

## 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**”), Service Order (the “**Service Order**”), or Online Order Form (the “**Order Form**”) sets forth which Services you are purchasing, the party entering the agreement (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. As used in this Agreement, the term Service Agreement means any Service Agreement, Service Orders or Online Order Form or any combination of the foregoing. These Terms of Services (the “**Terms of Service**” or the “**Terms**”) 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).

MARKETING 360® PROVIDES THE SERVICES AND SOFTWARE SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT YOU ACCEPTS AND COMPLY WITH THEM. BY EITHER SIGNING A SERVICE AGREEMENT/SERVICE ORDER OR BY CHECKING THE "ACCEPT" BOX ON THE SIGNUP ORDER FORM YOU (A) ACCEPT THIS AGREEMENT AND AGREE TO BOUND BY ITS TERMS; AND (B) REPRESENT AND WARRANT THAT: (I) YOU ARE 18 YEARS OF AGE OR OLDER/OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND (II) IF CLIENT IS A CORPORATION, GOVERNMENTAL ORGANIZATION, OR OTHER LEGAL ENTITY, YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF CLIENT AND BIND CLIENT TO ITS TERMS. IF YOU DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU MUST NOT ACCESS OR USE THE SERVICES OR SOFTWARE.

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, Service Order, and/or Online Order Form, together with these Terms of Service, the Marketing 360® Privacy Policy located at

<https://www.marketing360.com/privacy-policy/>, the Marketing 360® Payments Terms of Service, which governs all use of Marketing 360® Payments and related services, located at [www.marketing360.com/payment-terms](http://www.marketing360.com/payment-terms) (the "Payment Terms"), 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.

**1. Definitions.** The Marketing 360® products, services, and other capitalized terms have the definitions as defined in this section or in the section where they first appear.

**a. Ads/Ad Credits.** Ad Credits are used to run advertisements across digital platforms using the Top Placement Ads®, Retargeting Ads®, and Social Targeting Ads™ programs under the Model A Advertising Plan. Ad Credits cost one dollar (\$1.00) per credit. Ad Credits are allocated as follows: Sixty-one percent (61%) of each Ad Credit is allocated to media buy (paid placement on services such as Google AdWords, Facebook, Etc) and the remaining thirty-nine percent (39%) is allocated to campaign management and campaign optimization.. Please note, the media buy allocation percentage is subject to change without notice. Ad Credit costs, including cost-per-click reporting and more, are reflected through the Ad Credit Program (formerly, 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 (email acceptable). 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 Success Manager 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 number 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, we will not provide access to view or control your advertising or analytics accounts at the advertising account level of the respective service provider. You acknowledge that we will not transfer any advertising accounts or related account access to you at the end of the term. 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 Success Manager, if applicable.

**b. 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 Ad Credits or 3<sup>rd</sup> Party advertising media buy. Complimentary Promotions are fully contingent on Client fulfilling the Initial Term. If you cancel 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.

**c. Creative Deliverables.** Creative Deliverables shall be defined as Custom Website Design, the final delivered logo design, video media in final delivered form, photography media in final delivered form, the final end product of any Content services, the final end product of Social Media Management services, and the end product of any creative service defined in Section 1.d.

**d. Creative Services/Creative Credits.** Our creative services include, but are not limited to, Custom Website Design, logo design, photography services, and general design and development time. All creative services are offered via Creative Credits. Creative Credits cost one dollar (\$1.00) per credit. Your Service Agreement and/or Marketing 360® Representative will outline your specific creative services package and our estimated Creative Credit bid for the services. The credit bid 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 credits listed. If additional credits are required to complete the project, 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. Your approval of any credit increase shall be binding and incorporated into this agreement. Any unused Creative Credits paid for by Client will remain in the Client's account for one year from the date of payment and will then expire. You may also purchase Creative Credits which may be used for any creative services. A list of Creative Credit cost for services can be provided upon request. If you have Creative Hours on file, each Creative Hour is equal to 75 Creative Credits. Creative Hours, Complimentary Creative Hours and Creative Credits are non-refundable and expire at the end of the Term.

