

Terms and Conditions

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For our very latest terms and conditions please visit
<https://newzapp.co.uk/legal/terms-and-conditions/>

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1. Definitions and Interpretation

1.1. In this Agreement;

Additional Charges means the charges which are payable from time to time for work undertaken in addition to the Services;

Agreement means these Terms and Conditions and the Order Form;

Licence Period means a period of one year commencing on the expiry of the Initial Licence Period or any anniversary of it;

Charges means the Service Charges and the Additional Charges;

Named-User means a unique login used to access a NewZapp licence

Single-User means a NewZapp licence that can only be accessed by one Named-User

Multi-User means a NewZapp licence that can be accessed by more than one authorised Named-User

Confidential Information means all information relating to either you or us (including but not limited to information in respect of the Services (or any of them)) which might reasonably be considered to be of a confidential nature;

Content means any information in whatever format (including text, audio or video) which is provided by you or on your behalf for distribution using the Services;

Custom Template means a Template which we design to your specific requirements;

Customer Personal Data means the Personal Data which you provide to us and in relation to which we provide the Services;

Data Subject means an individual who is the subject of Personal Data;

Discloser means a party when disclosing Confidential Information;

DPA means the Data Protection Act 1998;

GDPR means the General Data Protection Regulation

Email Packs means email credits which can be used with an Annual Licence for sending emails via the NewZapp Services. 1 email credit allows for the sending of an email to one recipient.

Email Send Up To Quota means the maximum volume of email You are able to send using a Monthly Licence every month via the NewZapp Services. 1 unit of Send Up To Quota allows for the sending of an email to one recipient.

Email Top Up means email credits which can be used with a NewZapp PAYG account for sending emails via the NewZapp Services. 1 email credit allows for the sending of an email to one recipient.

Order Form means: the page described as the Order Form and attached to these terms and conditions or the web page(s) which you complete and signify your consent to our terms and conditions in order to purchase the Services;

Initial Licence Period means the period of time which commences on the NewZapp Services Commencement Date and which ends at the time set out on the Order Form, except that if no such period is set out the Initial Licence Period will be one year;

IPR means all trademarks, service marks, patents, know-how, copyright (including but not limited to html, xml, dhtml, SQL, visual basic and all other source code formats, code templates and routines), design rights, database rights together with any applications to register any of the same anywhere in the world;

Message means an email, sms or other form of electronic communication which we distribute as part of the NewZapp Services;

Monthly Period means a period of one calendar month commencing on the date of the initial order and recurring thereafter;

Parties means you and us and Party will be interpreted accordingly;

NewZapp Annual (or Annual Licence) means a NewZapp product which has a 12 month term and is billed annually.

NewZapp Monthly (or Monthly Licence) means a NewZapp product which has a 12 month term and is billed monthly.

NewZapp Unlimited means a NewZapp product which is billed based on active contact total, which has a minimum 3 month term and is billed monthly.[Legacy product that is no longer available]

NewZapp PAYG means the NewZapp Pay As You Go product. Legacy product that is no longer available]

Recipient means a party when in receipt of Confidential Information;

Reseller means a company, individual or entity who purchase the Services from Us and sell or provide them to You;

Service Charges means the charges set out on the Order Form for the provision of the Services, including but not limited to the NewZapp Annual Licence Fee, NewZapp Monthly Licence Fee, NewZapp Email Pack Fee, the NewZapp Extras Fee and the Design Fee;

Services means the Set-Up Services, the NewZapp Services;

NewZapp Account means the specific product level as detailed on the Order Form. The choice of NewZapp Account determines the features and email volume restrictions applicable to you;

NewZapp Services Commencement Date means the commencement date for the Initial Licence Period, which date is notified to you after completion of the Set-Up Services;

NewZapp Services means the services identified on the Order Form;

NewZapp Contact (or simply Contact) is an email address that is in the customer's contact list. Where the same email address is in more than one group or list it is counted as a contact for each group or list. If an email address was in 4 groups it would count as four contacts.

NewZapp Unlimited – What's an active contact. Any unique email address you upload and/or send to during a billing period.

