

## **Digital Marketing Terms & Service Agreement**

### **1. Online Advertising and Marketing Services.**

Loyalty Health Inc. (Agency) offers a variety of services to market businesses online, improve website visibility, assist in growth and additional business needs. By engaging us, you (Client) agree to the Terms and Service Agreement (Agreement) set forth below.

If you have questions, or if we may be of any service, please do not hesitate to contact us.

Agency provides social media marketing, search engine optimization, search engine marketing, pay per click, retargeting, reputation management, website design & optimization, online patient booking, digital geo-fencing and other related services on a local, national and international basis. As such, we submit information on your behalf to social media sites and search engine providers for whom you must agree to their terms and conditions. These providers may include, but are not limited to: Facebook, LinkedIn, Instagram, Google, Yahoo, MSN/Bing, Yelp, local online newspapers, Twitter, Pinterest, YouTube and other sites. The terms and conditions of these providers all apply. Agency will not share your information with any business other than in the course of securing online advertising marketing services, merchant processing, H.R/Payroll services and/or related support on your behalf.

### **2. Advertising Material.**

Agency has the right to place information pertaining to your business on any of the social media, publisher, and search provider websites, such as those listed above, and you authorize Agency to develop content based on information or material provided by you or your designees and collected by Agency including copy, form, size, text, graphics, names, addresses, phone numbers, URLs, logos, trade names, trademarks, service marks, endorsements, photographs or likenesses, and videos. Further, you represent that the material and information you provide to Agency is truthful, not misleading, and that you have the authority to represent this product and service information to Agency. Additionally, if so contracted, you authorize Agency to contact your customers for the sole purpose of gaining endorsements and reviews of your products and services for publication. Further, articles, press releases, and blog postings will be sent for approval before publishing. The timeliness of these pieces is critical to campaign performance. For this reason, all content will be considered approved after the content was sent for approval unless requested edits or other communication is received from the client. Finally, you authorize Agency to utilize tracking phone numbers, and even record calls on your behalf, for 'customer service' purposes, and upon automatic notification to all incoming callers on tracking phone numbers if included when that service is contracted.

### **3. Client's Obligations.**

The Client shall provide assistance, technical information and decisions to the Agency, as reasonably required by the Agency in sufficient time to facilitate the execution of marketing efforts in accordance with any estimated delivery dates or milestones. The Client agrees to work closely with Agency to provide regular information and feedback so Agency can create fresh content and make adjustments to marketing efforts, accordingly. The Client shall have sole responsibility for ensuring the accuracy of all information provided to the Agency and warrants and undertakes to the Agency that the Client's employees assisting in the execution of an effort have the necessary skills and authority. This includes providing necessary login information and passwords to access social media, analytics, hosting, domains, and other third-party accounts necessary for Agency to carry out marketing efforts.

### **4. Rates.**

All advertising purchased will be at the rates and on the terms indicated in this Agreement, or on the DocuSign Application.

Agency may, in its discretion, from time to time, increase the rates listed, modify the product/service offerings, or change its service terms. The Agency will inform the Client of any increase in rates, new product/service modifications, or change in terms in writing prior to the effective date of the increase, modification or change that could impact this agreement. If the rates are increased, products/services modified, or terms changed, the Client may cancel the remainder of the term of this Agreement, as of the date the new rates, modifications, or changes become effective. Client must notify the Agency in writing if the Client decides to cancel the remaining term of this Agreement because of increases, modifications, or changes prior to the changes taking effect. If the Client fails to provide such written notice, Client agrees to be bound by the new rates. Product/service modifications, and terms, which will become a part of this Agreement and become effective on the date set forth in the Agency's notice.

> Loyalty Health Mobile Geofencing Package = \$999.00 per month. (*3 mo. minimum, then mo. to mo.*)

> Loyalty Health Organic SEO Package = \$999.00 per month. (*3 mo. minimum, then mo. to mo.*)

> Loyalty Health SEM Package = \$999.00 per month (*30% management fee deducted*)

> Loyalty Health Social Facebook Geofencing Package = \$399 per month.

