

## Marketing 360® Terms of Service

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Marketing 360® (“Marketing 360®,” “we” or “us”) provides a range of marketing products and services for businesses of all sizes (the “Services”). Your Service Agreement (the “Service Agreement”) sets forth which Services are being purchased, the Client purchasing the Services (the “Client”, “you” or “your” and together with Marketing 360® the “Parties” or each individually a “Party”), the costs for such Services, the minimum Initial Term and other relevant details. These Terms of Services (the “Terms of Service”) are incorporated by reference into and made part of any Service Agreement submitted to Marketing 360® and govern the relationship between you and Marketing 360®. These Terms of Service are effective on the date the Service Agreement is signed (the “Effective Date”) and remain in effect until terminated as provided below. The Service Agreement, the Terms of Service and the other documents incorporated by reference herein are collectively referred to as the (“Agreement”). These Terms of Service may be reviewed at any time at [marketing360.com/terms](https://marketing360.com/terms).

PLEASE REVIEW THIS AGREEMENT CAREFULLY. BY ACCEPTING THESE TERMS, YOU AGREE THAT YOU HAVE READ, UNDERSTOOD AND AGREE TO BE BOUND BY THESE TERMS OF SERVICE, WHICH CONTAIN, AMONG OTHER PROVISIONS, DISPUTE RESOLUTION PROVISIONS, A WAIVER OF CLASS-ACTION RIGHTS AND LIMITATIONS OF LIABILITY. UNLESS OTHERWISE EXPRESSLY STATED, MARKETING 360® DISCLAIMS ANY AND ALL WARRANTIES WHETHER PROVIDED BY MARKETING 360®, ITS AFFILIATES, OR ITS RESPECTIVE EMPLOYEES AND AGENTS.

The Service Agreement, together with these Terms of Service, the Marketing 360® Privacy Policy located at <https://www.marketing360.com/privacy-policy/>, and any other ancillary documents incorporated by reference in these Terms of Service constitute the entire agreement between the Parties. Marketing 360® limits acceptance to these agreements, and objects to any other additional or different terms in the Client’s acceptance.

**1. Marketing Services.** Marketing 360® Services (the “Services”) include, but are not limited to, the following products. Not all of these Services are applicable to all accounts. Please check your Service Agreement for the list of products and services included in your specific marketing package:

- Marketing 360® Software Platform
- Top Placement Ads®
- Retargeting Ads®
- Social Targeting Ads™
- Natural Listing Ads®
- Local Listing Ads™
- My Click-to-Calls®
- UXi® Website Designs
- Custom Website Design/Development
- Website Hosting
- UXiCommerce™
- Reputation Management
- Email Marketing 360™
- Marketing 360® CRM
- SMS Marketing 360™
- Logo Design

- Social Media Management
- PR Marketing Campaigns
- Video and Photography Services
- 3<sup>rd</sup> Party Audience List Advertising

**a. Client Services.** Marketing 360® will provide the Services outlined in your Service Agreement governed by these Terms of Service. Your Marketing Executive will work with you to develop a marketing plan for your business based on your service agreement, budget, goals and other relevant factors. You may add additional one-time or recurring products and services at any time during the life of this Agreement. You may add services by either verbally communicating the request to your Marketing Executive/Marketing 360® representative or communicating your request via email. Unless the Parties agree otherwise in writing, any and all products and services added during the Term shall be governed by this Agreement. For the purpose of this Agreement, a Client who is current on its monthly Marketing 360® Base Platform payment, as outlined in its Service Agreement, is considered a “Marketing Client.” A Client who has not contracted for the Marketing 360® platform or who is not current on its monthly Marketing 360® Base Platform payment will be considered a “Non-Marketing Client.”

**b. Marketing 360® Base Platform.** The Marketing 360® Base Platform Fee (the “Marketing 360® Base Platform Fee”) grants Client access to the Marketing 360® software platform as well as access to utilize the Marketing 360® Services. Your Service Agreement will outline your specific monthly Marketing 360® Base Platform fee. The Marketing 360® services included with your base fee are a dedicated Marketing Executive, either a User Experience Intelligence® (UXi®) website design or 5 creative hours, Email Marketing 360™, On-Demand Marketing & Design Services™, the Conversion Inbox, the Marketing 360® CRM, a Top Rated Local® Premium Account, website hosting for up to one website, the Local Listing Ads™ Program for up to one local business location, as well as analytics and reporting through the Marketing 360® Software Platform. Each of these products/services are available for all Marketing 360® accounts that are current on their monthly Marketing 360® Base Platform Fee, however some products/services may not be utilized for your account depending on your specific marketing goals. Please note, some services may require additional funds or credits to run or be utilized. You may only use your credits on file if you are current on you monthly Marketing 360® Base Platform Fee. Some services that by their nature require a live website in order to be utilized will not be utilized until your website goes live. Please note, some 3<sup>rd</sup> Party products and services may not be available for all clients based on the terms and conditions of the applicable 3<sup>rd</sup> Party provider. Your Marketing Executive will work with you to develop a Marketing 360® plan designed to address your marketing goals based on your specific needs considering your location, budget, and other factors. If we are developing a website for you, your Marketing 360® platform login may not be provided until your site is completed and goes live with your approval.

**c. Ad Credits.** Ad Credits are used to run the Top Placement Ads®, Retargeting Ads® and Social Targeting Ads™ programs. Ad Credits cost one dollar (\$1.00) per credit. Ad Credits are allocated to media buy (paid placement), campaign management, and campaign optimization. A more detailed explanation of Ad Credits, how they are allocated, and the current media buy allocation percentage can be found at [www.marketing360.com/how-ad-credits-work](http://www.marketing360.com/how-ad-credits-work). Please note, the media buy allocation percentage is subject to change. Ad Credit costs, including cost-per-click reporting and more, are reflected through the Top Placement Ads®, Retargeting Ads®, and Social Targeting Ads™ programs within the Marketing 360® platform for return on investment (ROI) and cost-per-conversion tracking/analysis. Ad Credits are subject to the terms and conditions of the applicable 3<sup>rd</sup> Party provider (e.g. Google, Bing, YouTube, Facebook), and some services may not be available for some client

products or services. You may access a performance report which includes raw data on costs, clicks, and impressions at the Google advertising account level at any time by clicking the applicable link on your Marketing 360® dashboard. These links are available in the top right-hand corner of the Top Placement Ads®, Retargeting Ads® or Social Targeting Ads™ pages on your Marketing 360® dashboard. Ad Credits are non-refundable, but may be allocated to other services with a written request. If you cancel your recurring Ad Credit product, your credits on file will remain in your account for one billing cycle, and must be used or transferred to another product during your next monthly billing cycle or may be forfeited. If we are developing a website for you, your Ad Credits and related services, cannot be used until your site has gone live with your approval. Actual ad position on 3<sup>rd</sup> Party websites is based on several factors, and top position cannot be guaranteed. Unless instructed otherwise, your Marketing Executive will optimize your Top Placement Ads® campaign to target the top three ad positions for your keywords where possible. In any billing cycle, Marketing 360® may spend any credits you have on file. Marketing 360® will monitor your Ad Credit spend to keep you on budget, but in rare cases Marketing 360® may spend over and above the amount of credits you have on file. Any balance of your Ad Credit budget remaining at the end of a monthly billing cycle, positive or negative, will be rolled over to the next monthly billing cycle. Any negative balance remaining at the end of the Term is due at that time. We use a master advertising account with each 3<sup>rd</sup> Party Ad Credit services provider (Google, Bing, Yahoo, Facebook, etc.). We will set up an advertising account for you within our master advertising account. You acknowledge that you must use our master advertising account in order to use Ad Credits for these services. Because all of our accounts are linked within our master advertising accounts, you will not have access to view your account at the advertising account level of the respective service provider. You can get a report of your advertising performance and Ad Credit usage by logging into the Marketing 360® platform at any time or by contacting your Marketing Executive.