Creative Hours or Creative Credits may not be transferred to other services without our written consent. Creative Services are available at a discounted rate for Marketing Customers. Your Marketing 360® representative can provide you with the current rates for Creative Services. Video Production services are more involved and have a different hourly rate. Please see your Service Agreement for our current Video Production hourly rates. For more information on Video Production please see Section ae. Our Creative Services necessarily require your input and cooperation. You agree to provide materials, direction, information, approvals, authorizations or decisions necessary for us to complete your project. We will work with you to complete your Creative Services project on your timeline. However, if we do not hear from you for over one year, we may cancel your project and you will forfeit any amounts paid for the Creative Services.

**e. CRM.** The Marketing 360® CRM is a customer relationship management system within the Marketing 360® platform that is designed for small and medium-sized businesses. The CRM is included in both DIY and DIFM plans with the Marketing 360® Base Platform Fee payment. You may use the Marketing 360® CRM to manage up to 25,000 leads, contacts, or customers, additional contacts require additional resources and fees. You may add as many team members as you need, create up to 20 custom fields at no additional charge, 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 Success Manager 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 DIY Plan of the Marketing 360® Base Plan. 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 Marketing 360® CRM trial, you will have full complimentary access to the CRM for the free trial period. After the free trial period, you will need to pay either the DIY Fee or the Marketing 360® Base 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.

**f. Custom Website Design.** Custom Website Design shall mean a website not based on one of our preexisting designs and that is developed pursuant to an hourly bid and scope of work signed by the Client. All Custom Website Sites will display the words Custom Website Design prominently on your Service Agreement. Websites 360® and UXi® websites are never Custom Website Designs.

**g. eCommerce Website Design.** This product includes eCommerce website design services built to work on some of the most popular eCommerce website platforms (BigCommerce, Shopify, WooCommerce, Websites 360 Shop App, etc.) These services may appear on your service agreement as “Shopify Design,” “WooCommerce Design,” “Woo360 Design,” or “BigCommerce Design. 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. 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.

**h. 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. Email Marketing 360 under either the DIY Plan or a DIFM Plan 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 (\$10 per 2500 messages). 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.

**i. Fees.** Your Fees are the amounts you owe pursuant to your Service Agreement. Your Service Agreements will include one-time, monthly and/or annual Fees required for your use of the Services. Fees may also include additional Products and Services are added during the Term at your request.

**j. Listings/Local Listing Ads™.** The “Listings” or “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 Listings program is available for Marketing Clients with physical business locations. Included with the Marketing 360® Base Platform payment is Listings account for one location. Additional Listings locations are available at \$35 per month per location.

**k. Marketing 360® Platform License.** The Marketing 360® Platform License (the “**Marketing 360 Platform,**” “**Marketing 360® Base Plan**” or “**Marketing360® Base**”) plan grants you access to the Marketing 360® software platform as well as access to utilize certain Marketing 360® Services. Your Service Agreement will outline your specific monthly Marketing 360® Platform License fee. The Marketing 360® services included with the Marketing 360® Platform License are a limited license to use the Marketing 360® software platform during the term, a Websites 360® website license (if requested), access to Email Marketing 360, on-demand marketing and design services, the conversion inbox, access to the Marketing 360® CRM, a Top Rated Local® Account, store up to 10GB of files in the cloud, a free Marketing 360® Payments account (subject to additional terms and processing fees), website hosting for up to one website, access to the Local Listing Ads™ Program for up to one local business location, and a customer support pin number. Each of these products/services are available for all Marketing 360® accounts that are current on their monthly Marketing 360® Platform License 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 your 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. If you have a DIFM plan, your Marketing Success Manager 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.

**I. Marketing 360® Payments.** Marketing 360® Payments and related services are governed by the Marketing 360® Payment Terms located at [www.marketing360.com/payment-terms](http://www.marketing360.com/payment-terms) (the "Payment Terms"). The Payment Terms are incorporated in full by this reference. If you use Marketing 360® Payments services you hereby agree to be governed by the Payment Terms.

**m. Marketing 360® Platforms.** The Marketing 360® Platforms include all of Marketing 360®'s software platforms and product offerings. These include, but are not limited to, Marketing 360®, Marketing 360® Payments, Websites 360®, and Top Rated Local®.

