

General Terms & Conditions

1. APPOINTMENT AND TERM

1.1 **Appointment:** You appoint WAZE to provide the Services and WAZE agrees to provide such Services during the Term in accordance with this Agreement.

1.2 **Term of Agreement:** This Agreement commences on the Start Date and will continue until terminated in accordance with this Agreement (**Term**).

1.3 **Term for Services:** WAZE will provide each Service for the term set out in the Key Terms (**Service Term**). You may cancel a Service prior to the end of the applicable Service Term on the provision to WAZE of not less than 30 days' prior written notice (**Cancellation Period**). If you do not notify us within the Cancellation Period, the Service Term will be extended for a further equivalent period of time.

2. OBLIGATIONS

2.1 **WAZE Ltd** In addition to any other obligations set out in this Agreement; WAZE will provide the Services to you:

- (a) in accordance with the Specification in all material respects, the terms of this Agreement and all applicable laws;
- (b) exercising reasonable care, skill and diligence; and
- (c) using suitably skilled, experienced and qualified staff.

2.2 **Customer:** You will:

- (a) provide WAZE with all necessary information and materials and feedback on the Services and Deliverables in a timely manner that WAZE may reasonably require in order to provide the Services, ensuring such information and materials and feedback are complete, accurate and up to date in all material respects;
- (b) co-operate with WAZE in all matters relating to the provision of the Services;
- (c) obtain and maintain all necessary licences, permissions and consents that may be required for the provision of the Services before the Start Date and during the Term including in accordance with clause 5;
- (d) notify WAZE of any change made by you or any third party to any website in relation to which we are providing the Services as any such change may impact the performance of the Services, in particular the tracking of any advertising campaign;
- (e) only use the Services and Deliverables or any part of them for the express purposes for which they have been provided by WAZE and you will not access and use

the Services and Deliverables for any purpose that is illegal or prohibited by these Terms; and

(f) comply with all applicable laws and clause 2.4(a) at all times in relation to your use of the Services.

2.3 Third Party Platforms: Where shown in the relevant Service description, certain Services may be delivered through or are dependent upon the use of certain Third Party Platforms or systems (**Third Party Platforms**). You agree that:

(a) you will provide WAZE (and its employees, agents, consultants and subcontractors as applicable), with access to your accounts on any Third Party Platforms as reasonably requested and required by us so we can provide the Services to you;

(b) you will ensure, and be solely responsible for ensuring, that any previously paid services that you have established in your name in relation to the Services that have not been set up or that are not managed by WAZE have been closed or de-activated before WAZE commences provision of the Services;

(c) your use of those Services is subject to the terms and conditions of the relevant Third Party Platform referred to in the Services Description or as otherwise notified to you by WAZE LTD

(d) where WAZE has established an account on a Third Party Platform in relation to the provision of Services to you, such account(s) will remain the property of WAZE and will not be transferrable to you on the termination or expiry of the Services or this Agreement;

(e) WAZE does not control the Third Party Platforms and will not be liable for any system errors (including application, software, hardware, downtime, loss of access or information or other damage except to the extent caused directly by WAZE negligence or wilful misconduct), the quality or performance of the Third Party Platform or its services or any acts or omissions of the operator of the Third Party Platform;

(f) the Fees payable may include certain charges or costs relating to use of the Third Party Platform or its services as set out in the Services Description at Schedule 1, or otherwise as notified to you by WAZE. You are responsible for any other charges or costs related to use of Third Party Platforms in relation to the provision of the Services, for which you will promptly reimburse WAZE on receipt of a valid invoice where those costs are initially incurred by WAZE; and

(g) you will not use, or misuse, any Third Party Platform or any Service in any way that could impair the functionality of any Third Party Platform, the delivery of the Service, or other systems or networks used to host or make available the Service or that could impair the ability of any other user to access or use the Third Party Platform or any Service; and

(h) you will not attempt to view, access or copy any deliverables, materials or data other than that which you are authorised to access.

