

PINPOINT DIGITAL TERMS AND CONDITIONS

1. APPLICATION

- 1.1 These terms and conditions apply to Pinpoint Services provided by Pinpoint Digital Limited ("us, we, our") pursuant to a Pinpoint Digital Services Plan which has been accepted by you.
- 1.2 If there are any special conditions included in our Pinpoint Digital Services Plan these shall prevail in the event of any conflict with these terms and conditions.

2. PINPOINT DIGITAL SERVICES PLAN

- 2.1 You are solely responsible for the accuracy of any information upon which we have based a Pinpoint Digital Services Plan which we have prepared for you in respect of the Pinpoint Services to be provided to you.
- 2.2 Any changes to the Pinpoint Services required subsequent to any Pinpoint Digital Services Plan provided to you by us shall constitute a variation and shall be paid for in addition.
- 2.3 If we provide an estimate we are not bound to supply the Pinpoint Services at the estimated price and you are liable for the actual price of any Pinpoint Services we supply as invoiced by us.

3. AUTHORISATION

- 3.1 You agree that we have no obligation to inquire into the authority of any person placing orders or instructions on your behalf.

4. TERM

- 4.1 The Term of the Agreement is initially the Initial Term as specified in your Pinpoint Digital Services Plan.
- 4.2 **At the end of this Initial Term, the Agreement will be automatically renewed for the Rollover Term on the same terms and conditions unless you provide us with written notice of termination no later than 10 Business Days prior to the expiry date of the Initial Term, ("Expiry Date") in which case the Agreement will terminate on the Expiry Date. The Agreement will continue to be automatically renewed at the end of each following Rollover Term unless you provide us with written notice of termination no later than 10 Business Days prior to the expiry date of each Rollover Term.**

5. FEES

- 5.1 In consideration for the performance of the Pinpoint Services by us, you agree to pay the Fees to us and the costs of all Third-Party Costs.
- 5.2 The Deposit is payable on the date you accept our Pinpoint Digital Services Plan and is not refundable.
- 5.3 The Pinpoint Monthly Fee is payable monthly in advance with the first Pinpoint Monthly Fee being due on or before the Commencement Date.
- 5.4 All Fees are to be paid as follows:
- (a) either by credit card or by direct debit or electronic payment of cleared funds into the bank account specified in writing by us (if the Services we are providing to you include the Paid Ad Service we will require you to pay our fee by direct debit);
 - (b) no later than the 20th of the month immediately following receipt of our invoice;
 - (c) in New Zealand dollars; and
 - (d) free and clear of any restriction, counterclaim, condition, set-off, deduction whatsoever.

5.5 All Fees and Third-Party Costs are exclusive of GST, except where stated otherwise in writing by us.

5.6 If (for whatever reason) we do not receive payment of our Fees by the due date, or if the Third-Party Costs are not paid by you by the date required by us, then we (without prejudice to any of our other rights or remedies under the Agreement or otherwise at law), may (at our sole discretion) suspend the Pinpoint Services unless and until the outstanding sum is paid.

5.7 If we take action to recover overdue amounts from you, you will be liable to pay any costs incurred by us in recovering the overdue amounts, including but not limited to any legal costs (on a full indemnity basis) and collection agency charges.

5.8 You acknowledge that we have no liability for any Third Party Costs. You must provide us with credit card information which we will make available to the relevant supplier of those services for payment of the monthly ad spend. If your credit card is declined for any reason, you must rectify the issue or provide us with an alternative payment method within 48 business hours.

5.9 If in our sole opinion your creditworthiness deteriorates before the end of the Term we may require full or partial payment at any time or the provision of security in a form acceptable to us. If such payment or security is not provided we may refuse to supply or cease the supply of Pinpoint Services to you.

5.10 We may charge, and you must pay, default interest at the rate of 2% per month (calculated on a daily basis) until all amounts owed to us are paid in full including actual legal costs and other costs (including debt collection costs) and expenses incurred by or on behalf of us in enforcing or defending all or any of our rights (including our right to payment for any Pinpoint Services supplied).

