

Terms and Conditions

The contractual relationship between, The 360 Review Agency Pty. Ltd. (ABN 936 658 579 83) of Suite 39/Level 1, 285a Crown Street, Surry Hills, NSW 2010 (hereinafter referred to as “**The 360 Review**”) and its customer (“**Customer**”) is governed by the following standard terms and conditions. If the Customer already receives services from The 360 Review on the basis of an earlier agreement, from now on the following standard terms and conditions shall also apply to those services, thereby replacing the previous version of standard terms and conditions provided from the date of entering this agreement. If in future the Customer orders additional services from The 360 Review the following standard terms and conditions shall also apply to such future services.

Any additional or contrary standard terms and conditions of the Customer shall not apply, even if The 360 Review accepts a purchase order in which the Customer refers to its own standard terms and conditions and/or which is accompanied by a copy of the Customer’s own standard terms and conditions.

1. Services provided by The 360 Review

- a. The 360 Review will provide the Services outlined in this agreement to the Customer in consideration for the Customer paying the Fee to The 360 Review, subject to the provisions of this agreement.
- b. The 360 Review and the Customer will agree on the time and place for the performance of the Services.
- c. The 360 Review will use reasonable endeavours to complete the Services including the provision of data, materials or reports by the dates specified in the Specification or any other dates agreed by the Parties.
- d. The Services will be performed by the employees or agents that The 360 Review may choose as most appropriate to carry out the Services as agreed, from time to time by the Parties.
- e. The Services to be performed as agreed by the Parties, the time estimates for the provision of the particular Services, and the Fee(s) will be set out in the Specification.

2. Obligations of the Customer

- a. **Customer co-operation in due time.** The Customer shall provide all necessary assistance, information and documentation to permit The 360 Review performing its services in due time so that The 360 Review can comply with the agreed timeline. The Customers shall make available to The 360 Review such facilities and systems as The 360 Review reasonably requires and ensure that the Customer’s staff and agents cooperate with and assist The 360 Review.
- b. **Sufficient usage rights of the Customer.** The Customer represents and warrants that both the Customer and The 360 Review may legally use for the purpose of this agreement any templates, systems or data which the Customer has provided to The 360 Review. If third parties make claims or accuse The 360 Review of legal offences based on the allegation that such sufficient usage rights do not exist, the following shall apply: the Customer shall indemnify and hold harmless The 360 Review against any such claims without delay, shall provide appropriate support for any legal defence, and shall further indemnify and hold harmless The 360 Review against any and all costs incurred by The 360 Review for such legal defence. This indemnification obligation shall be subject to The 360 Review (i) informing the Customer in text form of any such claims without delay, (ii) not making any acknowledgements or similar declarations, and (iii) enabling the Customer, to the extent permitted by procedural requirements, to conduct all court procedures and out-of-court negotiations at the Customer’s expense.
- c. **The Customer will not charge** for The 360 Review’s use of the facilities and systems made available by the Customer. If the Customers does not provide the facilities and systems that The 360 Review reasonably requires (and within the time period) to perform the Services, then any additional costs and expenses which are reasonably incurred by The 360 Review will be paid by the Customer.
- d. **Customer systems.** If the provision of The 360 Review’ services requires adjustments to the Customer’s own IT systems and/or of IT systems provided by third parties on behalf of the Customer (collectively “**Customer Systems**”, e.g. the provision of interfaces for data exports/imports from/to

Customer Systems, or the inclusion of tracking codes into Customer websites) the Customer shall make such adjustments at its own cost and under its own responsibility, but in consultation with The 360 Review. Only the Customer shall be responsible for the correct operation of the Customer Systems. The 360 Review shall not be responsible for any disclosure, modification or deletion of the Customer's data resulting from access by a Customer System.

e. Login credentials. The Customer will provide The 360 Review with login credentials to relevant facilities and systems (e.g. user name and passwords) which will permit access to the Customer's data. The confidentiality of any data stored by the Customer depends on the Customer's own confidential handling of the data and login credentials. Any acts performed by third parties using the login credentials provided to The 360 Review by the Customer will be considered as, and treated like, acts performed by the Customer itself. Should the Customer note that its login credentials have been compromised the Customer shall immediately notify The 360 Review and effect a change of these login credentials.

f. Compliance with all applicable laws. The Customer must comply with all applicable laws (including, without limitation, applicable federal, state and local laws, rules and regulations) when accessing and using the services under this agreement.