**d. Natural Listing Ads® and NLA® Credits.** NLA® Credits are used to power the Natural Listing Ads® SEO program. Use the Natural Listing Ads® program to increase your visibility in organic search results on search engines like Google & Bing and generate more sales from organic search. NLA® Credits cost one dollar (\$1.00) per credit. NLA® Credits can be used to execute such things as SEO keyword research, website optimization, title tag and meta description optimization, link quality auditing, disavowing bad links, internal linking optimization, blog architecture optimization, image tag optimization, social media network optimization, Google+ and Google maps listing optimization, page schema markup, page content creation and optimization, blog post writing and optimization, SEO optimized infographic design, guest blog posting for link building, and more. All NLA® credit usage is determined by Marketing 360® based on what we estimate will have the greatest impact on organic growth. Depending on your marketing goals NLA® Credits and the Natural Listing Ads® services may begin as soon as you are entered into our system, however, in some cases, it might not make sense to use NLA® Credits until the Client's website has gone live with Client approval. Your Marketing Executive and NLA® team members will determine the best allocation of your resources depending on your goals. NLA® Credits are non-refundable, but may be allocated to other services, with the exception of Ad Credits, with a written request. If you cancel your recurring NLA® Credit product, your NLA® credits on file will remain in your account for one billing cycle, and must be used or transferred to another product during your next monthly billing cycle or may be forfeited. Unless otherwise specified, content will be automatically posted to Client's website periodically. Client is solely responsible for the review and approval of all website content and must notify Marketing 360® of any errors. Upon receiving notice of an error, Marketing 360®'s sole responsibility shall be to remove the erroneous content as soon as is practicable. All content will be considered approved unless Client provides notice to Marketing 360®. Client represents that it will not choose keywords that violate any

3<sup>rd</sup> Party's trademarks or other intellectual property rights or will obtain licenses to use any 3<sup>rd</sup> Party trademarks as keywords. You may log into the Marketing 360® platform at any time to track NLA® Credit usage and results. Additional NLA® Credits may be added at any time in order for additional activities to be completed.

**e. Local Listing Ads™.** The Local Listing Ads™ program is used to add, update, sync, enhance, and monitor your local business listings across dozens of local sites through your Marketing 360® interface. The Local Listing Ads™ program is available for Marketing Clients with physical business locations. Included with the Marketing 360® Base Platform payment is a Local Listing Ads™ account for one location. Additional Local Listing Ads™ locations are available at an additional monthly rate.

**f. My Click-to-Calls®.** If you choose to utilize the My Click-to-Calls® service, calls will be recorded for tracking purposes so that we may analyze the performance of ads and optimize accordingly. Call recording can be deactivated if needed while leaving call tracking in place by request. Two phone numbers are included with the Marketing 360® Base Platform payment; additional numbers may be purchased for an additional cost per month. After cancellation of your account, you may maintain your My Click-to-Calls® number for a monthly fee.

**g. Marketing 360® CRM.** The Marketing 360® CRM is a full-featured customer relationship management system within the Marketing 360® platform that is designed for small and medium-sized businesses. The CRM is included with the Marketing 360® Base Platform Fee payment. You may use the Marketing 360® CRM to manage unlimited leads, contacts, and customers in one place. You may add as many team members as you need, create custom fields to store any contact information you need, assign tasks, track deals and sales pipelines, assign contacts to specific team members, and use your CRM on your phone or desktop computer from anywhere with internet access. Once you sign up for the Marketing 360® CRM, a CRM specialist will contact you to walk you through the product and answer any initial questions you may have. Going forward, either your Marketing Executive or a CRM specialist can assist you with any questions via email or via phone during our normal business hours. Access to the Marketing 360® CRM is included through the Marketing 360® platform if you are a Marketing Client and are current on your monthly marketing payment. Your access to the Marketing 360® CRM may be suspended or terminated if you dispute any payment or fail to make a required payment. We are under no obligation to store and maintain your CRM records if your Marketing 360® CRM account has been terminated. If you have signed up for the free 45-day Marketing 360® CRM trial, you will have full complimentary access to the CRM for the 45-day trial period. After the free trial period, you will need to pay the Marketing 360® Base Platform Fee monthly to have access to the CRM. All fees paid for the Marketing 360® CRM are non-refundable. You may log into the system and export a .csv file of your CRM data at any time, as long as your CRM access is not currently suspended or terminated. Please contact your CRM specialist for more information about exporting CRM data. You are fully responsible for the information that you upload to the CRM. The CRM is not intended to store sensitive, protected, proprietary, health or financial data, and you agree not to use the CRM to store this information. You acknowledge that the Marketing 360 CRM is not PCI compliant, and you agree not to store financial data, social security numbers or payment processing data within the CRM. You acknowledge that the Marketing 360® CRM is not HIPAA compliant, and is not designed to be used by any health services provider. You agree not to store any HIPAA protected PHI within the CRM. For clarification, your Indemnification obligation outlined in Section 13 applies to any unauthorized use of the CRM. To the extent that we process CRM data that is subject to the European Union General Data Protection Regulation ("GDPR") on your behalf, the terms of the Marketing 360® Data Processing Agreement (the "Marketing 360® DPA") shall apply, see Section 15.j.

**h. Website Design and Content.** Website design services include a website design built for conversions and designed to work on some of the most popular website platforms (Websites 360®, UXi®, BigCommerce, Shopify, WooCommerce, etc.). Your site design includes up to three rounds of revisions at no additional cost. Along with the site design, Marketing 360® will populate up to 20 webpages with Client-provided content or products at no additional charge. We anticipate that you will provide the content for the website pages, but we will provide content writing services for up to 10 pages at up to 300 words per page (rather than the population of 20 pages of the Client supplied content), upon request at no additional charge. If you need to add more time in order for us to make additional revisions, content, pages, etc., it can be added at an additional hourly rate. You are welcome to add pages, content, or products at any time for no additional charges via the website's content management system. Website design is included at no additional charge with a six-month minimum marketing commitment; however, your license to use the website design is contingent upon our receipt of either: (a) full payment of your monthly marketing payments through the Initial Term, or (b) the Early Cancellation Fee as applicable. See section 6.d. for more information on your website design license. Website development is a fluid process dependent on several factors, including, but not limited to, Client response time on questions and approvals, Client response time for delivering website content, and requests for additional rounds of revisions. Accordingly, we cannot guarantee your website will "Go Live" on any set timeline. We will, however, strive to minimize response times on our end and bring your website live as soon as practicable. Unless you have contracted for a Custom Website Design, a site will be developed for you based on our standard website design layouts. If you require specialized functionality and/or complex design features, you will need to contract for a Custom Website Design. Many services, including both Ad Credits and some NLA® services, cannot be used until your website is completed and goes live with your approval. Any Credits paid for prior to website completion will remain in your account until your website goes live. If you have contracted for Custom Website Design services, it will be clearly stated as "Custom Website Design" on your Service Agreement and will include both a scope of work and an estimated work hour quote. Additional information regarding Custom Website design is included in Section 1.n. If you are a marketing Client, but do not need or want a new website design, we will provide you with five Creative Hours in lieu of a website design upon your request.

