

## Marketing 360® Terms of Service

Last updated March 6, 2017.

Marketing 360® (“Marketing 360®,” “we” or “us”) provides a range of marketing products and services for businesses of all sizes (the “Services”). Your Service Agreement (the “Service Agreement”) sets forth which Services are being purchased, the Client purchasing the Services (the “Client”, “you” or “your” and together with Marketing 360® the “Parties” or each individually a “Party”), the costs for such Services, the minimum Initial Term and other relevant details. These Terms of Services (the “Terms of Service”) are incorporated by reference into and made part of any Service Agreement submitted to Marketing 360® and govern the relationship between you and Marketing 360®. These Terms of Service are effective on the date the Service Agreement is signed (the “Effective Date”), and remain in effect until terminated as provided below. The Service Agreement, the Terms of Service and the 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 MARKETING 360®, 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. Not all of these services are applicable to all accounts, please check your Service Agreement for the list of products and services included in your specific 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™
- Email Marketing 360®

- Marketing 360® 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. You may add services by either verbally communicating the request to your Marketing Executive/Marketing 360® representative or communicating your request via email. Unless the Parties agree otherwise in writing, any and all products and services added during the Term shall be governed by this Agreement. For the purpose of this Agreement, a Client who is current on its monthly Marketing 360® Base Platform payment, as outlined in its Service Agreement, is considered a “Marketing Client,” any Client who has not contracted for the Marketing 360® platform or who is not current on its monthly Marketing 360® Base Platform payment will be considered a “Non-Marketing Client.”

**b. Marketing 360® Base Platform.** The Marketing 360® base platform fee or Marketing 360® base package grants Client access to the Marketing 360® software platform as well as access to utilize Marketing 360® Services, including a dedicated Marketing Executive, a User Experience Intelligence® (UXi®) website design, Natural Listing Ads® (NLA®), Top Placement Ads®, Retargeting Ads®, Social Targeting Ads™, My Click-to-Calls® (up to 2 numbers included), Email Marketing 360®, On-Demand Marketing & Design Services™, the Conversion Inbox, the Marketing 360® CRM, 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, as well as Analytics and Reporting through the Marketing 360 Software Platform. Each of these products/services are available for all Marketing 360® accounts that are current on their monthly marketing payment, however some products/services may not be utilized for your account depending on your specific marketing goals. Please note that some services (Top Placement Ads, Natural Listing Ads, Social Targeting Ads, Retargeting Ads, Email Marketing 360®, On-demand Marketing Services, etc) may require additional funds or credits to run or be utilized. Further, some services that by their nature require a live website in order to be utilized (including, but not limited to, Ad Credits, some NLA® services, website hosting, etc) will not be utilized until your website goes live. Please note, some 3<sup>rd</sup> Party products and services may not be available for all clients based on the terms and conditions of the applicable 3<sup>rd</sup> Party provider. Your Marketing Executive will work with you to develop a Marketing 360® plan designed to address your marketing goals. If we are developing a website for you, your Marketing 360® platform login may not be provided until your site is completed and goes live with your approval.

**c. Ad Credits.** Ad Credits are used to run 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. The media buy allocation percentage is determined by your Marketing 360® base plan, Model A or Model B. A more detailed explanation of Ad Credits, how they are allocated and the two Ad Credit Models 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 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, Yahoo, Facebook, etc), and some services may not be available for some Products or Services. You may access a performance report which includes raw data on costs, clicks, and impressions at the Google advertising account level at any time by clicking the applicable link on your Marketing 360® dashboard. These links are available in the top right hand corner of the Top Placement Ads®, Retargeting Ads™ or Social Targeting Ads pages on your Marketing 360® dashboard. Ad Credits are non-refundable, but may be allocated to other services with a written request. If we are developing a site for you, your Ad Credits, and related services, cannot be used until your site has gone live with your approval. Actual ad position on third party websites 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 spend any credits you have on file. Marketing 360® will monitor your Ad Credit spend to keep you on budget, but in rare cases Marketing 360® may spend over and above the amount of credits you have on file. Any balance of 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. We use a master advertising account with each third party Ad Credits services provider (Google, Bing, Yahoo, Facebook, etc). You agree to link your advertising account with our master account in order to use Ad Credits for these services. Because all of our accounts are linked within our master advertising accounts, you will not have access to view your account at the advertising account level of the respective service provider. You can get a report of your advertising performance and Ad Credit usage by logging into the Marketing 360® platform at any time or by contacting your Marketing Executive.

