



Identified Marketing, LLC Services Agreement and Terms of Service

This Services Agreement and Terms of Service (the “**Agreement**”) is entered into pursuant to the order form (the “**Order Form**”) between you (**hereinafter, “Client” or “You”**) and Identified Marketing, LLC Software Company (“**Identified**”, “**we**” or “**us**”) (together with you, the “**Parties**”), and it becomes effective as of the date of your signature on the Order Form (the “**Effective Date**”). This Agreement relies on certain defined terms, and these terms are specified in Section 9 or are otherwise defined in context. This Agreement is incorporated into the Order Form by reference and, likewise, the terms of the Order Form are hereby incorporated herein by reference, subject to the provisions of Section 8.6, below.

1. Identified Services. We provide access to a web-based portal containing data, reports, dashboards, and analytics through a product named Identified (the “**Services**”), as defined below and as more specifically identified in in the **Order Form**. As part of the Services, Identified will provide consulting and implementation assistance for Identified as agreed upon in one or more Statements of Work entered into hereunder.

2. Grant of Rights; Intellectual Property Ownership. To provide the Services, we use proprietary software (“**Software**”), know-how and other items that together embody Identified IP. Identified and its licensors own the Software, reports and analysis created thereunder (the “**Reports**”), and all associated intellectual property. You retain ownership of Client Information and intellectual property rights associated with such Client Information. Identified owns the Intellectual Property associated with all the content in the Reports, including all information, artwork, text, trademarks, trade dress and report formatting. We grant you a non-exclusive, non-transferable, royalty-free, license to access and use the Reports for your internal business purposes during the term of this Agreement.

2.1. Grant of License. Identified hereby grants to Client a non-exclusive, non-transferable license to use the Software and its related Documentation during the Term of this Agreement as follows:

2.1.1. For internal purposes only, in the conducting its normal business; and

2.1.2. To copy any software data files created by the Software or for back-up or archival purposes.

2.1.3. If the software license granted herein is terminated by the Client or Licensor for any reason, Client shall have no rights in the Software.

2.2 Limitations of License. Use of the Services and Software underlying them is limited to authorized personnel of the Client and access may not be granted to any other individual or entity without Identified’s advanced written permission. Use of the Services shall be limited to Client’s internal business uses in its ordinary course of business. Any use exceeding this limitation shall represent a material breach of this Agreement and the license provided hereunder.

2.2. EULA; Privacy Policy; Acceptable Use. All users of the Software shall be required to review, accept, and abide by the Privacy Policy, User Guidelines and Acceptable Use Policy. The text of the applicable policies may be found at the following URLs and their terms and provisions are hereby explicitly incorporated herein by reference:

<https://identified.ai/terms-of-service>

2.3. Identified Intellectual Property Rights. In the course of performing its duties under this SOW, Identified may use enhancements, discoveries, processes, methods, designs and know-how, whether or not copyrightable or patentable, which Identified conceived during the course of this and other consulting engagements. In addition, Identified may independently develop enhancements, processes, methods, designs or know-how during the term of this consulting engagement. The parties understand and agree that any such developed enhancements, processes, methods, designs, know-how, or other such similar matters shall not be considered works for hire and are the sole and exclusive property of Identified and it shall have sole ownership of all such matters, including copyrights, trademarks and patents, subject only to the license granted hereunder.

2.4. Client Information; PII; Privacy Obligations. Client agrees that it is the data controller of personal information and/or personally identifiable information

("PII") collected or otherwise entered into its licensed accounts for the Software and/or the Services. Client grants to Identified the right and license to make use of Client Information, including but not limited to PII, for the purpose of processing said information as necessary in order to provide the Services. Identified agrees that it shall make use of PII only for the purpose of processing the PII for the purposes of providing the Services and for otherwise complying with legal and/or regulatory requirements imposed upon Identified with respect to the PII or otherwise.

2.4.1. Customer is responsible for all Customer Sites integrated or used with the Services, including without limitation:

2.4.1.1 compliance with all Applicable Laws that relate to data protection and individual privacy and publicity rights; and

2.4.1.2 posting an online privacy notice that:

2.4.1.2.1 discloses in a legally sufficient manner how data (including Personal Data) is collected and the purposes for which data is collected and used by Customer and Identified;

2.4.1.2.2 includes instructions on how End Users can control the collection of data by web browsers and mobile devices and how End Users can opt-out from receiving interest-based advertising.

