

## BUSINESS SERVICES REPORT

<b>Contract Parties</b>	This contract is between You (TBC) and THEM (the "TBC")
<b>Contract Type</b>	XXX Agreement
<b>Contract Overview</b>	The Agreement provides a contract between YOU and THEM whereby the XXX agrees to create social media content to promote your products for a XXX day period in exchange for a one off payment of \$TBC.
<b>Key Obligations</b>	<p>Your key obligations:</p> <ol style="list-style-type: none"> <li>1. You must approve creative content within 2 days of receiving a draft from the XXXX;</li> <li>2. The agreed fee will be paid to THEM at the end of the Agreement period upon receipt of an Invoice; and</li> <li>3. If the Agreement is terminated prior to the end of the agreed period, you must pay THEM for work completed up to the date of termination (see comments below in paragraph 3 of our Suggested Negotiation Points).</li> </ol> <p>XXXX key obligations:</p> <ol style="list-style-type: none"> <li>4. The XXXXX will create social media posts as required by the schedule of activity in Article 5 of the Agreement. Posts will use your products and will be consistent with the XXXX's social media aesthetic;</li> <li>5. The XXXXX is not permitted to work with any competitors during the term of the Agreement;</li> <li>6. The XXXXX must reply to any communication from You within 48 hours of receipt;</li> <li>7. The XXXXX will follow your brand on social media for a period of 2 months from the commencement of the Agreement;</li> <li>8. Posts created under the Agreement must remain on the platform for XXXXX a period of 3 months (see comments below in paragraph 9 of our Suggested Amendments);</li> <li>9. The XXXXX must ensure that posts clearly disclose the connection/relationship between You and the XXXXX. (See comments below in paragraph 6 of our Suggested Amendments in relation to ensuring all posts conform to New Zealand's advertising standards)</li> </ol>
<b>Key Risks</b>	<p>The following are suggested risks. You should seek legal advice on how to proceed further:</p> <ol style="list-style-type: none"> <li>1. Notwithstanding that You are able to review posts created by the XXX in relation to your products, You will have no control over how the XXXX may otherwise represent themselves on their social media platform during the term of the Agreement and how this may reflect on You as a representative of your brand</li> </ol>
<b>Key Liabilities</b>	<p>The following are suggested liabilities. You should seek legal advice on how to proceed further:</p> <ol style="list-style-type: none"> <li>1. You are required to pay the XXX the agreed fee provided that they complete the posts required of them. Payment of the fee is not linked to the performance/success of the posts</li> </ol>

<b>Suggested Amendments</b>	<p>The following are suggested key amendments. You should seek legal advice on how to proceed further:</p> <ol style="list-style-type: none"> <li>1. The dates in the Agreement need to be updated prior to signing. Dates currently provided for are June, July and August 2020. Article 3:</li> <li>2. The words (“Termination Date”) need to be added to the end of the first paragraph. The term is used through-out the Article, but has not been defined. Article 8:</li> <li>3. The third paragraph needs to be amended by deleting the words “an infringement suit in federal court” and replaced with “the breach in court”. The existing wording is not relevant in NZ law. Article 9:</li> <li>4. The words “And Compliance with FTC Guidelines” should be removed from the heading. This is not relevant to NZ Law.</li> <li>5. The Article refers throughout to the “Company”. Use of this term is inconsistent with the rest of the Agreement. To avoid confusion, all references to “Company” should be changed to “Advertiser”</li> <li>6. Suggest that a new paragraph be added as follows: “The XXXX will ensure that all content created for the Advertiser meets the Advertising Standards Code 2018 and all other relevant Advertising Standards Authority codes” Article 12:</li> <li>7. Article 12 provides that if one party wishes to amend the Agreement and the other party does not agree to such an amendment, then the contract can be terminated. The whole Article as drafted should be deleted and replaced with the following: “ Any amendments to this Agreement must be recorded in writing and mutually agreed between the parties” Article 14:</li> <li>8. The last sentence of paragraph (b) beginning “The parties agree that this choice of law.....” should be deleted entirely. It is not necessary under NZ law. Article 15</li> <li>9. Paragraph (h) should be deleted and replaced with “The XXXX posts promoting the Advertiser should remain on the XXXX’s social media platform(s) for a minimum of three months from the date of posting”</li> <li>10. The reference to “Contractor” in paragraph (h) should be changed to “XXXX” in order to be consistent with the defined terms used in the Agreement</li> </ol>
<b>Suggested Negotiation Points</b>	<p>The following are suggested negotiation points. You should seek legal advice on how to proceed further:</p> <p>Article 3:</p> <ol style="list-style-type: none"> <li>1. Article 3 provides that, where a party has committed a material breach of the contract the other party may terminate the contract within 14 days (if the breach is not or cannot be remedied after receiving notice of the breach). As the full term of the contract is only 30 days, suggest that this period be significantly less e.g five (5) days</li> <li>2. Suggest that the 6<sup>th</sup> paragraph be amended by adding the words “and/or failing to comply with the regulations/rules of the social media</li> </ol>