**d. Natural Listing Ads® and NLA® Credits.** NLA® Credits are used to power the Natural Listing Ads® SEO program. Use the Natural Listing Ads® program to increase your visibility in organic search results on search engines like Google & Bing and generate more sales from organic search. NLA® Credits cost one dollar 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. All NLA® credit usage is determined by Marketing 360® based on what we estimate will have the greatest impact on organic growth. Depending on your marketing goals NLA® Credits and the Natural Listing Ads® services may begin as soon as you are entered into our system, however in some cases it might not make sense to use NLA® credits until the Client's website has gone live with Client approval. Your Marketing Executive and NLA® team members will determine the best allocation of your resources depending on your goals. Any unused 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, 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 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.

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

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

**g. Marketing 360® CRM.** The Marketing 360® CRM is a full featured customer relationship management system within the Marketing 360® platform that is designed for small and medium sized businesses. Use the Marketing 360® CRM to manage all your leads & customers in one place. Add as many team members as you need, create custom fields to store any contact information you need, assign tasks track deals and sales pipelines, assign contacts to specific team members and use your CRM on your phone or desktop computer from anywhere with internet access. Once you sign up for the Marketing 360® CRM, a CRM specialist will contact you to walk you through the product and answer any initial questions you may have. Going forward, either your Marketing Executive (if you are a Marketing Client) or a CRM specialist can assist you with any questions. Access to the Marketing 360® CRM is included if you are a Marketing Client and are current on your monthly marketing payment. For Non-Marketing Clients, the Marketing 360® CRM is available for \$1,188 per year billed on a recurring annual basis. Billing will renew automatically until cancelled with no less than 30 days' written notice (email is acceptable) to your CRM specialist. Your access to the Marketing 360® CRM will be suspended and/or terminated if your renewal payment is denied, 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 cancel marketing, but wish to continue using the Marketing 360® CRM, you must pay the annual fee of \$1,188 within five (5) business days from cancellation or your CRM account may be suspended and/or terminated. If you are a Marketing 360® CRM only Client, you will access the CRM through the normal Marketing 360® dashboard, but you will not have access to the marketing functionality within the dashboard. If you have signed up for the free 45-day Marketing 360® CRM trial you will have full complimentary access to the CRM for the 45 day trial period. After the free trial period, your access to the Marketing 360® CRM will be suspended until you pay the annual fee. 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. Please note, the Marketing 360® CRM is not designed to be HIPAA compliant, and is not designed to be used by any health services provider.

**h. Website Design and Content.** Website design services include a website design built for conversions and designed to work on some of the most popular website platforms (UXi®, BigCommerce, Shopify, WooCommerce, etc). Your site design includes up to three rounds of revisions at no additional cost. Along with the site design, 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. If you need to add more time in order for us to make additional revisions, content, pages, etc., it can be added at an additional hourly rate. You are welcome to add pages, content

or products at any time for no additional charges via the website's content management system. Website design is included at no additional charge with a six-month minimum marketing commitment, however, your license to use the website design is contingent upon our receipt of either (a) full payment of your monthly marketing payments through the Initial Term or (b) the early cancellation fee as applicable. See section 6.d. for more information on your website design license. Website development is a fluid process dependent on a number of 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 the website design of your choice. A selection of available website designs is located at <http://www.bestwebsitedesigngallery.com/>. Many services, including both Ad Credits and some NLA services cannot be used until your website is completed and goes live with your approval. Any Credits paid for prior to website completion will remain in your account until your website goes live. If you have contracted for Custom Website Design services it will be clearly stated as "Custom Website Design" on your Service Agreement and will include both a scope of work and an estimated work hour quote. Additional information regarding Custom Website design is included in Section 1.n. Creative Services.

