

## **Terms of Use: Jolted News**

Please note by agreeing to use the Jolted News software, you agree to the following:

### **1. SPAM**

#### **1.1 Anti-Spam Policy:**

Through Jolted News (a service provided by Jolted Pixel Media and Marketing), it provides web site operators a variety of tools and resources to collect visitor email addresses and to create, launch, and manage online marketing campaigns. This service may not be used for the sending of unsolicited email (sometimes called "spam"). We are not responsible for detecting spam. It is the responsibility of the user.

Jolted Pixel has a no tolerance spam policy. User accounts will be terminated if they send unsolicited email messages. Please report any suspected abuse to [info@joltedpixel.com](mailto:info@joltedpixel.com) or call 604-792-1797. If applicable, please unsubscribe from the newsletter using the link at the bottom of the email if you no longer wish to receive emails from the sender.

All users of our Jolted News software must agree to only sending permission-based email newsletters. This means that all recipients sent to must have opted-in to receive communications from the sending organization. An opt-in can occur either via a sign-up form on a web site, at a point-of-sale sign-up form, or on a physical sign-up sheet. Any opt-in form should include a clear description of what will be sent and how often it will be sent. Lists that are purchased may not be used within the Jolted News system.

#### **1.2 Policy Enforcement:**

Jolted Pixel has a no tolerance spam policy. The strict measures we take to enforce our policy include, but are not limited to:

- A record is saved of every email that is sent through the system.
- Verification is used to automatically send all of your new subscribers an email confirming their interest in receiving emails from you. This enables us to know that people are only receiving your e-mails if they opt-in for it.
- Any customer found to be using Jolted News for spam will be terminated from using the system.
- We welcome anyone to contact us regarding the suspicion that you are using your Jolted News E-mail Marketing System for Spam.
- We reserve the right to determine what classifies as spam.

### **1.3 Ensuring you are not sending spam.**

The following is a list of clues that suggest you may be sending spam through your Jolted News account.

- Are you using an imported purchased list of any kind?
- Are you sending mail to anyone who has not agreed to join your mailing list?
- Does the e-mail subject line of your message contain any false or misleading information?
- Are you sending to distribution lists or mailing lists which send indirectly to a variety of email addresses?

Answering yes to any of these questions may label your emails as spam and could result in account termination.

## **2. SERVICES AND SUPPORT**

2.1 Services provided by Jolted News (Jolted Pixel) are subject to all parts of this Terms of Use agreement. Any other notices regarding this agreement, or any other guidelines, rules or operating policies that Jolted Pixel may establish are also subject to this Terms of Use Agreement. This Agreement (or policy) may be updated, and all users will be subject to all revised versions.

2.2 Jolted Pixel Services are available only to persons who can form legally binding contracts. Services are not available to individuals under the age of 18. Those who do not qualify are not permitted to use Jolted Pixel Services.

2.3 Jolted Pixel Services enable web sites to sign up web page visitors, collect and retrieve visitor sign-up data, and develop e-mail marketing campaigns with visitors.

2.4 Services will be subject to yearly subscriptions fees (“Paid Services”, “Services Rendered”). Access to the Services will be disabled until payment is received. Paid Services are billed yearly or pre-paid, in advance, according to the Fee Schedule provided to you by Jolted Pixel. Amounts paid for the services are not refundable. If Jolted Pixel is for any reason unable to receive your payment, your account could be disabled until payment is received. This does not cancel your account so although your account could be temporary disabled until payment is received, term length remains the same and charges will still apply. We reserve the right to send unpaid accounts to a collection agency if they are not paid within three (3) months of invoice date.

2.5 You must complete the registration form on the Sign Up page in order to use the Services. You will provide accurate information about yourself as requested in the registration form. As part of the registration process, you will identify an email address for your Jolted News account. You are responsible for maintaining

the security of your account, passwords, and files, and for all uses of your account and of the Services in your name. Jolted News reserves the right to refuse registration of, or cancel, accounts it deems inappropriate.

2.6 Technical support will be done on an email basis. Advanced support or training may require additional fees not outlined in package costs. General sales questions may be answered by phone.

2.7 As a Jolted News user, you acknowledge that you will purchase a certain number of subscribers spots and sending credits. If you have more than the amount purchased, sending will be disabled until you reduce the number of subscribers or upgrade your account.

2.8 Jolted Pixel reserves the right to adjust service costs. You will be made aware of any adjustments.

### **3. RESTRICTIONS & RESPONSIBILITIES**

3.1 This is an Agreement for Services, and you are not granted a license to any software by this Agreement. You will not, directly or indirectly: reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of, or found at or through the Services or any software, documentation, or data related to the Services ("Software"); remove any proprietary notices or labels from the Services or any Software, modify, translate, or create derivative works based on the Services or any Software; or copy, distribute, pledge, assign, or otherwise transfer or encumber rights to the Services or any Software. The Services shall be used for your internal business (which includes civic or charitable) purposes only and you shall not use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party.

3.2 You acknowledge and agree that Jolted Pixel Services, company names, logos, design marks, slogans, and all related products and services are the property of Jolted Pixel Media and Marketing. Your use of the Services grants no ownership or title in the Service, not does it give the rights to sell the product. All ownership remains in Jolted Pixel Media and Marketing.