2.4.2. GDPR. Client shall be responsible for addressing any and all inquiries or requests from individuals regarding their PII pursuant to the General Data Privacy Directive of the European Union and the rules thereunder (the "GDPR"). Identified agrees to cooperate in a commercially reasonable manner with the Client with respect to instructions received in writing from the Client regarding Client's PII disclosure and/or removal obligations under the GDPR. Where the Customer Sites attract End Users from European Territories, Customer must deploy a consent and transparency mechanism ("Consent Mechanism") on Customer Sites to obtain End User consent to Identified placing cookies or similar tracking technologies on End Users' browsers and/or through e-mails.

CCPA. Client shall be responsible for addressing any and all inquiries or requests from individuals regarding their PII pursuant to the California Consumer Privacy Act and the rules thereunder (the "CCPA"). Identified agrees to cooperate in a commercially reasonable manner with the Client with respect to instructions received in writing from the Client regarding Client's PII disclosure and/or removal obligations under the

CCPA. Customer must provide specific notice to California residents in the Customer's online privacy notice that includes a link to the California Residents Section of Identified's Service Privacy Notice (<https://identified.ai/privacy-policy>),

2.4.3. which addresses Identified's obligations under the CCPA.

3. Charges and Payment of Fees. You will pay us for the Services as identified and specified in the **Order Form**. Furthermore, you agree to reimburse us for travel and accommodation expenses incurred at your request.

3.1. Billing. You are responsible for payment of our invoices, and you shall pay such fees directly to us without delay or set off as provided in Section 3.2 and the **Order Form**.

3.2. Payment Terms. Except for Setup/Launch Fee, which is due upon execution of this Agreement, payment is due upon receipt of each invoice. Upon execution of this Agreement, you shall set up an automated payment process through either 1) ACH debit service, or 2) credit card. Client authorizes Identified to utilize the payment method above to collect payment each 30-days for the services mentioned herein. Balances not paid within five (5) days after receipt of invoice shall incur late fees equal to \$50.00 per attempt to collect payment occurring daily until collected, but not to exceed \$500.00.

3.2.1 Non-refundable. All sales and invoices paid, are final and no refunds will be granted for any reason. Client agrees that payments made to the Company are final and agrees not to dispute any charges for any reason.

3.3. Taxes. Unless otherwise stated, Identified fees do not include any taxes, levies, duties or similar governmental 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 all taxes associated with client's purchases hereunder. For clarity, Identified is solely responsible for taxes assessable against it based on income, property and employees.

4. Confidentiality. Confidential or sensitive information one Party (the "**Disclosing Party**") provides to the other Party (the "**Receiving Party**") under this Agreement shall be governed as follows:

4.1. Confidential Information. “Confidential

Information” means non-public and proprietary know-how and information disclosed under this Agreement, whether oral or written or electronic, that (a) concerns the Services, the reports or the software, technology, customers, finances, methods, research, processes or procedures of either Identified or Client; and (b) is designated as "Confidential" or "Proprietary" by the Disclosing Party at the time of disclosure or within a reasonable period thereafter. Confidential Information also includes, without limitation, information relating to the disclosing party's software or hardware products which may include source code, API data files, documentation, specifications, data bases, networks, system design, file layouts, tool combinations and development methods as well as information relating to the disclosing party's business or financial affairs, which may include business methods, marketing strategies, pricing, competitor information, product development strategies and methods, Client lists, and financial results. Confidential Information also includes information received from others that the disclosing party is obligated to treat as confidential and oral information that is identified by the disclosing party as confidential. Confidential Information disclosed by a subsidiary of the disclosing party and/or its agents is covered by this Agreement. Confidential Information includes all tangible materials which contain Confidential Information whether written or printed documents, computer disks or tapes whether user or machine readable. Confidential Information shall not include any information that: (1) is already known to the receiving party or its affiliates, free of any obligation to keep it confidential; (2) is or becomes publicly known through no wrongful act of the receiving party or its affiliates; (3) is received by the receiving party from a third party without any restriction on confidentiality; (4) is independently developed by the receiving party or its affiliates; (5) is disclosed to third parties by the disclosing party without any obligation of confidentiality; or (6) is approved for release by prior written authorization of the disclosing party.