**n. Model A Advertising Plan.** Under the Model A Plan, Client will purchase Ad Credits, and ads will be run through our master advertising accounts using those Ad Credits. This is the default advertising plan for all Clients. If your Service Agreement doesn't specify which advertising model you are using, you are under Model A.

**o. Model B Advertising Plan.** Under the Model B Plan, you will not be purchasing Ad Credits, but will instead pay a monthly optimization fee. Client will be responsible for purchasing ads directly from the applicable 3<sup>rd</sup> party ad provider in Client's own advertising accounts. Client agrees to provide the Company with admin access to these accounts during the Term. The monthly Optimization Fee (the "**Optimization Fee**") is equal to \$3,000 plus 10% of Client's monthly 3<sup>rd</sup> Party Media Buy total. The Company will manage all of Client's ad campaigns for this set monthly Optimization Fee. Your Marketing Success Manager will work with you to determine your anticipated monthly spend prior to your monthly bill each month and adjust your monthly invoice accordingly, in advance. If your actual spend exceeds your anticipated spend by more than 10% your next monthly invoice may be adjusted accordingly to accommodate the overspend. Model B is recommended for all Clients consistently spending more than \$10,000 per month in Ad Credits.

**p. Call Tracking/My Click-to-Calls®.** If you choose to utilize the Call Tracking a/k/a 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 inbound call tracking 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 Call tracking number(s) for a monthly fee. 500 call tracking minutes per month are included with your Marketing 360® Account. Additional tracking minutes are available for \$.02 per additional minute.

**q. Content/Natural Listing Ads.** "Content" a/k/a "Natural Listing Ads" Services are used to provide written, graphic design video and other content for your website or social media profiles for DIFM accounts with a monthly or one-time Content credit budget. Content Credits a/k/a NLA® Credits are used to power the this program. Content credits cost one dollar (\$1.00) per credit. Content 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 My Business 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, video production and more. All Content 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 Content services may begin as soon as you are entered into our system, however, in some cases, it might not make sense to use Content credits until your website has gone live with your approval. Your Marketing Success Manager and/or Content team members will determine the best allocation of your resources depending on your goals. Content credits are non-refundable, but may be allocated to other services, with the exception of Ad Credits, with a written request (email acceptable). If you cancel your recurring Content credit product, your Content 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 your website periodically. You are 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 Content credit usage and results. Additional Content credits may be added at any time in order for additional activities to be completed.

**r. 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.

**s. Print and Merchandise Services.** Print and Merchandise Services are provided through partnerships with third party providers. All print services will be available for pickup at a to be determined location or will be shipped to Client at an address provided by Client. Your price and included Print Services will be included on your Service Agreement or otherwise communicated to you by your Marketing Success Manager. The timing and location of the delivery depends on the availability of the respective service.

**t. 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 (shipping not included) 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.

**u. Services.** For the purpose of this Agreement, Services means any and all Products and Services offered by us pursuant to these Terms of Service.

**v. Onboarding Package.** All Marketing 360® accounts, with the exception of Trial Accounts, come with an Onboarding Package. This Onboarding Package includes, as applicable, work to customize your Marketing 360 Platform account for your business, either the design of a new website or the integration of your existing website into the platform, and basic training for you or your employees on the use of the platform. The amount of your Onboarding Package is defined in your Service Agreement. If your Service Agreement does not define the Onboarding Package it shall be equal to \$2,350.00. Marketing 360® may agree to waive some or all of the Onboarding Package with your agreement to an Initial Term of six (6) months or more. If you fail to complete your Initial Term you acknowledge that you must repay any previously waived Onboarding Package. See Section 6.c. for more information about early cancellation of your

Service Agreement. In earlier Service Agreements, the Onboarding Package may be referred to as the "Setup Fee."

**w. 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 SMS platform can be used to create trackable, custom, automated SMS campaigns. Your Marketing 360® Base Platform payment allows you to send 250 messages per month to your subscribers at no additional cost. Messages in excess of 250 per month will be charged \$.04 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.