> (Optional) Credit and Debit Card Merchant Processing Services.

Additional agreement will be provided if merchant services option activated.

> (Optional) Employee H.R., Payroll and Tax Reporting Services.

Additional agreement will be provided if employee H.R./payroll services option activated.

### **5. Payment.**

Payment is due and will be made automatically via ACH or credit card, in advance, on the initial monthly effective date (or within 5 business days) of this signed agreement and of each subsequent month's effective date that the contract is in effect. Failure to secure final approval from Client on designs, digital creatives, digital ads, etc. will not be considered a reason to delay payment beyond the due date.

The Client agrees to pay the Agency for all expenses incurred by it to collect any amounts payable under this Agreement, including costs of collection, court costs and attorney's fees.

## **6. ACH Authorization.**

Client authorizes a one time and/or regularly scheduled charges to Clients checking/savings account. Client will be charged the amount indicated in this Terms and Service agreement, unless otherwise agreed upon by Client and Loyalty Health in writing. The Agency charge will appear on clients' bank statement as a Loyalty Health ACH Debit. Client agrees that no prior notification will be provided unless the date or amount changes, in which case client will receive notice from Agency at least 10 days prior to the payment being collected.

Client understand that this authorization will remain in effect until Client cancels it in writing, according to the Cancellation terms in section 9 of this agreement. Client agrees to notify Loyalty Health in writing of any changes in Clients' account information at least 15 days prior to the next billing date. If payment dates fall on a weekend or holiday, Client understands that the payments may be executed on the next business day. For ACH debits to Clients checking account, Client understands that because these are electronic transactions, these funds may be withdrawn from Clients' account as soon as the signed execution date of this agreement. In the case of an ACH Transaction being rejected for Non-Sufficient Funds (NSF) Client understands that Loyalty Health may at its discretion attempt to process the charge again within 30 days. Client acknowledges that the origination of ACH transactions to Clients' account must comply with the provisions of U.S. law. Client certifies that Client is an authorized user of this bank account and will not dispute these scheduled transactions with Clients bank; so long as the transactions correspond to the terms indicated in these Terms and Conditions.

## **7. Taxes.**

In the event that any federal, state or local taxes are imposed on the printing, publication or distribution of advertising material or on the sale of advertising or products and services produced by the Agency, these taxes will be assumed and paid by the Client.

## **8. Termination.**

The Agency may reject an advertising order and/or immediately terminate this Agreement, upon notice to Client for any of the following reasons, including but not limited to: (a) if the Client fails to make payment when due or otherwise fails to perform any of the provisions of this Agreement, (b) if the Client makes an assignment for the benefit of creditors, (c) if a petition in bankruptcy or for reorganization under the bankruptcy or insolvency laws is filed by or against the Client, (d) if the Client ceases doing business or is likely to cease doing business or (e) in the opinion of the Agency, the credit of the Client is or may be impaired. If this Agreement is terminated for any of these reasons, Client will nevertheless remain liable for balances due on any products and services that were purchased, whether billed or unbilled, and Agency will send an invoice to Client, which Client agrees to promptly pay within 30 days of invoice.

## **9. Cancellation.**

Client may cancel at any time and for any reason, with written notice, after the initial 3-month term (for Geofencing Package and/or SEO Package) with no penalty or cancellation fees. Package Services have a three (3) month Initial Term. Only months in which full payment has been received will count as a month of marketing under the Initial Term. Client acknowledges that Client's digital marketing plan is designed based on a minimum three-month Initial Term. After the Initial Term, the Term will be automatically renewed for successive one-month periods (month to month) each, a "Renewal Term".

If you have not completed the Initial Term, cancellation will be effective at the completion of the Initial Term (3 months). If you have completed the Initial Term, services will continue through the end of the next applicable Renewal Term (1 month) and will then be cancelled. There are no refunds.