2.4 **Customer Default:** Subject to clause 7.3 and without prejudice to any other right or remedy available to WAZE if a Customer's act, omission or failure to perform any of its relevant obligations (**Customer Default**) prevents, delays or otherwise interferes with WAZE performance of any of its obligations under the Agreement, then:

(a) WAZE will be entitled to suspend its performance of the Services until you remedy the Customer Default, during which time WAZE will continue to invoice you for the provision of the Services subject to the Term being extended by the length of time the Services were suspended;

(b) WAZE will be entitled to rely on a Customer Default to relieve it of its obligations under this Agreement in each case to the extent a Customer Default prevents or delays WAZE performance of any such obligations;

(c) WAZE will not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from WAZE failure or delay to perform any of its obligations to the extent a Customer Default prevents or delays WAZE performance of any of such obligations; and

(d) you will reimburse WAZE on written demand for any costs or losses sustained or incurred by WAZE arising directly or indirectly from the Customer Default.

3. FEES AND INVOICING

3.1 **Fee payment:** In consideration of the provision of the Services by WAZE you will pay WAZE the Fees by credit card as indicated in the Key Terms or by any other method the parties may agree from time to time and in accordance with this Agreement.

3.2 The Fees for the Services are calculated on a monthly basis and exclude Goods and Services Tax unless otherwise stated.

3.3 **Invoicing:** WAZE will provide you with valid tax invoices for the Fees on a monthly basis in advance or as otherwise agreed by the parties in writing.

3.4 Subject to clause 3.5 below, you will pay in full any invoice received from WAZE on or before the specified due date on the invoice or in accordance with any other arrangements previously agreed in writing between the parties (**Due Date**).

3.5 If you have a genuine dispute with an invoice or any part of it, you will notify WAZE of the reasons for such dispute within 7 Business Days of receipt of the invoice. You agree to pay the part of the invoice that is not in dispute and any further dispute will be addressed pursuant to clause 10.

3.6 **Overdue amounts:** Subject to clause 3.5, if you fail to make full payment of any invoice by the Due Date, WAZE may, at its sole discretion:

- (a) charge a 10% late payment fee on all overdue amounts (excluding interest under this clause 3.6(a));
- (b) charge an administrative fee to cover any administrative costs incurred by WAZE in respect of your failure to make full payment by the Due Date;
- (c) cancel or suspend access to the Services, Customer accounts and/or any phone number connected to a Customer's account;
- (d) terminate this Agreement in accordance with clause 6;
- (e) cancel any rebate, discount or allowance due or payable by WAZE as at the date the invoice becomes overdue;
- (f) institute any recovery process as WAZE thinks fit at your cost.

4. EXCLUSIONS

4.1 All warranties, terms, guarantees and conditions that are not expressly set out in this Agreement are excluded to the extent permitted by law.

4.2 You agree and represent that you are acquiring the Services for the purposes of trade. The parties agree that:

- (a) to the maximum extent permissible by law, the New Zealand Consumer Guarantees Act 1993 does not apply to the supply of the Services or the Agreement; and
- (b) it is fair and reasonable that the parties are bound by this Agreement, including this clause.

5. INTELLECTUAL PROPERTY

5.1 **IP owned by WAZE** All pre-existing Intellectual Property Rights in or used by WAZE in delivering the Services, and any Intellectual Property Rights of general application developed or created in delivering the Services (in each case other than Intellectual Property Rights in any materials provided by you) are and shall remain the exclusive property of WAZE or its licensors, unless otherwise agreed by the parties in writing.

5.2 **IP owned by you:** As between the parties to this Agreement, all Intellectual Property Rights in the following will remain your property:

- (a) any content you supply to us (including without limitation copy, images and video) in connection with the Services; and
- (b) any Deliverables or content created by WAZE specifically for you as part of the Services (together the **Customer IP**).

5.3 **Licence of content:** You grant to WAZE or shall procure the direct grant to WAZE of, a fully paid-up, worldwide, non-exclusive, royalty-free licence to use, copy, adapt, modify and make available any Deliverables that WAZE produces for you, and any other materials or content that you provide to WAZE in relation to the provision of the Services (including any content supplied by you including text, images and video) for the purpose of enabling WAZE to provide the Services and/or the Deliverables and in relation to the operation of its business.

5.4 **Our use of Customer IP:** You represent and warrant that you hold all rights necessary to provide the Customer IP to WAZE for use by WAZE in performing the Services and that such use will not infringe the rights of any third party. You indemnify and hold WAZE harmless from and against any claim, cost, proceeding or liability brought against or incurred by WAZE as a result of any claim by a third party of infringement of their Intellectual Property Rights relating to WAZE use of any Customer IP as part of the provision of the Services.