**x. Social Media Posts and Social Media Management Services.** If you are a Marketing 360® Base DIY Client, you may use the Marketing 360® Software to publish posts across your social media platforms. You may connect up to 10 social media profiles within Marketing 360® (additional profiles are an additional \$1 per month). You may publish 500 posts per month at no additional charge. Posts in excess of 500 each month will incur an additional fee of \$.02 per post. If you have Social Media Management Services added to your DIFM account, we will provide a dedicated Social Media Manager to help you manage your business' social presence across your social media platforms. 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, and up to one video per month. The Advanced Plan includes 16 posts per month on a maximum of 4 platforms, up to 4 hours of engagement per month, and up to 2 videos 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. All Social Media related services are governed by the terms of service of the platform in question (Instagram, Facebook, Twitter, LinkedIn, etc).

**y. Top Rated Local®.** A Top Rated Local® Account is included in your DIY package with your Marketing 360® Base Platform Fee. You may upgrade to Top Rated Local® Reputation Management services account with a dedicated Top Rated Local® Reputation Manager at any time for an additional fee. Use the Top Rated Local® program to monitor your online reviews and reputation. The Top Rated Local® program includes your listing/profile, rating system, access to the rating and analytics dashboard, recommendations for improving your rating score, the ability to leave notes or reply's to reviews on certain review platforms, the ability to embed Top Rated Local reviews and ratings on your website, and the ability to use the Top Rated Local trust badge on your website and marketing materials.

**z. Trial Services.** Marketing 360® may offer an obligation free trial to allow you to evaluate some or all of our Services free of charge. With the exception of the terms specifically related to billing, all of these Terms will apply to free trial accounts (each a **"Trial Account"**). Your free trial includes reduced access to the Marketing 360® Platform. Your Trial Account includes unlimited use of certain services within the Marketing 360® platform including Payments (the Marketing 360® Payment Terms and applicable processing fees apply), CRM (up to 2,500 contacts), Forms, the Banner Builder, and Reputation Management. You also get access to a 14 day trial of Websites 360® website design by signing up for a Trial Account. The Services included in your Trial Account are subject to change without notice to you, and we may modify or stop offering free trials at any time.

**aa. Video Production.** Your Service Agreement will contain a project bid which is an estimation of the production time required for your project based on the information you have provided. This would include, but not limited to; the time used by the project manager, designers, and video producer for the purpose of planning, designing, and production as herewith covered in this agreement. Unless specifically stated, video production does not include filming or media capture. In the event that additional video production and design time is required, either due to additional client requests, increased scope of the project, or design changes you will be charged an additional rate. The additional hourly charges, if any, will apply to the client's project in excess of the estimated design and video production time listed. In the case of time over-runs, the client will be notified before any additional charges, beyond the initial cost estimate, are incurred. We will proceed only after receiving approval (written or oral) from the Client. This Client approval shall be binding and incorporated into the terms of this agreement. Once completed, all media will be delivered through email. If you have a marketing services contract, the media may also be incorporated into the Client's website or in an advertisement. Delivery of the finished media will only occur if the client has paid in full under the terms of this agreement. Finished media is considered a Creative Deliverable, but all raw footage, raw audio, or raw media capture is considered Marketing 360® work product. We do not store or provide raw video footage after delivery of the completed project. All raw video footage will be deleted 30 days after the delivery of the finalized media. If you want us to deliver the raw video footage it is

available for an additional cost. You will also need to provide the removable storage drive for transport. Video Production services necessarily require your input and cooperation. You agree to provide materials, direction, information, approvals, authorizations, or decisions necessary for us to complete your 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 may cancel your project and you will forfeit any amounts paid for the Video Production services.

**ab. Websites 360® Shop App.** The Websites 360® Shop App add-on is a fully functional shopping cart add-on for use on your Websites 360® website. You can easily add additional products via the Websites 360® Shop App interface. The Shop App may be added on to your Websites 360® website for an additional monthly or annual fee. With the Shop App, you are solely responsible for maintaining the confidentiality of all associated access credentials and you are solely 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 your Shop App. You must utilize Marketing 360® Payments if you are using the Websites 360 Shop App. You may not use Websites 360® Shop App (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. You acknowledge that 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 your Websites 360® Shop App 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. Without limitation, you expressly acknowledge that the indemnification provision of Section 14 applies to the use of the Websites 360® Shop App.