6. PINPOINT WEBSITE SERVICES

6.1 If the Pinpoint Services include the Website Service, you agree:

- (a) That we may add a statement in the footer of each page of the Website that we are responsible for the creation, design and hosting of your Website. We may also include a link to your website in any of our marketing material or social media advertising and on our website.
- (b) That you are responsible for promptly providing all website content to us and for proof-reading and the correctness of any content that you provide to us and any content which we create on your behalf.
- (c) That where the Website Services are dependent on third party software or application programming interface, that we are not responsible for any changes to those services and we may charge extra (at our currently hourly rate) if any further works are required as a result of such changes.

7. PAID ADS SERVICE

7.1 If the Pinpoint Services includes the Paid Ads Service, you acknowledge and agree that:

- (a) in relation to Facebook we may create a Google AdWords Account and Facebook Business account on your behalf, including a Google Analytics account if required (**Google AdWords Account**);

- (b) the Paid Ads Service will be subject to the terms and conditions of the relevant remarketing platform (e.g., Facebook, Google AdWords and AdRoll or any similar platform (“**Platform**”)), and that each platform reserves the right to refuse an advertisement at any time, for any reason (“**Platform Refusal**”);
- (c) if a Platform Refusal occurs, we will take reasonable steps to reverse that decision, however, we may not be successful and you agree that if we receive a Platform Refusal (other than as a result of our negligence), you are still liable to pay the Pinpoint Monthly Fee; and
- (d) in addition to the Pinpoint Monthly Fee, you are responsible for payment of invoices generated by the Platform for their charges, including pay-per-click fees in respect of your Remarketing Service.
- 7.2 You further agree not to tamper with or make any adjustments to the ad campaigns which we have set up (including but not limited to turning on or off campaigns and changing ad spends) Any tampering or adjustments could impact the campaign’s performance as it could affect machine learning.
- 7.3 If your Agreement with us is terminated for any reason and we have set up the Google Ads Account or Facebook Business Account on your behalf, you will not have any right to account and the campaign we have created on your behalf. You will need to set up your own Google Ads Account and Facebook Business account - on termination.
- 7.4 You are responsible for any fees imposed by Facebook or Google or other platforms in connection with the Pinpoint Services.
- 8. SEO SERVICE**
- 8.1 You agree in relation to the provision of the SEO Service by us that:
- (a) While we will use all reasonable efforts to increase the rankings of your Website on Google we do not guarantee that this will happen;
- (b) We may place in the footer of each of your web pages (or mobile applications) our "Digital Marketing by Pinpoint" link;
- (c) We may suggest changes to your website which we consider may assist (but are not guaranteed) your website’s search engine optimisation. If you require us to make changes to your website, then our hourly rate will apply. We may (but are not obliged to) develop link exchanges that result in links to and from your website to other websites, directories etc.
- (d) in addition to our Fees for the SEO Service, you are responsible for payment of invoices generated by Google (or other platforms) for their charges, including pay-per-click fees in respect of your SEO Service
- (e) we may at our sole discretion allow you to update the creative content relating to the SEO Service once every 90 day period from the date we commence providing the SEO Service.
- 9. YOUR RIGHTS, OBLIGATIONS AND ACKNOWLEDGMENTS**
- 9.1 You agree to:
- (a) provide all information and all reasonable support as requested by us in order to enable us to provide the Pinpoint Services, including responding promptly to all of our requests for information;
- (b) appoint a single representative who is the person who has the authority to request and agree on variations and approve any changes, designs, etc as required by us from time to time;
- (c) respond promptly to any queries or requests for information made by us. We will let you know if the information is required within a certain timeframe. If we don’t, you agree to provide us with a response within five Business Days.
- 9.2 You agree we can refer to the fact you are or were one of our clients in our marketing materials and on our website.
- 9.3 You agree and acknowledge that:
- (a) any timeframes we advise to you in relation to completion of any of the Pinpoint Services are not guaranteed. We will use reasonable endeavours to meet any timeframes given but circumstances outside our reasonable control may mean that we will be unable to meet these timeframes and we will notify you accordingly;
- (b) we provide no (and cannot provide any) warranty, representation or guarantee that pinpoint Services will deliver you anticipated or expected results for your business or will generate any increase in your sales or business activity;
- (c) the Pinpoint Services may require the use and/or interface of third party applications or products and we have no liability in relation to the performance or unavailability of such applications and products.
- 10. LIMITATION OF LIABILITY**
- 10.1 Subject to clause 10.2, you agree that we are not liable to you for any direct or indirect loss or damage, including without limitation; economic loss, loss of profits or savings (or for any indirect or consequential loss or damage) experienced by you in relation to the performance of our obligations under the Agreement.
- 10.2 Our liability in respect of all claims for loss, damage or injury arising from a breach of our obligations under our Agreement from any act or omission by us is limited in each case to the lesser of:
- (a) resupply of the Pinpoint Services; and
- (b) payment of the reasonable cost of resupplying the Pinpoint Services; and
- (c) the price you have paid for the affected Pinpoint Services.
- 10.3 All claims must be made in writing and are subject to verification or acceptance by us. No claim for any loss, damage or injury arising out of the supply of the Pinpoint Services by us, may be brought more than one month after the date of completion of the Pinpoint Services.
- 11. YOUR INDEMNITY**
- 11.1 You will indemnify us for any physical, direct and indirect damage, economic loss or other loss or cost or expenses (including legal expenses on a solicitor and client basis), and against any claims or proceedings against us to the extent caused or

