



# BEKON

## DIGITAL BILLBOARD AGREEMENT TERMS AND CONDITIONS

### PARTIES

BEKON LIMITED of a duly incorporated company under number 5862844, having its registered offices c/- DJCA LIMITED, Level 3, 50 Victoria Street, Christchurch Central, Christchurch, 8013 (Bekon)  
{NAME OF SECOND PARTY} of [Address of Second Party], [Occupation of Second Party] (Client)

### BACKGROUND

A. [Bekon provides LED digital billboards for advertising display etc]

### Executed as an Agreement

#### Executed by

{NAME OF FIRST PARTY}

in the presence of

\_\_\_\_\_  
Director/Authorised Signatory

\_\_\_\_\_  
Director/Authorised Signatory

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

#### Executed by

{NAME OF SECOND PARTY}

in the presence of

\_\_\_\_\_  
Director/Authorised Signatory

\_\_\_\_\_  
Director/Authorised Signatory

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

# AGREEMENT

## 1. Definitions and Interpretation

1.1 Definitions: In this Agreement unless the context otherwise requires:

Advertiser means the owner of the company, product or service being advertised on the site;

Advertising Material means the Content to be displayed on the Billboard.

Advertising Order means the advertising order agreed to by the parties in relation to a Display and/or Campaign, which may take any form, and which must include the following information:

- 1.1.1 client contact information, including reference number (if applicable);
- 1.1.2 Display start date;
- 1.1.3 Display end date;
- 1.1.4 Site;
- 1.1.5 the charges and costs;
- 1.1.6 any discounts (if applicable); and
- 1.1.7 amount due. Rental Value

Agency means a Client that is signing on behalf of an Advertiser;

Agreement means this agreement (including the Schedules) as it may be amended from time to time;

Authority means any body that has statutory and/or contractual rights to exercise control over Bekon's rights to display Advertising Material on the Sites, and includes (but is not limited to) local councils, landlords, Advertising Standards Authority, New Zealand Transport Authority, and regional councils;

Billboard means: LED Billboard

Business Day means a day other than a Saturday or a Sunday on which registered banks are open for business in Christchurch

Campaign means Site or package of Sites booked on a single Agreement;

Client means the person or company representing a certain company, product or service and entering into an agreement with Bekon;

Display means the display of the Advertising Material on the Site as part of a Campaign;

Pre-emptible Site means a site that is booked by the Clients subject to it being available when requested by the Client and not subject to another Agreement; and

Site means a digital billboard that Bekon is entitled to make available for advertising

Term means the term of the Display, which commences on the Display start date and terminates on the Display end date, in accordance with the Advertising Order agreed to between the parties.

1.2 Construction of Certain References: In this Agreement, unless the context otherwise requires, any reference to:

costs includes all legal, accounting, engineering, advisor, insurance, contractor, development and employee costs, together with any other contributions, donations, charges, prices, rates, fees, liabilities (whether contingent or realised), damages (whether liquidated, equitable or otherwise at common law) or fines;

event includes any act, omission, transaction or other occurrence;

includes or including are to be construed as being followed by "without limitation,";

a person includes an individual, body corporate, an association of persons (whether corporate or not), a trust, an estate, an agency of an estate in each case, whether or not having separate legal personality and whether incorporated or existing in New Zealand or elsewhere; and

rights includes any rights, authorities, discretions, remedies or powers.

1.3 Interpretation: In this Agreement unless the context otherwise requires:

1.3.1 A reference to any party to this Agreement includes, as far as is consistent with the provisions of this Agreement, that party's successors in title and assigns.

1.3.2 Reference to a statute or statutory provision, or order or regulation made under it, includes that statute, provision, order or regulation, as amended, modified, re-enacted or replaced from time to time (whether before or after the date of this Agreement) and to any previous statute, statutory provision, order or regulation amended, modified, re-enacted or replaced by that statute, provision, order or regulation.

1.3.3 An agreement, representation, warranty or indemnity on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally.

1.3.4 If a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.

1.3.5 If an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.

1.3.6 References to:

- (a) one gender include each other gender;
- (b) the singular include the plural and vice versa;
- (c) a clause mean a clause in this Agreement unless otherwise specified; and
- (d) an agreement includes that agreement as modified, supplemented, novated or substituted from time to time.

