

## Marketing 360® Terms of Service

Last updated March 17, 2015.

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 individually a “Party”), the costs for such Services, the minimum commitment 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 documents and/or links referenced in such documents are collectively referred to as the “Agreement”. These Terms of Service may be reviewed at any time at [marketing360.com/terms](http://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 THE COMPANY, ITS AFFILIATES, OR ITS RESPECTIVE EMPLOYEES AND AGENTS.

The Service Agreement, together with these Terms of Service, constitute the entire agreement between the Parties. Marketing 360® limits acceptance to the Service Agreement and the Terms of Service, and objects to any other additional or different terms in the Client’s acceptance.

**1. Marketing Services.** Marketing 360® Services include, but are not limited to, the following products. Please check your Service Agreement for the list of products and services included in your specific 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™
- Marketing 360® Batchbook CRM
- SMS Marketing 360®
- Logo Design
- Social Media Management
- PR Marketing Campaigns
- Video and Photography Services

**a. Client Services.** Marketing 360® will provide the Services outlined in your Service Agreement governed by these Terms of Service. You may add additional one-time or recurring products and services at any time during the life of this Agreement. Unless the Parties agree otherwise in writing, any and all products and services added during the Term shall be governed by this Agreement.

**b. Marketing 360® Base Platform.** The Marketing 360® base platform grants Client access to the Marketing 360® software platform as well as access to a dedicated Marketing Executive, User Experience Intelligence® (UXi®), Natural Listing Ads® (NLA®), Top Placement Ads®, Retargeting Ads™, Social Targeting Ads™, My Click-to-Calls® (up to 1 number included), On-Demand Marketing & Design Services™, the Conversion Inbox, the Top Rated Local®, National® or eCommerce™ Program, UXi® Website Hosting for up to one website, the Local Listing Ads™

Program for up to one local business, Analytics, Reporting and More. Each of these products/services are available for all Marketing 360® accounts, however some products/services may not be utilized for your account depending on your specific marketing goals. Your Marketing Executive will work with you to develop a Marketing 360® plan designed to address your marketing goals. If we are developing a website for you, your Marketing 360® platform login will be provided once your site is completed and goes live with your approval.

**c. License to Access Marketing 360®.** Upon execution of the Service Agreement, and for so long as your Service Agreement is in effect and your account is in good standing, you will be granted a revocable, non-transferable, non-sublicenseable, non-exclusive limited license to access the Marketing 360® software platform. Your access shall be password protected and you acknowledge that you shall not share your password or otherwise provide access to third parties. 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®. You may only access Marketing 360® via a web browser or mobile application. You will not attempt to reverse engineer, alter or modify Marketing 360® in any way. Marketing 360® may terminate the foregoing license if it determines, in its sole discretion, that you have violated the provisions of this license.

**d. Ad Credits.** Ad Credits are used to run Top Placement Ads®, Retargeting Ads® and Social Targeting Ads™. Ad Credits cost one dollar per credit. Ad Credits are allocated to media buy (paid placement), campaign management and optimization. A more detailed explanation of Ad Credits and how they are allocated can be found at [www.marketing360.com/how-ad-credits-work](http://www.marketing360.com/how-ad-credits-work). 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 accurate 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 site (Google, Bing, Facebook, etc). You may access a performance report which includes raw data on costs, clicks, and impressions at the advertising account level (Google AdWords, Bing® Ads, etc.), 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. Ad Credits will not be used until your site has gone live with your approval. Ad position is based on a number of 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 use up to 110% of the Monthly Ad Credit Budget. Any balance of the Monthly 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, and any negative balance remaining at the end of the Term is due at that time. You may log into the Marketing 360® platform at any time to track Ad Credit usage and the results of your paid placement advertising.