4.2. Non-disclosure. As a result of the business relationship formed by this Agreement, the Parties hereto may have access to Confidential Information. The Parties agree to maintain the confidentiality of the Confidential Information and to protect as a trade secret any portion of the other Party's Confidential Information by preventing any unauthorized copying, use, distribution, installation, or transfer of possession of such information. The Receiving Party will retain the Disclosing Party's Confidential Information in confidence and shall not use or disclose Confidential Information except for purposes permitted under this Agreement. The Receiving Party shall be entitled to

disclose Confidential Information of the Disclosing Party (i) to its employees, provided such employees are bound by non-disclosure obligations no less protective than those set out in this Agreement, and (ii) to affiliates and vendors, provided such affiliates and vendors are bound by non-disclosure obligations no less protective than those set out in this Agreement.

4.3. Standard. Each Party will use at least the same degree of care in safeguarding the other Party's Confidential Information as it uses in safeguarding its own Confidential Information but shall not use less than reasonable care and diligence.

4.4. Exceptions. Section 4.2 will not apply to Confidential Information the Receiving Party can demonstrate: (i) is or becomes a matter of public knowledge through no fault of the Receiving Party; (ii) was or becomes available to the Receiving Party on a non-confidential basis from a third party, provided that such third party is not bound by an obligation of confidentiality to the Disclosing Party with respect to such Confidential Information; (iii) was independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information; or (iv) is required to be disclosed by law, provided that the Disclosing Party is promptly notified by the Receiving Party to provide the Disclosing Party an opportunity to seek a protective order or other relief.

4.5. Without limiting the generality of the foregoing, neither party shall permit any of its personnel to remove any proprietary or other legend or restrictive notice contained or included in any material provided by the disclosing party and the receiving party shall not permit its personnel to reproduce or copy any such material except as expressly authorized hereunder. The Confidential Information of one party may be used by the other party only to fulfill its obligations under this Agreement.

4.6. The Parties acknowledge that any use or disclosure of the other party's Confidential Information in a manner inconsistent with the provisions of this Agreement may cause the non-disclosing party irreparable damage for which remedies other than injunctive relief may be inadequate, and both Parties agree that the non-disclosing party may request injunctive or other equitable relief seeking to restrain such use or disclosure.

4.7. The terms and provisions of this Section 4 shall survive any termination of this Agreement for any reason for a period of 2 years.

5. Term and Termination

5.1. Term. The initial term of this Agreement shall be three (3) months (“**Initial Term**”). The Agreement shall

then automatically renew as month-to-month services (each an "**Additional Term**;" together with "**Initial Term**" the "**Term**") unless either Party notifies the other in writing at least thirty (30) days before the end of any term that it does not want the Agreement to renew, in which case this Agreement will expire at the end of the then current term. Thirty (30) days written notice is mandatory for terminating services. There are no refunds for any payments made to the Company under any circumstance.

5.2. Termination. We may terminate this Agreement and/or suspend the services provided hereunder immediately and without advanced notice to you in the event that you materially breach this Agreement in any respect, including but not limited to the non-payment of any fees due hereunder.

5.3. Effect of Termination. In the event of a termination of this Agreement, all invoices and fees owed to us by you shall become immediately due and payable. All terms and provisions under this Agreement that should by their nature survive the termination of this Agreement will so survive, including, without limitation, Sections 3, 4, 5.3, 6, 7 and 8.

6. Representations and Warranties; Disclaimers

6.1. Identified SaaS Limited Warranties. During the Term, Identified warrants that the Software is fit for the ordinary purposes for which it is designed, but expressly disclaims and excludes any warranty or representation that the Software or Documentation will meet any particular requirement or business need of the Client. Identified warrants that the Software and Documentation does not infringe upon or contribute to the infringement of any United States patent, trademark, or copyright.

6.2. Disclaimers. EXCEPT AS PROVIDED IN SECTION 6.1, WE MAKE NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND WE SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

6.3. Client Information. You represent and warrant that, during the Term, you hold all rights and permissions necessary to provide Client Information to us for the uses specified in this Agreement. You are solely responsible for the accuracy, integrity and completeness of Client Information.

7. Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR

INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE), EXCEPT DIRECT DAMAGES, ARISING OUT OF, OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE SERVICES. EXCEPT FOR A BREACH OF SECTION 4, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER UNDER THIS AGREEMENT EXCEED THE AMOUNTS PAID BY YOU TO US.