3. Customer data

a. Customer owns the data. All rights in and to the data which the Customer stores belong to the Customer. The 360 Review will use such data neither for its own purposes nor for the purposes of third parties, and will not sell or otherwise transfer such data to third parties.

b. Deletion when the agreement ends. Upon completion of the services outlined in the service agreement, The 360 Review shall delete any of the Customer's data from its storage media, except to the extent that The 360 Review is bound by statutory retention provisions to continue storing such data.

c. Licence. The Customer grants The 360 Review a non-exclusive licence to use the Customer's data for the purpose of allowing The 360 Review to provide the services under this agreement.

4. Agency services

a. No legal review. To the extent that The 360 Review provides programming services, the design or production of content, or any other agency services to the Customer, The 360 Review shall not be obliged to perform, and assume responsibility for, the legal clearance of the corresponding Work Results under applicable trademark, design, or unfair competition laws, except where such legal clearance has been explicitly agreed to be part of The 360 Review' services.

b. Costs. Any creation of concepts or drafts, or any other agency services which The 360 Review provides to the Customer shall be remunerated unless it is explicitly agreed otherwise.

c. Freedom of design. When providing agency services The 360 Review shall deliver the agreed designs or other agreed deliverables (together "**Work Results**") at its discretion as long as they are within the scope of the Customer's instructions provided to The 360 Review when placing the order. The Customer cannot raise warranty claims based on The 360 Review' artistic design in this regard. If the Customer requests changes during or after The 360 Review' production process any additional efforts caused by the change request shall be remunerated separately and in addition to The 360 Review' remuneration claim for any started or bindingly agreed tasks.

d. Customer approval. Upon the Customer's approval of texts, drafts or production templates the Customer assumes responsibility for the correctness of texts and designs, and The 360 Review shall no longer be liable in this regard.

e. Production supervision. Any production supervision obligations for The 360 Review require an explicit agreement to provide such services. In case of such agreement The 360 Review is entitled to take the corresponding decisions, and to provide any necessary instructions, at its own discretion. The 360 Review shall only be liable for its own mistakes in this regard, and not for mistakes made by the production company being supervised. If The 360 Review assumes the production supervision the Customer will only receive any proofs prior to production if this has been explicitly agreed.

f. Licene. The Customer shall have the right to use the Work Results of The 360 Review' agency services for the purpose of performing the respective contract. Unless it is agreed otherwise this right of the Customer shall be on a non-exclusive basis. Any transfer or sub-licensing to third parties or any use of the Work Results in any higher volumes than originally anticipated requires a written agreement. If the Customer uses Work Results in higher volumes than originally anticipated The 360 Review may – in addition to any other rights which The 360 Review may have under this agreement or applicable statutes – demand an additional remuneration from the Customer for such additional use, as well as an indemnification from all potential claims which any affected licensors of The 360 Review may raise.

- g. Retention of title.** Any rights to use the Work Results of The 360 Review' agency services shall only transfer to the Customer after the corresponding remuneration has been fully paid.
- h. Computer files.** The 360 Review shall not be obliged to hand over any computer created data or layout files for its agency Work Results. If the Customer wishes to obtain such electronic files, this will require an additional agreement specifying an additional remuneration for The 360 Review. If The 360 Review has provided such computer files to the Customer these files may only be modified and/or used with The 360 Review' prior written consent.
- i. Copyright notice.** The 360 Review can demand that any copies of its agency Work Results carry a copyright notice to the benefit of The 360 Review.
- j. Customer input.** Any Customer suggestions regarding the design of agency Work Results, or any other input given by the Customer, does not result in a co-creatorship of the Customer and has no influence on the remuneration owed by the Customer.