**i. Website Hosting.** Website hosting for up to one site is included with the Marketing 360® Platform for Marketing Clients upon request. Hosting for additional websites or for Non-Marketing Clients is available for \$249 per year billed annually on a recurring basis. Website Hosting includes up to 100GB of bandwidth per month. UXi® hosting includes all necessary website data storage. Hosting for non-UXi® sites includes 500MB of data storage; additional storage will require additional fees. Additional bandwidth is available for an additional cost. UXi® websites are a proprietary hosted solution compatible only with UXi® servers and must be hosted on the UXi® platform to operate properly. Upon cancellation of marketing, UXi® website hosting may be purchased for \$249 per year. If your hosting services continue after the cancellation of marketing, such hosting services will continue to be governed by these Marketing 360® Terms of Service. Although unnecessary, if you want to move the UXi® site design off UXi® hosting, the design may be rebuilt on another CMS platform at your expense. BigCommerce, Shopify and other 3<sup>rd</sup> Party e-commerce site design files are hosted on their respective servers. Upon cancellation of marketing, BigCommerce and Shopify sites will continue to be hosted on these platforms. If you have issues with your 3<sup>rd</sup> party website hosting, you must contact those entities directly.

**j. UXiCommerce™.** The UXiCommerce™ Add-On is a fully functional shopping cart add-on for use on your UXi® website. You can easily add additional products via the UXiCommerce™ interface. You are granted a limited, non-exclusive, non-transferable, revocable and non-perpetual license to use

the UXiCommerce™ shopping cart add-on. You shall not knowingly, directly or indirectly, (a) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, underlying ideas, or algorithms of UXiCommerce™; (b) copy, modify, or create derivative works based on UXiCommerce™; (c) permit any third party to access UXiCommerce™ except as necessary to utilize the shopping cart under the terms of your Agreement and these Terms of Service; (d) access the Services with the purpose of building a competitive product or service; or (e) copy any features, functions or graphics of UXiCommerce™ unless otherwise agreed upon by Marketing 360®. You are responsible for maintaining the confidentiality of all associated access credentials, and are entirely responsible for any and all activities that occur using your access credentials. You agree to promptly notify us of any unauthorized use of your access credentials or any other breach of security of the Partner Interface that is known to Channel Partner. You may not use UXiCommerce™ (a) in violation of any applicable export laws and regulations, including without limitation any U.S. export laws and regulations; (b) in violation of any applicable national, state, or local laws or regulations, including without limitation any laws governing the import of the Service or governing the content which you make available via the Service; or (c) in ways that infringe the rights of others or interfere with other users of Supplier's network or other networks. Marketing 360® agrees to exercise commercially reasonable efforts to remedy security breaches associated with UXiCommerce™. You acknowledge that, notwithstanding such security precautions, use of, or connection to, the Internet provides the opportunity for unauthorized 3<sup>rd</sup> parties to circumvent such precautions and illegally gain access to the Services and your UXiCommerce™ Data. Accordingly, we cannot and do not guarantee the privacy, security, integrity or authenticity of any information so transmitted over or stored in any system connected to the Internet or represent that any such security precautions will be adequate or sufficient. You expressly acknowledge that the indemnification provision of Section 14 applies to the use of UXiCommerce™.

**k. Top Rated Local®, National® and eCommerce® Program.** A Top Rated Local® Premium Account is included with your Marketing 360® Base Platform Fee. You may upgrade to a Top Rated Local® Reputation Plus account with a dedicated Top Rated Local® Reputation Manager at any time for an additional fee. Use the Top Rated Local® program to control your online reputation unlike any other rating system you'll find. The Top Rated Local®, National® and eCommerce® programs include your listing/profile, rating system, trademarked ad copy and a trusted online badge for your website. The Top Rated Local®, National® and eCommerce® programs are governed by the terms and conditions in the Top Rated Local® listing agreement. You will be presented with these terms when you sign up for your account on [topratedlocal.com](http://topratedlocal.com). If you do not agree to be bound by these terms you must alert Top Rated Local® and cancel your Top Rated Local® listing within 10 business days; failure to cancel within 10 days will constitute acceptance of these terms. Upon termination of your Marketing 360® account, your Top Rated Local® account will automatically be downgrade to a Top Rated Local® free account unless you upgrade your account through [topratedlocal.com](http://topratedlocal.com).

**I. Reputation Management.** Your online reputation is vitally important in online marketing. With Reputation Management services, we will provide a dedicated Reputation Manager to help you manage your business' online reputation. Your Reputation Manager will work with you to help improve your online reputation by reaching out to verified clients to solicit reviews on reputable review websites. Your reputation manager will also read and reply (with your permission) to reviews of your business posted throughout the internet. The Marketing 360® Reputation Management program is designed to be used together with the Top Rated Local® program. All Reputation Management accounts will include a Top Rated Local® Reputation Plus account. Your Reputation Manager will also challenge verification on questionable reviews left on Top Rated Local® and request customer feedback for reviews left on Top Rated Local® below three stars.

**m. SMS Marketing 360™.** Use our SMS Marketing 360™ platform to manage your text message marketing to engage new and existing clients and increase sales. The platform can be used to create trackable, custom, automated SMS campaigns. Your Marketing 360® Base Platform payment allows you to send 1,000 messages per month to your subscribers at no additional cost. Messages in excess of 1,000 per month will be charged \$.01 per message. Any excess charges due will accrue over the month, and you will be billed for these charges in arrears with your regular monthly marketing payment. Unused messages do not rollover from month to month. By using SMS Marketing 360™ you agree to the Marketing 360® Anti-Spam Policy located at [marketing360.com/antispam](http://marketing360.com/antispam). The Anti-Spam Policy is incorporated into this Agreement by reference. You are solely responsible for complying with all associated laws and regulations in conjunction with your SMS Marketing 360™ account including, but not limited to, CAN-SPAMM and the TCPA. Further, you are solely responsible for validating and keeping accurate records of your SMS number list, and confirming that all recipients have consented to receive SMS alerts from your business. You are solely responsible for the content of all SMS messages sent, and agree to indemnify Marketing 360® in all matters related to SMS Marketing 360™.