1.3.7 Unless otherwise stated, reference to the sign "\$" or the word "dollar" in this Agreement will be construed as a reference to New Zealand dollars.

1.3.8 Headings are to be ignored in construing this Agreement.

## 2. Standard Terms and Conditions of Business

2.1 The following terms and conditions apply to all advertising services provided by Bekon and form part of this Agreement unless otherwise expressly agreed in writing by Bekon. This Agreement will not bind Bekon until execution by an authorised representative of Bekon.

## 3. Advertising Campaigns

3.1 The specific details of the Campaign are as set out in the Advertising Order (attached as Schedule to this Agreement).

3.2 The details of any additional Campaigns will be set out in separate Agreements/Advertising Orders.

## 4. Charges, Costs and Payment

4.1 Unless otherwise agreed in writing, charges for media costs will be invoiced monthly.

4.2 Where the GST rate changes, the amount of GST payable by the Client to Bekon may vary from that stated in this Agreement and will be determined by the provisions of the

Goods and Services Tax Act 1985.

4.3 In addition, the Client will pay all costs relating to:

4.3.1 the projection and/or display of Advertising Material;

4.3.2 importing of Advertising Material, including GST, freight and customs clearance, and delivery to then specific Bekon installers responsible for the Site;

4.3.3 any costs incurred by Bekon in receiving or forwarding Advertising Material;

4.3.4 all costs incurred by Bekon in recovering payment from the Client including (without limitation) all debt collector's fees or commissions, solicitors fees and disbursements and company clerical costs; and

4.3.5 any merchant fees incurred by Bekon in relation to payments the Client makes by credit card.

4.4 All costs associated with design, artwork and preparation of Advertising Material for a Site will be payable by the Client or charged to its account.

4.5 Payment of all invoices must be made in full on or before the 20th day of the month following invoice date.

4.6 Where the Client has indicated that any costs associated with production, installation or display of the Advertising Material should be charged directly to a third party, the Client remains responsible for the costs until such time as they are paid in full by that third party.

4.7 If payment is not made in full on or before the due date for payment, Bekon may do either of the following (without limiting any other right it may have):

4.7.1 charge the Client default interest on the amount outstanding at the rate which is 3% above the overdraft rate charged by Bekon's principal bankers (plus GST) from the due date for payment until payment is received by Bekon compounding monthly; or

4.7.2 terminate this Agreement and remove any Advertising Material (provided however that Bekon will not be obliged to remove any Advertising Material).

4.8 Where the Client is acting as an agent for the Advertiser, the Client and the Advertiser will be jointly and severally liable for payment of all money due under this Agreement and a reference to the Advertiser in relation to payment will include a reference to the Client. The Client warrants to Bekon that the Client has executed this Agreement on behalf of the Advertiser as agent for the Advertiser and with Advertiser's authority.

## 5. Provision of Artwork by Client

5.1 The Client will provide all materials and artwork that are required for Display in accordance with Bekon's policies in effect at the time, including without limitation the manner of transmission to Bekon and the lead-time prior to the commencement of the Campaign. Bekon will not be required to publish any advertisement that is not received in accordance with such policies.

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5.2 All changes to Advertising Materials made by the Client must be made in writing to Bekon, and must be received prior to the lead-time deadline prior to the commencement of the Campaign.

5.3 If it is specified in this order that Bekon will carry out production in respect of the Advertising Material:

5.3.1 The Client must, at least hours before the commencement of the Term, provide Bekon with a copy of the artwork for the Advertising Material at such address as Bekon may direct, which is to scale and supplied as finished reflection or electronic art and which is, in Bekon's opinion, in compliance with this Agreement, suitable for display and of a nature which will be approved by any Authority whose approval is required.

5.4 The Client is required to physically proof its own materials artwork before submission to Bekon. Bekon accepts no responsibility for any errors in print or the electronic image quality resulting from poor photography or artwork. If physical proofs are required, an additional charge will apply. All graphics will be printed displayed as per the format provided by the Client.

5.5 If the Client uses third parties to serve the advertisement, the Client will be responsible for such third parties' compliance with this Agreement.