5. Fee(s)

- a. Payment of Fees.** In consideration of the provision of the Services in accordance with this agreement, The Customer will pay The 360 Review the Fee outlined in the service agreement. Where The 360 Review's charges are based on an hourly rate, any time spent which is less than an hour is charged on a prorated basis. The Customers acknowledges that the Fees are exclusive of any GST that may be charged by The 360 Review to the Customer, and therefore, The 360 Review will be entitled to add on GST.
- b. Invoicing.** The 360 Review will provide the Customer with a tax invoice in accordance with the GST Law in relation to Fees payable under this clause. Payment will be made by the Customer to The 360 Review within 14 days after receiving The 360 Review's invoice. When making a payment the Customer must quote relevant reference numbers and the invoice number.
- c. Variation of Fees.** The 360 Review is entitled to vary their rates during the term of this agreement with written notice to the Customer of 14 days prior to the change being implemented.
- d. Costs and disbursements.** The 360 Review is permitted to charge for all costs and expenses incurred in performing the Services, including travelling, photocopying, courier services, and postage.
- e. Failure to pay.** If the Customer does not make a payment by the date stated in an invoice or as otherwise provided for in the agreement, The 360 Review is entitled to do any or all of the following:
 - i.** charge interest on the outstanding amount at the rate of 5% per year above the base lending rate of, accruing daily;
 - ii.** require the Customer to pay, in advance, for any Services (or any part of the Services) which have not yet been performed; and not perform any further Services (or any part of the Services).
- f. Disputed invoices.** If the Customer disputes the whole or any portion of the amount claimed in an invoice submitted by The 360 Review, the Customer must: pay the portion of the amount stated in the invoice which is not in dispute in accordance with the terms of payment set out in this agreement; and notify The 360 Review in writing (within 7 days of receipt of the invoice) of the reasons for disputing the remainder of the invoice

6. Confidentiality

- a.** Both parties will likely disclose confidential information to each other in connection with this agreement. Confidential information shall be all information marked in writing as "confidential", or oral information which is subsequently confirmed in writing and marked as confidential, as well as any information whose confidential nature is evident from its content or from the circumstances under which it was disclosed. Confidential information shall also include any commercial agreements between the parties as well as any personal data collected or processed hereunder. If there is any doubt as to the confidential nature of information, the party having received the information shall contact the other party and seek clarification without undue delay, in any event before disclosing the information to third parties.
- b.** Information shall not be deemed confidential if the receiving party can prove that
 - i.** it was known to it before disclosure by the other party;
 - ii.** it developed the information independently without recourse to or use of information obtained from the other party;
 - iii.** it lawfully received the information from third parties who, to its knowledge, were not bound by any confidentiality obligation to the other party;
 - iv.** such information became known to it or is known to the general public without infringement of these provisions or of any other provisions in place to protect the business secrets of the other party; or

- v. it must be disclosed based on a statutory obligation or an official or judicial order. In the latter case the receiving party shall inform the other party of the impending disclosure to a third party without undue delay.
- (c) Except to the extent it is necessary for the performance of the agreement each party undertakes to maintain the other party's confidential information in strictest confidence, and to apply at least the same degree of care in protecting the other party's confidential information as it applies to protect its own confidential information. Section 14 remains unaffected.
- (d) The mutual confidentiality obligations of this section shall apply for the entire term of the agreement and for an additional period of 5 years after its termination.
- (e) As of this agreement's commencement date pursuant to section 16.1 the mutual confidentiality obligations of this section shall replace any other confidentiality or non-disclosure obligations regarding the subject matter of this agreement on which the parties may have agreed before, and such other confidentiality or non-disclosure obligations shall no longer apply.
- (f) At the Termination Date, or when earlier directed by the Discloser: all Confidential Information must be returned to the Discloser, including all copies of the Confidential Information or any extracts or summaries of the Confidential Information that the Recipient makes and any software that the Recipient creates based on the Confidential Information; and the Recipient must erase and destroy any copies of any software containing or comprising the Confidential Information in the Recipient's possession or under the Recipient's control or that may have been loaded onto a computer possessed or controlled by the Recipient.

