



BETWEEN Spikemail (“Spikemail Ltd”)

AND [Client name] (“The Client”)

Purpose

The purpose of this Agreement is to set out all the terms and conditions for the provision of managed email marketing services provided by Spikemail Ltd to The Client. It is agreed between the parties as follows:

1. APPOINTMENT

1.1 The Client agrees to appoint Spikemail Ltd and Spikemail Ltd agrees to provide managed email marketing services pursuant to the terms and conditions contained in this Contract.

2. RESPONSIBILITIES AND DUTIES

2.1 Spikemail Ltd will provide the services and undertake the responsibilities and duties set out in the proposal approved by The Client. Spikemail Ltd will use its best endeavors to commence, undertake and complete its services in a diligent and professional manner.

3. CONFIDENTIALITY

3.1 Spikemail Ltd acknowledges that in the course of this Contract they may have access to confidential information concerning the business, affairs, property, customers, clients or principals of the Client (“the Information”) and that the disclosure of any part of the Information to any unauthorised person or source may cause damage to the Client. Accordingly, Spikemail Ltd shall use their best endeavors to prevent the use, publication or disclosure of any part of the Information unless otherwise agreed with the Client.

4. OWNERSHIP

4.1 Spikemail Ltd acknowledges that the Information is the property of the Client.

4.2 If there is third party software that Spikemail Ltd has to use in conjunction with its services to the Client then the Client will obtain the right to use that software and the Client will pay all costs, fees and license charges and perform all other obligations in respect of that software. The Client hereby indemnifies Spikemail Ltd in respect of all such costs, fees and license charges and other obligations to such third parties.

4.3 The product provided by Spikemail Ltd to the client shall remain the property of Spikemail Ltd until such time that Spikemail Ltd has received payment in full in compliance with the approved proposal.

5. UNSOLICITED ELECTRONIC MESSAGES ACT

5.1 The Client agrees that by using the Service to send emails to an address The Client has obtained without the consent of such addressee is a violation of this Agreement and international and local Email Marketing Standards as outlined by the Unsolicited Electronic Messages Act 2007.

The Client may not acquire email addresses through list purchase, list rental, list exchange, partner mailings or similar types of email campaigns.

Any form of email prospecting (i.e. where there is no consent or existing business relationship between The Client and the recipient is prohibited. Email addresses used for the Service must not be gathered through methods such as scraping, or dictionary harvesting attacks. Email Addresses must not be sold, shared or exchanged with third parties unless such sale, sharing or exchange is disclosed at the point of address collection.

The Client agrees not to authorize the sending of any email that could be expected in Spikemail Ltd's reasonable discretion, to provoke complaints regarding unsolicited email.

6. DISCLAIMER

6.1 Spikemail Ltd will in no circumstances be held liable to the Client for any loss, loss of profits or contracts, damage, costs or expenses of any kind arising out of the use of the system supplied or the operation of any products or services supplied by Spikemail Ltd, whether such loss or damage arises directly or indirectly from the programs or services supplied or from any information contained in, or omissions from, the documentation, or breach of obligations, or the Unsolicited Electronic Messages Act 2007, set out in this Contract.

7. FEES

7.1 The Client shall pay Spikemail Ltd's fees specified in the approved proposal or in accordance with any modifications as the parties may from time to time agree upon in writing.

7.2 Spikemail Ltd shall render to the Client an invoice for the supply of services. Such invoices shall be due for payment as per the Payment Terms set out in the approved proposal. Where projects extend over a number of months then Spikemail Ltd may invoice on a monthly basis for services performed and the Payment Terms in specified in the approved proposal shall apply. Any breach of the Payment Terms by the Client shall make the Client liable for interest on the unpaid portion of the relevant invoice at the interest rate of 18% per annum from the date the payment is overdue. In addition any debt collection costs may be recovered in full from the Client.

7.3 In the event that the Client does not adhere to the Payment Terms Spikemail Ltd shall have the right to cease their work for the Client until payment is made for outstanding invoices.

8. ADDITIONAL CHARGES

8.1 The Client will be charged additionally for any travel, parking, toll calls, courier fees and any other disbursements incurred in connection with and necessary for the provision of the services by Spikemail Ltd. These charges are additional to the fees specified in the approved proposal. Travel time shall be charged at half the hourly rate and 65 cents per km and shall be charged for travel to and from the Client site from Spikemail Ltd's business address. The other disbursements will be charged at cost. Spikemail Ltd shall properly

record such costs and provide receipts to the Client where reasonably applicable.

9. WARRANTY

9.1 Where the service in Schedule 1 provided by Spikemail Ltd results in an output such as a database, application, website or other product ("the Product") Spikemail Ltd will correct all development errors detected by the Client or Spikemail Ltd within the limited warranty period of one month from the date of installation or delivery of service free of charge. Although every effort is made to thoroughly test the Product before implementation, Spikemail Ltd does not warrant that the Product will be free of errors. Additional charges referred to in clause 7 will remain chargeable within the warranty period. This warranty is invalidated if (1) the Product is altered by someone other than Spikemail Ltd unless Spikemail Ltd has given consent in writing or (2) if payment is not received by Spikemail Ltd as per the Payment Terms specified in the approved proposal.

10. TERM AND TERMINATION OF CONTRACT

10.1 The Contract is for the period specified in the approved proposal. Spikemail Ltd may cancel this Contract if the Client fails to make payments of fees upon invoices being presented as per the approved proposal.

10.2 Spikemail Ltd may cancel this Contract if the Client becomes insolvent or bankrupt (or being a company goes into liquidation or receivership) or ceases or threatens to cease business. Any such cancellation by Spikemail Ltd shall not affect the Client's obligation to pay Spikemail Ltd for services performed to the date of cancellation.

11. DISPUTE RESOLUTION

11.1 All disputes arising out of or in respect of this Contract shall be settled in New Zealand under the Arbitration Act 1996 or any statutory or amendments or re-enactments thereof. Each party shall appoint an arbitrator and the arbitrators shall appoint their umpire before proceeding on the reference. No person in the employ of or acting as agents for or otherwise actively interested in either of the parties shall be eligible to act as arbitrator or umpire. If either party fails to appoint an arbitrator within 14 days of notice in writing requiring him or her to do so the arbitrator appointed by the other party shall act for both parties as if he or she had been appointed sole arbitrator by consent.

Spikemail Ltd

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