



Terms and Conditions

Top Rank Digital General Terms

Term, Renewals & Termination (including any trial period)

1. APPOINTMENT AND TERM

1.1 Appointment: You appoint Top Rank Digital to provide the Services and Top Rank Digital 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: Top Rank Digital 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 Top Rank Digital of not less than 2 billing cycles 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.

1.4 Early Termination Fee: If customer cancels during the "cooling-off period" there will be no penalties but if customer cancels outside the "cooling-off period" the Early Termination Fee is 50% of the remaining contract.

2. OBLIGATIONS

2.1 Top Rank Digital: In addition to any other obligations set out in this Agreement; Top Rank Digital 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 Top Rank Digital with all necessary information and materials and feedback on the Services and Deliverables in a timely manner that Top Rank Digital 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 Top Rank Digital 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 Top Rank Digital 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 Top Rank Digital 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 Top Rank Digital (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 Top Rank Digital have been closed or de-activated before Top Rank Digital 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 Top Rank Digital;
- (d) where Top Rank Digital 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 Top Rank Digital and will not be transferable to you on the termination or expiry of the Services or this Agreement;
- (e) Top Rank Digital 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 Top Rank Digital's 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 Top Rank Digital. 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 Top Rank Digital on receipt of a valid invoice where those costs are initially incurred by Top Rank Digital; 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 Top Rank Digital, if a Customer's act, omission or failure to perform any of its relevant obligations (Customer Default) prevents, delays or otherwise interferes with Top Rank Digital's performance of any of its obligations under the Agreement, then:

(a) Top Rank Digital will be entitled to suspend its performance of the Services until you remedy the Customer Default, during which time Top Rank Digital 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) Top Rank Digital 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 Top Rank Digital's performance of any such obligations;

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

(d) you will reimburse Top Rank Digital on written demand for any costs or losses sustained or incurred by Top Rank Digital 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 Top Rank Digital, you will pay Top Rank Digital 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: Top Rank Digital 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 Top Rank Digital 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 Top Rank Digital 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, Top Rank Digital 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 Top Rank Digital 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 Top Rank Digital as at the date the invoice becomes overdue;
- (f) institute any recovery process as Top Rank Digital 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 Top Rank Digital: All pre-existing Intellectual Property Rights in or used by Top Rank Digital 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 Top Rank Digital 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 Top Rank Digital specifically for you as part of the Services (together the Customer IP).

5.3 Licence of content: You grant to Top Rank Digital, or shall procure the direct grant to Top Rank Digital of, a fully paid-up, worldwide, non-exclusive, royalty-free licence to use, copy, adapt, modify and make available any Deliverables that Top Rank Digital produces for you, and any other materials or content that you provide to Top Rank Digital in relation to the provision of the Services (including any content supplied by you including text, images and video) for the purpose of enabling Top Rank Digital 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 Top Rank Digital for use by Top Rank Digital in performing the Services and that such use will not infringe the rights of any third party. You indemnify and hold Top Rank Digital harmless from and against any claim, cost, proceeding or liability brought against or incurred by Top Rank Digital as a result of any claim by a third party of infringement of their Intellectual Property Rights relating to Top Rank Digital's 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 Top Rank Digital termination rights: Without affecting any other right or remedy available to it, Top Rank Digital 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 Top Rank Digital 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, Top Rank Digital may suspend the supply of Services under this Agreement or any other contract between you and Top Rank Digital 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 Top Rank Digital 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 Top Rank Digital all of Top Rank Digital's outstanding unpaid invoices and interest. Where any Services have been supplied but an invoice has not yet been issued, Top Rank Digital 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 Top Rank Digital 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 Top Rank Digital 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 Top Rank Digital, 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: Top Rank Digital 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 Top Rank Digital 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 Top Rank Digital harmless from and against any claim, proceeding or liability brought against or incurred by Top Rank Digital 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: Top Rank Digital reserves the right to review and amend these General Terms and Conditions at any time and from time to time. Top Rank Digital 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: Top Rank Digital is an independent contractor. Nothing in this Agreement is intended to constitute a relationship of employment, joint venture, agency (except in relation to Top Rank Digital's 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@Top Rank Digital.co.nz](mailto:accounts@TopRankDigital.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 Top Rank Digital.