7. Privacy

- a. The Customer is responsible for obtaining all relevant consents from, and providing all relevant notices to, individuals whose Personal Information is provided by the Customer to The 360 Review in connection with this agreement so as to ensure that The 360 Review's dealings with that information pursuant to this agreement comply with The 360 Review's obligations under any Privacy Laws.
- b. The Customer must indemnify The 360 Review against, and must pay The 360 Review on demand the amount of, all Losses, liabilities, costs and expenses arising out of its failure to comply with clause 12(a).
- c. The Customer must:
 - i. immediately notify The 360 Review if it becomes aware of any unauthorised access to, or unauthorised disclosure of, Personal Information under its control by virtue of this agreement, and provide advice as to whether it considers that such security breach may result in serious harm to any individual to whom the information relates;
 - ii. comply with any directive from The 360 Review as to which Party will discharge any statutory reporting obligation arising from the incident;
 - iii. conduct or assist The 360 Review in conducting a reasonable and expeditious assessment of the breach or suspected breach; and
 - iv. ensure compliance with all mandatory data breach reporting obligations arising out of the breach or suspected breach.

8. References

- a. **References.** The 360 Review shall be entitled to use the Customer's name and logo for reference purposes in its own advertising materials such as website, trade fair presentation, brochures, newsletters etc. If such use is subject to specific guidelines the Customer will notify these to The 360 Review.
- b. **Specimen copies.** Within this scope The 360 Review is entitled to use and reproduce specimen copies of its Work Results delivered to the customer for its own marketing purposes.
- c. **Press releases and case studies.** Any use of the Customer's name and/or logo in press releases to external distribution lists and/or in case studies shall only be made with the Customer's consent.

9. Subcontracting

- a. Commissioning of subcontractors.** The 360 Review may commission subcontractors to perform its contractual obligations, provided (i) the Customer has given its prior approval of the subcontractor or (ii) The 360 Review has concluded a written agreement with the subcontractor which provides a level of protection to the benefit of the Customer and its data which is at least equal to the level of protection provided by this agreement. The 360 Review shall remain fully responsible to the Customer for any services provided by a subcontractor.
- b. Revocation of approvals.** Customer may only revoke any given approvals to the commissioning of subcontractors for good cause, provided that such cause (i) is directly related to the affected subcontractor and (ii) would entitle the Customer to terminate this entire agreement for cause if the approval is not revoked.

10. Limitation of liability

- a. Consequential loss.** Subject to sections 17.5 and 17.6. The 360 Review is not liable to the Customer or to any other person for any indirect, incidental, special or consequential loss or damage, pure economic loss damages and exemplary or punitive damages, loss or damage in relation to loss of use, loss of production, loss of revenue, loss of profits or anticipated profits, loss of business, loss of business opportunity, loss of contract, loss of reputation or opportunity, business interruptions of any nature, loss of data, data corruption rectification costs or loss or damage resulting from wasted management time, arising out of or in connection with this agreement irrespective of whether the liability for the loss or damage arises in or under contract (including for liability under an indemnity), statute, tort (including negligence), equity or otherwise at law, or the Customer or any other person previously notified The 360 Review of the possibility of the loss or damage.
- b. Maximum liability.** Subject to sections 17.3, 17.5 and 17.6, the maximum aggregate liability of The 360 Review for all losses, damages, costs, expenses and claims arising out of, or in connection with, this agreement, whether arising in or under contract (including for liability under any indemnity), statute, tort (including negligence), equity or otherwise at law ("**Claim**"), is limited to the sum of the amounts paid by the Customer to The 360 Review under this agreement in the 3 month period immediately prior to the notice of the then current Claim.
- c. Exceptions.** Nothing in sections 17.1 through 17.6 inclusive limits The 360 Review' liability with respect to damages for: (i) personal injury, including sickness and death; (ii) damage to any tangible or real property; or (iii) any fraudulent acts or omissions.
- d. Exclusion of implied warranties.** Any representation, warranty, condition, guarantee, indemnity or undertaking that would be implied in, or affect, this agreement by legislation, common law, tort, equity, or by course of performance, dealing, trade, custom or usage is excluded to the maximum extent permitted by law.
- e. Non-excludable rights implied by statute.** Nothing in this agreement excludes, restricts or modifies any consumer guarantee, right or remedy conferred on the Customer by the Australian Consumer Law, Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* or any other applicable law that cannot be excluded, restricted or modified by agreement.
- f. Liability for breach of non-excludable rights.** To the fullest extent permitted by law, the liability of The 360 Review for a breach of a non-excludable guarantee referred to in section 17.5 is limited, at The 360 Review' option, to: (i) in the case of goods, any one or more of the following: (A) the replacement of the goods or the supply of equivalent goods; (B) the repair of the goods; (C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or; (D) the payment of the cost of having the goods repaired; or (ii) in the case of services: (A) the supplying of the services again; or (B) the payment of the cost of having the services supplied again.