## 6. Client Warranties as to Ownership

6.1 The Client warrants that it possesses full legal right to use, and to allow Bekon to use as contemplated in this Agreement, all information or materials or artwork of whatever kind and whatever form delivered by the Client to Bekon and that no part of any advertisement used on or in connection with this Agreement will infringe the rights (including intellectual property rights) of any person or will fail to comply with the Advertising Standards or with any obligation imposed by law or equity. Approval by Bekon of any artwork or the display of any Advertising Materials on a Site does not constitute a waiver of this warranty.

6.2 The Client will indemnify Bekon and its officers, directors, employees, and agents for all liabilities, losses, damages, costs, expenses and charges which Bekon may suffer or incur (including any costs incurred on a solicitor/own client basis) as a result of any breach of this warranty or as a result of Bekon being deemed to be a manufacturer of the Advertising Material for the purposes of the Consumer Guarantees Act or otherwise liable to any third party in relation to the Advertising Material on a Site.

6.3 The Client's obligations pursuant to these warranties survive the termination of this Agreement.

## 7. Delivery, display & Maintenance

7.1 If it is specified in this Agreement that the Advertising Material is changing under another existing Agreement (Copy Change date), the Client must deliver to Bekon, the Advertising Material in a form ready to display no later than 48 hours prior to the commencement of the Term.

7.2 Bekon will arrange the display of the Advertising Material on an agreed Site and will retain the right to use its own contractors for any such display.

7.3 Bekon will make every reasonable effort to have the Advertising Material displayed at the Sites within five Business Days of the Start date or Copy Change date. Bekon will not be responsible for any delay in the

commencement of the Display caused by any act or thing beyond its reasonable control, including where bad weather renders the commencement of Display unsafe or impracticable. Where a delay in the commencement of the Display is caused solely by Bekon, the Client will be allocated either a pro rata abatement of the charges or to a pro rata extension to the display of the Advertising Material on that Site, or a combination of both subject to Bekon Media's discretion.

7.4 At the termination of a Campaign, Bekon reserves the right to dispose of the Advertising Material unless the Client has notified Bekon that it requires the Advertising Material to be retained and either forwarded to a specified address or collected by the Client within one month of the termination of the Campaign.

## 8. Inability to Display

8.1 In the event that:

8.1.1 any Site or proposed Site becomes permanently or temporarily unavailable to Bekon during the Campaign; or

8.1.2 any Site or proposed Site become excessively burdensome to secure; or

8.1.3 any Display is or becomes completely or substantially obstructed, or partially destroyed or defaced; or

8.1.4 Bekon for any reason changes or terminates Display at a specific Site or ceases to use any specific Site Bekon will have the right to display the Client's Advertising Material at an acceptable replacement location and all terms of this Agreement will remain in affect.

8.2 If the parties cannot agree on another acceptable location owned or controlled by Bekon (if any) within ten (10) Business Days after notice by one party to the other of the occurrence of such an event (Notice Period), this Agreement will terminate, with such termination to be effective thirty (30) Business Days after the expiry of the Notice Period, and Bekon will refund the Client on a pro-rata basis for any pre-paid then outstanding Display time as of the effective date of termination.

8.3 Bekon will not be responsible for any interruption to the electrical power supply to any Site and the Client will not be entitled to any abatement of Monthly Rates during the period of such interruption.

## 9. Advertising Standards

9.1 The Client must provide a copy of the materials and artwork comprising the Advertising Materials to Bekon for approval no later than 48 hours prior to the commencement of the Campaign.

9.2 If Bekon considers any Advertising Material is illegal or in breach of the standards issued by the Advertising Standards Authority (ASA) (as may be modified from time to time) (Advertising Standards) Bekon may elect not to display that Advertising Material, in which case the following will apply:

9.2.1 Bekon may refer the matter to the ASA for decision. If the ASA determines that the advertising is in breach of the Advertising Standards, the Client will be liable to Bekon for:

(a) the full amount of the charges under this Agreement (even if the Advertising Material has not been displayed);

(b) all costs of removing any Advertising Material that has been posted; and

(c) all costs incurred by Bekon in referring the matter to the ASA.

9.2.2 If Bekon elects not to refer the matter to the ASA, no charges will be payable by the Client (but neither will Bekon be liable to the Client for any reason whatsoever).

9.3 If Bekon has been compelled by ASA to remove the Advertising Material, the Client will be liable to Bekon for:

9.3.1 the full amount of the charges under this Agreement; and

9.3.2 all costs of removing any Advertising Materials that have been posted.