6. TERMINATION

6.1 **Mutual termination rights:** Without affecting any other right or remedy available to it, either party may terminate this Agreement at any time with immediate effect upon written notice to the other party, if that other party:

- a) commits a material breach of any term of this Agreement and, where the breach is remediable, fails to remedy the breach within 10 Business Days of being notified in writing to do so;
- b) has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of external administration, or ceases to continue business for any reason.

6.2 **WAZE termination rights:** Without affecting any other right or remedy available to it, WAZE may:

- (a) terminate this Agreement at any time without cause by giving you not less than 30 days' written notice;
- (b) terminate this Agreement with immediate effect on written notice to you if:
 - (i) you fail to pay any amount due under this Agreement to WAZE by the Due Date; or
 - (ii) you undergo a change of control.

6.3 **Suspension of Services:** Without affecting any other right or remedy available to it, WAZE may suspend the supply of Services under this Agreement or any other contract between you and WAZE if:

- (a) you fail to pay any amount due under this Agreement by the Due Date;

(b) you become subject to any of the events listed in clauses 6.1(b) or WAZE reasonably believes you are about to become subject to any of them.

6.4 Consequences of termination: On termination of this Agreement:

(a) you shall immediately pay to WAZE all of WAZE outstanding unpaid invoices and interest. Where any Services have been supplied but an invoice has not yet been issued, WAZE shall issue an invoice, which shall be payable by you immediately on receipt; a

(b) Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry.

6.5 Clauses with continuing effect: Termination or expiry of this agreement will not affect any provisions of this agreement which are expressed, or by implication are intended, to survive termination or expiry of this Agreement.

7. LIABILITY

7.1 Maximum liability: The total liability of WAZE to you under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty or otherwise, will not exceed the Fees paid and/or payable by you to WAZE in accordance with the Agreement in any 12 month period commencing from the Start Date or any anniversary of the Start Date.

7.2 Excluded loss: Except for your liability for payment of the Fees to WAZE neither party is liable to the other under or in connection with the Agreement for any loss of profits, data, anticipated savings, sales or business, revenue, and/or goodwill of any kind or any indirect, consequential, incidental or special loss or damage.

7.3 No liability for the other's failure: Neither party will be responsible, liable, or held to be in breach of this Agreement, for any failure to perform its obligations under the Agreement or otherwise, to the extent the failure is directly caused by the other party failing to comply with its obligations under the Agreement, or by the negligence or misconduct of the other party or its personnel.

8. CONFIDENTIALITY

8.1 Non-disclosure: Each party undertakes that it shall not at any time during the Agreement (and for a period of 1 year after expiry or termination of the Agreement), disclose to any person any Confidential Information concerning the business affairs, customers, clients or suppliers of the other party, except as permitted by clause 8.2 below.

8.2 Permitted disclosure: A party may disclose the other party's Confidential Information:

- (a) for the purpose of performing the Agreement or exercising its rights under the Agreement;
- (b) if required by law (including under the rules of any stock exchange); and
- (c) if it is publicly available through no fault of the recipient of the Confidential Information or its personnel.

8.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Agreement.

9. PRIVACY

9.1 **Applicable law:** WAZE will only collect and process personal information in accordance with applicable laws, including the requirements of the New Zealand Privacy Act 1993.

9.2 **Consent:** You consent to our collection, use and storage of your personal information for the purposes of supplying the Services, carrying out credit checks, debt collection, enforcing any rights under this Agreement and providing you with information about goods or services we think might be of interest to you.

9.3 **Your rights:** You have the right to access personal information that we hold about you and to request correction of that information.

9.4 You acknowledge that you have the necessary consents for any personal information supplied to WAZE by you, including any customer data supplied:

- (a) for the purpose of sending marketing communications; and
- (b) for importing into another system or platform.

9.5 You indemnify and hold WAZE harmless from and against any claim, proceeding or liability brought against or incurred by WAZE as a result of any failure by you to obtain consent for, or to comply with all applicable laws relating to, any processing of personal information.

10. DISPUTES

10.1 **Good faith negotiations:** If any dispute or difference arises between the parties under or in connection with this Agreement, both parties will endeavour in good faith to settle the dispute by agreement.