#### **10. Errors.**

The Client may not claim a breach of this Agreement if there are typographical errors, incorrect ad placements, under deliveries, omissions or errors in advertising, social media and website content provided by the Agency. The Agency agrees to promptly take corrective action after notification by the Client, that portion of the advertising, website or social media content which may have been rendered valueless by such typographical errors, incorrect ad placements, under deliveries or omission of copy, unless such error arose due to the error or omission of Client, or after the advertisement, website or social media content had been set and proofed or otherwise confirmed by the Client or the advertisement was submitted after start date. The Agency will not be liable to Client for any loss or damage that results from a typographical error, incorrect ad placement, under delivery, omission or error related to the products and services it provides.

#### **11. SEO/Digital Marketing.**

Client acknowledges the following with respect to SEO services from Agency:

- i. Agency has no control over the policies and ranking algorithms of search engines with respect to the type of sites and/or content that they accept now or in the future. Client's web site may be excluded from any search engine or directory at any time at the sole discretion of the search engine or directory.
  - ii. Due to the competitiveness of some keywords/phrases, ongoing changes in search engine ranking algorithms, and other competitive factors, Agency does not guarantee No.1 positions or consistent top positions for any particular keyword, phrase, or search term.
  - iii. Google has been known to hinder the rankings of new websites (or pages) until they have proven their viability to exist for more than "x" amount of time or have enough back-link strength. Agency assumes no liability for ranking, traffic, indexing issues related to such penalties. Consequently, client understands that ranking new websites is much more difficult than ranking old and established sites and they should not have unrealistic expectations about rankings, traffic and revenues.
  - iv. Occasionally, search engines will drop listings for no apparent reason. Often, the listing will reappear without any additional SEO efforts.
  - v. A website's search engine ranking can fluctuate any day, any time because of on-going changes in the ranking algorithm, SEO efforts made by the competitors or both.
  - vi. Agency makes no guarantee/warranty of project timelines or added expenses if content or SEO work is destroyed either wholly or in part, either knowingly or unknowingly by any party other than Agency or without the prior consultation of Agency.
  - vii. Agency is not responsible for the Client or any of its affiliates overwriting content or SEO work.
- b. Client acknowledges the following with respect to Pay-Per-Click (PPC)/Paid Social Media Campaigns/Paid Search Services from Agency:
- i. Agency accepts no responsibility for policies of PPC Advertising Networks, social media platforms, third-party search engines, directories or other web sites that Agency may submit to with respect to the classification or type of content it accepts, whether now or in the future. Client's website or content may be excluded, rejected or banned from any third-party resource at any time. Client agrees not to hold Agency responsible for any liability or actions taken by third-party resource under this Agreement.
  - ii. Client acknowledges and agrees that Agency makes no specific guarantee or warranty regarding the search providers, social media platforms or publishers to which it submits advertising on your behalf,

including placement of paid advertising or any specific results. Agency does not warrant the number of calls, clicks, impressions, event registrations, website visits, or that paid advertising will appear in response to any particular query. Agency does not guarantee position, consistent positioning, or specific placement for any particular ad, keyword, phrase or search term.

iii. Client acknowledges that Agency's past performance is not indicative of any future results client may experience.

iv. Agency does not warrant that the performance will be error-free but will promptly act to correct errors once they have been identified.

v. Client acknowledges that paid advertising may be subject to the individual advertising network's policies and procedures. Changes to these policies may require added resources employed by Agency to adhere to these changes.

vi. Client acknowledges that any of the online advertising networks, social media sites, search engines, directories or other resources may reject, block, prevent or otherwise stop accepting submissions for an indefinite period of time.

vii. Client acknowledges that online advertising networks or search engines may drop listings from its database for no apparent or predictable reason. Agency shall re-submit resources to the search engine based on the current policies of the third-party advertising network in question.