**i. Website Hosting.** Website hosting for up to one site is included with the Marketing 360® Platform for Marketing Clients upon request. Hosting for additional websites or for Non-Marketing Clients is available for \$149.50 per year billed annually on a recurring basis. Website Hosting includes up to 100GB of bandwidth per month. UXi hosting includes all necessary website data storage. Hosting for non-UXi sites includes 500MB of data storage; additional storage will require additional fees. Additional bandwidth is available for an additional cost. UXi® websites are a proprietary hosted solution compatible only with UXi® servers, and must be hosted on the UXi® platform to operate properly. Upon cancellation of marketing, UXi® website hosting may be purchased for \$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, Shopify and other 3<sup>rd</sup> Party e-commerce site design files are hosted on their respective servers. Upon cancellation of marketing, BigCommerce and Shopify sites will continue to be hosted on these platforms. If you have issues with your 3<sup>rd</sup> party website hosting, you must contact those entities directly.

**j. UXiCommerce™.** The UXiCommerce™ Add-On is a fully functional shopping cart add-on for use on your UXi® website. You can easily add additional products via the UXiCommerce™ interface. You are granted a limited, non-exclusive, non-transferable, revocable and non-perpetual license to use the UXiCommerce™ shopping cart Add-On. You shall not knowingly, directly or indirectly, (a) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code underlying ideas or algorithms of UXiCommerce™; (b) copy, modify or create derivative works based on UXiCommerce™; (c) permit any third party to access UXiCommerce™ except as necessary to utilize the shopping cart under the terms of 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 are responsible for maintaining the confidentiality of all associated access credentials, and are entirely responsible for any and all activities that occur using your access credentials. You agree to promptly notify us of any unauthorized use of your access credentials or any other breach of security of the Partner Interface that is known to Channel Partner. You may not use UXiCommerce™ (a) in violation of any applicable export laws and regulations (including without limitation any U.S. export laws and regulations); (b) in violation of any applicable national, state, or local laws or regulations, including without limitation any laws governing the import

of the Service or governing the content which you make available via the Service; or (c) in ways that infringe the rights of others, or interfere with other users of Supplier's network or other networks. Marketing 360® agrees to exercise commercially reasonable efforts to remedy security breaches associated with UXiCommerce™. You acknowledge that, notwithstanding such security precautions, use of, or connection to, the Internet provides the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to the Services and your UXiCommerce™ Data. Accordingly, we cannot and do not guarantee the privacy, security, integrity or authenticity of any information so transmitted over or stored in any system connected to the Internet or represents that any such security precautions will be adequate or sufficient. You expressly acknowledge that the indemnification provision of Section 14 applies to the use of UXiCommerce™.

**k. Top Rated Local®, National® and eCommerce® Program.** Use the Top Rated Local® 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 you sign up for your account on [topratedlocal.com](http://topratedlocal.com). If you do not agree to be bound by these terms you must alert Top Rated Local®, and cancel your Top Rated Local® listing within 10 business days; failure to cancel within 10 days will constitute acceptance of these terms.

**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 Marketing 360® base platform allows you to send 1,000 messages per month to your subscribers at no additional cost. Messages in excess of 1,000 per month will be charged \$.01 per message. Any excess charges due will be accrued 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). 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-SPAM 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™.

**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. The hourly bid included in the Service Agreement is provided on the estimation, based on information received from you at the time of offer, that the projected total time spent on the design and development of this project should not exceed the total number of hours listed. In the case of time over-runs, you will be notified before any additional charges, beyond the initial cost estimate, are incurred. In the event of increased costs, we will proceed only after receiving both approval (written or oral) and payment from the Client. This Client approval shall be binding and incorporated into this agreement. Any unused creative hours paid for by Client will remain in Client's account for one year from the date of payment and will then expire. One hour of complimentary creative time is included in each month where Client has paid the Marketing 360® base platform fee. Complimentary hours expire at the end of the Term. Unless otherwise stated in your Service

Agreement, creative hours are available for \$75 per hour for Marketing Clients, and \$120 per hour for Non-Marketing Clients.

**n. Social Media Management.** Social media management is a great tool to increase social engagement with your brand. We will post 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 to connect with other related and complementary businesses and organizations, creating even more visibility. With Social Media Management, we will manage all of your social media accounts. Included in each plan are regular postings on applicable social media platforms; branding and design of all platforms, regular monitoring and communication on platforms to respond to comments, messages, posts and spam. Your Service Agreement will outline your specific plan including the monthly recurring price. The total number of weekly posts across your platforms is based on your monthly package with at least 1 post per week included in the \$950 plan, at least 2 posts per week are included in the \$1,550 plan and at least 5 posts per week are included in the \$2,750 plan. We will run ads (Social Targeting Ads) on the various social media platforms at your direction, 100 Ad Credits are included with your package each month and additional Ad Credits may be added on demand.