9.4 Bekon accepts no responsibility for the Advertising Material prepared by or at the request of the Client.

9.5 Notwithstanding any other term of this Agreement, Bekon reserves the right to approve the content of all Advertising Material. Bekon further reserves the right to reject or cancel any Advertising Material, Display or Campaign or positioning commitment at any time if Bekon believes on reasonable grounds that the Advertising Material, Display or Campaign may subject Bekon to criminal or civil liability, or may bring Bekon's business and reputation into disrepute.

## 10. Limitation of Liability

10.1 Except for any express warranty contained in this Agreement, all warranties, descriptions, representations or conditions whether implied by statute or otherwise by law, trade, custom or otherwise are expressly excluded to the fullest extent permitted by law.

10.2 Bekon will not be liable in any event for any consequential, indirect or special damage, loss or injury of any kind suffered by the Client (including but not limited to loss of profits or opportunity) even if such loss or damage was foreseeable or Bekon had been advised of the possibility of it occurring.

10.3 If Bekon should be held liable to the Client, the total liability of Bekon whether in tort (including negligence), contract or otherwise, for any loss, damage or injury which the Client may suffer or incur as a direct or indirect result of any act or omission of Bekon will be limited, except where statute expressly requires otherwise, to the lesser of:

10.3.1 the charges and costs actually paid by the Client to Bekon under this Agreement; and

10.3.2 the actual loss or damage suffered by the Client.

10.4 Bekon shall not be responsible for any failure or delay in the performance of this Agreement where such failure arises out of any fire, act of God, industrial dispute, strike (whether legal or illegal), lockout, curtailment of cessation of traffic ordered by local or central government, contractor negligence, labour or material shortage, transportation interruption of any kind, work slowdown, or any other condition affecting production or delivery in any manner beyond Bekon's control, carelessness or any other act or thing beyond Bekon's reasonable control.

10.5 The Client acknowledges that Bekon has entered into this Agreement in reliance upon the limitation of liability contained in this clause [10], and that same is an essential basis of the agreement between the parties.

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**11. Default, Cancellation and Termination**

- 11.1 In the event that:
  - 11.1.1 any amount payable by the Client to Bekon is overdue or in Bekon's opinion the Client is unlikely to be able to meet its payment or other obligations to Bekon;
  - 11.1.2 the Client breaches any other term of this Agreement or fails to meet any other obligation to Bekon; or
  - 11.1.3 the Client becomes insolvent, has a receiver appointed in respect of all or some of its assets, makes or is likely to make an arrangement with its creditors or has a liquidator (provisional or otherwise) appointed, or is placed under statutory or official management, then, in addition to and without prejudice to its other remedies Bekon will be entitled to, in its absolute discretion:
  - 11.1.4 cancel all or any part of this Agreement (and/ or any other Agreement which may be in place between the parties for the provision of advertising space at the time any of the events in clause 11.1 take place) which remain unfulfilled;
  - 11.1.5 terminate this Agreement (and/or any other Agreement which may be in place between the parties for the provision of advertising space at the time any of the events in clause 11.1 take place) immediately;
  - 11.1.6 require the Client to pay any costs of removal of Advertising Material displayed under this Agreement (or any other Agreement which may be in place between the parties for the provision of advertising space at the time any of the events in clause 11.1 take place).
- 11.2 The Client may cancel this Agreement at any time up to the date that is three months prior to the commencement of the Campaign with 50% of the full media cost payable upon cancellation for the full term of the Agreement. If the Agreement is within the three month start date, 100% cancellation is payable. All cancellation notices or requests must be made in writing and the Client must confirm receipt of the cancellation notice or request with its Bekon representative.

**12. Dispute Resolution**

- 12.1 Any dispute or difference arising out of or in connection with this Agreement, or the subject matter of this Agreement, including any question regarding its existence, validity or termination (Dispute), will first be referred to mediation.
- 12.2 Upon a Dispute being referred to mediation, the parties will agree on a suitable person to act as mediator. If the parties fail to agree on the identity of the mediator within 10 Business Days of the Dispute being referred to mediation, the mediator will be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc, upon the application of any party.
- 12.3 The mediation will be conducted in accordance with the Mediation Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc in force at the time the Dispute is referred to mediation.
- 12.4 If the Dispute is not resolved by mediation in accordance with the above provisions, the Dispute will be referred to and finally resolved by arbitration.
- 12.5 The arbitration will be conducted in accordance with the Arbitration Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc in force at the time the Dispute is referred to arbitration.
- 12.6 The arbitral tribunal will consist of one arbi-

trator to be agreed upon by the parties. If the parties fail to agree on the identity of the arbitrator within 10 Business Days from the date upon which the Dispute is referred to arbitration then the arbitrator will be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc, upon the application of any party.