- contributed by you (or any of your agents or employees) or arising from a breach of Agreement.
- 12. TERMINATION**
- 12.1 You are unable to terminate this Agreement prior to the end of the Term.
- 12.2 If any of the events set out in clause 12.3 occur we may without prejudice to and in addition to any other rights or remedies we may have, exercise all or any of the following rights:
- (a) delay delivery of any of the Pinpoint Services until the matter is resolved to our satisfaction;
 - (b) suspend or cancel in whole or in part the Agreement or any other contract between us by written notice to you;
 - (c) recover from you all amounts for any damage, losses, costs (including debt recovery costs) or expenses including actual legal costs and expenses arising from your default or non-payment and obtaining payment;
 - (d) by notice to you require that all amounts owed to us whether due or not are paid immediately.
- 12.3 The events are:
- (a) breach of your obligations (including payment obligations) under these Terms or any other contract with us;
 - (b) you entering into any negotiations for any scheme of arrangement, composition or compromise with your creditors;
 - (c) you, in our sole opinion, being unable to pay your debts (including contingent liabilities) as they fall due;
 - (d) you passing any resolution to liquidate or becoming the subject of any liquidation proceedings;
 - (e) you have a receiver or a receiver or manager appointed over the whole or part of your property or undertaking; or
 - (f) you, or any of your directors, becoming bankrupt or committing an act of bankruptcy.
- 13. NON-SOLICITATION OF STAFF**
- 13.1 You agree that, for a period of **two years** following the receipt of a Pinpoint Digital Services Plan, you will not, and will use their best endeavours to ensure that your directors, staff, agents and contractors do not, solicit, engage, employ or contract any of our employees, contractors or agents. You agree to ensure that your directors, employees, agents and contractors sign such covenant as we may require in relation to the non-solicitation of our staff pursuant to this clause.
- 14. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")**
- 14.1 You acknowledge that this Agreement constitutes a Security Agreement and that we have a security interest in any Pinpoint Services we supply to you, as security for your obligations to us under these Terms and this security interest is registerable in the Personal Property Securities Register.
- 14.2 You must sign and deliver any documents and do anything else that we require to ensure that we have a perfected first ranking security interest in the Pinpoint Services under the Personal Properties Securities Act 1999 ("PPSA").
- 14.3 You waive any right to receive a copy of a verification statement under the PPSA and agree to the extent permitted by law that
- 14.4 Any terms used in this clause and whereby are different in the PPSA shall have the meaning given to them in the PPSA:
- (a) Where we have rights in addition to or existing separately from those in Part 9 of the PPSA, those rights will continue to apply and in particular, will not be limited by section 109 of the PPSA;
 - (b) Sections 133 and 134 of the PPSA will not apply; and
 - (c) You will have none of the rights referred to in sections 116, 117(1)(c), 119, 120(2), 125, 129 and 131 of the PPSA and you waive your rights to object under section 121 and to redeem under section 132.
- 14.5 Any terms used in this clause and whereby are different in the PPSA shall have the meaning given to them in the PPSA.
- 15. CONSUMER GUARANTEES ACT 1993**
- 15.1 You agree that where the Pinpoint Services and Fair Trading Act 1986 are being supplied for the purposes of the business that the Consumer Guarantees Act 1993 and sections 9, 12 and 14 of the Fair Trading Act 1986 will not apply.
- 16. PRIVACY INFORMATION**
- 16.1 You agree that any information about you provided to us may be used by us at any time for any purposes connected with our business including but not limited to direct marketing, debt collection and credit reporting or assessment. You authorise us to provide such information to any external agency or any party for credit information and assessment purposes and that agency or party are hereby authorised to use and continue to use such information as part of their business services. Any personal information is held at Enterprise Street, Birkenhead and you have the certain right of access to your personal information under the Privacy Act 1993.
- 16.2 You acknowledge that we may share your data and your customers with Facebook at the Maximum Level. Under this level, your customer's personal information is shared to match users on Facebook's network. The information collected using this setting includes your customer's name, location, email address, and phone number, as well as their browsing behaviour in your online store.
- 17. UNSOLICITED ELECTRONIC MESSAGES ACT 2007**
- 17.1 Under the Unsolicited Electronic Messages Act 2007, you must consent to receive commercial emails from us. Consent can either be explicit, inferred or deemed. We will infer that we have your consent to send you commercial emails from time to time unless you inform us otherwise by letter or email or unsubscribe using the unsubscribe facility in our marketing emails. The email address for subscribing to commercial emails is hello@pintpoint.digital.
- 18. INTELLECTUAL PROPERTY**