(c) Deliverables: all documents, products and materials developed by Top Rank Digital 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).

(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 Top Rank Digital on its website at www.TopRankDigital.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.

13. Cancellation Fee:

Marketing Campaigns: If you cancel your marketing campaign after 7 days of signing a contract, there will be a \$250+GST Admin Fee charged to your account and is due immediately. If you cancel your marketing campaign after 90 days of signing a contract you will be required to pay for 2 billing cycles worth of services as a cancellation fee. If your marketing campaign is Google Ads, you will only be required to pay the management fee of this time period, not the full amount. •

Websites: If you cancel your website services after 7 days of signing a contract, there will be a \$1000+gst Fee charged to your account as cancellation Fee and is due Immediately.

Hosting Transfers: If you wish to move your website away from us, we can help you do so. There will be a one-off cost of \$250+gst required for the admin and transfer fee.

Cancelling contract: If we don't receive payment within a timely manner or had communication from the customer we have the right to cancel your contact and charge administration fee of \$250.00+GST

14. Top Rank Digital Call Tracking: What we'll provide

- Call tracking with Avanser (a third party vendor).
- An Avanser login in order to see reports.
- A daily report with all calls received in the last week. What you need to do
- You are responsible for ensuring that your PABX or other network equipment is programmed, as specified by Top Rank Digital or any carrier.
- You will reasonably cooperate with Top Rank Digital and any carrier involved in the provision of the Top Rank Digital Call Tracking service to allow Top Rank Digital (and any such carrier) to establish and supply the Call Tracking service safely and efficiently.
- You will be responsible for updating code on your website with the required tags around each phone number that will be tracked. If this is not done then call tracking cannot go ahead.
- Any equipment at your premises used to provide Call Tracking services through another supplier may be disconnected upon transfer to Top Rank Digital. It is your responsibility to notify your current supplier of the change in provision of your services and to arrange forth with the removal of any equipment.

- Top Rank Digital will charge you a fee for each successful or failed/rejected port-in of a landline telephone number. You should ensure that all complex services (including but not limited to line hunt, DSL, diversions, ISDN) are completely removed from the landline telephone number before requesting Top Rank Digital or its carrier to port-in the number. Failure to remove all complex services may result in the port-in being rejected by the incumbent carrier. Important things you need to know about Top Rank Digital Call Tracking You acknowledge and agree that:

- Top Rank Digital Call Tracking is an inbound service and requires you to maintain a separate phone line and number
- Top Rank Digital Call Tracking cannot and should not be used to make calls to emergency services
- You may only use the telephone numbers allocated to you for the purposes of tracking Top Rank Digital advertising. If you use the telephone numbers for any other purpose (e.g. on business cards, letterheads, flyers, websites etc), then the Top Rank Digital Call Tracking function will cease to operate
- Top Rank Digital cannot guarantee that details about every call will be recorded with complete accuracy
- You agree to reimburse Top Rank Digital at the set rate for any minutes you use in excess of those included in your monthly package
- The number of minutes in a monthly package are for use within that month only, and do not 'roll over' into following months*
- Your use of the service is also subject to the General Terms and Conditions Applying to Phone Lead Alert, located at www.avanser.co.nz. We currently use Avanser as our provider. However we reserve the right to change providers.
- *In case of complementary call tracking, Top Rank Digital will pay for your 0800 number setup and up to 50 free minutes every Month. You agree to reimburse Top Rank Digital at the set rate for any minutes you use in excess of those included in your monthly package.

Marketing Campaigns Including Google AdWords, Facebook Campaigns, Search Engine Optimisation

Minimum Term & Cancellation

You acknowledge that you have ordered the Marketing Services for at least the Minimum term set out in your sales Order. The Marketing Services will be continued to be supplied after the Minimum Term until you cancel. All our digital marketing campaigns are on a minimum 3 Months terms. As set out in the Marketing Terms & Conditions, if you give us written notice of the termination of your Marketing Services at least Two billing cycles after the expiry of the Minimum Term then such termination will take effect after the two billing cycles finish. Any cancellation outside these terms and conditions will require a cancellation fee. The cancellation fee is the management fee for these marketing campaigns.