11. Termination

- a. Termination with notice.** Either Party may terminate this Agreement by notice in writing to the other if the other Party notified:
- i. fails to observe any term of this Agreement; and
 - ii. fails to rectify this breach, to the satisfaction of the notifying Party, following the expiration of 7 days notice of the breach being given in writing by the notifying Party to the other Party.
- b. Immediate Termination.** Either Party may terminate this Agreement immediately upon the happening of any of the following events:
- i. if the other Party commits a material breach of the agreement which is incapable of rectification;
 - ii. if the Customer enters into a deed of arrangement or an order is made for it to be wound up;

- iii. if an administrator, receiver or receiver/manager or a liquidator is appointed to the Customer pursuant to the Corporations Act;
- iv. or if the Customer would be presumed to be insolvent by a court in any of the circumstances referred to in the Corporations Act.

(c) Upon termination of this agreement any fees, expenses or reimbursements payable by the Customer to The 360 Review in respect of any period prior to the Termination Date must be paid by the Customer within 7 days after the Termination Date.

12. General

a. Force Majeure.

- i. Neither Party has any liability under or may be deemed to be in breach of this agreement for any delays or failures in performance of this agreement which result from a Force Majeure Event.
- ii. The Party affected by these circumstances must promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so
- iii. If such circumstances continue for a continuous period of more than 6 months, either Party may terminate this agreement by written notice to the other Party.

b. Amendments. This Agreement may only be amended in writing signed by duly authorised representatives of the Parties.

c. Assignment.

- i. Subject to clause (ii), neither Party may assign, delegate, subcontract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this Agreement without the prior written agreement of the other Party
- ii. A Party may assign and transfer all its rights and obligations under this Agreement to any person to which it transfers all of its business, provided that the assignee undertakes in writing to the other Party to be bound by the obligations of the assignor under this Agreement.

c. Entire agreement

- iii. This Agreement contains the whole agreement between the Parties in respect of the subject matter of the Agreement.
- iv. The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

c. Waiver

- v. No failure or delay by The 360 Review in exercising any right, power or privilege under this Agreement will impair the same or operate as a waiver of the same nor will any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.
- vi. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

c. Agency, partnership etc

- vii. This Agreement will not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.
- viii. Neither Party will have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

c. Further assurance. Each Party to this Agreement will at the request and expense of the other execute and do any deeds and other things reasonably necessary to carry out the provisions of this Agreement or to make it easier to enforce.

c. Severance. If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and will not in any way affect any other circumstances of or the validity or enforcement of this Agreement

c. Announcements

- ix. Subject to clause (b), no Party will issue or make any public announcement or disclose any information regarding this Agreement unless prior to such public announcement or disclosure it furnishes the other

Party with a copy of such announcement or information and obtains the approval of the other Party to its terms

x.No Party will be prohibited from issuing or making any such public announcement or disclosing such information if it is necessary to do so to comply with any applicable law or the regulations of a recognised stock exchange

c. **Notices.** A notice or other communication connected with this Agreement has no legal effect unless it is in writing. In addition to any other method of service provided by law, the notice may be sent by pre-paid post to the address of the addressee as set out in this Agreement, or sent by facsimile to the facsimile number of the addressee.

c. **Work, health and safety.** The 360 Review must comply with all relevant work, health, safety and welfare standards and regulations determined by the Customer or as prescribed by legislation.

c. **Law and jurisdiction.** This Agreement takes effect, is governed by, and will be construed in accordance with the laws from time to time in force in New South Wales, Australia. The Parties submit to the non-exclusive jurisdiction of the courts of New South Wales.