**o. Print Services.** Print Services are provided through a partnership with The UPS Store®. All print services will be available for pickup at a UPS Store® near your location. Your price and included Print Services will be included on your Service Agreement or otherwise communicated to you by your Marketing Executive. The timing and location of the delivery depends on the availability of your local UPS Store branch. Clients in Colorado, Nebraska and South Dakota will be charged sales tax in conjunction with these services. Contact your Marketing Executive for any questions.

**p. Email Marketing 360.** Email Marketing 360 allows you to easily design, create and send targeted marketing campaigns to your email marketing list through the Marketing 360 platform. The Marketing 360® base platform includes 2,500 emails per month at no additional charge. Email messages in excess of 2,500 per month will be charged \$.01 per message. Any excess charges due will accrue over the month and you will be billed for these charges in arrears with your regular monthly marketing payment. Unused messages do not rollover from month to month. By using Email Marketing 360 you agree to the Marketing 360® Anti-Spam policy located at [marketing360.com/antispam](http://marketing360.com/antispam). 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 third 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.

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

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

**3. Client Obligations.** In addition to making all required payments, Client shall (a) cooperate with Marketing 360® in all matters relating to the Services and provide access to Client's 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. Unless otherwise stated, 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 any 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 in Section 5 below. If you are a Marketing Client, you acknowledge that you are required to pay the full amount due for the Services each month through the Initial Term and Renewal Terms at no less than the monthly recurring marketing total listed in your Service Agreement. You will be required to agree to all applicable payment authorization forms which authorize recurring billing in accordance with your agreement. Marketing 360® shall have the right to charge your credit card or debit from your account through ACH for fees in accordance with these Terms of Service and the Service Agreement. Client warrants the validity of any ACH information provided to Marketing 360®, and acknowledges that Marketing 360® is entitled to debit Client's account for any ACH fees charged to Marketing 360® due to Client's error, including, but not limited to, incorrect information, invalid account numbers and non-sufficient funds. Marketing 360® uses a credit card updating service that automatically updates credit card numbers where a credit card has expired or been replaced. You acknowledge that Marketing 360® has a right to charge any credit card updated in this manner in accordance with these Terms of Service and the Service Agreement. YOU UNDERSTAND AND ACKNOWLEDGE THAT ALL AMOUNTS OWED MUST BE PAID IN ADVANCE



AND THAT, IN ADDITION TO BEING IN BREACH OF YOUR CONTRACTUAL OBLIGATIONS, YOUR SERVICES MAY BE PAUSED OR TERMINATED IF TIMELY PAYMENT IS NOT RECEIVED OR IF A PAST PAYMENT HAS BEEN DISPUTED.

## 5. Term/Termination.

**a. Term.** The Agreement shall begin on the Effective Date, and will remain in effect until terminated as provided below. For recurring accounts, the Service Agreement sets forth the minimum commitment term (the "Initial Term"), and authorizes recurring monthly billing for such period. Unless otherwise stated in the Service Agreement, all monthly recurring Services have a six (6) month Initial Term. Only months in which unconditional payment has been received will count as a month of marketing under the Initial Term. Client acknowledges that Client's digital marketing plan is designed based on a minimum six-month Initial Term. After the Initial Term, the Term will be automatically renewed for successive one month periods (each, a "Renewal Term"), or as otherwise provided in the Service Agreement (the Initial Term and any Renewal Terms are collectively referred to herein as the "Term.")

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

**c. Early Cancellation Fee.** If you wish to cancel the Services without completing the Initial Term you may do so only by providing both written notification of cancellation and the Early Cancellation Fee. The amount of your Early Cancellation Fee is defined in your Service Agreement. If your Service Agreement does not define the Early Cancellation Fee it shall be equal to the lesser of either (a) your remaining monthly payments under the Initial Term or (b) \$2,310. The Early Cancellation Fee must be provided within five (5) business days from our receipt of your written notice of early cancellation. No early cancellation of a Service Agreement will take effect until the Early Cancellation Fee has been paid, and you will continue to be billed monthly until we receive both proper written notice of cancellation and the early cancellation fee, as applicable. Upon execution of this agreement, Marketing 360® will be investing considerable work into 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 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, we will reimburse you for any unused funds within 30 business days from the effective cancellation date.

