

## TERMS AND CONDITIONS OF USE

### 1 About

- 1.1 Welcome to [\[360\]](#), the mobile application (the **Platform**) which is operated by 360 App Pty Ltd (ACN 637 438 558) (the **Company**). Users may browse videos of properties available for sale or rent, which are uploaded or posted by an Agent for the purposes of promoting the real estate or finding a buyer or a tenant (the **Services**).
- 1.2 Access to and use of the Platform, and its associated Services, is provided to you by the Company. Details of the Services can be found on the Platform.

### Definitions

- 1.3 “Agent” means the person or entity using the Platform that is a registered real estate agent pursuant to the law (if any) of the relevant jurisdiction that uses the Platform to upload Posts.
- 1.4 “Post” means the uploading to the Platform of text, video, and photograph (a single still photo or a combination of still photos) content of real estate for the purposes of sale or rent.
- 1.5 “Privacy Policy” means the privacy policy, as updated from time to time at the sole discretion of the Company, available on the Platform and at [\[Insert Privacy Policy Link\]](#).
- 1.6 “User” means any user of the Platform that is not an Agent.
- 1.7 “You” means you, the Agent or User accepting these terms, themselves and the party that they represent (if any).

### Acceptance of these Terms

- 1.8 These terms and conditions (the **Terms**) are the agreement between you and the Company.
- 1.9 Please read these Terms carefully. By using, accessing, or registering through the Platform or the Services, you signify that you have read, understood and agree to be bound by the Terms. If you do not agree with the Terms, you must cease use of the Platform and the Services immediately.
- 1.10 You understand and agree that continuing to access or use the Platform, whether through the capacity of an Agent or User, when you do not agree with these Terms, is treated as acceptance of these Terms.
- 1.11 If you are accessing and using the Platform on behalf of a corporation or other entity, you warrant that you have been authorised by the corporation or other entity to enter into and agree to these Terms on the corporation’s or entity’s behalf and bind them to these Terms.
- 1.12 You may not access the Platform or use the Services and may not accept the Terms if:
- (a) you are not of legal age to form a binding contract with the Company; or
  - (b) you are a person barred from receiving the Services under the laws of Australia or other countries including the country in which you are a resident in or from which you use the Services.
- 1.13 By accepting these Terms, you warrant that you have familiarised yourself with, and agree to be bound by the Privacy Policy, which is incorporated into these Terms, as well as any other relevant legal documentation provided by the Company.

## **2 Changing the Terms**

- 2.1 The Company reserves the right to review and amend these Terms from time to time and at the Company's sole discretion by updating the contents of this page.
- 2.2 In the event that a change to these Terms is made by the Company that substantially modifies your rights or obligations under these Terms, the Company will use reasonable endeavours to notify you of these changes (e.g., by sending you an email to the email address used to create your account or by posting a pop-up window notification with a link to the updated Terms on the homepage of the Platform when you first log in following the update). Any changes to the Terms take immediate effect from the date of their publication.
- 2.3 If you do not agree with or accept the new terms, your sole recourse will be to stop using or accessing the Platform and the Services. Your continued access or use of the Platform and the Services after the date of the new Terms constitutes your acceptance of the changes and the new Terms and that you agree to be bound by the new Terms.
- 2.4 The Company recommends you regularly check these Terms for any material changes and to keep a copy of the Terms for your records.

## **3 Account Set Up**

- 3.1 To access and use the Platform as an Agent, you are required to register with the Company by creating an account as an Agent of the Platform. You may register for an account via the Platform.
- 3.2 As part of the registration process or as part of your continued use of the Platform and the Services, you may be required to provide personal information about yourself (such as identification and contact details), including, but not limited to:
  - (a) your full name;
  - (b) a work email address;
  - (c) your position or title;
  - (d) any person or entity that you represent;
  - (e) (if an Agent) the full name of the real estate agency that employs you;
  - (f) (if an Agent) the address of the real estate agency that employs you;
  - (g) a preferred username; and
  - (h) a preferred password.
- 3.3 As part of your profile, you may write a description about yourself, and upload an image to use as your profile picture.
- 3.4 You agree that any information you give to the Company will always be accurate, correct and up to date and that you will keep any personal information provided to the Company current. If at any time, the information given to the Company changes, you must inform the Company immediately.
- 3.5 You acknowledge that you are responsible for ensuring the information provided to the Company is accurate, correct and up to date.
- 3.6 Once you have completed the registration process you will be a registered member of the

Platform (**Member**).

- 3.7 As a Member, you acknowledge that you are personally liable for the account, even if you are acting on behalf of a third party.
- 3.8 As a Member, if you are acting on behalf of a third party, you acknowledge that you are accepting the Terms on their behalf and that the third party is also liable for the account.
- 3.9 You agree to not disclose to any third party the password used to access your account. If you discover that a third party has accessed your account or knows your account password, you must immediately notify the Company in writing at **team@360app.io**.
- 3.10 You agree that you are solely responsible for the activity that occurs under your account, including but not limited to, any comments you post and any direct messages you send.
- 3.11 You understand that by supplying the Company with your address, email address and phone number, you may receive regular emails, newsletters, telephone calls or SMS updates from the Company to keep you informed about the Company's activities. If you do not wish to receive updates from the Company, you may contact the Company at **team@360app.io**.
- 3.12 The Company will hold any information provided in relation to the account and the Services in accordance with the Privacy Policy.
- 3.13 Providing false or misleading personal information is grounds for immediate termination of your account without notice.

#### **4 Identity Verification of Agent**

- 4.1 If you are accessing the Platform as an Agent, you acknowledge and agree that due to the nature of the Services, the Company is required to verify your identity to ensure that you are not using the Platform in an illegal or fraudulent manner and to deem your overall authenticity.
- 4.2 You warrant that where the Company advises you in writing that they require further verification of your identity then you will make all reasonable endeavours to comply with this request within seven (7) days of receipt of same.
- 4.3 You warrant that any information that you provide pursuant to this clause will be true and correct to the best of your knowledge and belief and failure to comply with this clause will warrant an immediate termination of the provision of the Services to you.
- 4.4 You agree that during the verification process, the Company may use various methods to verify your identity, including but not limited to, matching your workplace email address with the email address used to set up an account and checking public and private data bases.

#### **Your Account Obligations**

- 4.5 As a Member, you agree with the following:
  - (a) to comply with the Terms;
  - (b) use the Platform and Services only for the purposes that are permitted by:
    - (i) these Terms; and
    - (ii) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdiction;

- (c) you have sole responsibility for protecting the confidentiality of your password and/or email address. Use of your password by any other person, other than the Member, may result in the immediate cancellation of your account;
- (d) any use of your registration information by any other person, or third parties, is strictly prohibited. You agree to immediately notify the Company of any unauthorised use of your password or email address or any breach of security of which you have become aware;
- (e) you understand that the Company makes no representations or warranties as to the conduct of its Members or their compatibility with any current or future Agents or Users;
- (f) access and use of the Platform is limited, non-transferable and allows for the sole use of the Platform by you for the purposes specified in the Terms and only for the duration of the membership, unless you are a User that cancels their membership, in which case you may still browse the Services;
- (g) you must not:
  - (i) expressly or impliedly impersonate another Member or use the profile or password of another Member at any time;
  - (ii) provide false information including false names, addresses and contact details;
  - (iii) use the Platform unlawfully or in a manner that violates any applicable laws, regulations or these Terms;
  - (iv) hack into any part of the Platform or attempt to circumvent the Company's security or network to access data not intended for you;
  - (v) interfere with the servers or networks connected to the Platform or the Services, or violate any of the procedures, policies or regulations of networks connected to the Platform or the Services;
  - (vi) engage in conduct or access the Platform in a way that will impose an unreasonable or large burden of traffic demands on the Company's infrastructure;
  - (vii) introduce or transmit files that contain a virus, malware, "spam", "chain letters" promotional materials, or "junk mail";
  - (viii) upload or post content to the Platform which is false, misleading, defamatory or contains sexually explicit material, references or innuendos;
  - (ix) act in a way that is unlawful, harassing, threatening, abusive, violent, discriminatory, intimidating, or predatory, or that otherwise would disrupt others' enjoyment of the Platform and the viewing of Posts;
  - (x) use the Platform or Services in connection with any commercial endeavours except those that are specified or approved by the Terms;
  - (xi) use the Platform or Services for any illegal and/or unauthorised use which includes collecting email addresses of other Members by electronic or other means for the purpose of sending unsolicited communication or unauthorised framing of or linking to the Platform;
  - (xii) create derivative works of the Platform or an application substantially similar or a direct copy of the Platform such that confusion may occur as to which Platform is

operated by the Company;

- (xiii) resell or export the software associated with the Platform or any of the videos uploaded on the Platform;
- (xiv) disclose any private and confidential information rendered from dealings with real estate owners, buyers, or tenants such as addresses, phone numbers, email addresses, to other third-parties;
- (h) commercial advertisements, affiliate links, and other forms of solicitation may be removed from Member profiles without notice and may result in termination of the Services. Appropriate legal action will be taken by the Company for any illegal or unauthorised use of the Platform or the Services; and
- (i) any automated use of the Platform or the Services are prohibited.

#### **Using the Platform as an Agent**

4.6 As an Agent, the Platform provides you with an opportunity to upload a Post.

4.7 In order to upload a Post, you must:

- (a) register as a Member;
- (b) upload a Post on the Platform which states:
  - (i) whether the real estate listing is available for rent or for sale;
  - (ii) the address of the real estate;
  - (iii) the rental price or the sale price, whichever is applicable, for the real estate listing;
  - (iv) a description of the real estate, including the type of real estate and the number of bedrooms, car spaces, and bathrooms in the real estate;
  - (v) the date on which the real estate is open for inspection; and
  - (vi) the date on which the real estate is available, if it's for rent, or the date on which the auction for the real estate will be held, if it's for sale.

4.8 You acknowledge that, in using the Platform as an Agent, you are not employed by the Company in any capacity, and accordingly, you do not have any rights as an employee, agent or independent contractor of the Company.

4.9 You agree that when uploading a Post you will:

- (a) ensure the Post is of a professional manner in accordance with any professional standards, either expressed or implied, that apply to the Agent or are relevant to the real estate industry;
- (b) ensure that any music overlaid on the Post is either:
  - (i) the music made available on the Platform; or
  - (ii) music you have the documented rights and necessary permission or authorisation to use that sound recording and musical works in the Post and to stream the music to the public for business purposes on the Platform;

- (c) replace any pre-existing music that does not comply with clause 8.4(b) and replace it with music in compliance with clause 8.4(b) above;
  - (d) ensure that you have the documented rights and necessary permission or authorisation to use any text, photographs, art, or video in the Post and stream it on the Platform;
  - (e) ensure that any video effects, text and/or filters overlaid on the Post are tools used to enhance the display potential of the Post and the real estate, and do not distort the look of the real estate or the Post; and
  - (f) not upload any Post, send messages or post comments, onto the Platform that is confidential and proprietary as all Posts that are uploaded, messages that are sent, or comments that are posted on the Platform will be considered non-confidential and non-proprietary.
- 4.10 The Agent represents that it has the proper legal authority by local laws and real estate bodies and authorities to represent and market properties on the Platform.
- 4.11 The Agent represents and warrants that any text, photographs, videos and property information uploaded or posted onto the Platform is accurate, current and correct to the best knowledge of the Agent and holds a true and reliably accurate portrayal of the real estate available for rent or sale.
- 4.12 The Agent agrees and represents that it received all necessary rights, permissions, clearances from, or are authorised by, the owner of any part of a Post to upload the Post pursuant to these Terms.
- 4.13 The Agent acknowledges that it is responsible for ensuring the Post uploaded or posted conforms with clauses 8.4 through 8.6 above, and that the Post is the sole legal responsibility of the Agent.
- 4.14 The Agent acknowledges that it is responsible for removing uploaded Posts and associated information about the real estate which represents that a real estate is available for rent or sale when the Agent is aware or knows that the real estate has been leased or sold and as such is no longer available.
- 4.15 The Agent must comply with clause 8.9 above within forty-eight (48) hours of the Agent becoming aware or knowing that the real estate has been leased or sold.
- 4.16 The Agent may upload the Post, that has been uploaded to the Platform by the Agent, to third party websites. If a Post is uploaded to a third-party website, the Agent must comply with their terms and guidelines.
- 4.17 The Platform may not be used for and no Post may be associated with a short-term stay, such as Airbnb, short term rentals, or hotels. Real estate in Posts must be available for rent or purchase.
- 4.18 The Company reserves the right, at any time and without prior notice, to remove or disable access to the Post uploaded onto the Platform at the Company's sole discretion without notice and for any reason, including, but not limited to, if the Company finds that the Post is:
- (a) not filmed in a professional manner, or does not have a professional theme, and is generally not professional;
  - (b) offensive;
  - (c) abusive, threatening, or discriminatory;

- (d) violates these Terms;
- (e) harmful or damaging to the Platform, the Services, the Agents and the Users; or
- (f) a claim is made that the Post violates the intellectual property rights of a third party.

4.19 For a guide on what constitutes a Post that is professional, see [\[360's best Practices Guidelines\]](#).

#### **Using the Platform as a User**

- 4.20 As a User, the Platform provides you with an opportunity to view and browse the Posts uploaded on the Platform by the Agent based on the suburb you have searched.
- 4.21 Upon becoming a Member, the Platform provides you with the opportunity to follow the Agent, contact the Agent through the Platform to obtain more detail about the real estate listing, to schedule a time to view the real estate or for any other reason connected to the real estate and like and/or share the Post.
- 4.22 If a User contacts an Agent through any medium, including telephone or text, whose information was obtained through the Platform, the User agrees to communicate respectfully and professionally. The Company reserves the right, at any time and without prior notice, to remove or disable your access to the Platform at the Company's sole discretion and for any reason, including, but not limited to, if the Company believes that you have caused any abuse, threats, sexist or racist comments. Agents may block communications with any User at any time and without notice.
- 4.23 You acknowledge that the Platform is only a mobile application which facilitates the Services and the Company does not offer the sale or rent of the real estate shown in the Posts to you.
- 4.24 You acknowledge that any Posts are not an offer by the Agent, but rather an offer to accept an offer.

#### **Services**

- 4.25 By the Company offering its Service to you, you agree and acknowledge that:
- (a) unless otherwise stated, all amounts are listed in Australian Dollars (AUD) and are inclusive of GST;
  - (b) the Company may receive a commission, benefit, or fee from third parties in relation to the provision of the Services to you;
  - (c) the Company does not, at any time, provide any guarantees whatsoever, whether express or implied, with respect to the success of the Service;
  - (d) you shall remain solely responsible for assessing the implications and risks of using the Services; and
  - (e) these Terms do not create a relationship of employment, trust, joint venture, agency, partnership or other relationship of a fiduciary nature between the parties.
- 4.26 You acknowledge that the Company has entered into these Terms in reliance on the acknowledgements, representations and warranties given by you in these Terms.

#### **5 Subscription Fee**

- 5.1 If you are accessing and using the Platform as an Agent, you expressly understand and agree

that you may be required to pay to the Company the agreed subscription fee to use the Platform or Services that can be found on the Platform, which may vary from time to time (the **Fee**). Payment of the Fee may be made through the Platform's third-party payment provider as specified on the Platform (the **Payment Gateway**). In using the Services or making payment of the Fee, you warrant that you have familiarised yourself with, and agree to be bound by, the applicable terms and conditions, privacy policy and other relevant legal documentation required by the Payment Gateway, prior to you using the Payment Gateway services.

## **Non-payment**

- 5.2 In the event you elect to pay the Fee by way of direct debit and/or credit card and there is a chargeback by your credit provider, the Company may suspend or terminate the Services immediately. You will be charged the then current Company administration fee, available on the Platform, plus GST (**Administration Fee**), and you agree to pay 2% plus the Cash Rate Target set by the Reserve Bank of Australia (the **Interest**) on amounts which remain unpaid after thirty (30) days from the date of the tax invoice. Upon payment of the Administration Fee and Interest in accordance with the Terms, the Company may reinstate the Services to you.
- 5.3 Further, if you do not pay any amounts owing to the Company, you will be liable to make the payment immediately. In the event the amounts remain unpaid after 30 days from the date of the tax invoice, we may proceed to recover the debt from you without further notice. If the Company initiates debt recovery action against you, you acknowledge and agree that you will be and remain liable for all debt collection costs which includes any legal costs (on an indemnity basis), collection agency costs and any other expenses or disbursements. You will also be liable to pay the Interest and Administration Fee on the outstanding debt and we may report you to a credit reporting agency.
- 5.4 The Company reserves the right to terminate or suspend your access to the Services in the event that you fail to pay any payment pursuant to the Services or any invoice sent by the Company from time to time.

## **6 Refund Policy**

- 6.1 If, for whatever reason, you are unsatisfied with the Services please contact the Company at **team@360app.io** outlining why you believe you are entitled to a refund of any Fee so that the Company is able to determine whether a refund should occur.
- 6.2 Any refunds granted pursuant to this clause will be at the Company's absolute discretion.

## **Copyright and Intellectual Property**

- 6.3 The copyright, patents, trademarks, service marks, moral rights, trade names, designs (including the "look and feel" and other visual or non-literal elements, whether registered or unregistered) and all related intellectual property rights that exist in the Platform, the Services and all of the related products and services of the Company (the **Material**) are subject to and protected by copyright under the laws of Australia and through international treaties, including the various rights conferred by statute, common law and equity. Unless otherwise indicated, all rights (including copyright) in the content and compilation of the Materials (including but not limited to text, graphics, logos, button icons, video images, audio clips, websites, mobile applications, code, scripts, lists, design elements and interactive features) (the **Content**) are owned or controlled for these purposes and are reserved by the Company or its contributors.
- 6.4 The Company may licence to Agents music that is owned by third parties (**Third Party Music**). This is a revocable, non-transferrable licence to use the Third Party Music to the extent necessary to use the Services. You agree to only use the Third Party Music pursuant to the licence



agreement between the Company and the Third Party Music's licensor.

- 6.5 The Company retains all rights, title and interest (including copyrights, patents and trademarks) in the Material, the Content, and all related content therein. Nothing you do will transfer any interest in the Material to you, other than the grant of the licence to you in clause 14.4 below.
- 6.6 The Company grants you a worldwide, non-exclusive, royalty-free, revocable licence whilst you are a Member of the Platform as an Agent or User to:
- (a) download the Material to a mobile device, and access the Material and Content of the Platform via an application;
  - (b) use the Material and Content pursuant to the Terms; and
  - (c) copy and store the Material and Content in your mobile devices cache memory for the purpose of facilitating the Services.
- 6.7 The Company does not grant you any other rights whatsoever in relation to the Material and/or the Content. All other rights are expressly reserved by the Company.
- 6.8 You may not, without the prior written consent of the Company and the permission of any other relevant rights owner: broadcast, reproduce, republish, download, upload to a third party, transmit, post, distribute, show or display or publish in public, adapt or change in any way the Material or Content for any purpose, other than for the purposes expressly allowed by these Terms. This prohibition does not extend to the Material and Content which are freely available for re-use or are in the public domain.
- 6.9 The Agent owns the intellectual property in any Post it uploads to the Platform. The Agent grants the Company a non-exclusive, transferrable, perpetual, royalty-free, irrevocable, worldwide licence to broadcast, publish, distribute, transmit, reproduce, modify, adapt, publicly display, and otherwise use without acknowledgement of Moral Rights, the Post for the purposes of business and promoting the Company and related services. "**Moral Rights**" means the moral rights granted under the *Copyright Act 1968* (Cth), and any similar rights existing under foreign laws. To the extent that the Member has Moral Rights in the Post, the Member gives a Moral Rights Consent. To the extent that a person, other than the Member, has Moral Rights in the Post, the Member will obtain a Moral Rights Consent from that person, and provide it on request by and in a form acceptable to the Company. A "**Moral Rights Consent**" means a waiver of Moral Rights to the extent permitted by law and an unconditional consent to any act or omission in relation to the Post by or on behalf of the Company, its personnel or any licensee or subsequent owner of copyright in the Post.
- 6.10 You must not use data mining, robots, screen scraping, or any other automated data gathering, extraction or publication tools on the Platform (including without limitation for the purposes of establishing, maintaining, advancing or reproducing information or Content contained in the Materials on your own website or in any other publication).
- 6.11 Agents must ensure that any Posts do not include infringements of the intellectual property rights of third parties. If you believe an Agent's Post is infringing your intellectual property rights, please attempt to resolve the matter directly with the Agent. The Company is not able to assist with the resolution of such matters.

## 7 Material and Content

- 7.1 You may not publish, resell or sub-licence the Material or Content, except where you created the Post. The Company makes no guarantees, representations or warranties about the accuracy or

legal correctness of any of the Material or Content.

## 7.2 Third Party Website

- (a) The Company works with a number of partners and affiliates whose websites or mobile phone applications may be linked with or provided by the Company and are controlled by parties other than the Company (each a **Third Party**).
- (b) The Company is not responsible and does not endorse or accept any responsibility for the availability, contents, products, services or use of the Third Party websites or mobile phone applications, any website accessed from a Third Party or any changes or updates to such sites. The Company makes no guarantees about the content or quality of the products or services provided by such sites.
- (c) By using any information, product, service, or functionality originating from the Services, you are allowing the Company to share information with any Third Party with whom the Company has a pertinent contractual relationship – any information necessary to facilitate its provisions of products, services, or functionality to you.

## The Company's use of your material

7.3 By using the Platform, you acknowledge and agree that the Company is granted an irrevocable, perpetual, worldwide, royalty free right to use your Posts, trade mark, logo, photographs, testimonials, feedback, name, username, image and profile picture for the purpose of promoting the Company or the Services and for business purposes, now and in the future. This includes any promotion, testimonials, marketing or advertising by way of online, in print, in social media, in competitions, advertisements, books and magazines, design publications and any other self-promotional or demonstrative purpose.

7.4 You agree to do all things and sign all documents necessary to effectuate clause 16.1 above.

## 8 The Platform

8.1 The Company reserves the right to make changes to, amend, vary, update or discontinue the Platform at any time and without prior notice.

8.2 Access to and use of the Platform may be subject to interruptions, restrictions or delays beyond the Company's control. The Company does not warrant or guarantee that the Platform will be available to you continuously at any time or that the operation of the Platform will be error free. Given the nature of the Internet, the Company does not warrant:

- (a) that access to the Platform will always be immediate or uninterrupted; or
- (b) that the Content on the Materials will be free from infection, viruses or destructive code.

8.3 The Company reserves the right to periodically undertake system maintenance, during which the Platform may be temporarily unavailable to access. The Company takes no responsibility for, and shall not be liable for, the Platform becoming temporarily unavailable due to maintenance.

8.4 The Platform (including the information, Services and Content provided on, or accessible through, the Platform) may become unavailable at any time without notice. The Company takes no responsibility and accepts no liability whatsoever to you or any other person for any loss or damage arising from or in connection with any delays, interruptions, errors or omissions in the delivery of the information or the Services supplied to you through the Platform.

8.5 The Company may also have on its Platform from time to time hyperlinks to other websites. Such

links are provided for convenience only and the Company takes no responsibility and gives no guarantee for the content and maintenance of or privacy compliance by any linked website, or its compliance with relevant laws or regulations. Inclusion of any link does not imply any endorsement of the linked website by the Company nor of the information, services and/or products provided within that linked website. You access such websites and use their information, services and/or products at your own risk.

- 8.6 The Company takes care to ensure the Platform is free of any virus, infection or destructive code, however the Company is not responsible and shall not be liable to you on any basis for any damage or loss suffered by you as a result of any damage to your computer equipment, software and any other electronic device or other property which arises in connection with your use of the Platform or any linked website.

## **Communications**

- 8.7 By using the Platform, you agree to receive notifications and other communications from the Company and third parties at any date or time while using the Platform, including for marketing purposes. The Company will communicate with you by sending emails to the email address specified on your account, text messages, and/or mobile phone notifications.

## **9 General Disclaimer**

- 9.1 You acknowledge that the Company does not make any guarantees, warranties, representations, or conditions whatsoever regarding the Platform or the Services, and their standard, other than provided for pursuant to these Terms.

- 9.2 Nothing in the Terms limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the Australian Consumer Law (or any liability under it) which by law may not be limited or excluded.

(a) If you are not a Consumer (under the Australian Consumer Law), you agree that the Company has no direct or indirect liability (including in negligence) to you in any way related to your use of the Platform or the Services.

(b) If you are a Consumer (under the Australian Consumer Law), the Company limits all its direct and indirect liability (including in negligence) to you to the Consumer Guarantees under the Australian Consumer Law.

- 9.3 Subject to clause 19.1 and to the extent permitted by law:

(a) the Company excludes all representations, warranties or guarantees, whether express or implied, by statute, trade, these Terms or otherwise; and

(b) the Company will not be liable for any special, indirect or consequential loss or damage (unless such loss or damage is reasonably foreseeable resulting from our failure to meet an applicable Consumer Guarantee), loss of profit or opportunity, or damage to goodwill arising out of or in connection with the Platform and the Services or these Terms (including as a result of not being able to use the Platform), whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.

- 9.4 Use of the Platform and the Services is at your own risk. The Platform, the Services, the Content and the Posts are provided to use “as is” and “as available” without warranty or condition of any kind. None of the Company’s affiliates, directors, officers, employees, agents, contributors, third party content providers or licensors make any express or implied representation or warranty about its Content or any Posts uploaded or posted onto the Platform. This includes (but is not

restricted to) loss or damage you might suffer as a result of any of the following:

- (a) failure of performance, error, omission, interruption, deletion, defect, failure to correct defects, delay in operation or transmission, computer virus or other harmful component, loss of data, communication line failure, unlawful third party conduct, or theft, destruction, alteration or unauthorised access to records;
- (b) the accuracy, suitability or currency of any information on the Platform, the Service, or any of its Content related products (including third party material and advertisements on the Platform);
- (c) the Content or operation in respect to links which are provided for the Agent's and User's convenience;
- (d) any defamatory, threatening, offensive or unlawful conduct of third parties or publication of any materials relating to or constituting such conduct.

9.5 The Company is not a provider of the Posts or any of the information on the real estate listings and has no responsibility for any services or experiences provided or not provided to you by the Agent.

9.6 The Platform may include, or make available to Agents, third party content which is subject to that third party's terms and conditions of use. Third party content is not necessarily related to or controlled by the Company in any way and does not indicate any relationship between the Company and that content or any endorsement by the Company of that content. The Company does not guarantee that any of the third party content made available to Agents through the Platform is appropriate for Agent's to use on Posts.

## **10 Limitation of liability**

10.1 The Company's total liability arising out of or in connection with the Services or the Terms, however arising, including under contract, tort (including negligence), in equity, under statute, or otherwise, will not exceed the resupply of the Service to you.

10.2 You expressly understand and agree that the Company, its affiliates, employees, agents, contributors, third party content providers and licensors shall not be liable to you for any direct, indirect, incidental, special consequential or exemplary damages which may be incurred by you, however caused and under any theory of liability. This includes, but is not limited to, any direct or indirect loss of profit, any loss of goodwill or business reputation, any loss of data and any other intangible loss.

10.3 The Company is not responsible or liable in any manner for any Post uploaded by an Agent on the Platform or in connection with the Services.

10.4 The Company is not responsible or liable to monitor and determine whether a real estate listing is current and accurate. Accordingly, the Company is not liable for any Post that remains live on the Platform for Members to view, which depicts that the real estate is still available for lease or sale when the real estate has been sold or leased.

10.5 The Company will take all necessary measures to verify the authenticity of the Agent, however, the Company is not liable in any manner if the Agent depicts that it is a current Agent, that it holds a current real estate licence, or that it has the legal authority to upload Posts when it does not. Accordingly, the Company is not responsible for obtaining a current real estate licence, or the relevant legal authority, for the Agent or for paying any fees associated with obtaining a current real estate licence for the Agent.

10.6 You expressly understand and agree that the Company will not be liable to you for your use of the information in the Services.

10.7 The Company does not control and are not responsible for the behaviours and actions of the Members, and their comments, Posts or information that they upload. Accordingly, the Company is not responsible for any offensive, inappropriate, obscene or unlawful content you may encounter on the Platform or in connection with any of the Services.

## **Reporting**

10.8 An Agent has the right to block communications with a Member, unfollow a Member, or report a Member if the Member has sent or posted, or continually sends or posts, any abusive, threatening, discriminatory, harassing, or intimidating comments or messages.

10.9 A Member has the right to report any conduct or Post uploaded that is harassing, threatening, abusive, violent, sexually explicit, discriminatory, intimidating, predatory, or spammy or that otherwise disrupts the enjoyment of the Platform and the viewing of Posts.

10.10 If a Member encounters any offensive, inappropriate, obscene or unlawful conduct on the Platform, or any offensive, inappropriate or obscene Post, they must report the Member or Post immediately so that the Company can take the appropriate action.

10.11 To report any Post or a Member, please email the Company at [team@360app.io](mailto:team@360app.io).

## **11 Indemnity**

11.1 You agree to indemnify the Company, its affiliates, employees, agents, contributors, third party content providers and licensors from and against all actions, suits, claims, demands, liabilities, costs, expenses, loss and damage (including legal fees on a full indemnity basis) incurred, suffered or arising out of or in connection with:

- (a) inaccurate or misleading information provided by a Member;
- (b) any breach of law by a Member or its officers, employees, agents, contractors, sub-contractors or representatives directly or indirectly associated with the Platform or the Services;
- (c) a Post, including but not limited to the use of music, video, photographs, the likeness of a person, brands, logos, or any other intellectual property;
- (d) any breach of the Terms; or
- (e) any direct or indirect consequences of you accessing or using the Platform or the Services or attempts to do so.

11.2 This indemnity will survive termination of the Terms.

## **12 Termination**

12.1 The Terms will continue to apply until the deletion of your account, or until terminated by the Company as set out below.

12.2 Termination of Account:

- (a) The Company may at any time, and at the Company's sole discretion, terminate your account if:

- (i) you have breached or intend to breach any of these Terms;
- (ii) the Company is required to do so by law;
- (iii) you have been reported by other Members on multiple occasions for sending abusive, harassing, threatening, discriminatory, or otherwise objectionable messages, or acting in a manner that is abusive, harassing, threatening, or discriminatory;
- (iv) your conduct and actions on the Platform may violate or has violated any third-party rights, applicable laws or regulations;
- (v) your conduct, activities or actions, have infringed or may infringe any copyrights or other intellectual property rights;
- (vi) your conduct or activities are misleading or deceptive or you have used the Platform in a way that is misleading or deceptive; or
- (vii) the Company ceases to operate the Platform and/or the Services.

12.3 If you elect to terminate your account, you may delete your account at any time by navigating to your account settings and clicking 'Delete My Account.' If you choose to terminate your account, your account (including any information you provided in relation to the setup of your account), and if you are an Agent, the Post(s) you have uploaded on the Platform and your profile, will be immediately deleted. You understand that you will no longer be able to access, use or retrieve the deleted account.

12.4 Subject to local applicable laws, the Company reserves the right to discontinue or cancel your access to the Services at any time and may suspend or deny, in its sole discretion, your access to all or any portion of the Platform or the Services without notice if you breach any provision of the Terms or any applicable law or if your conduct damages the Company's name or reputation or violates the rights of those of another party.

12.5 Upon the termination of your account, all of the legal rights, obligations and liabilities that you and the Company have benefited from, been subject to (or which have accrued over time whilst the Terms have been in force) or which are expressed to continue indefinitely shall be unaffected by this cessation, and the provisions of this clause shall continue to apply to such rights, obligations and liabilities indefinitely.

## Dispute Resolution

### Dispute Resolution for dispute occurring within Australia

#### 12.6 Compulsory Mediation

If a dispute arises out of or relates to the Terms, the Services, or the Platform, then no party may commence any Tribunal or Court proceedings in relation to the dispute, unless the following clauses have been complied with (except where urgent interlocutory relief is sought).

#### 12.7 Notice

A party claiming a dispute (**Dispute**) must, within thirty (30) days of becoming aware of the Dispute, complete the Complaint Form detailing the nature of the Dispute, the desired outcome and the action required to settle the Dispute (the **Dispute Notice**) and serve it on the other party. A copy of the Complaint Form may be requested from the Company by sending an email to [team@360app.io](mailto:team@360app.io).

## 12.8 Response

Within fourteen (14) days of receipt of the Dispute Notice, the other party must complete a Response Form detailing their response to the Dispute and serve it on the other party. A copy of the Response Form may be requested from the Company by sending an email to [team@360app.io](mailto:team@360app.io).

## 12.9 Mediation

On receipt of the Response Form by that other party, the parties to the Dispute (the **Dispute Parties**) must within seven (7) days of the Dispute Notice endeavour in good faith to resolve the Dispute expeditiously by negotiation or such other means upon which they may mutually agree.

If for any reason whatsoever, twenty-one (21) days after the date of the Dispute Notice, the Dispute has not been resolved, the Dispute Parties acknowledge and agree that the Company may refer the Dispute to a mediator or request that an appropriate mediator be appointed by the Australian Disputes Centre or his or her nominee and the mediation will be held in accordance with the Australian Disputes Centre's Guidelines for Commercial Mediation.

The mediation will be held in Melbourne, Victoria, Australia by video conference.

## 12.10 Confidential

All communications concerning negotiations made by the Dispute Parties arising out of and in connection with this dispute resolution clause are confidential and to the extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable laws of evidence.

## 12.11 Termination of Mediation

If thirty (30) days have elapsed after the start of a mediation of the Dispute and the Dispute has not been resolved, either Dispute Party may ask the mediator to terminate the mediation and the mediator must do so.

## Dispute Resolution for dispute occurring outside Australia

### 12.12 Compulsory Mediation and Arbitration

If a dispute arises out of or relates to the Terms and a party outside of Australia (**Foreign Dispute**), either party to the Foreign Dispute (the **Foreign Dispute Parties**) may not commence any arbitration or Court proceedings in relation to the dispute unless the Foreign Dispute Parties have complied with clause 24.7 through 24.9 (except where urgent interlocutory relief is sought).

### 12.13 Notice

A party claiming a Foreign Dispute must, within thirty (30) days of becoming aware of the Foreign Dispute, complete the Foreign Complaint Form detailing the nature of the dispute, the desired outcome and the action required to settle the Foreign Dispute (the **Foreign Dispute Notice**) and serve it on the other party. A copy of the Foreign Complaint Form may be requested from the Company by sending an email to [team@360app.io](mailto:team@360app.io).

### 12.14 Mediation

On receipt of that notice by that other party, the Foreign Dispute Parties must within seven (7) days of the notice endeavour in good faith to resolve the Foreign Dispute expeditiously by negotiation or such other means upon which they may mutually agree.

If for any reason whatsoever, twenty-one (21) days after the date of the notice, the Foreign

Dispute has not been resolved, the Foreign Dispute Parties must either agree upon selection of a mediator or request that an appropriate mediator be appointed by the Australian Disputes Centre or his or her nominee and the mediation will be held in accordance with the Australian Disputes Centre's Guidelines for Commercial Mediation.

The Foreign Dispute Parties are equally liable for the fees and reasonable expenses of a mediator and the cost of the venue of the mediation and without limiting the foregoing undertake to pay any amounts requested by the mediator as a pre-condition to the mediation commencing. The Foreign Dispute Parties must each pay their own costs associated with the mediation.

The mediation will be held in Melbourne, Victoria, Australia by video conference.

#### 12.15 Arbitration

In the event that the Foreign Dispute is not resolved at the conclusion of the mediation, the Foreign Dispute Parties are prohibited from instituting legal proceedings concerning the subject matter of the Foreign Dispute and the Foreign Dispute, controversy or claim arising out of, relating to or in connection with the Terms, including any question regarding its existence, validity or termination, will be resolved by arbitration in accordance with the ICC Rules of Arbitration (or any rules which supersede these rules). The seat of arbitration shall be Melbourne, Victoria, Australia. The language of the arbitration shall be English. The number of arbitrators shall be one. This clause may be used as a bar to legal proceedings issued in any Court in any country which has ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

#### 12.16 Confidential

All communications concerning negotiations made by Parties arising out of and in connection with this dispute resolution clause are confidential and to the extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable laws of evidence.

### 13 **Venue and Jurisdiction**

Pursuant to clause 25, in the event of any dispute arising out of or in relation to the Platform, you agree that the exclusive venue for resolving any dispute shall be in the courts of Victoria, Australia.

### 14 **Governing Law**

The Terms are governed by the laws of Victoria, Australia. Any dispute, controversy, proceeding or claim of whatever nature arising out of or in any way relating to the Terms and the rights created hereby shall be governed, interpreted and construed by, under and pursuant to the laws of Victoria, Australia, without reference to conflict of law principles, notwithstanding mandatory rules. The validity of this governing law clause is not contested. The Terms shall be binding to the benefit of the parties hereto and their successors and assigns.

### 15 **Notice**

- 15.1 The Company may provide any notice to you under the Terms by sending a message to your email address. The notice provided by the Company to you by email shall be deemed to have been properly given on the date the Company sends the email, regardless of whether you have received the email.

### 16 **Severance**

If any part of the Terms is found to be void or unenforceable, that part shall be severed, and the rest of the Terms shall remain in force.



## 17 Waiver

- 17.1 If you are using the Platform as an Agent, by uploading Posts, you waive any and all rights of privacy and publicity, and any rights of prior inspection or approval of any marketing or advertising campaigns related to the Post, or that include the Post, or any information you have posted.
- 17.2 A waiver is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

## Assignment

- 17.3 The Company may assign or transfer its rights or obligations under the Terms without your consent.
- 17.4 You may not assign or transfer your rights or obligations under the Terms without prior written consent of the Company, who will not unreasonably withhold such consent. A purported assignment without written consent will be deemed to be void and convey no rights.

## Force majeure

- 17.5 If a party is prevented from or delayed in performing an obligation by Force Majeure, and promptly acts to mitigate or remove the Force Majeure and its effect, then the obligation is suspended during, but for no longer than, the period the Force Majeure continues and any further period that is reasonable in the circumstances.
- 17.6 In this clause, "**Force Majeure**" means an event beyond the reasonable control of the affected party, which occurs without the fault or negligence of the affected party.

## