

## LEADS360 MASTER SERVICE AGREEMENT TERMS AND CONDITIONS

Last Updated: 7/6/2011 6:07 PM

These Leads360 Master Service Agreement Terms and Conditions set forth an agreement by and between Leads360, Inc. ("Leads360"), a Delaware corporation, with offices at 222 N. Sepulveda BLVD, Suite 1850, El Segundo, California 90245 and the person or entity identified in a Leads360 Order Form ("Customer"). By entering into a Leads360 Order Form, which identifies the products and services that Customer is purchasing, Customer agrees to these Leads360 Master Service Agreement Terms and Conditions, which upon acceptance of the Order Form by Leads360, together constitute an agreement between Leads360 and Customer (collectively, this "Agreement"). If an individual enters into an Order Form on behalf of a company or other legal entity, then such individual hereby represents and warrant that he/she has the authority to bind such entity to this Agreement.

**1. Service:** Leads360 hereby grants Customer, subject to Customer's ongoing compliance with all of the terms and conditions of this Agreement, a non-exclusive, non-transferable, non-sublicenseable right and license to access and use the Leads360 Web-based service ("Service") for its internal business purposes only. Customer shall have no right to access or use the Service if it is a direct competitor of Leads360, except with Leads360's prior written consent. In addition, Customer may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes. The Service is offered in three editions: Express, Small Business and Enterprise. Information concerning these editions of the Service may be found at <http://www.leads360.com>.

**2. Customer Support:** Customer support is provided Monday through Friday, 6AM to 6PM Pacific Time, excluding holidays. For the Express edition of the Service, Customer support is provided by email only.

**3. Term:** The term of this Agreement begins on the Effective Date (defined in the Order Form) and remains in effect for the "Term" specified on the Order Form, unless terminated in accordance with this Section 3 or Section 4 below (the "Initial Term"). Upon the expiration of the Initial Term, this Agreement will automatically renew for successive renewal terms equal in duration to the Initial Term. Collectively the Initial Term and all renewal terms shall be referred to herein as the "Term". Either party may terminate this Agreement and reduce the number of User Licenses, effective only upon the expiration of the Term, by notifying the other party in writing at least thirty (30) days prior to the expiration of the Term.

**4. Suspension and Termination:** In the event Leads360 has reason to believe Customer's use of the Service is fraudulent, unauthorized or may adversely impact the operation of the Service, Leads360 may initiate an investigation and, upon notice to Customer, Leads 360 may suspend Customer's right and license to use the Service while such an investigation is being conducted. Customer shall cooperate with and assist Leads360 and in its investigation of any suspected fraudulent or otherwise unauthorized use of the Service. Leads360 will notify Customer of the results of its investigation and Leads360, in addition to all other available remedies, shall have the right to terminate this Agreement for cause if Customer has engaged in any fraudulent or unauthorized use of the Service, as determined by Leads 360 in its sole discretion. In addition, Leads360 may suspend Customer's right and license to use the Service or terminate this Agreement in its entirety for cause immediately in the event (i) Customer commits a breach of any of the provisions of this Agreement and such breach has not been fully cured within thirty (30) days of notice of such breach, (ii) Customer is in default of any of its payment obligations and such default is not fully cured within five (5) days following notice of such default, (iii) provision of the Service (or any portion thereof) to Customer is prohibited by applicable law, or has become impractical or unfeasible for any legal or regulatory reason, as determined by Leads360 in its sole discretion, or (iv) subject to applicable law, of Customer's liquidation, commencement of dissolution proceedings, disposal of Customer's assets, failure to continue Customer's business, assignment for the benefit of creditors, or if Customer becomes the subject of a voluntary or involuntary bankruptcy or similar proceeding. In addition, Leads360 may terminate a free account at any time in its sole discretion. Customer agrees and acknowledges that Leads360 has no obligation to retain Customer Data (defined below), and may delete such Customer Data following termination of this Agreement. Notwithstanding anything in this Agreement, Leads360 shall have no liability for any damages, liabilities or losses (including, without limitation, loss of data or lost profits) that may result from Leads360's deletion of any Customer Data. Upon suspension by Leads360 of Customer's use of the Service, in whole or in part, for any reason, (a) Monthly Fees will continue to accrue for any portion of the Service that remains accessible by Customer, notwithstanding the suspension, (b) Customer shall remain liable for all fees, charges and any other obligations Customer has incurred through the date of suspension with respect to the Service, and (c) all of Customer's rights with respect to the Service shall be terminated during the period of the suspension.

**5. Effect of Termination:** Upon termination of this Agreement for any reason (i) Customer shall remain liable for all fees, charges and any other obligations it has incurred under this Agreement through the effective date of termination, and (ii) all of Customer's rights under this Agreement shall immediately terminate and revert to Leads360. Each party's rights and obligations under Sections 7, 10, 15, 17-20, 22, 24 and 26-32 will survive any termination of this Agreement.

**6. User Licenses:** Customer is permitted to use the Service only by the number of unique users specified in the Order Form ("Users" or "User Licenses"). User Licenses are for named Users only and cannot be shared or used by more than one User, but initially named Users may be replaced by, and assigned to, new Users from time to time by Customer providing notification thereof to Leads360. Either party may reduce the number of User Licenses, effective only upon the expiration of the Initial Term or the then-current renewal term, by notifying the other party in writing at least thirty (30) days prior to the expiration of the Initial Term or such renewal term.