**n. Creative Services.** Our creative services include, but are not limited to, Custom Website Design, logo design, video production, photography services, and general design and development time. Your Service Agreement will outline your specific creative services package, our estimated hourly bid and the price per hour for the services. The hourly bid included in the Service Agreement is provided on the estimation, based on information received from you at the time of offer, that the projected total time spent on the design and development of this project should not exceed the total number of hours listed. In the case of time over-runs, you will be notified before any additional charges, beyond the initial cost estimate, are incurred. In the event of increased costs, we will proceed only after receiving both approval (written or oral) and payment from the Client. This Client approval shall be binding and incorporated into this agreement. Any unused creative hours paid for by Client will remain in Client's account for one year from the date of payment and will then expire. You may also purchase creative hours which may be used for any creative services. Five complementary Creative Hours are included with each Marketing Service Agreement with an Initial Term of six months or longer. Creative hours, including complimentary hours, are non-refundable and expire at the end of the Term. Creative hours may not be transferred to other services without our written consent. Unless otherwise stated in your Service Agreement, creative hours are available for \$75 per hour for Marketing Clients, and \$150 per hour for Non-Marketing Clients. Video Production services are more involved and have a different hourly rate. Please see your Service Agreement for our current Video Production hourly rates. We do not store raw video footage after delivery of the completed project. All raw video footage will be deleted 30 days after delivery of the finalized media. If you want us to deliver the raw video footage you will need to provide a removable storage drive or reimburse us for the costs of a removable storage drive. Our video services necessarily require your input and cooperation. You agree to provide materials, direction, information, approvals, authorizations or decisions necessary for us to complete the project. We will work with you to complete your video project on your timeline. However, if we do not hear from you for over one year, we will cancel your video project and you will forfeit any amounts paid for video services.

**o. Social Media Management.** Social Media Management services are used to increase social engagement with your brand on Facebook, Instagram, Twitter, LinkedIn, Google My Business and Pinterest. With Social Media Management, we will provide a dedicated Social Media Manager to help you manage your business' social presence. Your Social Media Manager will work with you to help engage and interact with your followers, optimize your profiles, and work to create more visibility and loyalty to your brand. Included in each plan are regular postings on applicable social media platforms, branding and design, regular monitoring and communication on platforms to engage with followers,

and response (with your permission) to comments, messages, posts and spam. Your Service Agreement will outline your specific plan (Basic, Standard or Advanced) including the monthly recurring price. The Basic or Maintenance Plan includes 4 posts per month on a maximum of two social media platforms, and up to 1 hour per month of engagement on your profiles. The Standard Plan includes 8 posts per month across a maximum of 3 social media platforms, up to 2 hours of engagement per month, up to one video per month and an additional 150 Ad Credits per month. The Advanced Plan includes 16 posts per month on a maximum of 4 platforms, up to 4 hours of engagement per month, up to 2 videos per month and an additional 400 Ad Credits per month. Additional services may be added as follows: +1 Platform per month - \$150/mo, +1 Post per month - \$75/mo, and +1 hour of engagement per month - \$75/mo. Additional Ad Credits may be added on demand for an additional monthly or one-time fee.

**q. Print Services.** Print Services are provided through a partnership with The UPS Store®. All print services will be available for pickup at a UPS Store® near your location. Your price and included Print Services will be included on your Service Agreement or otherwise communicated to you by your Marketing Executive. The timing and location of the delivery depends on the availability of your local UPS Store® branch.

**r. Email Marketing 360™.** Email Marketing 360™ allows you to easily design, create, and send targeted marketing campaigns to your email marketing list through the Marketing 360® platform. The Marketing 360® Base Platform includes 2,500 emails per month at no additional charge. Email messages in excess of 2,500 per month will be charged \$.004 per message. Any excess charges due will accrue over the month and you will be billed for these charges in arrears with your regular monthly marketing payment. Unused messages do not rollover from month to month. By using Email Marketing 360™ you agree to the Marketing 360® Anti-Spam Policy located at [marketing360.com/antispam](http://marketing360.com/antispam). The Anti-Spam Policy is incorporated into this Agreement by reference. You represent that you will use Email Marketing 360™ in compliance with all applicable laws (including but not limited to policies and laws related to spamming, privacy, obscenity and defamation, and regulations such as HIPAA and other applicable privacy laws.) You agree not to use Email Marketing 360™ in a way that is obscene, harassing, threatening, libelous, or in any way that violates or infringes upon any 3<sup>rd</sup> Party intellectual property rights. You hereby agree to indemnify and hold harmless Marketing 360® against any damages, losses, liabilities, and expenses arising from an alleged violation of the foregoing or otherwise relating to your use of the Email Marketing 360™ services.

**s. Complimentary Promotions.** Marketing 360® occasionally offers Complimentary Promotions to new Clients signing a Service Agreement. Complimentary Promotions take the form of funds, credits or creative hours added to the Client's account to offset marketing costs under the Service Agreement. Unless otherwise stated, Complimentary Promotions may be used to offset any cost associated with the Service Agreement with the exception of 3<sup>rd</sup> Party advertising media buy. Complimentary Promotions are fully contingent on Client fulfilling the Initial Term. If Client cancels the Service Agreement prior to fulfilling the Initial Term, Client must pay back all Complimentary Promotions spent on Client's account at the time of cancellation, in addition to any applicable Early Cancellation Fees.

**t. M360 Payments Program Discount.** If you entered this Agreement in conjunction with a Marketing 360 Payment Processing Agreement, the Company may have agreed to discount your monthly marketing payment to offset the \$25 M360 Payments Program Fee. This discount will appear on your monthly marketing invoice as long as you remain both a Marketing Client and a Payment Processing Client. If you terminate either service, the discount will no longer be applied. For clarification, the discount is not available to Client's who are not being charged the monthly M360 Payments Program Fee in conjunction with their payment processing agreement.



**u. Promotional Point of Sale/Payment Processing Equipment.** If you have been provided promotional payment processing equipment at no cost when you signed up for our marketing and/or payment processing services, that equipment is provided free of charge to you for the term of your processing agreement. In the event you terminate your processing product(s) early and/or marketing service agreement prior to completing the Initial Term, you agree to return the promotional equipment, or remit to Madwire, LLC the retail price of the promotional equipment within 5 business days of account termination.

**v. Oracle/Facebook 3<sup>rd</sup> Party Audience Data.** If you choose to use the Oracle 3<sup>rd</sup> Party Audience Data we will provide access to the Oracle Data Cloud Digital Audiences for use in your Facebook ad campaigns. The cost of the services is fifteen percent (15%) of the total gross amount (prior to any discounts, rebates, or any other offsets) that you spend on media that includes the Oracle Powered Facebook Custom Audiences in any Facebook Ad Sets (your "Gross Media Spend"). An amount equal to 15% of your estimated Gross Media Spend will be taken from your Ad Credits on file prior to your Facebook ad sets running. Any excess charges not accounted for in this estimate will accrue over the month, and you will be billed for these charges in arrears with your regular monthly marketing payment. Your use of these services in connection with Facebook ads is subject to separate terms and conditions, including Facebook's Advertising Guidelines (currently accessible at <https://www.facebook.com/policies/ads>, as updated by Facebook from time to time). You represent and warrant that (i) your content complies with all applicable foreign and domestic federal, state and local laws and government rules and regulations (including any laws, directives or regulations relating to privacy, consumer protection, databases, data collection or data transfer) and your privacy policies, (ii) you have provided proper notice and secured proper consent for the collection and use of your content in connection with this Agreement, and (iii) you have procured all rights and licenses, and have all power and authority, necessary to provide your content to the Company without the additional consent of any third party. You further represent and warrant that any of your content provided to the Company for utilization in connection with the Facebook Platform Services (i) consists solely of Personal Data based records (and not cookie-based records or cookie-based records that are appended to Personal Data that were either (x) collected from your customers or (y) purchased or licensed by you from third parties and (ii) is readily available and accessible to you. You expressly agree that Facebook is an intended third-party beneficiary of this Agreement with respect to the provisions set forth in this Section. To use these services, we must provide Oracle with access and permissions to your Facebook Business Manager and/or Ad Accounts to which Oracle has fulfilled Oracle Powered Facebook Custom Audiences to allow Oracle to access, via Facebook reporting APIs, audience usage reporting on an ongoing basis for the use of Oracle Powered Facebook Custom Audiences. You acknowledge and expressly consent to Madwire sharing this information and these permissions with Oracle. EU GDPR Obligations: Your content may not relate to individuals subject to the General Data Protection Regulation (GDPR) 2016/679.

**2. Compliance with Laws/Prohibited Content.** Client shall not use or permit the Services to be used in violation of any applicable national, state, or local laws or regulations. Without limiting the foregoing, Client may not use any Marketing 360®'s Services for any illegal activity including the storage or transmission of information, data, files, or links to content that violate any applicable local, state, national, or international law. This includes, but is not limited to, pirated software, copyrighted data or links thereto, the propagation of computer worms or viruses, the use of false identities, or attempts to gain unauthorized entry to any network. Pornography and sex-related merchandising are prohibited on all Marketing 360®'s servers. This includes sites that may infer or link to sexual content. Spamming sites and

sites selling or promoting bulk email software, services, or addresses are also prohibited. Marketing 360® may terminate this agreement if it determines, in its sole discretion, Client has violated this policy.

**3. Client Obligations.** In addition to making all required payments, Client shall (a) cooperate with Marketing 360® in all matters relating to the Services and provide access to Client's advertising accounts including Client's Google Adwords and Analytics accounts as necessary; (b) respond promptly to questionnaires and any reasonable request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Marketing 360® to perform Services in accordance with the requirements of this Agreement; and (c) provide such customer materials or information as Marketing 360® may reasonably request to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects. Marketing 360® is not responsible or liable for any delay or failure of performance caused in whole or in part by Client's delay in performing, or failure to perform, any of its obligations under this Agreement.

**4. Payment.** Once you have executed your Service Agreement, you will be responsible for payment in full of all associated payments. All payments are due in US dollars. Unless otherwise stated, Client will pay all amounts due under this Agreement monthly, in advance. Payment for one-time services will be due in full on the Effective Date, or as otherwise provided by your Service Agreement. For recurring payments, the initial payment will be taken on the Effective Date, and you will be billed for subsequent payments as outlined in your Service Agreement. For monthly recurring Services, unless the Service Agreement states otherwise, you will be billed on the same numerical day of each month as the Effective Date. For example, if the Effective Date is November 17<sup>th</sup>, you will be billed for recurring monthly payments on December 17<sup>th</sup>, January 17<sup>th</sup>, and so on. The last billing date in each month is the 25<sup>th</sup>. If your Effective Date is after the 25<sup>th</sup>, the first payment will be taken on the Effective Date, and recurring payments will bill on the 25<sup>th</sup> of each month. For annual recurring services, you will be billed for the first year on the Effective Date, and you will be billed for subsequent payments on the anniversary of the Effective Date unless cancelled as provided in Section 5 below. If you are a Marketing Client, you acknowledge that you are required to pay the full amount due for the Services each month through the Initial Term and Renewal Terms at no less than the monthly recurring marketing total listed in your Service Agreement. You will be required to agree to all applicable payment authorization forms which authorize recurring billing in accordance with your agreement. Marketing 360® shall have the right to charge your credit card or debit from your account through ACH for fees in accordance with these Terms of Service and the Service Agreement. Client warrants the validity of any ACH information provided to Marketing 360® and acknowledges that Marketing 360® is entitled to debit Client's account for any ACH fees charged to Marketing 360® due to Client's error, including, but not limited to, incorrect information, invalid account numbers and non-sufficient funds. Marketing 360® uses a credit card updating service that automatically updates credit card numbers where a credit card has expired or been replaced. You acknowledge that Marketing 360® has a right to charge any credit card updated in this manner in accordance with these Terms of Service and the Service Agreement. YOU UNDERSTAND AND ACKNOWLEDGE THAT ALL AMOUNTS OWED MUST BE PAID IN ADVANCE AND THAT, IN ADDITION TO BEING IN BREACH OF YOUR CONTRACTUAL OBLIGATIONS, YOUR SERVICES MAY BE PAUSED OR TERMINATED IF TIMELY PAYMENT IS NOT RECEIVED OR IF A PAST PAYMENT HAS BEEN DISPUTED.

#### **5. Term/Termination.**

**a. Term.** The Agreement shall begin on the Effective Date and will remain in effect until terminated as provided below. For recurring accounts, the Service Agreement sets forth the minimum commitment term (the "Initial Term") and authorizes recurring monthly billing for such period. Unless otherwise stated in the Service Agreement, all monthly recurring Services have a six (6) month

Initial Term. Only months in which full payment has been received will count as a month of marketing under the Initial Term. Client acknowledges that Client's digital marketing plan is designed based on a minimum six-month Initial Term. After the Initial Term, the Term will be automatically renewed for successive one-month periods (each, a "Renewal Term") or as otherwise provided in the Service Agreement (the Initial Term and any Renewal Terms are collectively referred to herein as the "Term.")

**b. Cancellation.** Client may cancel the services by providing no less than 30 days' written notice of cancellation via mail or email addressed to Client's Marketing Executive or Project Manager, as applicable. If you have not completed the Initial Term, cancellation will be effective at the completion of the Initial Term. If you have completed the Initial Term, services will continue through the end of the next applicable Renewal Term and will then be cancelled.

**c. Early Cancellation.** If you wish to cancel the Services without completing the Initial Term you may do so only by providing both written notification of cancellation and the Early Cancellation Fee. The amount of your Early Cancellation Fee is defined in your Service Agreement. If your Service Agreement does not define the Early Cancellation Fee it shall be equal to the lesser of either (a) your remaining monthly payments under the Initial Term or (b) \$2,310.00. The Early Cancellation Fee payment is in addition to your monthly payments to date and may not be paid with credits on file or any prior payment. The Early Cancellation Fee must be provided within five (5) business days from our receipt of your written notice of early cancellation. No early cancellation of a Service Agreement will take effect until the Early Cancellation Fee has been paid, and you will continue to be billed monthly until we receive both proper written notice of cancellation and the Early Cancellation Fee, as applicable. Upon execution of this agreement, Marketing 360® will be investing considerable work into your business and online marketing activities. This investment is being made with the understanding that you are committing to pay for the Services through the Initial Term. Client recognizes the aforementioned investment, up-front sales, setup, and opportunity costs that Marketing 360® bears in connection with this marketing commitment, and acknowledges that this fee is not a penalty, but rather a reasonable amount of liquidated damages to compensate Marketing 360® for early cancellation of the Services.

**d. Cancellation Revocation.** You may, upon written notice (email is acceptable), revoke such cancellation after you have made a cancellation request, in which case the Service Agreement will be reinstated, and all applicable services will be reinstated upon payment in full of all amounts owed. If the cancellation fee has already been paid it shall be applied to any future amounts owed.

**e. Marketing 360®'s Right to Cancel.** We may cancel this Agreement at any time for any reason, and in our sole discretion, by providing written notice of cancellation to you. Cancellation will take effect at the end of the then current billing period. Written notice may be provided to you via email. If we terminate this Agreement pursuant to this Section 5.e, we will reimburse you for any unused credits and funds within 30 business days from the effective cancellation date.

**f. Pause or Downgrade of Service.** During the Initial Term, you may request a pause or a downgrade in your Services, however it will be in Marketing 360®'s sole discretion to determine if a pause or downgrade in Services is appropriate. No pause or downgrade during the Initial Term will be effective without a signed written confirmation from both Marketing 360® and the Client. After the Initial Term, you may pause or downgrade your account with no less than 30 days' written notice. After the Initial Term a downgrade that fully eliminates the recurring portion of certain services (e.g. NLA Credits, Ad Credits, Social Media Management, Reputations Management) shall be deemed a cancellation of such services and will terminate all Marketing 360® obligations related to that service

at the end of the then current billing cycle. Further, the Parties agree that any downgrade that eliminates the Marketing 360 Base Platform Fee (e.g. a downgrade to hosting services only) will terminate all Marketing 360® obligations related to those removed services. The Parties agree that the preceding two sentences shall not apply to temporary downgrades accompanied by a signed agreement. Client may upgrade or reinstate services at any time with a written or oral request.

**g. No Refunds and Unused Credits.** Unless we cancel the agreement pursuant to Section 5.e., no refunds will be provided for any amounts already paid to Marketing 360®. Upon cancellation of this agreement by you for any reason, any and all unused funds, credits or creative hours will be forfeited. If you are a Marketing Customer and downgrade to hosting only services or any other recurring services that do not include the Marketing 360 Base Platform Fee, any and all unused funds credits or creative hours remaining in your account at the time of the downgrade will be forfeited. The preceding sentence does not apply to temporary downgrades with a signed agreement.

**h. Collection of Amounts Owed.** You agree to pay all costs of collection (including attorneys' fees, costs, and other legal and collection expenses) incurred by Marketing 360® in connection with its enforcement of its right to payment under the Agreement. Any amounts not paid by you when due shall bear interest at the rate of 1.5% per month (or the highest rate permitted by law, if less).

**i. Charge Disputes.** If you dispute any payment with your credit card company or bank, and such dispute is resolved in Marketing 360®'s favor, you will be assessed a charge of \$100 per dispute initiated. You acknowledge that this amount is not a penalty, but a reasonable amount of liquidated damages to compensate Marketing 360® for the additional costs incurred in defending your payment dispute.

## **6. Intellectual Property.**

**a. License to Marketing 360®.** During the Term, you hereby grant to Marketing 360® a non-exclusive, royalty-free worldwide license to use, copy, backup, modify, display, broadcast, and transmit any of your content, including but not limited to your website, text, images, logos, trademarks, service marks, promotional materials, photos, audio, and video content relating to your existing website, as applicable, to the extent necessary and for the sole purpose of allowing Marketing 360® to perform the Services. This license will terminate upon termination of the Service Agreement.

**b. Ownership of Creative Deliverables and Content.** Upon receipt by Marketing 360® of full, unconditional payment from Client, Client shall own all rights, title, and interest in and to the Creative Deliverables (as defined below) created under this Agreement. Creative Deliverables shall be defined as any Custom Website Design, logo design, video production, photography services, Natural Listing Ads services and general design and development time as discussed in Section 1.n. Marketing 360® will retain a non-exclusive, non-revocable license in the completed Creative Deliverables, and Marketing 360® reserves the right to use the Creative Deliverables for advertising, publication, promotion, display or other purposes.

**c. Ownership of Website Design.** Notwithstanding Section 6.b., Marketing 360® retains all copyrights in all non-custom website designs delivered under this Agreement in accordance with Section 1.i. Upon valid cancellation of this Agreement in accordance with Section 5, and so long as full, unconditional payment has been received by Marketing 360® for any amounts owed by Client under this Agreement, Client will be granted a perpetual, royalty free, revocable, non-transferable license to use, copy, and publish any website design and related materials delivered to Client under this Agreement. Marketing 360® reserves the right to revoke this license only if either (1) Client does

not fulfil the Initial Term and/or pay the early cancellation fee or (2) Client initiates a payment dispute for any past payment.

**d. Work Product Ownership.** Any copyrightable works, ideas, discoveries, inventions, patents, products, marketing data, marketing campaigns or other information (collectively, "Work Product") developed in whole or in part by Marketing 360® during the course of this Agreement but excluding the Creative Deliverables and any materials referenced as belonging to Client pursuant to Section 6a. above, shall be the exclusive property of Marketing 360®.

**e. Trademarks.** All trademarks used in this agreement and used in conjunction with the Services are the property of their respective owners or licensors. With the exception of the trademark rights explicitly granted in this Agreement, no other rights to any trademarks are granted herein. Use of the Marketing 360® trademarks without the express written consent of Marketing 360® is prohibited.

**7. Authorization and Limited License to Access Marketing 360® Software Platform.** Upon execution of a marketing Service Agreement, and for so long as your Service Agreement is in effect and you are current on your Marketing 360® Base Platform Fee, you will be granted a revocable, non-transferable, non-sublicenseable, non-exclusive limited license to access the Marketing 360® Software Platform. You acknowledge and agree that you do not have, nor will you claim any right, title or interest in Marketing 360®, the platform, software, data, applications, methods of doing business, or any other content provided through Marketing 360® whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in and to the Marketing 360® Platform and Services, are and will remain with Marketing 360®. You may only access Marketing 360® via a web browser or mobile application. Your access shall be password protected and you acknowledge that you shall not share your password or otherwise permit any other person to access or use the Marketing 360® Platform or Services except as expressly permitted by this Agreement. For purposes of clarity and without limiting the generality of the foregoing, you shall not, except as this Agreement expressly permits: (a) copy, modify, or create derivative works or improvements of Marketing 360® Platform or Services; (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Marketing 360® Platform or Services to any person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service; (c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Services or Marketing 360 systems, in whole or in part; (d) bypass or breach any security device or protection used by the Marketing 360® Platform or Services, or access or use the Marketing 360® Platform or Services other than by an Authorized User through the use of his or her own then valid Access Credentials; (e) input, upload, transmit or otherwise provide to or through the Services or Marketing 360®'s systems, any information or materials that are unlawful or injurious, or contain, transmit or activate any harmful code; (f) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Services, Marketing 360®'s systems or Marketing 360®'s provision of services to any 3<sup>rd</sup> Party, in whole or in part; (g) remove, delete, alter, or obscure any trademarks, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property, or proprietary rights notices from any Services or other Marketing 360® materials, including any copy thereof; (h) access or use the Marketing 360® Platform or Services in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of Marketing 360® or any 3<sup>rd</sup> Party or in a way that violates any applicable law; (i) access or use the Marketing 360® Platform or Services for purposes of competitive analysis of the Services, for the development, provision, or use of a competing software service or product, or any other purpose that is to Marketing 360's detriment or commercial disadvantage. In addition to the other remedies Marketing

360® may have, Marketing 360® may terminate the foregoing license and this Agreement if it determines, in its sole discretion, that you have violated the provisions of this license.

**8. Representations.** By signing, you personally represent that (a) you have the power to enter into this Agreement and be bound to its obligations hereunder on behalf of the Client; (b) the execution of this Agreement by the Client has been authorized by all necessary corporate actions; and (c) upon execution of the Service Agreement, this Agreement constitutes a legal, valid, and binding obligation of Client, enforceable against Client in accordance with its terms. Client further represents that Client has the right to enter this agreement and use all intellectual property, including, but not limited to copyrighted materials and trademarks, supplied to Marketing 360® for use in conjunction with the services.

**9. Agency.** If you are purchasing the Services on behalf of another company, you personally represent and warrant that you have been authorized by such company to act as its agent in all respects related to the agreement. Without limiting the foregoing, you agree on behalf of each such company that such company has been made aware of, and agrees to be bound by, these Terms of Service.

**10. DISCLAIMER OF WARRANTIES.** MARKETING 360® PROVIDES ALL SERVICES ON AN “AS IS” BASIS WITHOUT ANY WARRANTY OF ANY KIND, AND MAKES NO REPRESENTATIONS OR WARRANTIES ABOUT THE SUITABILITY, RELIABILITY, TIMELINESS, SECURITY, OR ACCURACY OF THE SERVICES. THE SERVICES ARE PROVIDED WITHOUT ANY GUARANTEE OF CONTINUOUS OR UNINTERRUPTED AVAILABILITY. IF THE MARKETING SERVICES ARE INTERRUPTED OR DELAYED, MARKETING 360®’S SOLE OBLIGATION WILL BE TO RESTORE OR PROVIDE SUCH SERVICES AS SOON AS PRACTICAL. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MARKETING 360® DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. WITHOUT LIMITING THE FOREGOING, MARKETING 360® MAKES NO GUARANTEES WITH RESPECT TO THE PERFORMANCE OF ANY PRODUCT OR SERVICE.

**11. LIMITATIONS OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, MARKETING 360® SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY CLIENT OR COULD HAVE BEEN REASONABLY FORESEEN, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. EXCEPT FOR YOUR LIABILITY FOR PAYMENT OF FEES, YOUR LIABILITY ARISING FROM YOUR OBLIGATIONS UNDER THE INDEMNIFICATION SECTION AND YOUR LIABILITY FOR VIOLATION OF OUR INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT SHALL AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE EXCEED THE TOTAL OF THE AMOUNTS YOU PAID TO MARKETING 360® FOR THE SERVICES SOLD HEREUNDER. WITHOUT LIMITING THE FOREGOING, MARKETING 360® IS NOT RESPONSIBLE FOR ANY DAMAGES DUE TO ANY CONTENT, OMISSIONS, OR ERRONEOUS DATA APPEARING IN CLIENT’S WEBSITE, BLOGS, OR ON SOCIAL MEDIA OR ANY LOSS, DAMAGE, CORRUPTION, OR BREACH OF CLIENT DATA WITHIN CLIENT’S MARKETING 360® ACCOUNT. WE FURTHER DISCLAIM ALL LIABILITY WITH RESPECT TO THIRD-PARTY PRODUCTS THAT YOU USE IN CONJUNCTION WITH THESE SERVICES.

YOU UNDERSTAND AND AGREE THAT ABSENT YOUR AGREEMENT TO THIS LIMITATION OF LIABILITY, WE WOULD NOT PROVIDE THE SERVICES TO YOU.

## 12. Dispute Resolution.

**a. Good Faith and Cooperation.** Each of the Parties agrees to cooperate in good faith, reasonably, and in such a manner as may be necessary or appropriate to implement and give effect to the terms, conditions, and agreements contained herein. Each Party agrees to contact the other in writing (email is acceptable) regarding any claims, disputes, or controversies, and allow the other Party no less than 30 days to cure the issue or demonstrate that there is in-fact no issue present under these Terms of Service prior to initiating any formal legal action, payment dispute, or publishing any disparaging comments detrimental to the reputation, business, or business relationships of the other.

**b. Agreement to Arbitrate.** If the Parties are unable to resolve a dispute in Good Faith, the Parties hereby agree to resolve any and all disputes, controversies, or claims arising out of, relating to, or in connection with this Agreement and/or the Services, including the breach, termination, or validity thereof, through confidential binding arbitration in Fort Collins, Colorado by a single arbitrator. Such arbitration shall be administered by the American Arbitration Association (AAA) and conducted pursuant to the Expedited Procedures of the Commercial Arbitration Rules (CARs) of the AAA. The Parties further agree that they may only bring or participate in claims against the other in their respective individual capacities, and not as a plaintiff or class member in any purported class or representative proceeding. The Parties further agree that the arbitral tribunal may not consolidate more than one person's claims and may not otherwise preside over any form of a representative or class proceeding.

**c. Exceptions to Agreement to Arbitrate.** Marketing 360® may bring a lawsuit solely for injunctive relief to stop unauthorized use or abuse of the Services or for intellectual property infringement (for example, trademark, trade secret, copyright, or patent rights) without first engaging in arbitration or the Good Faith dispute-resolution process described above. In the event that the Parties agreement to arbitrate is found not to apply for any reason, all actions relating to or in connection with this Agreement shall be brought in the state and federal courts located in Larimer County, Colorado and Denver County, Colorado, respectively. The Parties consent to venue and personal jurisdiction in these courts for the limited exceptions under this Section 12.c.

**d. Costs and Attorney's Fees:** Except as otherwise provided in these Terms of Service, the Parties will be responsible for their own costs and legal fees.

**e. Voluntary and Knowing Waiver.** BY ENTERING INTO THIS ARBITRATION AGREEMENT, CLIENT ACKNOWLEDGES AND AGREES THAT IT IS WAIVING THE RIGHT TO A TRIAL BY JURY FOR ANY CLAIM SUBJECT TO ARBITRATION. CLIENT FURTHER ACKNOWLEDGES AND AGREES THAT IT MAY ONLY BRING A CLAIM IN ITS INDIVIDUAL CAPACITY, AND THAT IT WAIVES ANY RIGHT TO BRING AN ACTION AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. OTHER RIGHTS THAT CLIENT WOULD HAVE IF IT WENT TO COURT, SUCH AS DISCOVERY OR THE RIGHT TO APPEAL, MAY BE MORE LIMITED OR MAY NOT EXIST.

**13. Indemnification.** You agree to indemnify, defend, and hold us harmless from any and all liability, claims, damages, and settlements due to any 3<sup>rd</sup> Party claims or causes of action, (including, without limitation, reasonable attorneys' fees and court costs) arising out of or relating to Client's (a) illegal or unauthorized use of the Services, or (b) noncompliance or breach of any of these Terms of Service by Client or any 3<sup>rd</sup> Party (authorized, permitted or enabled by Client). This indemnification includes, but is

not limited to, any actions, including intellectual property actions (including trademark and copyright actions), actions related to end user personal or financial data, PCI compliance, Client's order processing, billing, fulfillment, shipment, collection, or actions related or associated with any products or services offered, sold, or licensed through Client's website. If Client is a Covered Entity under The Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Client waives any Claims it may have against Marketing 360® arising out of or in connection with HIPAA requirements and agrees to indemnify and hold harmless Marketing 360® against any and all Claims that are related to or arise from failure to comply with HIPAA requirements.

#### 14. Miscellaneous.

**a. Choice of Law:** This agreement and its interpretation, and all controversies arising hereunder, shall be governed by the applicable statutory and common law of the state of Colorado without giving effect to conflict of laws principles.

**b. Entire Agreement.** These Terms of Service together with the applicable Service Agreement constitute the entire agreement between the Parties. All prior agreements, discussions, representations, warranties and covenants are merged herein. Any amendments or modifications of this agreement shall be in writing and executed by the Parties.

**c. Waiver.** The failure by either Party to require performance of any provision shall not constitute a waiver nor affect that Party's right to require performance at any time thereafter.

**d. Electronic Signatures.** Each party agrees that electronic signatures have the same force and effect as manual signatures. Electronic signature means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record.

**e. Severability.** If any provision of this Agreement or the application thereof is held invalid, illegal, or unenforceable by any court of competent jurisdiction, (a) such provision will be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law, and (b) the remaining terms, provisions, covenants, and restrictions of this Agreement will remain in full force and effect.

**f. Assignment.** Neither Party may assign any part of the Agreement without the prior written consent of the other Party, provided, however, that either Party may freely assign this Agreement in connection with a sale of substantially all of its assets or a change of control of at least 50% of the voting equity interests of the business effective upon written notice to the other Party.

**g. No Third-Party Beneficiaries.** The parties do not confer any rights or remedies upon any person other than the parties to this Agreement and their respective successors and permitted assigns.

**h. Third-Party Sites and Products.** Third party sites and products are not under our control and are provided to you only as a convenience. The availability of any third party website or product does not mean we endorse, support or warranty the 3<sup>rd</sup> Party site or product. We do not warranty the performance of any third party product or service. If you are using a Woo360 website, certain WooCommerce plugins may be required for certain website functionality. You will be required to create your own WooCommerce account to access these plugins for your website, and you may be required to pay WooCommerce an additional fee for certain plugins.



**i. HIPAA.** If Client is a “covered entity” or a “business associate” thereof, as each term is used under the Health Insurance Portability and Accountability Act of 1996 (as may be amended or replaced, “HIPAA”) or is otherwise subject to any HIPAA-related or similar legal requirement, Client is solely responsible to ensure full compliance therewith. Client is responsible for maintaining the privacy of any persons or their information that may be covered by HIPAA or any related or similar legislation or regulation. Marketing 360® makes no claims or warranties regarding compliance with HIPAA.

**j. EU/EEA Data Processing.** To the extent that we process customer data that is subject to the European Union General Data Protection Regulation (“GDPR”) on your behalf, such processing will be undertaken pursuant to the terms of the Marketing 360® Data Processing Agreement (the “DPA”) located at <https://www.marketing360.com/data-processing-agreement/>. Please contact your Marketing 360 representative to receive a signed version of the DPA. The DPA is hereby incorporated by reference for all accounts whereby we process data subject to the GDPR. You acknowledge that in all cases Marketing 360® acts as the data processor of this data and you are the data controller of the data. You are required under the GDPR to obtain and maintain documentation of the applicable legitimate purpose and consent to process any GDPR data shared with Marketing 360® under this Agreement.

**k. Google Third Party Disclaimer.** Marketing 360® resells Google AdWords as a Google Third Party Partner. For more information on this program please see Google’s “Working with a Third-Party Disclaimer” located at <http://www.google.com/adwords/thirdpartypartners/>.

**l. Bing Ads Agreement.** Marketing 360® resells Bing Ads as a Bing Ads Elite SMB Partner, if you use our services to market on Bing you agree to be bound by the Bing Ads Agreement located at: <https://advertise.bingads.microsoft.com/en-us/resources/policies/microsoft-bing-ads-agreement>.

**m. Facebook Advertising Guidelines.** Your use of these services in connection with Facebook ads is subject to separate terms and conditions, including Facebook’s Advertising Guidelines (currently accessible at <https://www.facebook.com/policies/ads>, as updated by Facebook from time to time).

**n. Relationship of the Parties.** The Parties to the agreement are independent contractors, and no agency, partnership, joint venture, or employee/employer relationship is intended or created.

**o. Referrals.** Marketing 360® may provide incentives to 3<sup>rd</sup> parties to introduce potential Clients to Marketing 360®. From time to time, Marketing 360® may receive referral fees, incentives, revenue shares or rebates (the “Incentives”) from 3<sup>rd</sup> party advertisement providers, payment processors, and/or other 3<sup>rd</sup> parties based on hitting revenue or advertising spend thresholds or referring potential customers to the 3<sup>rd</sup> party provider. You acknowledge that you are not entitled to any Incentive or share of any Incentive received by Marketing 360®.

**p. Survival.** The sections labeled Intellectual Property, Confidentiality, Disclaimer of Warranties, Limitations of Liability, Dispute Resolution, and Indemnification are intended to survive the termination, cancellation or expiration of this agreement. Notwithstanding the foregoing, Client remains liable for any amounts due to Marketing 360® as of the effective date of termination.

**q. Subcontracting.** Marketing 360® may, without your consent, subcontract to any party the performance of all or any of Marketing 360®'s obligations under this Agreement provided that Marketing 360® remains primarily liable for the performance of those obligations.

**r. Taxes.** Sales tax and/or VAT tax may be added to certain products or services in certain states and countries. Sales and VAT taxes are automatically calculated based on Client's billing address and the product or services on Client's invoice. Client is responsible for any sales, use or VAT taxes not collected by Marketing 360®.

**s. Call Recording.** You acknowledge that we may record Client phone calls for quality control purposes.

**t. Trade Name.** Marketing 360® is a federally registered trademark and registered trade name of Madwire, LLC a Colorado limited liability company.

**u. Headings.** Section headings are provided for reference purposes only and in no way define, limit, construe, or describe the scope or extent of any section.

**v. Force Majeure.** Neither party shall have any liability for any failure or delay (other than for an obligation to pay) resulting from any government action, natural disaster, power failure, or any other condition affecting production or delivery in any manner beyond the reasonable control of such party.

**w. Notices.** All notices required by one party hereunder shall be provided in writing to the other Party at the mailing address or email address provided to the other Party from time to time in writing.

**x. Defined Terms.** Capitalized terms are defined in the section in which they first appear.