8. General

8.1. No Waiver. The failure of Identified to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights.

8.2. Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal or unenforceable, that provision will be eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

8.3. No Agency. For the purposes of this Agreement, the Parties will at all times be independent contractors with no right to bind or obligate the other in any manner whatsoever. Nothing in this Agreement shall operate to create a partnership between the Parties, or to authorize either Party to act as agent for the other.

8.4. Non Disparagement. The Client agrees that it will not publicly disparage Identified or its services. Client agrees that it will address any dissatisfaction or complaints with Identified and/or its services exclusively and directly to Identified and will work in good faith with Identified to address any such dissatisfaction of complaints privately and directly.

8.5. Governing Law; Dispute Resolution; Jurisdiction. Georgia law, without reference to rules governing conflict of laws, shall apply to this Agreement and any dispute between the Parties related hereto. Any such dispute shall be resolved through binding arbitration in Fulton County, Georgia. The foregoing shall not apply to injunctive relief sought with respect to any breach or alleged breach of Section 4. As a condition precedent to filing an action in a court of competent jurisdiction, the Parties agree to mediate their dispute within forty-five days (45) of either Party receiving notice of a request to mediate. The Parties shall agree on a mediator or in the event the Parties cannot agree, each party shall choose a mediator who in turn shall choose the mediator to hear the dispute. The Parties by written agreement may treat the mediation as binding arbitration. The cost of mediation or binding arbitration shall be borne by the losing Party.

8.6. Entire Agreement. This Agreement and the Identified policies cited herein, the terms of which are incorporated herein by reference, along with the Order Form executed between the Parties which is incorporated herein by reference, contains the entire understanding of the Parties regarding its subject matter and supersedes all prior agreements between the Parties, both oral and written, and can be modified only by a subsequent written agreement executed by both Parties. To the extent of any conflicts between the terms of this Agreement and the Order Form, the terms of this Agreement shall supersede those contained in the Order Form, except where the Order Form explicitly states that a given term or provision shall supersede this Agreement.

8.7. Counterparts. The Parties may enter into this Agreement in counterparts, including facsimile, PDF or other electronic copies, which taken together will constitute one instrument.

8.8. Force Majeure. Identified shall not be responsible for failure to perform in a timely manner under this Agreement when its failure results from any of the following causes; Acts of God or public enemies, civil war, insurrection or riot, fire, flood, explosion, earthquake or serious accident, strike, labor trouble or work interruption or any cause beyond its reasonable control. In addition, Identified shall not be responsible for equipment or component failures due to defective manufacturing or defective software or for delays in shipment of equipment or components timely ordered.

8.9. Notices. Any notice or other communication required or permitted shall be in writing and shall be deemed to have been duly given on the day of service if served personally or by facsimile transmission with confirmation, or three (3) days after mailing if mailed by First Class mail, registered or certified, postage prepaid, and addressed to the respective Parties at their principal place of business or at such other addresses as may be specified by either Party.

8.10. Independent Contractor. Identified is an independent contractor. Neither Identified nor Client are, or shall be deemed for any purpose to be, employees or agents of the other and neither Party shall have the power or authority to bind the other Party to any contract or obligation. Identified has the sole authority to direct the work of its employees and determine the materials necessary to perform their duties pursuant to the terms of the contract. Identified shall retain the right to perform work for others during the term of the consulting engagement.

9. Definitions

9.1. “Client Information” means information generated by Client or by Client’s customers of visitors to Client’s online points of presence.

9.2 “Identified” is a set of bundled, software-driven digital marketing data-gathering and analysis tools offered by us, which comprises multiple modules, applications, platforms, interfaces, analytic engines, etc. The subset of the Identified tools provided by us to you under this Agreement is set forth in detail in the Order Form.

9.3 “Documentation” means any materials created or owned by Identified in either machine-readable or written form that are communicated to Client and are intended to describe the use or characteristics of software.

9.4 “Identified IP” means methods, algorithms, inventions, know how, information, data, concepts, ideas, methodologies, trade secrets, trade or service marks, logos, and other elements, including but not limited to computer object and/or source code, that we use to provide our Services.

Signature Page Follows:

By signing this agreement below, you are agreeing to the terms of service herein. The date of registration of services or of the signing of this agreement; whichever is first, will be considered the effective date. Services will not begin until this agreement is signed by both parties.

Identified Marketing, LLC

Signature: _____

Name: _____

Title: _____

Date: _____

Client

Signature: _____

Name: _____

Title: _____

Date: _____