**7. Fees:** Customer agrees to pay Leads360 on the Effective Date the one-time Setup Fee specified in the Order Form for account creation and other administrative tasks. In addition, Customer agrees to pay Leads360 on a monthly basis the recurring charge amounts set forth in the Seat Pricing Schedule corresponding to the product specified in the Order Form ("Monthly Fee"). On each anniversary date of the Effective Date, the recurring charge specified in the Seat Pricing Schedule shall increase automatically, without notice, by three percent (3%) of the then-current rate, unless otherwise agreed by the parties in writing. Customer agrees to pay Leads360 all Setup Fees and the first Monthly Fee starting on the Effective Date and, thereafter, all Monthly Fees shall be due and payable in advance on the first day of each month during the Term. If the Effective Date is a day other than the first day of a month, then the amount of the Monthly Fee for the first month will be pro-rated. Customer may add additional User Licenses during the Term by executing an additional Order Form. User Licenses added by Customer during the Term will remain in effect for the remainder of the Term and cannot be terminated or removed by Customer before the end of the Term. If additional Users are added on a day other than the first day of a month, Customer will be charged a pro-rated amount of the Monthly Fee for such additional Users for the first month. All payment obligations are non-cancelable and all amounts paid are non-refundable. Customer is responsible for paying for all User Licenses ordered for the entire Term, whether or not such User Licenses are used. All amounts payable by Customer under this Agreement will be made without setoff or counterclaim and without deduction or withholding. If any deduction or withholding is required by applicable law, Customer shall notify Leads360 in writing and shall pay such additional amounts as necessary to ensure that the net amount paid to Leads360, after such deduction and withholding, equals the amount Leads360 would have received if no such deduction or withholding had been required. Additionally, Customer shall provide Leads360 with supporting documentation evidencing Customer's payment of the withholding and deducted amounts to the relevant taxing authority.

**8. Customizations:** Upon request, Leads360 shall provide Customer with custom software development services designated in writing by both parties in an Order Form. All customizations of the Service, including lead source integrations not included in the Service, will be billed at Leads360's then-current hourly rates, plus all applicable Monthly Fees.

## **9. Availability:**

**9a. Formula:** The availability of the Service for a given month during the Term will be calculated according to the following formula ("Availability"):

$$\text{Availability} = (1 - (\text{TMU}/\text{TMM})) \times 100$$

TMM = Total minutes in the month

TMU = Total minutes in month Service is Unavailable. For purposes of this calculation, the Service will be deemed to be "Unavailable" if, based upon availability of monitoring of the Leads360 benchmark transaction, it does not respond to a request issued by Leads360's monitoring process. Further, the Service will not be deemed Unavailable for any downtime or outages excluded from such calculation by reason of the exceptions set forth in Section 9b below. Leads360's records and data will be the sole basis for all Availability calculations and determinations. Customer may audit Leads360's records and data, upon not less than ten (10) days' prior written notice, for the sole purpose of verifying the accuracy of Availability calculations and determinations.

**9b. Exceptions:** The Service will not be deemed to be Unavailable for any outage that results from any maintenance performed by Leads360 (i) of which Customer is notified at least 24 hours in advance; (ii) during Leads360's then-current standard maintenance windows (collectively referred to herein as "Scheduled Maintenance"); or (iii) as a result of Customer's request outside of Scheduled Maintenance. The Leads360 network extends to, includes and terminates at the data center located router that provides the outside interface of each of Leads360's WAN connections to its backbone providers (referred to herein as the "Leads360 Network"). In addition, the Service will not be deemed to be Unavailable for any outage of the Service due to (a) Customer's information content or application programming or software, acts or omissions of Customer or its agents, failures of equipment, software, technology or facilities provided by Customer or any third party, or network unavailability outside of the Leads360 Network; (b) issues arising from bugs or other problems in the software, firmware or hardware of Leads360's suppliers; (c) delays or failures due to circumstances beyond Leads360's reasonable control that could not be avoided by its exercise of reasonable care; (d) any outage or downtime outside of the Leads360 Network; or (e) suspension or termination by Leads360 of Customer's right to access the Service.

**9c. Remedies:** If the Availability of the Service in a given month during the Term is less than 99% ("Availability Commitment"), then, except as otherwise provided below, Customer will receive one (1) Service Credit, one (1) additional Service Credit if Availability Commitment is not met by 100 minutes or more and one (1) additional Service Credit for each additional 100-minute increment by which the Availability Commitment is not met. A

"Service Credit" will be deemed to be an amount equal to 1/30th of the Monthly Fee for the Service that is affected. The total number of Service Credits that Customer will be entitled to receive for any given month will, in no event, exceed the number corresponding to 50% of the then-current Monthly Fee for the affected Service. Service Credits will be recognized for billing purposes in the month following the month in which the Availability giving rise to such Service Credits occurred. All Service Credits will be calculated based upon a 30-day month. This Section 9c sets forth Leads360's sole and entire liability to Customer, and Customer's sole remedy, for the Service being Unavailable. In the event Customer is not current in its payment obligations when the Service is Unavailable, remedies will accrue, but Customer shall not be entitled to receive Service Credits until Customer has paid its payment obligations. To receive Service Credits, Customer must submit a written request or notify the Leads360 Customer Service Manager responsible for Customer's account within 30 days following the last day of the month in which the Availability Commitment was not met. Otherwise, Customer will be deemed to have waived its right to receive Service Credits with respect to the Availability Commitment not being met for such month. No more than once each calendar quarter, upon 10 days' prior written notice from Customer, Leads360 will make available its records and data relevant to calculating Availability so that Customer may audit such records and data for the sole purpose of determining the accuracy of Availability calculations and determinations.

**10. Taxes:** Unless otherwise stated, fees do not include any local, state, federal or foreign taxes, including VAT, levies or duties of any nature associated with the Service ("Taxes"). Customer is responsible for paying all applicable Taxes, excluding only taxes based on Leads360's income.

**11. Use Restrictions:** Customer agrees to use the Service solely for its internal business purposes as contemplated by this Agreement and further agrees that it will not, nor allow any third party to: (i) license, sublicense, sell, disclose, lend, transfer, convey, resell, rent, lease, assign, distribute, timeshare or otherwise commercially exploit or make the Service available to any third party, other than as expressly set forth in this Agreement; (ii) send spam or duplicative or unsolicited messages in violation of applicable law or regulations; (iii) send or store infringing, obscene, threatening, libelous or otherwise unlawful or tortious material including, without limitation, material that infringes or violates any third party's intellectual property, publicity or privacy rights; (iv) send or store material containing viruses, worms, Trojan horses or harmful computer codes, files, scripts, agents or programs; (v) interfere with or disrupt the integrity or performance of the Service, the Leads360 Network or the data contained therein; or (vi) attempt to gain unauthorized access to the Service, the Leads360 Network or its related systems or networks. Customer shall not (a) modify, alter, tamper with, copy or create derivative works based on the Service or Leads360 Technology or any software included within the Service; (b) create internet "links" to or from the Service, or "frame" or "mirror" any content forming any part of the Service other than on Customer's own intranets or otherwise for its own internal business purposes; or (c) disassemble, reverse engineer or decompile the Service or the Leads360 Technology or otherwise attempt to derive the source code of any software included within the Service for any purpose or reason.

**12. Leads360 Responsibilities:** Leads360 agrees to use commercially reasonable efforts to make the Service generally available 24 hours a day, 7 days a week, except for: (i) Scheduled Maintenance or planned downtime (which Leads360 shall schedule to the extent reasonably practicable during evening and weekend hours); or (ii) downtime caused by circumstances beyond Leads360's reasonable control including, without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, war, acts of terrorism, strikes or other material labor problems, computer or telecommunications failures or delays involving hardware or software not within Leads360's possession or reasonable control, and network intrusions or denial of Service attacks. Leads360 agrees to use commercially reasonable efforts to keep data and other information stored by Customer in Leads360's database secure; provided, however, that Leads360 shall not be responsible for any data loss or theft due to the failure or any security measure.

**13. Customer Responsibilities:** Customer is responsible, and Leads360 shall not have any responsibility, for all activities of Customer's Users or that occur using the security credentials for accessing under Customer's Users' accounts. Without limiting the generality of the foregoing, Customer shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability and appropriateness of all Customer Data; (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service (including, without limitation, causing all Users to change temporary passwords issued by Leads360 for accessing the Service), and Customer shall notify Leads360 promptly of any such unauthorized use; and (iii) comply with all applicable local, state, federal and foreign laws and regulations in using the Service.

**14. Third Party Services:** If indicated in an Order Form, Leads360 will provide Customer access to certain features, services or technology licensed by one or more third parties ("Third Party Services"). Leads360 hereby grants Customer a limited, non-exclusive, non-transferable, revocable, non-sublicenseable right and license to access and use Third Party Services, solely in conjunction with the Service for the purpose specified in this Section 14, and solely in accordance with the terms and conditions of this Agreement. By providing Third Party Services as a part of the Service, Leads360 does not guarantee the continued availability of such Third Party Services and Leads360 may terminate Customer's access to any of the Third Party Services for any reason whatsoever immediately upon written notice. In no event will Customer be liable for the operation of, the failure to operate or unavailability of any Third Party Services.

**14b. The following terms and conditions apply to Third Party Services providing mortgage pricing:**

i. Customer's access and use of such Third Party Services shall be limited to mortgage loan transactions. ii. Customer shall be solely responsible for the verification and integrity of its own and all of the investors' program guidelines and pricing data entered into such Third Party Services. The Third Party Services and all data generated by Third Party Services are provided "AS IS" without warranty of any kind. Neither Leads360 nor its licensors shall be responsible or liable for any errors, omissions, delays or losses resulting from any use of the Third Party Services or any data input by Customer or Leads360 on behalf of Customer.

**15. Proprietary Rights to Service and Data:**

**15a.** In providing the Service, Leads360 utilizes (i) certain audio and visual information, documents, software and other works of authorship and (ii) other technology, software, products, processes, algorithms, user interfaces, know-how and other trade secrets, techniques, designs, inventions and other tangible or intangible technical material and information used or provided by Leads360 in providing the Service (collectively "Leads360 Technology"), which are covered by intellectual property rights, as between the parties, owned by or licensed to Leads360 (collectively "Leads360 IP Rights"). Other than as is expressly set forth in this Agreement, no license or other rights in or to the Leads360 Technology or the Leads360 IP Rights are granted to Customer, and all other rights are expressly reserved by Leads360. Customer grants to Leads360 a non-exclusive, royalty-free, worldwide, perpetual, irrevocable and fully transferable right and license to use or incorporate into the Service any suggestions, ideas, enhancement requests, feedback, recommendations or other information ("Feedback") provided by Customer or its Users and to reproduce, distribute, modify create derivative works of, publicly perform, publicly display and sublicense such Feedback in connection with the operation of the Service. With respect to any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or its Users, Customer represents and warrants that such Feedback, in whole or in part, (a) is legally distributable by Customer, either because Customer owns the copyright or because Customer has fully complied with any copyright terms associated with the software or content, (b) contains no third party software and (c) does not violate, misappropriate or infringe any intellectual property rights of any third party.

**15b.** All data generated by the use of the Service, including lead source data, data contained in files uploaded to the Service by Customer, and data contained in Service generated documents such as PDF attachments (collectively "Customer Data"), shall remain the sole and exclusive property of Customer and its licensees. Leads360 may make such Customer Data non-personally identifiable by either combining it with information about other leads or transactions (aggregating the Customer Data with information about other customers and leads), or removing characteristics (e.g., lead name) that make the information personally identifiable to Customer, in either case, as de-personalized Customer Data. Customer hereby grants to Leads360 a royalty-free, worldwide, perpetual, irrevocable and fully transferable right and license to use (i) Customer Data (including, without limitation, personally identifiable information that may be contained therein) in connection with Leads360's operation of the Service and performance of its obligations under this Agreement, and (ii) de-personalized Customer Data to create and develop analytical and statistical analysis relating to the use of the Customer Data ("Leads360 Analytical Data"). Customer hereby authorizes Leads360 to make any commercial use of the Leads360 Analytical Data including, without limitation, sharing such Leads360 Analytical Data with third parties; provided that Leads360 does not sell, trade, or otherwise transfer outside of Leads360 any Customer Data that personally identifies any third party sales lead. Further, Leads360 may use Customer's name to identify Customer as a customer of Leads360 on Leads360's website and in a list of Leads360's customers for use and reference in Leads360's corporate, advertising, promotional and marketing materials. In addition, Leads360 may issue press releases identifying Customer as a customer of Leads360 and describing Customer's use of the Service and the benefits that Customer expects to receive from its use of the Service.

**16. Service Enhancements:** From time to time Leads360 may, in its sole discretion, make available or issue releases of the Service intended to correct problems with the software, such as fixes, patches, workarounds and enhancements ("Updates"), which shall be provided to Customer during the Term at no additional charge as Leads360 makes such Updates generally available to its customers, provided that Customer is in full compliance with the terms of this Agreement including, without limitation, its payment obligations. Updates provided to Customer shall constitute a part of the Service and shall be subject to the terms and conditions of this Agreement.

**17. Confidentiality:**

**17a. Confidential Information:** As used herein, "Confidential Information" means all confidential and proprietary information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure including, without limitation, business and marketing plans, technology and technical information, product designs and business processes. Without limiting the generality of the foregoing, the terms of this Agreement, the Service and the Leads360 Technology shall be deemed to be Leads360's Confidential Information. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii)

was known to the Receiving Party without confidentiality obligations prior to its disclosure by the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received without restrictions on use or disclosure from a third party without breach of any obligation owed to the Disclosing Party. The Receiving Party shall not disclose any Confidential Information of the Disclosing Party to a third party, other than its employees or consultants who have a need to know such information in connection with the Receiving Party's performance hereunder, or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement. Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either party exercise less than reasonable care in protecting such Confidential Information.

**17b. Mandatory Legal Disclosure:** A Receiving Party may disclose Confidential Information to the extent required by any applicable law, regulation or court; *provided however*, that the Receiving Party will (to the extent it is not prohibited from doing so) notify the Disclosing Party in writing, promptly after becoming aware of its obligations to make such a disclosure and will permit the Disclosing Party to seek to challenge or limit such required disclosure. Further, each party may disclose Confidential Information of the other party for the limited purpose of enforcing its rights under this Agreement before a court of competent jurisdiction, provided that such disclosure is accomplished in such a manner so as to protect the rights of the parties to this Agreement to the maximum extent reasonably possible.

**17c. Remedies:** If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Section 17, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that such breach is likely to result in irreparable harm to the Disclosing Party for which legal remedies are inadequate.

**18. Warranty and Disclaimer:** THE SERVICE, THE LEADS360 TECHNOLOGY AND THIRD PARTY SERVICES ARE PROVIDED "AS IS." CUSTOMER ASSUMES FULL RESPONSIBILITY FOR ITS USE OF THE SERVICE. LEADS360 AND ITS LICENSORS DO NOT WARRANT THE SERVICE OR THIRD PARTY SERVICES WILL BE ERROR FREE, WILL MEET CUSTOMER REQUIREMENTS OR EXPECTATIONS, OR THE PERFORMANCE OR THE RESULTS THAT MAY BE OBTAINED BY USING THE SERVICE OR THIRD PARTY SERVICES. LEADS360 AND ITS LICENSORS MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESSED, IMPLIED, STATUTORY OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LEADS360 AND ITS LICENSORS SPECIFICALLY DISCLAIM ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUIET ENJOYMENT AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE. LEADS360 AND ITS LICENSORS DO NOT WARRANT THAT THE SERVICE OR THIRD PARTY SERVICES WILL BE UNINTERRUPTED OR FREE OF HARMFUL COMPONENTS, OR THAT THE CUSTOMER DATA STORED WITHIN THE SERVICE WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. WITH THE EXCEPTION OF THE AVAILABILITY COMMITMENT SET FORTH IN SECTION 9a, LEADS360 AND ITS LICENSORS SHALL NOT BE RESPONSIBLE FOR ANY SERVICE INTERRUPTIONS INCLUDING, WITHOUT LIMITATION, POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS.

**19. Limitation of Liability:** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR OTHERWISE, NEITHER LEADS360, INCLUDING ITS AFFILIATES AND ASSIGNS, NOR ITS LICENSORS SHALL BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR (I) ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR FOR ANY LOST OR IMPUTED PROFITS OR REVENUES OR LOST DATA REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LIABILITY, LOSS OR DAMAGE, OR (II) THE COST OF PROCURING SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES. LEADS360'S TOTAL AGGREGATE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT SHALL NOT, IN ANY CASE, EXCEED THE TOTAL CHARGES PAID BY CUSTOMER TO LEADS360 HEREUNDER DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CLAIM. SOME JURISDICTIONS PROHIBIT LIMITING LIABILITIES, SO IN CERTAIN JURISDICTIONS THIS LIMITATION MAY NOT APPLY TO CUSTOMER.

## **20. Indemnification:**

**20a.** Customer agrees to defend, indemnify and hold Leads360, its affiliates, licensors and business partners, and its and their respective officers, directors, employees, agents and representatives, harmless against any and all liabilities, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees and costs) incurred in connection with claims, demands, suits or proceedings ("Claims") made or brought against Leads360 by a third party relating to or arising out of (i) Customer's use of the Service and/or any Third Party Services in a manner not authorized by this Agreement; (ii) Customer Data or the use of Customer Data; or (iii) Customer's violation of any of the terms and conditions of this Agreement; provided, that Leads360 (a) promptly gives written notice of the Claim to Customer; (b) gives Customer sole control of the defense and settlement of the Claim

(provided that Customer may not settle or defend any Claim unless it unconditionally releases Leads360 of all liability); and (c) provides to Customer at Customer's cost all reasonable assistance.

**20b.** Leads360 agrees to indemnify, defend and hold Customer, its officers, directors, employees, agents and representatives harmless from and against (i) any claims for bodily injury or tangible and/or real property damages to the extent such injury or such damage arises from or is related to the acts or omissions of Leads360 personnel, (ii) any claim, demand, suit or allegation, that the Service, or business method or delivery channel used by Leads360 violates or infringes the U.S. intellectual property right of a third party, including, but not limited to, infringing a copyright, trademark, or patent; violating a right of privacy, attribution or withdrawal; or constituting the misappropriation of a trade secret, or (iii) Leads360's breach of this Agreement or any of the representations or warranties contained herein; provided, that Customer (a) promptly gives written notice of the claim to Leads360; (b) gives Leads360 sole control of the defense and settlement of the claim (provided that Leads360 may not settle or defend any claim unless it unconditionally releases Customer of all liability); and (c) provides to Leads360 at Leads360's cost all reasonable assistance. Notwithstanding the foregoing, in no event shall Leads360 have any obligation or liability under this Section 20b arising from (1) Customer's use of the Service in a modified form or in combination with materials (including, without limitation, Customer Data) not furnished by Leads360 or (2) where the Service would not without combination with materials not furnished by Leads360 give rise to any such third party claim. If, in Leads360's reasonable determination, the Service is likely to become the subject of an injunction preventing its use as contemplated by this Agreement, Leads360 may, at its option and at its expense: (x) procure the right for Customer to continue using the Service, (y) replace or modify the Service so that it becomes non-infringing, or, if the actions stated in foregoing clauses (x) and (y) are not reasonably practicable, then (z) terminate Customer's license hereunder with respect to the allegedly infringing portion of the Service. THIS SECTION 20b STATES LEADS360'S ENTIRE LIABILITY AND EXCLUSIVE REMEDY WITH RESPECT TO ANY THIRD PARTY CLAIM OF INFRINGEMENT AS SET FORTH ABOVE AND ALL THIRD PARTY CLAIMS GENERALLY. IN NO EVENT SHALL LEADS360'S AGGREGATE LIABILITY TO CUSTOMER FOR INDEMNIFICATION OBLIGATIONS WITH RESPECT TO ANY THIRD PARTY CLAIM HEREUNDER EXCEED AN AMOUNT EQUAL TO AMOUNTS IN AGGREGATE PAID TO LEADS360 BY CUSTOMER HEREUNDER PRIOR TO THE DATE OF THE CLAIM GIVING RISE TO SUCH INDEMNIFICATION OBLIGATIONS.

**21. Public Disclosure:** Customer agrees not to issue any statements, confirm, or otherwise disclose to any third party the terms or existence of this Agreement or any business relationship with Leads360 without Leads360's prior written consent or except as required by applicable law. Customer shall not use the name, service marks or trademarks of Leads360 or its affiliates without Leads360's prior written consent.

**22. Disputes:** Any disputes relating to amounts stated in a Leads360 invoice must be described in writing and submitted to Leads360 by Customer within thirty (30) days following the date of such invoice. Customer shall not be entitled to any refund or credit relating to any dispute about which Leads360 is first notified after such thirty (30)-day period. Customer must identify the specific charges that are being disputed and submit detailed data and information in support of the dispute. The written notice of dispute must be signed by an officer of Customer and include a statement warranting the dispute and accompanying detail is accurate to the best knowledge and belief of Customer and the officer submitting it. A billing dispute does not relieve Customer from paying its invoices in accordance with the terms of this Agreement. Should Customer dispute a portion of its invoice, Customer shall pay all undisputed amounts in accordance with this Agreement.

**23. Failure to Pay:** In the event Customer fails to pay amounts due and payable hereunder, Customer agrees to pay all costs incurred by Leads360 in connection with its collection of delinquent payments, including attorney's fees and court costs. As security for Customer's payment obligations under this Agreement, Customer hereby grants to Leads360 a security interest in all Customer Data stored in Leads360's database (and Customer hereby authorizes Leads360 to file all documents as are necessary to perfect such security interest). In addition, in the event of Customer's failure to pay amounts due and payable hereunder, unless the unpaid amount is subject to a good faith dispute and Customer has provided notice of such dispute in accordance with Section 22, Leads360 shall have the right to suspend use of the Service, without liability to Customer, until such amounts are paid in full. Customer will continue to be charged for User Licenses during any period of suspension. Leads360 reserves the right to impose a reconnection fee of \$500.00 in the event of a suspension and subsequent request for reconnection by Customer. In addition to all other remedies available to Leads360, Leads360 shall be entitled to receive interest of 1.5% per month on any delinquent amount, or the maximum permitted by law, whichever is less.

**24. Governing Law and Jurisdiction:** This Agreement shall be governed by and construed exclusively in accordance with the laws of the State of California, without regard to its conflicts of laws provisions. Jurisdiction and venue for any dispute hereunder shall be in the state and federal courts located in Los Angeles County, California, and each party hereby irrevocably submits to the exclusive jurisdiction of such courts.

**25. Publicity:** Customer agrees that, during the Term, Leads360 may use Customer's name and trademarks in Leads360's advertising, publicity and other promotional activities. Leads360 shall comply with applicable

trademark usage guidelines or other instructions provided by Customer in writing regarding the proper use of its trademarks.

## 26. Email Policy

**26a. Email Volume:** Email sent from the Service is divided into two categories; email sent to users ("Internal Email") and email sent to leads ("External Email"). Internal Email volume is unrestricted, while external email volume is based on a monthly allowance. Customer may send an unlimited volume of **Internal Email** to valid email addresses directly associated with users in the Customer's LeadManager account. Customer may receive a monthly allowance of **External Email** which may be sent to valid email addresses directly associated with leads in the Customer's account. The available volume is based on the current number of user licenses and Service edition. The monthly allowance is reset on the first day of each calendar month. The unused portion of a monthly allowance shall not accrue and is not available for use in any subsequent month. Customer may enable additional email volume, in excess of the monthly email allowance, at a cost of \$.02 per email by providing written notice to Leads360 and charges for such additional email volume will be charged in the next billing cycle.

Product	Emails per Seat per Month	Additional Email
Enterprise	250	\$.02 per e-mail
Small Business	150	\$.02 per e-mail
Express	NA	NA

**26b. ISP Reported Bouncebacks:** Customer's email sending activities shall not result in bounce results, as reported by Internet Service Providers (e.g. Google, Yahoo, Hotmail) in excess of the following limits (exceeding said limits may result in temporary or permanent disabling of Customer's email service).

Type	Description	Limit (% of total email)*
Spam Complaint	Recipient has flagged the email as SPAM	0.3% over 24 hours
Hard Bounce	Email is permanently undeliverable	8% over 24 hours
Unknown User	Email address does not exist	5% over 24 hours
Soft Bounce	Email is temporarily undeliverable or bad	5% over 24 hours

\* Limits as of April 27, 2009. Limits are subject to change at any time based on ISP policies or practices.

**26c. Deliverability:** Leads360 makes no guarantee with regard to delivery of email generated by the email service available through the Service.

**26d. Spam:** Customer is prohibited from transmitting, distributing or delivering unsolicited bulk or commercial email through the Service. Customer agrees that all emails sent, or caused to be sent, by Customer to or through the Service shall be 100% opt-in and shall not use or contain invalid or forged headers; use or contain invalid or non-existent domain names; employ any technique to otherwise misrepresent, hide or obscure any information in identifying the point of origin or the transmission path; use other means of deceptive addressing; use a third party's internet domain name, or be relayed from or through a third party's equipment, without permission of the third party; or contain false or misleading information in the subject line or otherwise contain false or misleading content. Customer shall at all times comply with the CAN-SPAM Policy which may be viewed at <http://www.ftc.gov/bcp/edu/pubs/business/ecommerce/bus61.shtm>.

**26e. Email Content:** Customer shall not directly or indirectly send, transmit, handle, distribute or deliver any email through the Service (nor assist in any such action, nor engage or enlist another to do so) with content, or in a manner that: (a) is threatening, abusive, harassing, or defamatory; (b) is deceptive, false, misleading or fraudulent; (c) is invasive of another's privacy; (d) contains vulgar, obscene or indecent material; (e) infringes any third party's intellectual property right(s); (f) violates export control laws and/or regulations; (g) violates the usage standards or rules of an entity affected by User's use, including without limitation any ISP or news or user group (h) is legally actionable by private parties and/or (i) is in violation of any applicable local, state, national or international law or regulation, including without limitation the CAN-SPAM Act of 2003 (Controlling the Assault of Non-Solicited Pornography and Marketing Act), 15 U.S.C. sec. 7701 et seq.