**ac. Websites 360®.** Websites 360® is a hosted website license solution which allows you to create and publish Websites 360® websites hosted by Marketing 360®. You can edit and modify any of our predesigned templates to fit your business. You will receive one Websites 360® license with a current Marketing 360 Platform license, otherwise this service is available for \$300 per year, and we require annual billing for this service. You will receive access to the Websites 360® knowledge base for helpful articles and FAQs with your Websites 360 service.. Websites 360® websites are a proprietary hosted solution compatible only with Marketing 360® servers and must be hosted by Marketing 360®. Your license to use your Websites 360® website is defined in Section 7.d. below. Websites 360® websites may not be migrated to another website hosting platform under any circumstance.

**ad. 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 \$300 per year billed annually on a recurring basis.

Website hosting for WooCommerce websites for additional websites or for Non-Marketing Clients is \$49/month or \$588/year. Website Hosting includes up to 100GB of bandwidth per month. Additional bandwidth is available for an additional cost, contact your Marketing 360® representative for current pricing. Hosting includes up to 3GB of data storage; additional storage will require an additional fee of \$5 per additional 3GB of storage per month. These overages will be invoiced monthly and will be calculated at the time of invoicing. Websites 360® and UXi® websites are a proprietary hosted solution compatible only with Marketing 360® servers and must be hosted by Marketing 360®. Neither Websites 360® nor UXi® designs may be migrated to another hosting platform. Upon cancellation of your Marketing 360® Base Platform, UXi® or Websites 360® website hosting may be purchased for \$300 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. BigCommerce, Shopify, and some other 3<sup>rd</sup> Party e-commerce site design files must be 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.

**3. 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® 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.

**4. 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.

**5. Payment.** Once you have executed your Service Agreement, Service Order or Online Order Form, you will be responsible for payment in full of all associated Fees. All Fees are due in US dollars. Unless otherwise stated, Client will pay all Fees due under this Agreement monthly, in

advance. Fees for one-time services will be due in full on the Effective Date, or as otherwise provided by your Service Agreement. For recurring Fees, the initial payment will be taken on the Effective Date, and you will be billed for subsequent Fees 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 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 canceled as provided in Section 5 below. 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 FEES 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.

## **6. 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 Websites 360 Site Only plans or website hosting plans have a twelve (12) month Initial Term and all other plans have a six (6) month Initial Term. Your Initial Term may be extended by any added Service Order or Online Order Form. If there is a conflict the most recent agreement's Initial Term shall control. 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 the Initial Term defined in Client's Service Agreement. 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 your Marketing Success Manager 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.** You acknowledge that Marketing 360® requires an Onboarding Package for all Marketing 360 Platform License Accounts. Marketing 360® may waive some or all of this Onboarding Package for all accounts that sign up for an Initial Term of six (6) months or more. 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 any previously waived Onboarding Package. The amount of your Onboarding Package is defined in your Service Agreement. If your Service Agreement does not define the Onboarding Package it shall be equal to \$2,350.00. The Onboarding Package payment is in addition to your monthly payments to date and may not be paid with credits on file or any prior payment. The Onboarding Package 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 previously waived Onboarding Package has been paid, and you will continue to be billed monthly until we receive both proper written notice of cancellation and the Onboarding Package, 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. Clients who signed a Service Agreement prior to May 2021 do not have an Onboarding Package, but instead may cancel prior to the end of the Initial Term only by paying a Setup Fee or an Early Cancellation Fee. The Setup Fee or Early Cancellation Fee, if applicable, will be defined in your Service Agreement. You acknowledge the aforementioned investment, up-front sales, setup, and opportunity costs that Marketing 360® bears in connection with your Service Agreement and you acknowledge that this Early Cancellation 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. Content Credits, Ad Credits, Social Media Management, etc) 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 downgrade to hosting only services or any other recurring services that do not include the Marketing 360 Platform License 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.



## **7. Intellectual Property.**

**a. Your License Grant 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, copyrights, 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 created under this Agreement. 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 non-custom Website Design.** Notwithstanding Section 7.b. and Section 7d, 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 6, 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 fulfill the Initial Term and/or pay the waived Setup Fee fee or (2) Client initiates a payment dispute for any past payment.