viii. Agency will endeavor to make every effort to keep client informed of any changes that Agency is made aware of that impact any of the online marketing, social media campaign and strategy and the execution thereof under this Agreement.

ix. Client acknowledges that Agency cannot guarantee the exact placement of client's advertising; its availability or availability related to the funds in the client's account.

x. Cost for digital media advertising are additional and paid directly to third-party provider. Payment for media that Agency is running on behalf of Client shall be paid for in advance of running. In the event that there is a lag in payment or lack of adequate funds in a third-party account (e.g. Google, Facebook, Yahoo), Agency reserves the right to pause advertising until accounts are made whole.

xi. Development of text ads, image ads, video ads, and/or banner ads in support of online marketing or paid social media campaigns will be outlined specifically as a part of the deliverables in the strategy with Agency.

xii. Agency does not offer any refunds for SEO or digital marketing campaigns (SEO, PPC, Shopping Feeds, Email Marketing, Re-marketing, Content Marketing, Blogging, Social Media, etc.).

## **12. Intellectual Property Rights.**

All logos, website and social media content is considered to be owned by the Client once it has received final approval to go live and payment in full has been received and may be reused, shared and reproduced by the Client.

## **13. Advertising Content.**

The Agency may, in its sole discretion, edit, alter, omit, reject or cancel at any time any of Client's digital advertising products or services to meet industry standards or Client's budget. All digital advertising placements are at the option of the Agency, unless a specific placement is purchased by the Client. Failure to meet placement requests will not constitute cause for adjustment, refund, make good, termination or cancellation of this Agreement.

#### **14. Disclaimer of Warranties.**

To the maximum extent permitted by applicable law, Agency and its suppliers disclaim all warranties not expressly set forth in this document, whether express or implied, including, but not limited to implied warranties of merchantability and fitness for a particular purpose, with regard to Agency services.

#### **15. Indemnity:**

Client agrees to indemnify and hold harmless Agency, its owners and employees from and against all allegations, claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including without limitation attorneys' fees and costs) which arise out of, relate to Agency's use of materials furnished by Client (including but not limited to, logos, slogans, trademarks, written content, photographs, video, music and fonts). Information or data obtained by us from you to substantiate claims made in marketing deliverables shall also be deemed to be "materials furnished by you." Such claims may include claims for invasion of privacy, defamation, patent, trademark, copyright or other intellectual property claims. Additionally, Client agrees to indemnify and hold harmless Agency, its owners and employees against any and all allegations, claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including without limitation attorneys' fees and costs) which arise out of, relate to business ideas, innovations, concepts, websites, web-based applications and the like that Client has generated and has asked Agency to develop or implement. For example, if you have an idea for a web application, we develop it, and it is determined that the application's functionality violates another company's patent, you will indemnify Agency for any claims instituted by the third party. Agency does not take responsibility for determining whether your business ideas, business plans, concepts or innovations may interfere with another party's rights or are otherwise in compliance with applicable law. You warrant that any business ideas, business plans, concepts or innovations that you have presented to Agency and asked Agency to create deliverables for are compliant with applicable federal, state and local laws, rules and regulations. You agree to indemnify, defend, and hold Agency harmless from any and all liability, claims, damages, and settlements due to any 3<sup>rd</sup> Party claims or causes of action, (including, without limitation, reasonable attorneys' fees and court costs) arising out of or relating to Client's (a) illegal or unauthorized use of the Services, or (b) noncompliance or breach of any of these Terms of Service by Client or any 3<sup>rd</sup> Party (authorized, permitted or enabled by Client). This indemnification includes, but is not limited to, any actions, including intellectual property actions (including trademark and copyright actions), actions related to end user personal or financial data, PCI compliance, Client's order processing, billing, fulfillment, shipment, collection, or actions related or associated with any products or services offered, sold, or licensed through Client's website. If Client is a Covered Entity under The Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Client waives any Claims it may have against Agency arising out of or in connection with HIPAA requirements and agrees to indemnify and hold harmless Agency against any and all Claims that are related to or arise from failure to comply with HIPAA requirements. Client is responsible for maintaining the privacy of any persons or their information that may be covered by HIPAA or any related or similar legislation or regulation. Agency makes no claims or warranties regarding compliance with HIPAA.