**26f. Violations and Enforcement:** If Leads360 believes that Customer has breached any of the provisions of Section 25(d) or 25(e) above, it may, without notice, in addition to all other remedies available to it, take such action as it deems appropriate, including but not limited to: Requiring Customer to use a third-party email provider at an additional charge of \$250.00 per month for integration and maintenance services, blocking the delivery of Customer's email messages and/or suspending Customer's use of the Service.

## 27. Short Message Service "SMS" Service Policy

### 27a. Short Message Definitions:

The following terms shall have the following meanings with respect to SMS policies:

- **"Device"** shall mean any hardware capable of receiving or sending wireless messages.
- **"Operator"** shall mean the wireless carrier (e.g. T-Mobile) to which Leads360 has commercial connectivity.
- **"Subscriber"** shall mean the consumer or end-user on a wireless telecommunications network that sends or receives messages via a wireless device. The Subscriber is the consumer of the messaging services provided by Leads360 and the Customer as enables by the Operator.

**27b. Compliance with Operator Policies:** Customer shall adhere to the policies of the Operators regarding Content, Service, Subscriber interaction, and Transmission of Messages, and other policies that may be issued by specific Operators or from the Mobile Marketing Association ("MMA"). A breach of this section shall result in immediate and irreparable damage to Leads360 and Operator, for which Customer shall be fully responsible for all costs and damage amounts including reasonable attorneys' fees and shall further be a material breach of this Agreement allowing for termination as set forth in Section 4 above.

**27c. Content:** Customer agrees to be solely responsible for all Content. Customer will not send Messages for which it does not retain all rights necessary or where approval has not been received from Operator. Customer agrees to be solely responsible for any liability relating to Customer Content or its use of the Leads360 Service. Under no circumstances will Leads360 or any of the Leads360 indemnified parties be responsible for any loss, damage or liability arising out of the Content or Data of any transaction, including any billing or payment issues or mistakes contained in the Content or Data or the use or transmission of the Content or Data.

**27d. Liability for Operator Limitations:** Customer acknowledges and agrees that with respect to Operator communication services: (i) one hundred (100%) percent of the Messages or Content may not be delivered; and (ii) neither Leads360 nor any Operator will be liable to Customer for any Messages or Content (or part thereof) deleted or not delivered, regardless of the reason for deletion or non-delivery including, without limitation, network issues, message processing, Operator action, or transmission errors.

**27e. Facilitator:** Customer acknowledges that Leads360 is merely a facilitator and accepts no liability or obligations for changes to content executed by Operators. Use of the Service involves transmission through Operators or companies other than Leads360 and messages and transactions may not be private in certain circumstances and may be changed by those other companies to conform and adapt to requirements of their networks and devices. Leads360 assumes no responsibility for timeliness, deletions, miss-delivery or failure to store any Content or transaction.

**27f. Use and Privacy of Data:** For purposes of this Agreement and as a result of the operation of its Software, Leads360 collects some of the Data generated from the transactions including but not limited to the success or failure of the transaction. Customer acknowledges that Operators cannot guarantee the privacy of Messages, and accordingly Customer agrees that neither Leads360 nor the Operators will be liable to Customer or any other party for any lack of privacy or security experienced when using the Service. Customer also acknowledges that to the extent permitted by law, Operators have the right to intercept and disclose any transmissions over their facilities in order to protect their rights or property, including without limitation, to protect the efficient operation of their networks or to comply with governmental authorities.

**27g. Limitations on SMS Liability:** Notwithstanding anything in this Agreement to the contrary: (a) the services provided by any Operator by means of a wireless network or the Internet, are "as is", "where is" and "when available"; (b) Leads360 is not responsible for the availability of any Operator, or the availability and/or performance of the wireless network or the Internet; and (c) Leads360 is not responsible for any damages or costs Customer suffers or incurs as a result of any instructions given, actions taken or omissions made by Customer.

## **28. Telephony "Dial-IQ" Service Policy**

**28a. EMERGENCY SERVICE NOT PROVIDED:** Customer understands and acknowledges that Leads360 does not and is not required to provide Emergency Service, where "Emergency Service" is defined as services that connect a user to emergency services personnel or a public safety answering point ("PSAP"), pursuant to applicable regulatory requirements. In the United States, Emergency Service is provided by dialing the digits "911" on a wired or a wireless telephone. Services provided by Leads360 do not permit the dialing of "911" or any other emergency telephone numbers.

**28b. Disclaimer of Liability for Emergency Service:** Leads360 does not provide Emergency Service in conjunction with the Software Suite, the Service or any other services that may be used by Customer in connection with the Service. Leads360, its officers, directors, employees, shareholders, affiliates nor agents will be liable for any claim, damage, or loss arising from, or relating to, Customer's use of Five 9's services or any other service provided hereunder to contact a PSAP or Emergency Services personnel. Customer specifically waives, to the maximum extent permitted by applicable law, any and all such claims or causes of action, arising from or relating to Leads360's services or any other service provided hereunder to contact a PSAP or other Emergency Services personnel. Customer agrees to defend, indemnify, and hold harmless Leads360, its officers, directors, employees, shareholders, affiliates and agents from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, court costs and attorneys fees) arising out of the fact that Leads360 does not offer Emergency Service.