3.3 You represent, covenant, and warrant that you will use the Services only in compliance with the Agreement and all applicable laws (including but not limited to policies and laws related to spamming, privacy, obscenity, or defamation). You agree you will not access or otherwise use third party mailing lists in connection with preparing or distributing unsolicited email to any third party. You hereby agree to indemnify and hold harmless Jolted Pixel against any damages, losses, liabilities, settlements, and expenses (including without limitation costs and reasonable attorneys' fees) in connection with any claim or action that arises

from an alleged violation of the foregoing or otherwise arising from or relating to your use of the Services. Although Jolted Pixel has no obligation to monitor the content provided by you or your use of the Services, Jolted Pixel may do so and may remove any such content or prohibit any use of the Services it believes may be (or is alleged to be) in violation of the foregoing.

3.4 The Services may only be used for lawful purposes. Material that is obscene, threatening, harassing, libelous, or in any way a violation of intellectual property laws or a third party's intellectual property rights is strictly prohibited.

3.5 For every email message sent in connection with the Services, you acknowledge and agree that the Services may automatically add an identifying footer stating "Powered by Jolted News" or a similar message. You agree to cooperate with and provide reasonable assistance to Jolted Pixel in promoting and advertising the Services.

3.6 In using the varied features of the Services, you may provide information (such as name, contact information, or other registration information) to Jolted Pixel. We may use this information and any technical information about your use of the Services to tailor its presentations to you, facilitate your movement through the Service, or communicate separately with you. We will not provide information to companies you have not authorized, and Jolted Pixel will not permit the companies that get such information to sell and redistribute it without your prior consent.

3.7 Jolted Pixel will not use your customer list or any other customer information for any other purposes than those intended with the service.

#### **4. TERMINATION**

4.1 Term of Agreement. This Agreement commences on the date your services initially began - the Effective Date – and continues until the time specified in section 4.2. Services shall automatically renew for additional periods at the same contractual term as the previous Agreement at the list price in effect at the time of renewal unless Customer terminates as defined herein.

4.2 Termination. You may terminate this Agreement by e-mail to [info@joltedpixel.com](mailto:info@joltedpixel.com) or mailing a letter to 8856 Prest Rd. Chilliwack, B.C. V2P 8C9. A termination message must be in writing to be deemed creditable. Jolted Pixel has no liability to your or any third party because of such termination. All parts of this Agreement will survive termination.

4.3 Outstanding Fees. Termination shall not relieve Customer of the obligation to pay any fees accrued or payable to Jolted Pixel prior to the effective date of termination.

4.4 Customer Data. After cancellation, Jolted Pixel shall have no obligation to maintain or provide any Customer Data and may, at its sole discretion, thereafter delete all such data from its systems or any other forms otherwise in its possession or under its control. If you are past due on payment of your invoice, we reserve the right to delete your data and discontinue Services in their entirety without notice to the Customer and such discontinuance would not result in any direct or third party liability whatsoever for Jolted Pixel.

## **5. WARRENTY DISCLAIMER**

USE OF THE SERVICES AND ANY RELIANCE BY YOU UPON THE SERVICES, INCLUDING ANY ACTION TAKEN BY YOU BECAUSE OF SUCH USE OR RELIANCE, IS AT YOUR SOLE RISK. Jolted Pixel DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. THE SERVICES ARE PROVIDED "AS IS" AND Jolted Pixel DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

Your sole and exclusive remedy for any failure or nonperformance of the Services shall be for Jolted Pixel to use commercially reasonable efforts to adjust or repair the Services.

## **6. LIMITATION OF LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT, CONTRACT, OR OTHERWISE, SHALL Jolted Pixel OR ANY OF ITS UNDERLYING SERVICE PROVIDERS, BUSINESS PARTNERS, INFORMATION PROVIDERS, ACCOUNT PROVIDERS, LICENSORS, EMPLOYEES, DISTRIBUTORS OR AGENTS (COLLECTIVELY REFERRED TO FOR PURPOSES OF THIS SECTION AS "Jolted Pixel") BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY MONEY DAMAGES, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, COVER, RELIANCE OR CONSEQUENTIAL DAMAGES, EVEN IF Jolted Pixel SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY. IN THE EVENT THAT NOTWITHSTANDING THE FOREGOING, Jolted Pixel IS FOUND LIABLE TO YOU FOR DAMAGES FROM ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE), THE LIABILITY OF Jolted Pixel TO YOU WILL BE LIMITED TO THE AMOUNT YOU PAID FOR THE SERVICE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL

DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO YOU.

## **7. MISC**

7.1 If any provision of the Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

7.2 Jolted Pixel and you agree that the Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of the Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No delay or omission by either party in exercising any right or remedy under this Agreement or existing at law or equity shall be considered a waiver of such right or remedy.

7.3 No agency, partnership, joint venture, or employment is created as a result of the Agreement, and you do not have any authority of any kind to bind Jolted Pixel in any respect whatsoever.

7.4 In any action or proceeding to enforce rights under the Agreement, the prevailing party will be entitled to recover its costs and attorneys' fees.

7.5 The Agreement shall be governed by the laws of Canada.