- 18.1 You acknowledge that we own the Pinpoint IP agree that we will own all Intellectual Property associated with any Pinpoint Services we have to you, this includes any design work, content, written material and creative ideas and strategy plans until all Fees, Third Party costs and other amounts owed to us are fully paid.
- 18.2 You are solely responsible for ensuring that you have all appropriate rights and licenses to any material ("Content") that you supply to us for the purposes of the Pinpoint Services, including but not limited to video, images and text.
- 18.3 You acknowledge that we own the Pinpoint IP.
- 18.4 We reserve the right, in our sole discretion, to refuse to use any Content we believe is objectionable or which we believe may infringe upon the Intellectual Property rights of others.

19. DISPUTE RESOLUTION

- 19.1 The parties must use reasonable endeavours to resolve any and all disputes concerning this Agreement by negotiation with one another.
- 19.2 If the Parties cannot resolve a dispute by negotiations under clause 19.1 within 10 Business Days, either Party may, by written notice to the other, require that the Dispute be dealt with by mediation under the following terms:
- (a) The mediation shall be conducted in accordance with the Resolution Institution's standard mediation agreement.
- (b) The mediation shall be conducted by a mediator and at a fee agreed in writing by the Parties. Failing agreement as to the mediator and fee within 10 Business Days, the mediator will be selected and his or her fee determined by the chairperson for the time being of the Resolution Institute (or his or her nominee).
- (c) The mediation shall take place in Auckland, New Zealand.
- (d) The costs of the mediation, excluding the Parties' own legal and preparation costs, will be shared equally by the Parties.
- 19.3 No Party may initiate or commence court proceedings relating to a Dispute unless it has complied with the procedure set out in this clause 20, provided that application may still be made to the courts for interlocutory relief or to recover a debt payable.
- 19.4 You agree that the fact and details of any Dispute shall constitute Confidential Information for the purposes of the Agreement.

20. CONFIDENTIALITY

- 20.1 Except as permitted in this clause 20.2, you agree not to disclose, communicate or distribute to any third party any Confidential Information.
- 20.2 Clause 20.1 will not apply where:
- (a) we give our prior written consent to the disclosure of Confidential Information;
- (b) Confidential Information is disclosed by you to any of your related companies (within the meaning given to that term in section 2(3) of the Companies Act 1993), directors, officers, employees or professional advisers, so long as they agree in writing to comply with the obligations you have under these Terms;

- (c) is required to be disclosed by law;
- (d) is necessary to be disclosed to enable you to perform your obligations under the Agreement; or
- (e) at the time of disclosure, the Confidential Information is, or subsequently enters, the public domain otherwise than by breach of any duty of confidentiality of this Agreement.