**28c. "Do not Call" Regulation Compliance:** Customer agrees to comply with all federal, state and/or local law related to or connected with providing, selling, licensing and delivering information services and telecommunications services and products. Customer assumes all liability and responsibility for use of the Service in compliance with any federal, state or local laws, rules or regulations pertaining to the use of telephones, email, fax, automated telephonic equipment and other telephony and telecommunications products and services. Customer's limitations on its use of the Service may include but are not limited to: commercial solicitations; advertisements; delivering artificial or prerecorded telephonic messages to homes, businesses, hospitals, cellular phones or paging systems without the prior consent of the called party; and restrictions on the time of day in which such calls are permissible. A violation of any such laws may result in substantial penalties and other sanctions. Any person intending to use the Service for solicitation purposes and/or for any other purpose regulated by federal, state or local laws should consult with his or her own legal counsel, prior to entering into this Agreement to determine the extent of permissible activities. Customer agrees that Leads360 will not be responsible for Customer's illegal or fraudulent use of the Service, and Customer indemnifies Leads360 for any claims, liabilities or expenses (including attorneys' fees) incurred by Leads360 based upon Customer's illegal or fraudulent use of the Service. Customer is solely responsible for obtaining the consent of or a release from those persons or entities, to whom or to which Customer intends to send communications or Messages using the Service. Customer agrees to periodically review the list of recipients to be contacted, to contact only those persons who the Customer is legally permitted to contact from Customer Data, and only in the manner permitted, under federal, state and local law, and to delete those recipients that no longer wish to receive communications from Customer. If Customer is advised by any party that they do not wish to receive communications from Customer, then Customer agrees to promptly add those parties to its internal company-specific Do Not Call List, and thereafter refrain from calling such parties. If Leads360 determines, in its sole discretion, that the receipt of communications via the Service is not consensual, or violates any federal, state and/or local rule and regulation, or is harassing to consumers or businesses, Leads360 may suspend the Dial-IQ service for Customer until Leads360 is reasonably satisfied that the violation is cured.

**28d. Dial-IQ Warranty Disclaimer:** Notwithstanding anything in this Agreement to the contrary: (a) Dial-IQ is provided on an "as is" and "as available" basis; (b) Leads360 does not warrant that the Dial-IQ service will be uninterrupted or that all communications will be delivered; (c) Leads360 makes no warranties, expressed or implied, including, but not limited to, any implied warranties or merchantability or fitness for a particular purpose in relation to Dial-IQ; and (d) Customer understands that Dial-IQ may be inaccessible or inoperable for reasons outside of Leads360's control including but not limited to (i) Customer equipment malfunctions; or (ii) service interruptions caused by independent telecommunication providers.

**28d. Dial-IQ Call Charges:** Customer shall pay for each telephony connection made to another party utilizing Dial-IQ ("Call"). Calls shall be charged in six (6) second increments. The cost of Calls shall be as follows:

<b>Standard Calls:</b>	<b>\$0.03 per minute</b>
<b>Recorded Calls:</b>	<b>\$0.035 per minute</b>

For the avoidance of doubt, a call involving a connection to multiple parties ("Conference Calls") shall be charged as multiple Calls.

**28e. Dial-IQ Excessive Use:** Customer agrees that usage of Dial-IQ will not exceed two thousand (2,000) minutes of calling time per license each month ("Reasonable Usage Limit"). In circumstances where Customer exceeds the Reasonable Usage Limit, Leads360 may charge Customer for minutes of call time used that exceed two thousand minutes of calling time per license at five (5) cents per minute.

**28f. Call Recording Storage:** Storage of recorded calls shall be free of charge for six (6) months, thereafter Customer agrees to either delete call recordings or pay \$1.00 per gigabyte of stored calls each month.

**29. Entire Agreement:** This Agreement, together with any outstanding Order Forms, contain the sole and entire agreement and understanding between Leads360 and Customer with respect to the entire subject matter hereof. Any and all prior or contemporaneous agreements (including any prior license agreement with a current term), discussions, negotiations, commitments and understandings, whether oral, written or otherwise, related to the same subject matter are hereby superseded and/or merged herein.

**30. Notices:** All notices under this Agreement shall be in writing and shall be delivered to the address set forth above for Leads360 or, to Customer, at the address set forth in the Order Form, by registered mail-return receipt requested, personal delivery, facsimile or by email. Notice shall be deemed to have been given upon: (i) personal delivery; (ii) five (5) business days after mailing; (iii) upon sending by confirmed facsimile or by email provided a confirming copy of such notice is mailed as provided herein on the day of dispatch.

**31. Severability:** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the provisions shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in full force and effect.

**32. Amendments.** Leads360 may modify the terms of this Leads360 Master Service Agreement Terms and Conditions at any time by posting the revised Leads360 Master Service Agreement Terms and Conditions on this site. Customer's continued use of the Service shall constitute acceptance of such revised Leads360 Master Service Agreement Terms and Conditions.

**33. Successors and Assigns:** This Agreement will be binding upon, and inure to the benefit of the parties and their respective successors and assigns.

**34. Relationship of the Parties:** The parties are independent contractors, and this Agreement does not create an agency, partnership or joint venture.

**35. No Third Party Beneficiaries:** There are no third party beneficiaries to this Agreement.