- 12.7 The place of the arbitration will be Christchurch, New Zealand.
- 12.8 Clause [12] of this Agreement does not prevent any party from seeking urgent interlocutory or declaratory relief from a Court of competent jurisdiction where, in that party's reasonable opinion, that action is necessary to protect that party's rights.
- 12.9 While any Dispute is continuing the parties will continue to perform their obligations under this Agreement.

**13. General**

- 13.1 The Sites remain the property of Bekon at all times. Title to Advertising Material supplied under this Agreement remains with Bekon until all amounts owing by the Client in accordance with this Agreement have been paid in full and in cleared funds.
- 13.2 Bekon has the right to remove Advertising Material that is the subject of this Agreement at any stage, if compelled to by an Authority. On this event occurring, Bekon will use reasonable endeavours to find a suitable replacement site. If Bekon does not find a suitable replacement site in Bekon's discretion, then Bekon is entitled to cancel that Agreement and the Client shall be entitled to an abatement of charges only for the remaining period of this Agreement.
- 13.3 The Client will not deduct or withhold any amount (whether by way of set off, counterclaim or otherwise) from any money owing at any time to Bekon. Bekon may deduct any amount owing by the Client from any amount owing by Bekon to the Client.
- 13.4 Bekon discloses that it may be paid commissions by third-parties recommended or introduced to the Client by Bekon where any such third-party performs production or other work for the Client, and the Client consents to Bekon receiving any such commissions or other.
- 13.5 A waiver by any party of the obligations of the other party under this Agreement will not prevent the subsequent enforcement of that party's rights and will not be treated as a waiver of any kind.
- 13.6 Bekon may assign its right or obligations under this Agreement to another party. The Client may only assign, transfer or sub-license its rights with the prior written consent of Bekon. A change in control or beneficial ownership of the Client will be deemed an assignment and will require Bekon's prior written consent in accordance with this clause.
- 13.7 Any notice given by one party to the other under this Agreement will be sufficiently served or made if sent by email, post or facsimile transmission to the address set out on the front of this Agreement. The notice will be treated as having been received by or served upon the recipient party on the third day after the day in which it is posted or on the actual day if sent by email or facsimile.
- 13.8 Neither party may pledge the credit of the other nor represent itself as being the other party nor an agent, partner or employee of the other party and neither party may hold itself out as such nor as having any power

or authority to incur any obligation of any nature, express or implied, on behalf of the other. Nothing in this Agreement will be deemed to constitute either party an agent, partner or employee of the other.

- 13.9 This Agreement constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior agreements, correspondence or understandings between them. No express or implied representation or promise given by a Bekon representative shall bind Bekon unless contained or embodied in this Agreement.
- 13.10 If at any time Bekon receives legal advice that any part of this Agreement is or is likely to be in breach of the law, void or unenforceable, Bekon may, at its option, elect to terminate this Agreement immediately upon notice to the Client (and without any liability to the Client) or sever that part of this Agreement from the remaining terms and conditions and in that case the remaining terms and conditions will apply and be enforceable as though the severed part had not been included in this Agreement??
- 13.11 Bekon may amend these terms and conditions at any time at its discretion.
- 13.12 Neither termination nor expiry of this Agreement will affect the accrued rights and liabilities of the parties at the time of termination or expiry. All indemnities given by the Client will survive termination or expiry of this Agreement and termination or expiry will not affect the Client's obligations to comply with the provisions of this Agreement.
- 13.13 This Agreement may be executed in two or more counterparts each of which will be deemed an original and together will constitute one and the same agreement.
- 13.14 This Agreement is to be governed by and construed in accordance with the laws of New Zealand.
- 13.15 Each party irrevocably and unconditionally agrees that the Courts of New Zealand have jurisdiction to hear and determine any proceedings brought in relation to this Agreement.