Service Level Agreement means the document described as a Service Level Agreement and which is referred to in the Order Form;

Service Levels has the meaning given to it in clause 5.1;

Set-Up Services means the services provided by us in setting up the NewZapp Services such that they are ready to be used by you;

Template means any template message and/or newsletter (in email, sms or other form) which we make available to you for you to add Content to, and which will be distributed by us as part of the NewZapp Services;

Usage Level means the amount or volume of Messages which you purchase so that we can provide the Services.

Writing (or related expressions) includes but shall not be limited to a reference to email, communications via websites, postal letters, or other similar forms of communication.

1.2. The following terms have the meaning given to them in section 1(1) of the DPA: Data Controller, Data Processor, Personal Data, Processing and Process.

2. NewZapp Services

- 2.1. The NewZapp Services will commence from the NewZapp Services Commencement Date and will continue until terminated in accordance with this Agreement.
- 2.2. We will provide a Single-User or Multi-User licence as described on your order form / renewal invoice
- 2.3. We will only provide telephone and email support to Named-Users on a NewZapp licence

3. NewZapp Usage Levels

3.1. We will maintain a record of your usage of the NewZapp Services.

3.2. We will:

3.2.1. provide you periodically with statistical data about your usage of the NewZapp Services;

3.2.2. notify you before you exceed your Usage Level.

3.3. You may increase your Usage Level only by purchasing NewZapp Email Packs or Email Top Ups or by upgrading your NewZapp Account.

3.4. Email Volume:

3.4.1. Annual Licences (NewZapp accounts with an agreement duration of 1 year and billed on an annual basis) include email packs as detailed on the Order Form. Any unused email packs cannot be carried forward, in full or in part, to a new Annual Licence Period. Usage in excess of the included email packs will require the advance purchase of Extra Email Packs.

3.4.2. Monthly Licences (NewZapp accounts with an agreement duration of 1 year and billed on a monthly basis) use Email Send Up To Quota. If You do not send the full quota in any month the balance cannot be carried forward to a new Monthly Period. No refunds, full or partial, will be given for unused Send Up To Quota under any circumstances. Monthly Periods will not be extended beyond 1 month under any circumstances. Usage in excess of the Email Send Up To Quota will require the advance purchase of Email Overage Credit.

3.4.3. Unlimited Licences (NewZapp accounts that are billed on the maximum number of contacts in an account. With a minimum agreement duration of 3 months and billed on a monthly basis):

3.4.3.1. Allow for an unlimited volume of emails, or a large volume of emails depending upon the account purchased, to be sent.

3.4.3.2. Having more active contacts in the account in excess of the account limit requires upgrading to the next account level.

3.4.3.3. A "Fair Usage" policy applies to all Unlimited Accounts. This is to ensure a stable service is delivered to all customers. Customers deemed to be abusing their unlimited account, this being at the sole discretion of DestiNet Limited, will have their account automatically limited pending an investigation, suspended or terminated.

3.4.3.4. Any customers found to be sending excessively large volumes of email which is deemed, by DestiNet Limited, to be spam or non opt-in data will be liable to warnings, additional charges, account suspension and/or account termination.

3.4.4. Pay As You Go Licences (NewZapp accounts with no minimum term agreement) use Email Top Up which need to be purchased as required.

3.4.5. Extra Email Packs can be purchased at any time for use with Annual Licences and do not time expire and can be used at any time as long as you have an active Annual Licence. No refunds, full or partial, will be given for unused Extra Email Packs under any circumstances.

3.4.6. Email Top Up can be purchased at any time for use with Pay As You Go Licences and expire 12 months after purchase. No refunds, full or partial, will be given for unused Email Top Up under any circumstances.

3.5. Our record of your usage is accepted by all parties as being an accurate record of usage.

3.6. All Trial Accounts come with 20 sending credits until you have spoken to one of our sales & support team. To qualify for the free 50'000 credits you must be a UK registered company using a business email address. The content of your email campaign maybe checked before the credits are added to ensure it meets with our spam policy. All data relating to your trial account will be deleted 30 days after the account was created if a licence is not purchased.