**e. 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 per credit. NLA® credits are non-refundable, but may be allocated to other services with a written request. NLA® Credits can be used to execute such things as SEO keyword research & website optimization, title tag & 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 optimization, page schema markup, page content creation and optimization, blog post writing, SEO optimized infographic design, guest blog posting for link building and more. Credit usage is determined by Marketing 360®, based on what will have the greatest impact on organic growth. NLA® Credits cannot be used, and the Natural Listing Ads® SEO program cannot start, until the Client's website has gone live with Client approval. NLA® Credits will remain in the Client's Marketing 360® account until used. 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. All content will be considered approved unless Client notifies Marketing 360® of any errors, omissions or problems within 72 hours of posting. Client represents that it will not choose keywords that violate any third party's trademarks or other intellectual property rights and/or will obtain licenses to use any third

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.

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

**g. 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. One phone number is included with the Marketing 360® base platform; additional numbers may be purchased for an additional cost per month.

**h. UXi® Website Design and Content.** If you have requested UXi® Website Design services, we will populate up to 20 webpages with content or products at no additional charge. The content for the pages is generally provided by you, but we can provide content writing services for up to 10 pages, up to 300 words per page, upon request at no additional charge. Populating additional webpages and/or additional content writing is available at an 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. Unless you have contracted for a custom site, a site will be developed for you based on the UXi® design of your choice. UXi® design services include up to three rounds of revisions at no additional cost. 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. Neither Ad Credits nor NLA Credits can 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.

**i. Website Hosting.** UXi® website hosting for up to one site is included with the Marketing 360® Platform. Website Hosting includes up to 100GB of bandwidth per month. 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® hosting may be purchased for \$149.50 per year. 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 or Shopify 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 BigCommerce or Shopify 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 this Agreement; (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 may not use UXiCommerce in

**k. Top Rated Local®, National® and eCommerce™ Program.** Use the program to control your online reputation unlike any other rating system you'll find. Includes 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 accessing his/her account on 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.

**l. 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 SMS Marketing 360™ account allows you to send unlimited messages to your subscribers. SMS Marketing 360™ is billed annually. Your first payment will be taken on the Effective Date, and you will be automatically be billed for subsequent payments on the anniversary of the Effective Date (the “Renewal Date”). To cancel SMS Marketing 360™, you must provide notice of cancellation no less than 30 days prior to your renewal date. 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™

**m. 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. We have provided this bid 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.

**n. Social Media Management.** Social media is a great tool to increase social engagement with your brand. We will post daily content on your social media platform(s) as well as interact with your followers. The goal of our posts will be to engage your followers on a consistent basis and create more visibility and loyalty to your brand. We also use social media as a way to connect with other related and complementary businesses and organizations, creating even more visibility. Your Service Agreement will outline your specific plan including the number of Social Media site we will manage, and the number of management hours to be provided per month. Included in each plan is: daily postings on applicable social media platforms; branding and design of all platforms, and daily monitoring of platforms to respond to comments, messages, posts and spam. In addition, we will run contests and promotions (with Client approval). If additional hourly services are required by Client they can be purchased for the discounted rate contained in the Service Agreement. 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.

**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. The Company 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 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.

**4. Payment.** Once you have executed your Service Agreement, you will be responsible for payment in full of all associated payments, except as may otherwise be provided in Section 5 below. All payments are due in US dollars. Client will pay all amounts due under this Agreement monthly, in advance. If Client is paying by credit card or ACH, Client hereby irrevocably authorizes Marketing 360® to charge the credit card or other payment method provided

for any such amounts on a recurring basis when such amounts are due, and amounts due will be automatically charged, 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 below. You acknowledge that you are required to pay all amounts due for the Services through the Initial Term as outlined 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. The Company 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. 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.

## **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. After the Initial Term, the Term will be automatically renewed for successive periods (each, a "Renewal Term") as 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 registered 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, your services will run through the end of the previously paid billing period and will then be disabled.