10.2 **Obligations continue:** Each party must, to the extent possible, continue to perform its obligations under the Agreement even if there is a dispute.

10.3 **Right to seek relief:** This clause 10 does not affect either party's right to seek urgent interlocutory and/or injunctive relief.

11. GENERAL

11.1 **Amendment of terms:** WAZE reserves the right to review and amend these General Terms and Conditions at any time and from time to time. WAZE will notify you in writing in advance of any changes.

11.2 **Force majeure.** Neither party shall be in breach of this Agreement nor liable for any failure to perform, or delay in performing, any of its obligations under this Agreement if such failure or delay results from events, circumstances or causes beyond its reasonable control.

11.3 **Waiver:** A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and signed by the waiving party. Any such waiver will not constitute a waiver of any subsequent right or remedy.

11.4 **Relationship of parties:** WAZE is an independent contractor. Nothing in this Agreement is intended to constitute a relationship of employment, joint venture, agency (except in relation to WAZE operation of accounts on Third Party Platforms on your behalf), trust, partnership or other fiduciary relationship between the parties. No party has authority to bind or incur debts on behalf of the other party.

11.5 **Severability:** If any provision of this Agreement is or becomes invalid, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this agreement.

11.6 **Variation:** No variation of this Agreement will be effective unless it is in writing and signed by each party (or their authorised representative).

11.7 **Entire agreement:** The Agreement sets out everything agreed by the parties relating to the Services and supersedes and cancels anything discussed, exchanged or agreed prior to the Start Date. The parties have not relied on any representation, warranty or agreement relating to the subject matter of this Agreement that is not expressly set out in the Agreement, and no such representation, warranty or agreement has any effect from the Agreement's start. Without limiting the previous sentence, for the purposes of section 5D of the Fair Trading Act 1986 (FTA), the parties acknowledge and agree that they are contracting out of sections 9, 12A and 13 of the FTA in respect of all matters covered by this Agreement and it is fair and reasonable that the parties are bound by this clause 11.7.

11.8 **Assignment:** Neither party may assign or transfer any right or obligation under the Agreement without the prior written approval of the other (not to be unreasonably withheld). The first party remains liable for its obligations under the Agreement despite any approved assignment or transfer.

11.9 **Agreement not enforceable by third parties:** This agreement does not and is not intended to confer any benefit on or create any obligation enforceable at the suit of any person other than the parties.

11.10 **Notices:** Any notice or other communication required to be given to a party under or in connection with this Agreement must be in writing and sent by email to the following address: accounts@idigital.co.nz. Any notice or communication will be deemed to have been received and sufficiently served on successful transmission or, if dispatched after 5pm, on the next Business Day after dispatch.

11.11 **Counterparts:** This agreement may be executed in any number of counterparts (including by scanned copy) all of which, when taken together, will be treated as making up the one document. The date on which the last counterpart is executed will be the date of the agreement.

11.12 **Law:** The Agreement is governed by, and is to be interpreted in accordance with, the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with the Agreement.

12. INTERPRETATION

12.1 **Definitions:** Unless the context otherwise provides, terms are defined as indicated in the Key Terms, as set out below or as defined in the body of the Agreement.

(a) **Business Day:** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general business in New Zealand.

(b) **Confidential Information:** any information that is not public knowledge and that is obtained from the other party in the course of, or in connection with, this Agreement, including this Agreement and any Intellectual Property rights owned by WAZE

(c) **Deliverables:** all documents, products and materials developed by WAZE or its agents, contractors and employees specifically for delivery to you as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

(d) **Intellectual Property Rights or IP:** includes patents, copyright, business names and domain names, goodwill and the right to sue for passing off, rights in computer software, database rights, rights to use, and protect the confidentiality of, Confidential Information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection that subsist or will subsist now or in the future in any part of the world.

(e) Services Description: the description or specification of the Services as set out in Schedule 1 to this Agreement and/or published by WAZE on its website at www.idigital.co.nz.

12.2 **Interpretation:** In this Agreement:

- (a) clause and other headings are for ease of reference only and do not affect the interpretation of the Agreement;
- (b) words in the singular include the plural and vice versa; and
- (c) a reference to:
- (i) a party to this Agreement includes a party's permitted assigns; and
- (d) "including" and similar words do not imply any limit.