4. Our Responsibilities

4.1. We will use our reasonable endeavours to:

4.1.1. provide the Services:

4.1.1.1. in a timely manner;

4.1.1.2. in accordance with the Service Levels (if any)

4.1.1.3. to Named-Users only

4.1.2. put in place and maintain a reasonable level of security, taking into account electronic security technology from time to time, to prevent and/or detect any breach of external security of the NewZapp Service. For the avoidance of doubt, we will not be responsible for breaches of our internal security by your employees, agents, representatives and/or sub-contractors or by your acts or omissions.

4.2. We will carry out regular data backups of all data held in the NewZapp Services.

4.3. We will provide e-mail and/or telephone support and advice in respect of the NewZapp Services (or any of them) during the hours of 9 am – 5.00 pm (Monday to Friday but excluding bank holidays) to Named-Users.

5. Service Levels, Messages

Our Service Level Agreement (“SLA”) for NewZapp (the “Services”) sets forth the support service levels for each applicable Product Package. This SLA may be updated from time to time. Material changes will be communicated to existing customers with a 30-day notice period.

[Follow this link for more...](#)

6. Charges

6.1. All sums specified in this Agreement are exclusive of Value Added Tax which will be payable at the rate and in the manner prescribed by law.

6.2. Subject to clause 6.3.1 and 6.3.4 payment of all amounts invoiced will be made by you, or the Reseller, within 30 days of the date of the invoice.

6.3. We will be entitled to invoice you or the Reseller:

6.3.1. in respect of the Services for the Initial Period, when this Agreement comes into force, and such invoice will be paid immediately, unless otherwise agreed in writing;

6.3.2. in respect of Services to be provided in each Annual Licence Period, not earlier than two months prior to the commencement of that Annual Licence Period;

6.3.3. in respect of all other Charges, in advance of the commencement of the Services to which those Charges relate, and such invoice will be paid immediately.

6.3.4. in respect of Services to be provided in each Monthly Period, on the day of your next monthly billing cycle, and such invoice will be automatically and immediately charged to a valid credit or debit card you have added to your account, unless the Services are purchased from a Reseller, in which case they will be charged to the Reseller.

6.3.5. in respect of Services for Monthly Licences for all remaining months of your Licence Period where you have chosen to terminate your agreement before the expiry of your Licence Period, and you authorise us to charge such invoice(s) to any valid credit or debit card you have added to your account regardless whether you have deactivated such credit or debit card in your account.

6.3.6. in respect of additional Multi-User licence fees where it is determined at our sole discretion that a named-user licence is being used by more than one person. We will bill for each additional person using a licence at the Multi-User licence rate prevailing at the time.

6.4. We are not obliged to provide the Services relating to Charges which we have invoiced you, or the Reseller, for until you, or the Reseller, have paid those Charges.

6.5. For the avoidance of doubt any amounts payable in advance will not be refunded if you cease to use the NewZapp Services or purport to terminate this Agreement other than in accordance with its terms.

6.6. All sums not paid when due will accrue interest from the date due until the date paid at the rate of 8% above the base rate for the time being of the HSBC Bank Plc.

6.7. If we hold payment (including credit or debit) card details which you have previously provided to us for the purposes of paying the Charges, you hereby authorise us to use those details to charge to your payment card when due the Charges which are referred to in clause 6.3.1, 6.3.2, 6.3.3 and 6.3.4.

6.8. If you mistakenly pay us more than the invoice amount, make a payment when no payment is due or we automatically charge a payment (including credit or debit) card you have previously entered in to the NewZapp Service but which You have failed to deactivate, for a licence renewal you have failed to cancel in accordance with our terms and conditions we shall be under no obligation to refund any amounts. In the event we do make a refund it will be for an amount less any costs we have incurred in processing the payment(s) and less an administration charge of £45 + VAT.

7. Your Responsibilities

7.1. You will:

7.1.1. provide all reasonable assistance to us to enable us to properly and effectively provide the Services including but not limited to the provision of access to your premises and applicable personnel;

7.1.2. not use the Services (or any part of them) for illegal or immoral purposes and not do any act or omit to do any act which is or is likely to disrupt or interfere (in anyway) with our provision of our services to others.

7.1.3. be liable for any delays to the supply of the NewZapp Services caused by you and/or resulting directly or indirectly from your failure to fulfil any of your obligations hereunder;

7.1.4. ensure that the Content sent using the Services is not contrary to and/or does not infringe any applicable laws, rules, regulations, by-laws, codes of practice and/or third party rights. Without prejudice to the generality of the foregoing, you will ensure that no part of the Content is or could be interpreted as being obscene, indecent, libellous, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, discriminatory, menacing, blasphemous, or infringe or breach of any intellectual property rights or are otherwise illegal or contrary to or in breach of any law or third party right.

7.1.5. not use the Services for the purpose of sending unsolicited communication or SPAM of any kind.

7.2. You acknowledge that:

7.2.1. our ability to perform our obligations under these terms and conditions is dependent upon your full and timely co-operation with us, as well as the accuracy and completeness of any information and data you and/or your agents, sub-contractors and/or representatives provide to us;

7.2.2. we have no control over the Content and it is not our responsibility to, and we do not, monitor the Content. Notwithstanding the foregoing, we reserve the right (at our option) to restrict or prohibit access to the NewZapp Services at any time and/or remove Content from the NewZapp Services and/or terminate and/or suspend the NewZapp Services and this Agreement where we have reason to believe that there is or has been a breach of clause 7.1.4.

8. Templates and Licences

8.1. We will (as part of the Services) provide you with a number of pre-designed and pre-installed Templates, unless otherwise specified on the Order Form.

8.2. If in addition to the Templates referred to in clause 8.1 you require any Custom Templates the charges for and specifications for these (if any) are set out in the Order Form.

8.3. You will be entitled to use the Templates:

8.3.1. only during the period during which the NewZapp Services are provided;

8.3.2. and solely for the purposes of adding Content to the Templates in order that we can provide the NewZapp Services.

8.4. You are not entitled to:

8.4.1. change or otherwise modify any Template without our written permission.

8.4.2. reverse engineer or decompile (if compiled) any Template.

8.4.3. use any Template other than with the NewZapp Services unless otherwise agreed in writing.

8.4.4. (for the avoidance of doubt and without prejudice to the other provisions of this clause) remove from any Template any of our logos, trademarks or copyright notices or other text and/or images supplied by us.

8.5. The Templates contain IPRs belonging to us and/or our licensors, and you have no right to use such IPRs save to the extent set out in this clause 8.

8.6. If you wish to use the template, its design, layout or any of the IPR contained within the template, for any purpose other than with the NewZapp Services, you must obtain written permission from Us. There will be a charge in the event that such permission is granted of £1495 + vat per template or part template. Subject to payment of the charge in 8.6 we will grant to you a non-exclusive, non-transferable (except with written permission from us), non-sub-licensable, worldwide licence to use the template for your own purposes.

9. Data Protection

9.1. You will provide in a timely manner any request by us for verification of the opt-in details of a contact.

9.2. You acknowledge that you are the Data Controller and we are the data processor in respect of any Customer Personal Data.

9.3. We will process the Customer Personal Data only in accordance with your instructions from time to time (which instructions include our obligations under this Agreement).

9.4. We will take reasonable steps to ensure the reliability of all of our employees who have access to the Customer Personal Data.

9.5. You warrant, represent and undertake that our processing of the Customer Personal Data in accordance with this Agreement and your instructions under it will not infringe or breach any rights of any Data Subject or be other than in accordance with the DPA.

9.6. We warrant, represent and undertake that, having regard to the state of technological development and the cost of implementing any measures, we will take:

9.6.1. appropriate technical and organisational measures against the unauthorised or unlawful processing of Customer Personal Data and against the accidental loss or destruction of, or damage to, Customer Personal Data to ensure a level of security appropriate to

9.6.1.1. the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and

9.6.1.2. the nature of the data to be protected.

9.6.2. reasonable steps to ensure compliance with those measures.

9.7. You will indemnify and keep indemnified and defend at your expense us against all costs, claims, damages or expenses incurred by us due to any breach by you of Clause 9.5.

9.8. We will not be liable for:

9.8.1. any failure to provide or delay in providing the Services to the extent that any such failure or delay results from an instruction given by you in relation to our Processing of the Customer Personal Data.

9.8.2. any claim brought by a Data Subject arising from any action or omission by us to the extent that such action or omission results from our compliance with your instructions.

9.8.3. any breach of a NewZapp licence due to sharing of Named-User logins

10. Termination

10.1. We may terminate this Agreement on giving you not less than one months notice in writing to expire upon the expiry of the Licence Period;

10.2. You may terminate this Agreement on giving us not less than one months notice in writing, such notice to expire upon the expiry of the Licence Period;

10.3. We may terminate this Agreement immediately and without further notice if:

10.3.1. you breach any of your obligations in this Agreement and if capable of remedy fail to remedy within 5 working days of receipt of notice in writing or by e-mail from us requiring you to do so;

10.3.2. you breach this agreement by sending unsolicited communication or SPAM. We reserve the right to terminate your account on the first such report or instance of SPAM being sent from your account. In the event we cancel your account you will not be entitled to any refund of any monies paid to us for the purposes of providing you with the Services (or any of them).

10.3.3. We have reason to believe you are connected by association, common company director, parent or group company to an account we have terminated for a breach of this Agreement. In the event we cancel your account you will not be entitled to any refund of any monies paid to us for the purposes of providing you with the Services (or any of them).

10.3.4. you become insolvent and unable to pay your debts, bankrupt or placed in the hands of a receiver or administrator or wound up.

11. Effect of Termination

11.1. In the event of termination of this Agreement for whatever reason all Charges for which an invoice has been issued will become due immediately unless the Charges relate to an invoice for a further Licence period or a further Licence Period beyond the Initial Licence period and for which you have given appropriate written notice. If we hold payment (including credit or debit) card details which you have previously provided to us for the purposes of paying the Charges, you hereby authorise us to use those details to charge to your payment card any Charges which become due upon the termination of this Agreement.

11.2. We will delete all Content and Customer Personal Data within 30 days following any termination of this Agreement.

11.3. If you wish us to provide you with a copy of the Customer Personal Data on or in relation to any termination of this Agreement we will be entitled to make a minimum charge of £125 + VAT for the time spent by us in carrying out this work.

11.4. No termination of this Agreement (howsoever occasioned) will affect:

11.4.1. any accrued rights or liabilities of either party under this Agreement; or

11.4.2. the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into, or continue, in force on or after such expiration or termination.

12. Suspension of Services

12.1 We reserve the right to suspend some or all of the Services immediately if:

12.1.1. we consider that you are misusing the Services (or any of them);

12.1.2. we are required to do by law;

12.1.3. we need to carry out maintenance or upgrades to the Services (or any of them) save that we will use our reasonable endeavours to carry out any such maintenance or upgrade as quickly as possible and at times which we believe will cause the minimum disruption to the majority of our customers;

12.1.4. you should fail to pay any Fee or Additional Charges by the due date.

13. Confidential Information

13.1. The Recipient will not use the Discloser's Confidential Information other than for the purposes of this Agreement and will keep in confidence and not disclose the Discloser's Confidential Information other than to those persons to whom the Confidential Information needs to be disclosed in order to fulfil such purposes.

13.2. The restriction on disclosure in clause 13.1 will not apply to any information that:

13.2.1. is in the public domain through no fault of the Recipient;

13.2.2. was known to the Recipient prior to receipt from the Discloser;

13.2.3. is or was disclosed to the Recipient by a third party that was not under a confidentiality agreement;

13.2.4. is required to be disclosed by applicable law or order of any governmental authority of or court of competent jurisdiction;

13.3. The Recipient will make each person to whom it Discloses the Confidential Information aware of the confidential nature of the Confidential Information and will procure that each such person complies with obligations which are in writing and not less strict than those set out in this Agreement.

13.4. The provisions of this clause will survive any termination of this Agreement.

14. Warranties

14.1. We will perform the Services using reasonable care and skill. Subject to Clause 5 in the event that we fail to comply with this warranty your sole and exclusive remedy will be that we will either (at our option) re-perform the relevant part of the Services within a reasonable time or refund to you such of the charges as are applicable to the relevant Services.

14.2. We will not be liable for any reduction in the connection speed nor do we warrant the continual, error free, uninterrupted availability of the NewZapp Services.

14.3. All conditions, warranties or terms which are not expressly set out in this Agreement and which might otherwise have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality and fitness for purpose.

15. Liability

15.1. We do not exclude our Liability for any Liability which may not be limited or excluded by law.

15.2. Subject to clause 15.1:

15.2.1. our total Liability to you, and your total Liability to us, will not exceed the amount paid by you to us for the Services during the twelve months (12) prior to the event giving rise to the alleged claim.

15.2.2. we will have no Liability to you in respect of any of the following losses or damage (whether such losses or damage were foreseen, foreseeable, known or otherwise): (a) loss of profits, (b) loss of anticipated savings, (c) loss of business, (d) loss of goodwill, (e) loss of use or downtime, (e) loss of or corruption to data or other information, (f) any indirect, or consequential loss or damage.

15.3. We will not be liable under any circumstances for any delay, error or problem caused by any act or omission by you. We will be entitled to levy Additional Charges for all reasonable costs expenses incurred by us as a consequence of such acts or omissions.

15.4. You will fully indemnify us against any cost, claim, loss or damage incurred by us as a consequence of your breach of this Agreement.

16. Waiver

16.1. The waiver by either Party of any breach or failure to enforce any of the terms and conditions of this Agreement at any time will not in any way affect, limit or waive either Party's rights thereafter to enforce and compel strict compliance with every term and condition of this Agreement.

17. Publicity

17.1 Unless stated otherwise in the Order Form we will be entitled to indicate in press and publicity materials issued by us that you are a customer of ours, and we will be entitled to include on our website examples of Messages which we have sent in connection with the provision of the NewZapp Services.

18. Notices

18.1. Any notice required or permitted by this Agreement will be in writing and will be deemed sufficient when delivered:

18.1.1. forty eight (48) hours after being deposited in the regular mail as certified or registered mail (airmail if sent internationally) with postage prepaid; or

18.1.2. twenty four (24) hours after being sent by email or facsimile; or

18.1.3. forthwith upon receiving confirmation from the receiving Party either by facsimile, e-mail or by post.

19. Successors and Assigns, Subcontracting

19.1. This Agreement will be binding upon and inure to the benefit of the successors and assignees of you and us. We may assign our rights or obligations hereunder at any time.

19.2. We are entitled to subcontract any or all of our obligations under this Agreement.

20. Governing Law and Jurisdiction

20.1. This Agreement is governed by the laws of England and Wales and the Parties submit to the exclusive jurisdiction of the English Courts.

20.2. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the Parties agree to renegotiate such provision in good faith, in order to maintain the economic position enjoyed by each Party as close as possible to that under the provision rendered unenforceable.

21. Entire Agreement

21.1. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and all prior agreements with respect thereto are superseded. No amendment or modification hereof will be binding unless in writing and duly executed by both Parties.

22. Counterparts

22.1. This Agreement may be executed in two or more counterparts, each of which will be deemed an original and all of which together will constitute one instrument.

23. Third Party

23.1. Except as otherwise expressly stated herein, nothing in this Agreement confers any rights on any person (other than the parties hereto) pursuant to the Contracts (Rights of Third Parties) Act 1999.

24. Force Majeure

24.1. We will not be liable for any failure to perform, or delay in performing, our obligations under this Agreement to the extent that such failure or delay is due to the occurrence of any event outside our reasonable control. If any such event continues for a period of greater than two weeks we will be entitled to terminate this Agreement