**f. Pause or Downgrade of Service.** 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 will be effective without a signed written confirmation from both Marketing 360® and Client.

**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 any 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, backup, modify, display, broadcast and transmit any of your content, including but not limited to your website, text, images, logos, trademarks, service marks, promotional materials, photos, audio, and video content relating to your existing website, as applicable, to the extent necessary and for the sole purpose of allowing Marketing 360® to perform the Services. This license will terminate upon termination of the Services Agreement.

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

**c. Ownership of Website Design.** Notwithstanding Section 6.b., Marketing 360® retains all copyrights in all non-custom website designs delivered under this Agreement in accordance with Section 1.i. Upon valid cancellation of this Agreement in accordance with Section 5, and so long as full, unconditional payment has been received by Marketing 360® for any amounts owed by Client under this Agreement, Client will be granted a perpetual, royalty free, revocable, non-transferable license to use, copy and publish any website design and related materials delivered to Client under this Agreement. Marketing 360® reserves the right to revoke this license only in the event that either (1) Client does not fulfil the Initial Term and/or pay the early cancellation fee or (2) Client initiates a payment dispute for any past payment.

**d. Limited License to Access Marketing 360® Software Platform.** Upon execution of a marketing Service Agreement, and for so long as your Service Agreement is in effect and you are current on your Marketing 360® Base Platform Fee, all Marketing Clients 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. This limited license applies to Marketing 360® CRM only accounts accessing the CRM through the Marketing 360® portal.

**e. 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® during the course of this Agreement, but excluding the Creative Deliverables and any materials referenced as belonging to Client pursuant to Section 6a. above, shall be the exclusive property of Marketing 360®.

**f. Trademarks.** All trademarks in this agreement and used in conjunction with the Services are trademarks of Marketing 360®, its affiliates and licensors. Use of these trademarks without the express written consent of Marketing 360® is prohibited.

**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.** 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 use all intellectual property, including but not limited to copyrighted materials and trademarks, supplied to Marketing 360® for use in conjunction with the services.

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

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

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

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

## **12. Dispute Resolution.**

**a. Good Faith and Cooperation.** Each of the Parties agrees to cooperate in good faith, reasonably, and in such a manner as may be necessary or appropriate to implement and give effect to the terms, conditions, and agreements contained herein. Each Party agrees to contact the other in writing (email is acceptable) regarding any claims, disputes or controversies, and allow the other Party no less than 30 days to cure the issue 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 and all disputes, controversies or claims arising out of, relating to or in connection with this Agreement, 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 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.** 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 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 Arbitration Agreement 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 of the state of Colorado. The Parties consent to venue and personal jurisdiction in these courts for the limited exceptions under this Section 12.c.

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

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

**13. Indemnification.** You agree to indemnify, defend and hold us harmless from any and all liability, claims, damages and settlements due to any 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 or Service by Client or any third party (authorized, permitted or enabled by Client). This indemnification includes, but is not limited to, any actions, including intellectual property actions (including trademark and copyright actions), actions related to end user personal or financial data, PCI compliance, Client's order processing, billing, fulfillment, shipment, collection and/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 the Indemnified Parties against any and all Claims that are related to or arise from failure to comply with HIPAA requirements.

#### **14. Miscellaneous.**

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

**b. Entire Agreement.** These Terms 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.** 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 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 Site or Product does not mean we endorse, support or warranty the Third-Party Site or Product.

**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. 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/>.

**k. 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.

**l. Referrals.** Marketing 360® may provide incentives to third parties to introduce potential Clients to Marketing 360®.

**m. 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.

**n. 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.

**o. Taxes.** Except for Clients located in South Dakota, and 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. Sales Tax will be collected on all products, except for Ad Credits and Website Design services, sold to Clients residing in South Dakota.

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

**q. Trade Name.** Marketing 360® is a federally registered trademark and registered trade name of Madwire, LLC a Colorado Limited Liability Company.

**r. 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.

**s. 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.

**t. 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.

**u. Defined Terms.** Capitalized terms are defined in the Section in which they first appear.