#### **16. Limitation of Liability:**

IN NO EVENT SHALL AGENCY BE LIABLE TO CLIENT FOR ANY DIRECT, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF PROFITS, LOSS OF DATA OR LOSSES AS A RESULT OF DISCLOSURE OF

USER CONTENT OR OTHER DATA, WHETHER IN AN ACTION IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), OR OTHERWISE, ARISING OUT OF OR IN ANY WAY CONNECTED WITH AGENCY'S PRODUCTS OR SERVICES. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF AGENCY EXCEED ANY COMPENSATION PAID BY YOU TO AGENCY FOR ITS PRODUCTS OR SERVICES.

**17. Excusable Delays.**

The Agency will not be liable for any damages related to delay or failure to perform due to causes beyond its control, including but not limited to, fire, strike, work stoppage or other labor interruption, freight embargo, terrorism, sabotage, war, civil disturbance, governmental action, rules or regulations, failure of machinery, equipment or information systems, failure of suppliers and digital partners, the elements, flooding, power outages or interruptions or acts of God.

The Agency's inability or failure to perform will not constitute a breach of this Agreement. Performance by the Agency of its obligations under this Agreement will be suspended during this type of delay or failure to perform.

**18. No Waiver.**

The Agency's failure to insist upon the performance by the Client of any term or condition of this Agreement or to exercise any of the Agency's rights under this Agreement on one or more occasions will not result in a waiver or loss of the Agency's right to require future performance of these terms and conditions or to exercise its rights in the future.

**19. Assignment.**

Agency may assign, delegate, or subcontract any rights or obligations under this Agreement.

**20. Governing Law/Venue:**

This Agreement shall be governed by and construed in accordance with the internal laws of the State of Indiana and not the principles of conflicts of law thereof. The Parties agree that the venue for any action arising out of this Agreement will be in the State of Indiana.

**21. Severability.**

If any provision of this Agreement is invalid or unenforceable in any jurisdiction, the other provisions herein will remain in full force and effect in such jurisdiction and will be liberally construed to effectuate the purpose and intent of this Agreement, and the invalidity or unenforceability of any provision of this Agreement in any jurisdiction will not affect the validity or enforceability of any such provision in any other jurisdiction.

**22. Miscellaneous.**

All covenants and agreements of the parties made in this Agreement will survive termination or expiration of this Agreement. This Agreement and the Agency's current rates, terms of use and privacy policy, constitute the entire agreement between the parties and supersede and cancel any prior agreements, representations or communications, whether oral or written, between the parties relating to the subject matter of this Agreement. This Agreement may not be changed orally and may only be

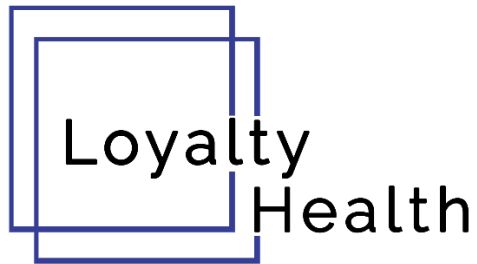
amended in writing and signed by both parties. Each party agrees that electronic signatures have the same force and effect as manual signatures. Electronic signature means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record.

**23. Authority.**

The person(s) signing this Agreement certifies that (s)he is lawfully authorized to purchase services on behalf of their respective company.

**24. Execution and Term.**

Terms and conditions of this Agreement are binding on both parties on the date the Agreement is signed and/or payment is made and continue for an initial period of 3 months (Initial Term) for Geofencing Package and/or SEO Package. Upon completion of the initial 3-month period, services will continue on a month-to-month basis until Client provides a written cancellation notice.



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