negligence or willful misconduct; and (ii) death or bodily injury resulting from DL's negligent acts or omissions.

10. FEES AND EXPENSES; PAYMENT TERMS; INTEREST ON LATE PAYMENTS

- a) In consideration of the provision of the Services by DL and the rights granted to Client under the Agreement, Client will compensate DL for Services according to the Strategic Campaign Development Fee and Monthly Investment amount, in accordance with the Payment Plan selected and under the Agreement, the SEO Plan, and these Terms where applicable.

The Strategic Campaign Development Fee will be due and payable upon the execution of this Agreement. Strategic Campaign Development will be considered complete upon the issuance of Client's online Campaign Dashboard credentials ("**Dashboard Live Date**"). Services will begin 30 days after the date of this Agreement, or upon the Dashboard Live Date, whichever is sooner ("**Service Start Date**").

If Client has selected the Month-to-Month option:

The first Monthly Investment Amount will be due up-front. Additional Monthly Investment amounts will become due and payable on a monthly basis beginning one month after the Service Start Date. On each subsequent month thereafter, the Monthly Investment will become due on the same numbered day as the Service Start Date for the duration of this Agreement. For example, if the Service Start Date was January 13th, the next billing date would be February 13th, then March 13th, etc.

If Client has selected a lengthier Prepayment option:

The Prepayment Amount will be due and payable with the first invoice issued upon the execution of this Agreement. Client will have no additional Monthly Investments due for the

number of Prepaid Months, beginning with the Service Start Date. Once the number of months following the Service Start Date has exceeded the number of Prepaid Months, the full non-discounted Monthly Investment amount will become due on the same numbered day as the Service Start Date for the duration of this Agreement. For example, if the Service Start Date was January 13th and 6 months were prepaid, the next billing date for the Monthly Investment Amount would be July 13th, then August 13th, etc.

- b) Client will pay all invoiced amounts due to DL on receipt of DL's invoice. Client will make all payments in US dollars.
- c) In the event payments are not received by DL within 15 days after becoming due, DL will issue notice of the delinquency to Client. If Client fails to make payment within 15 days of the notice, DL may; (i) charge interest on any unpaid amounts at a rate of 1.5% per month or, if lower, the maximum amount permitted under applicable law, from the date the payment was due until the date paid; and (ii) suspend all Services until all amounts due to DL have been paid in full. In the event that DL suspends services, a re-activation fee in the amount equal to 25% of the Monthly Investment amount will apply.
- d) Taxes. Client will be responsible for all sales, use and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by Client under the Agreement.
- e) Upon completion of the Initial Term, DL reserves the right to make adjustments to Pricing to compensate for increased costs of doing business. If a price increase becomes necessary, DL will provide 30-day notice to Client of the increase, and Client will have the option to opt-out of the increase by terminating this Agreement. Client will also have the option to evaluate available Service upgrade and downgrade options made available by DL at that time.
- f) DL is a leading innovator in the digital marketing and technology sector, and we



actively encourage customers to take advantage of modern technology with which to submit payment. Payment by traditional paper check introduces risk of delay into the payment process and takes additional time and effort by both parties to issue and process. In the interests of maintaining the lowest possible pricing and highest levels of uninterrupted service for our customers, any payments made by check will incur a \$35 check processing fee per check.

- g) DL accepts payment (for both Client's protection and DL's) by credit card and ACH. DL requires that Client's payment be made from a business (not personal) account.
- h) Any expenses incurred by DL at Client's direction and approval outside the scope of the agreed-upon Services, such as stock photography licenses, domain registration fees, hosting fees, keyword advertising fees, travel expenses, and any other expenses will be reimbursed by Client to DL.

11. TERM

All Services will begin upon execution of this Agreement. With the exception of lengthier prepayment Agreements, the Initial Term of the Agreement will be month to month, commencing on the Service Start Date. When a prepayment term is complete, the Agreement will automatically renew for an additional 1-month period until terminated by either party with 30-days written notice to the other. Upon termination for any reason, Client will immediately pay to DL all fees due and payable under this Agreement, which will include fees owed through the effective date of termination. If Client desires to terminate this Agreement for cause because of a claimed breach by DL or because of DL's fault, Client will provide DL with 30-days written notice detailing the nature of DL's fault and possible remedies, and DL will have a reasonable period of time (but in no event less than 30- days) to cure such fault.

If Client terminates and opts to transfer Services to a new service provider, DL will make reasonable efforts to work with Client to facilitate a clean transition to the new service provider. DL reserves the right to charge a reasonable hourly rate for transition assistance.

12. TERMINATION

In addition to any remedies that may be provided under this Agreement, DL may terminate this Agreement with immediate effect upon written notice to Client if Client: (i) fails to pay any amount when due under this Agreement and such failure continues for fifteen (15) days after Client's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of the terms of this Agreement, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy, or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

13. WAIVER

No waiver by DL of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by DL. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege under this Agreement precludes any other or further exercise or the exercise of any other right, remedy, power, or privilege.