Schedule 1: Services Description

WEBSITE DEVELOPMENT SERVICES

WEBSITE OR ECOMMERCE SITES.

The following terms apply if you engage WAZE to design and produce your website ("site"):

- Final payment for site design and production services is required before your site goes live.
- You will have a maximum of two design reviews and two build reviews to provide us with feedback on the production of your site.
 - A "build review" refers to where content is added to a designed site.
 - A "design review" refers to where the design and layout of the site is completed.
- You must provide review feedback in a timely manner. If feedback is not provided within two months of a request, we may at our discretion require final payment to be made immediately.
- WAZE will not be responsible for any maintenance, upgrades or issues with the site once it has gone live.
- If your site is produced on the **Squarespace platform** and operated under WAZE Squarespace account on your behalf, you agree that:
 - if you do not pay your monthly hosting fee by the Due Date, WAZE reserves the right to suspend or remove your site;

- o if your site is removed, you may lose access to any content already on the site and WAZE will not be responsible for supplying this content to you;
- o WAZE is not responsible for your search engine ranking; and
- o you will comply with Squarespace Terms & Condition (see www.squarespace.com).
- If your site is produced on the **BigCommerce platform** it will be owned and operated by you and you agree that:
 - o you are solely responsible for making any payments in relation to the service directly to BigCommerce or to any other parties providing the third party applications that you use; and
 - o you will comply with BigCommerce Terms & Conditions (see <http://bigcommerce.com/>).

MARKETING SERVICES

GET NOTICED - GOOGLE ADWORDS OR DISPLAY ADVERTISING ON THE GOOGLE DISPLAY NETWORK &/OR THE FACEBOOK PLATFORM.

The following terms apply if you engage WAZE to provide marketing services:

- As part of providing these marketing services to you, we will set up, manage and optimise advertising campaigns on the Facebook and/or Google AdWords platform(s) on your behalf.
- We will place advertising or post content for your business on the Facebook and/or Google AdWords platform(s) on your behalf.
- As part of the set up, we will add conversion tracking code to your site to allow us to optimise for conversions (such as someone purchasing or enquiring about your products or services which we will set up and operate on your behalf.
- The monthly charges for this service include our payments to Google or Facebook for advertising your business (“Advertising Spend”) and WAZE fee for managing and optimising your account and your advertising.
- While we will make our best efforts to manage your Advertising Spend (money paid to the platform we are advertising on such as Google or Facebook), some months this spend may be over or under the allocated split of Advertising Spend or Management fees. In that event, we will endeavour to correct it in the preceding months by increasing or decreasing your advertising spend.
- If you make changes to your site you need to tell us as soon as possible as these changes may impact the performance or tracking of your advertising campaign.
- For AdWords, we will conduct keyword research to understand which search terms to target for your business.

- You must comply with Google's terms and conditions available online at <https://billing.google.com/payments/termsandconditionsfinder> as if you were a "Customer".
- You must comply with Facebook's terms and conditions available online at <https://business.facebook.com/policies/?ref=pf>

GET FOUND - SEO SEARCH ENGINE OPTIMISATION

SMART CALL TRACKING

The following terms apply if you WAZE provides Smart Call Tracking to you:

- A Call tracking number is phone number used to identify call that came from your advertising campaign.
- Call tracking numbers must only be used for tracking results from the use of WAZE services and must not be used for any other purpose without our express permission.
- Your package will include a certain number of call minutes. You will be charged for any minutes used over that allocation.
- Call minutes do not roll over into following months.
- All telephone numbers provided as part of this services are provided by WAZE or its carrier and are provided to you while you use this service only. You acknowledge that you have no rights to these numbers if you or WAZE terminate this service of the Agreement.
- You acknowledge and agree that WAZE has no control over the quality of the service that telecommunication carriers provide, and therefore WAZE is not responsible for and cannot guarantee the quality of the call.
- You must comply with Delacon's Terms and Conditions available online at www.delacon.co.nz.

GET SOCIAL - ENGAGE

- We will create original content based on agreed themes that we will discuss as part of your content strategy.
- Each article will be approx. 350- 500 words, one round of amends.
- Monthly reporting on the level of engagement will be provided
- Visual content including images & video to be supplied by client or can be quoted separately