21. NOTICES

- 21.1 All notices and other communications to be given under the Agreement must be in writing and be addressed to the Party to whom it is to be sent at the physical address or email address from time to time designated by that Party in writing to the other Party for such purpose.
- 21.2 Any notice or communication given under these Terms shall be deemed to have been received:
- (a) at the time of delivery, if delivered by hand;
- (b) three Business Days after the date of mailing, if sent by ordinary post within New Zealand;
- (c) 10 Business Days after the date of mailing, if posted or delivered overseas; or
- (d) if sent by email, on the date and time at which it enters the recipient's information system, as evidenced (if requested by the recipient, where delivery is disputed) in a confirmation of delivery report from the sender's information system which indicates that the email was sent to the email address of the recipient.
- 21.3 Any notice or communication received or deemed received after 5.00pm or on a day which is not a Business Day in the place to which it is delivered, posted or sent will be deemed not to have been received until the next Business Day in that place.

22. GENERAL

- 22.1 You agree that time is of the essence in respect of your obligations to us.
- 22.2 We will not be prevented from enforcing any of our rights under the Agreement because on an earlier occasion we did not enforce those rights.
- 22.3 While you are not entitled to assign your rights under this Agreement we may.
- 22.4 Any variation to the Agreement must be in writing and signed by all parties.
- 22.5 You agree that we may issue any proceedings in respect of the Agreement in any court that suits us. The law that governs these Terms is New Zealand law.
- 22.6 Any provision of our Agreement that is held to be invalid or unenforceable for any reason shall be severed from and shall not affect the remaining provisions of these Terms.
- 22.7 You agree that the Pinpoint Digital Services Plan and our Agreement together with any variations (made in accordance with clause) express the entire understanding between us and that there have been no representations made by or on behalf of us that have been relied upon by you that are not contained in these Terms
- 22.8 You shall not assign all or any of your rights or obligations under our Agreement without our prior written consent.

23. INTERPRETATION

23.1

"Agreement" means your Pinpoint Digital Services Plan and these terms and conditions together with any variations agreed pursuant to clause 22.4.

"Business Day" means any day other than a Saturday, Sunday or public holiday in Auckland.

"Commencement Date" means the date on which we will start providing the Pinpoint Services as specified in your Pinpoint Digital Services Plan.

"Confidential Information" means all information (that is not publicly known) disclosed by a party (disclosing party) to the other party (receiving party) whether orally or in writing that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of its disclosure. Our confidential information includes our intellectual property and the terms of this agreement.

"Deposit" means the deposit specified in your Pinpoint Digital Services Plan.

"Fees" means the Pinpoint Monthly Fee and the Third Party Costs.

"GST" means Goods and Services Tax payable under the Goods and Services Tax Act 1986.

"Initial Term" means the Initial Term as specified in your Pinpoint Digital Services Plan.

"Intellectual Property" means all copyright developed and/or arising in relation to the Pinpoint Services.

"Paid Ads Service" means the services we provide to you in relation to advertising your business via Facebook Ads, Google Ads, etc.

"Pinpoint Digital Services Plan" means the Plan which we have prepared and which sets out the Pinpoint Services we are to provide you, together with details of fees, etc.

"Pinpoint Monthly Fee" means the Pinpoint Monthly Fee which is specified in your Pinpoint Digital Services Plan.

"Pinpoint Services" means the Website Service, the SEO Service, the Paid Ads Service and such other services as agreed between the parties and specified in the Pinpoint Digital Services Plan.

"Prepaid IP" means any website layouts, templates and other work which we produce and use for all our clients and all copyright associated with it.

"Rollover Term" means the term specified as such in your Pinpoint Digital Services Plan.

"Term" means initially the Initial Term and once the Initial Term has ended, the Rollover Term.

"Third Party Costs" means any amounts paid directly to a platform (e.g. Google, Facebook etc) or another third party.

"Website Service" means any services we provide to you in relation to the development and/or changes to a website.