	<p>platforms on which the XXXX is posting and/or relevant Advertising Standards Authority codes”.</p> <p>3. The 7<sup>th</sup> paragraph of the Article provides that if the Agreement is terminated prior to the termination date You will pay the XXXX any and all fees earned up until the termination. It should be specified on what basis such fees should be paid ie at a daily rate (so that if, for example, the contract is terminated 15 days through a 30 days contract they receive 50% of the fee) or based on content posted as at the termination date (ie if the XXXX was hired to make 4 posts and they only made 1 post prior to the date of termination, they receive 25% of the agreed fee):</p> <p>Article 4:</p> <p>4. The first line in Article 4 provides that the Agreement creates an exclusive relationship between You and the XXXX. The Article goes on to specify that the XXXX is not to work with any of your competitors during the term of the Agreement. Suggest that a new paragraph be added as follows “The XXXX acknowledges that the Advertiser is permitted to work with other social media XXXXs during the term of this Agreement and such XXXXs may be contracted by the Advertiser to promote the same products as the XXXX has agreed to promote for the Advertiser”.</p> <p>5. Suggest that you may want to include a definition of what is considered to be a competitor.</p> <p>Article 6:</p> <p>6. Article 6 records that the fees will be paid to the XXXX “upon producing the results as per the format already delivered to you”. Is payment of the fee contingent on the social media posts receiving a certain number of views? Or is it paid regardless? If the former, then this should be recorded in the Agreement ie the minimum number of views should be specified.</p> <p>7. Suggest the following is added to the start of the clause “Provided that the XXXX has completed the activities required in Article 5”</p> <p>8. Article 14(c) provides that disputes under the Agreement will be settled by Arbitration. You may wish to consider whether Mediation would be a more appropriate form of dispute resolution for this Agreement. It is a less formal than Arbitration and the focus is on negotiation between the parties. Arbitration is more structured and requires parties to adhere to the Arbitration Act.</p> <p>Article 15:</p> <p>9. Suggest a new obligation on the XXXX is added to the Agreement which provides that, during the term of the Agreement, the XXXX will not act in such a way as to bring You or Your products in to disrepute.</p> <p>Other:</p> <p>You may wish to consider specifying the product that you will be supplying the XXXX in order to complete the Agreement and specify</p>
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	whether the product is to be kept by the XXXX following expiry of the Agreement or whether it needs to be returned
<b>Assumptions made by Contract Check</b>	<ol style="list-style-type: none"> <li>1. Both parties are located in New Zealand and the work is to be undertaken in New Zealand.</li> <li>2. Both parties are aware of their right to obtain independent legal advice regarding the Contract and aware that this report does not constitute independent legal advice.</li> <li>3. The parties have fairly and accurately represented their respective skills and abilities to perform the obligations governed by the Contract.</li> <li>4. The parties are entering into the Contract of their own volition.</li> <li>5. The parties to the Contract are each aware of relevant legislation that might be applicable to this Contract and their legal rights, obligations and liabilities arising out of that legislation. Such rights, obligations and liabilities are separate from and additional to those contained in the Contract.</li> </ol>

**Please note:** This report and any advice that Contract Check provides about your contract is business advice which has been informed by our legal and business teams. Nothing on this report should be construed in any way as legal advice. If you're looking for specialised legal advice, we suggest you contact a lawyer who can assist or visit [www.nzls.org.nz](http://www.nzls.org.nz) (The New Zealand Law Society) to find one.