14. ASSIGNMENT

Client will not assign any of its rights or delegate any of its obligations under this Agreement without DL's prior written consent. Any purported assignment or delegation by Client in violation of this Section is null and void. No assignment or delegation relieves Client of any of its obligations under this Agreement. DL may freely assign its rights and obligations under this Agreement.

15. INDEMNIFICATION

Client agrees to defend, indemnify, and hold harmless DL and its owners, affiliates, subsidiaries, directors, employees, agents, and subcontractors from and against any and all damages, allegations, claims, expenses, and costs of any kind (including reasonable attorneys' fees), liability or suits threatened, made, or



brought arising from or related to: (i) DL's design, creation, provision or use of Content, Services, information, and technologies; (ii) Client's breach of this Agreement; (iii) Client's intentional or knowing infringement of the intellectual property rights, including but not limited to copyrights, trade secrets, trade names, or patents, of any entity or person; (iv) Client's violation of obscenity laws in any country or jurisdiction in which the Content can be viewed and retrieved; (v) or Client's gross negligence or intentional misconduct.

16. DISPUTE RESOLUTION

The parties will resolve any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination, or invalidity of this Agreement (each, a "**Dispute**"), under the provisions of this Section. The procedures set forth below will be the exclusive mechanism for resolving any Dispute that may arise from time to time. The parties to the Dispute will first attempt to resolve any Dispute through negotiation before proceeding to mediation and will attempt to resolve the dispute through mediation before proceeding to formal dispute resolution through the courts. All documents, discovery, and other information related to any dispute, and the attempts to resolve, mediate, or litigate the dispute, will be kept confidential to the fullest extent possible.

Negotiation. If a Dispute arises, any party to the Dispute will give Notice to each other party. After Notice has been given, the parties to the Dispute agree to meet in person and make a good faith effort to settle the Dispute through reasoned negotiations.

Mediation. If the Dispute cannot be resolved through negotiation, the parties agree to attempt to resolve the Dispute by non-binding mediation. The non-binding mediation will be mediated by a neutral individual reasonably acceptable to each of the parties to the Dispute and who has experience and knowledge relating to the Corporation's business. The parties to the Dispute will confer with one another to discuss the selection of a neutral mediator and agree to pursue mediation for a period of at least thirty (30) days after the date on which either party to the Dispute suggests, in writing, that mediation might be appropriate. If the parties to the Dispute are unable to agree on a mediator, the parties to the Dispute will each select one mediator. Together, the mediators chosen by the parties to the Dispute will appoint a third mediator who will act as the mediator. The mediation will occur within

thirty (30) days after the notice of mediation is given unless the parties to the Dispute mutually agree to a later date in writing. The parties to the Dispute will pay their own costs and expenses for the mediation, except the cost of the third-party mediator, whose costs will be borne equally by the parties to the Dispute.

Litigation as a Final Resort. If the Parties cannot resolve a Dispute for any reason, including, but not limited to, a Party's failure to agree to enter into mediation or agree to any settlement proposed by the mediator, a Party may, as a final resort, file suit in a court of competent jurisdiction.

17. NON-SOLICITATION

Client will not solicit DL employees, independent contractors, or consultants or engage them in any work independent of the parties' relationship under this Agreement during the term of the Agreement and for one year thereafter.

18. MISCELLANEOUS

- a) **Notices.** All notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a "**Notice**") will be in writing and addressed to the parties at the addresses set forth in this Agreement or the SEO Plan, or to such other address that may be designated by the receiving party in writing. All Notices will be delivered by personal delivery, nationally recognized overnight courier (with all fees pre- paid), certified or registered mail (in each case, return receipt requested, postage prepaid), or by electronically transmitted PDF sent to the email addresses listed below. Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

DL: DIGITAL LAYER, LLC
6404 International Pkwy, Suite 2200
Plano, TX 75093
Email: info@digilayer.com



CLIENT: Will be sent to the name and address provided in this Agreement.

- b) Governing Law. All matters arising out of or relating to this Agreement are governed, interpreted, and construed under the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether the State of Texas's or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Texas.
- c) The relationship between the parties is that of independent contractors. Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party will have authority to contract for or bind the other party in any manner whatsoever other than as this Agreement explicitly provides.
- d) Submission to Jurisdiction. Any legal suit, action, or proceeding arising out of or relating to this Agreement will be instituted in the federal courts of the United States of America or the courts of the State of Texas, in each case located in the City of Plano, and each party irrevocably submits to the exclusive jurisdiction of these courts in any suit, action, or proceeding.

- e) Neither party will be held responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay is caused by events or circumstances beyond the delayed party's reasonable control.
- f) This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- g) This Agreement may only be amended or modified by written amendment or a new agreement that specifically states that it amends or supersedes this Agreement as applicable and that is signed by an authorized representative of each party.
- h) In the event that any one or more of the provisions contained in this Agreement should, for any reason, be held to be invalid, illegal, or unenforceable in any respect under the laws of the State of Texas or any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction, and this Agreement will be construed as if such invalidity, illegality, or unenforceability had not been contained herein.
- i) This Agreement and its Amendments set forth the entire Agreement and understanding between the parties as to the subject matter hereof and replaces any and all prior agreements (whether written or verbal).