**d. Websites 360® License.** Marketing 360® grants Client, during the Term for which Client has paid the applicable Fees, a non-exclusive, non-transferable and revocable license, subject to this Agreement and any qualifications contained herein, to access and use the Websites 360 Service for displaying a Websites 360 website design. This license is limited, non-sublicensable, and intended solely for the purpose of accessing and using the Websites 360 Service in connection with the creation of Client websites hosted by Marketing 360. This license to access the Websites 360® will terminate upon cancellation or non-payment of any applicable fees.

**e. 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 7a. above, shall be the exclusive property of Marketing 360®.

**f. 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.

#### **8. Authorization and Limited License to the Access Marketing 360® Software Platforms.**

Upon execution of a marketing Service Agreement, and for so long as your Service Agreement is in effect and you are current on all applicable fees or payments, you will be granted a revocable, non-transferable, non-sublicenseable, non-exclusive limited license to access the Marketing 360® Software Platforms. You acknowledge and agree that you do not have, nor will you claim any right, title or interest in the Marketing 360® Platforms, including, without limitation, Marketing 360®, Websites 360®, Top Rated Local®, the platforms, 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® Platforms and Services, are and will remain with Marketing 360®. You may only access the Marketing 360® Platforms 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® Platforms 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® Platforms 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® Platforms 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.

**9. 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.

**10. 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.

**11. 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 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.

**12. 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® IN THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO A CLAIM. 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.

### **13. 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.

**14. Indemnification.** You agree to indemnify, defend, and hold Marketing 360® harmless from any and all liability, claims, damages, and settlements due to any third 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 you or any third party (authorized, permitted or enabled by Client). This indemnification includes, but is not limited to, any actions, including actions alleging or related to: infringement of any intellectual property (including trademark, patent and copyright actions), defamation, false or misleading advertising, end user personal or financial data, applicable privacy laws, 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.

**15. Non-Solicitation.** You agree not to directly or indirectly solicit, hire, recruit, or attempt to solicit, hire, or recruit, any employee of Marketing 360® or its subsidiaries, or induce the termination of employment of any Marketing 360® employee during the Term and for a period of three (3) years following the termination of this Agreement.

## **16. 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. Marketing 360® limits acceptance to these agreements, and objects to any other additional or different terms in the Client's acceptance.

**c. Amendment/No Waiver.** We may update and change any part or all of these Terms of Service. If we update or change the Terms of Service, the updated Terms of Service will be posted at <http://marketing360.com/terms> and we will let you know via email and/or via notification in the Marketing 360 Platforms. If you do not agree with a modification to the Terms of Service, you must notify us in writing within thirty (30) days after receiving notice of modification. If you give us this notice, your subscription will continue to be governed by the terms and conditions of the Terms of Service prior to modification for the remainder of your Initial Term or your current Renewal Term. Upon renewal, the Terms of Service published on our website will apply. Any material amendment to your Service Agreement must be contained in writing and executed by the Parties. 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, click box 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. CCPA Contract Clauses.** If we are processing data for you that is protected by the California Consumer Privacy Act (CCPA) such data will be processed in accordance with our CCPA Contract Clauses located at [marketing360.com/ccpaclauses](https://marketing360.com/ccpaclauses). If you are covered by the CCPA, it is your obligation to inform us of those obligations so that we can provide you with the CCPA Contract Clauses to sign.

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

**v. Communication Preferences.** You consent to receiving electronic and telephone communications from us relating to your account or the Services. These communications may involve telephone calls to any number you provide, SMS text messages to a phone number you provide, sending emails to any email address you provide, and posting communications to you in the Marketing 360 Platforms, or in the "My Account" page. You agree that any notices, agreements, disclosures or other communications that we send to you electronically will satisfy any legal communication requirements, including that such communications be in writing. You should maintain copies of electronic communications by printing a paper copy or saving an electronic copy. You also consent to receiving certain other communications from us, such as newsletters about new features and content, special offers, promotional announcements and customer surveys via email or other methods. Please review our Privacy Policy for further detail on our marketing communications.

**w. 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.



**x. 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.

**y. 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.