**c. Cancellation Fee.** If you wish to cancel the Services immediately without completing the Initial Term you may do so only by providing both written notification of cancellation and an early cancellation fee. The early cancellation fee shall be equal to the lesser of (a) your remaining monthly payments or (b) \$2,310. The early cancellation fee must be provided within 5 business days from our receipt of your written notice of early cancellation. No early cancellation of a Service Agreement will take effect until this 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 Client's 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 within 30 days 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 at any time for any reason 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, we will reimburse you for any unused funds within 30 business days from the effective cancellation date.

**f. Pause of Service.** You may request a pause in your Services, however it will be in Marketing 360®'s sole discretion to determine if a pause in Services is appropriate.

**g. No Refunds.** Upon cancellation of this agreement by you for any reason, any and all unused funds or credits will be forfeited. Unless we cancel the agreement pursuant to Section 5.e., no refunds will be provided for amounts already paid to Marketing 360®.

**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, modify, display, broadcast and transmit any of your text, images, logos, trademarks, service marks, promotional materials, photos, audio, and video content relating to your existing website, as applicable, to the extent necessary for Marketing 360® to perform the Services.

**b. Ownership of Creative Deliverables.** Upon receipt of full, unconditional payment by Marketing 360®, Client shall own all rights, title and interest in and to the Creative Deliverables (as defined below) created under this Agreement. Creative Deliverables shall mean custom website design, logo design, video production, photography services and general design and development time as discussed in Section 1.m. The Company will retain a non-exclusive, non-revocable license in the completed materials Creative Deliverables, and Marketing 360® reserves the right to use the Creative Deliverables for advertising, publication, promotion, display or other purposes. Notwithstanding the foregoing, for clarification, Marketing 360® retains all rights in UXi® website designs created under this Agreement. Upon cancellation of this Agreement per 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, non-revocable, non-transferable license to use, copy and publish any UXi® websites and related materials delivered to Client under this Agreement.

**c. Work Product Ownership.** Any copyrightable works, ideas, discoveries, inventions, patents, products or other information (collectively, "Work Product") developed in whole or in part by Marketing 360® in connection with 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®.

**7. Confidentiality.** You receive this Agreement in strict confidence. Except as may be required by law, you agree that you will not publish or disseminate the terms or pricing of this Agreement to any third party (excluding communications with your affiliated, accountants, business advisors and/or attorneys) without the prior written consent of Marketing 360®.

**8. Representations.** You represent that (a) you have the power to enter into this Agreement and be bound to its obligations hereunder; (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.

**9. Agency.** In the event that you are purchasing the Services on behalf of another company, you 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.** THE COMPANY PROVIDES ALL SERVICES ON AN "AS IS" BASIS, WITHOUT ANY WARRANTY OF ANY KIND AND WITHOUT ANY GUARANTEE OF CONTINUOUS OR UNINTERRUPTED AVAILABILITY. IF

THE MARKETING SERVICES ARE INTERRUPTED OR DELAYED, THE COMPANY'S SOLE OBLIGATION WILL BE TO RESTORE OR PROVIDE SUCH SERVICES AS SOON AS PRACTICABLE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE COMPANY 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, THE COMPANY MAKES NO GUARANTEES WITH RESPECT TO THE PERFORMANCE OF ANY PRODUCT OR SERVICE.

**11. LIMITATIONS OF LIABILITY.** THE COMPANY 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. IN NO EVENT SHALL THE COMPANY'S 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 PAID TO THE COMPANY FOR THE SERVICES SOLD HEREUNDER.

WITHOUT LIMITING THE FOREGOING, THE COMPANY IS NOT RESPONSIBLE FOR ANY DAMAGES DUE TO OMISSIONS OR OTHER ERRONEOUS DATA APPEARING IN CLIENT'S WEBSITE, BLOGS OR ON SOCIAL MEDIA.

## **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 and/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 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 dispute that may arise between the Parties, including a breach of any provision in this Agreement, through confidential binding arbitration in Loveland, Colorado by a single attorney. Such arbitration shall be conducted pursuant to the Commercial Arbitration Rules (CARs) of the American Arbitration Association (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.

**c. Exceptions to Agreement to Arbitrate.** Either Party may assert claims, if they qualify, in small claims court in Larimer County, Colorado. Either party may bring a lawsuit solely for injunctive relief to stop unauthorized use or abuse of the Services, or 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.

**d. Equitable Relief.** Notwithstanding any other provision of this Agreement, in the event of a breach or threatened breach of this Agreement by one Party, the Parties hereby consent and agree that the other shall be entitled to seek a temporary or permanent injunction or other equitable relief against such breach or threatened breach without the necessity of showing any actual damages or that money damages would not afford an adequate remedy, and without the necessity of posting any bond or other security. The aforementioned equitable relief shall be in addition to, not in lieu of, legal remedies, monetary damages or other available forms of relief.

**e. Judicial forum for disputes.** In the event that the agreement to arbitrate is found not to apply to a Party's claim, you and Marketing 360® agree that any judicial proceeding will be brought in the state courts of Larimer County, Colorado, or, if a federal matter, in the Federal District Court of Colorado. Both you and Marketing 360® consent to venue and personal jurisdiction in these courts.

**f. 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.

**g. 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 NOT 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. Modification.** We reserve the right to modify these Terms of Service from time to time, and each such modification shall be effective upon notice to you of such modification. Updated Terms of Service will be maintained at [marketing360.com/terms](http://marketing360.com/terms). All material modifications will apply prospectively only. Your continued use of the Services following any such modification constitutes your agreement to be bound by and your acceptance of the Agreement as so modified. If you do not consent to any modification you must provide written notice (email is acceptable) of your objection within 30 days of such notice. Such objection shall not affect any previously agreed upon obligations of Client.

**14. Indemnification.** Each Party agrees to indemnify, defend and hold harmless the other Party, its subsidiaries, partners, officers, directors and employees from any and all liability, claims, damages and settlements due to any third party claims or causes of action, including reasonable legal fees and expenses arising out of or related to the indemnifying Party's material breach of any of its representations or warranties in this Agreement. Client further agrees to indemnify, defend and hold harmless Marketing 360®, its subsidiaries, partners, officers, directors, and employees from any third party claims (including, without limitation, reasonable attorneys' fees and court costs) arising out of or relating to Customer's breach of any of these Terms or use by Customer or any third party (authorized, permitted or enabled by Customer). This indemnification includes, but is not limited to, actions arising from keywords, content including blogs or material on any website associated with any Advertising Content, Advertiser's website(s), end user personal or financial data, and Client's order processing, billing, fulfillment, shipment, collection and/or other customer support associated with any products or services offered, sold or licensed through any Client website. If Customer is a Covered Entity under The Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Customer 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 the Indemnified Parties against any and all Claims that are related to or arise from failure to comply with HIPAA requirements.

#### **15. 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 or 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.** You may not assign any part of the Agreement without the prior written consent of Marketing 360®; provided, however, that you may assign this Agreement: (a) to an affiliate of Client; or (b) in connection



with a sale of substantially all of your assets or a change of control of at least 50% of the voting equity interests of your business. The Parties' rights and obligations will bind and inure to the benefit of their respective successors, heirs, executors and assigns.

**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. Google Third Party Disclaimer.** Marketing 360<sup>®</sup> 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/>.

**i. 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.

**j. Referrals.** The Company may provide incentives to third parties to introduce potential Clients to Marketing 360<sup>®</sup>.

**k. 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<sup>®</sup> as of the effective date of termination.

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

**m. Taxes.** Unless otherwise stated, the fees do not include any taxes, levies, duties or other similar government assessments of any nature, including but not limited to value-added, sales, use or withholding taxes assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). Client is responsible for paying any taxes associated with the purchase of the services hereunder.

**m. Trade Name.** Marketing 360<sup>®</sup> is a federally registered trademark and registered trade name of Madwire Media, LLC.

**n. 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.

**o. 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.

**p. 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.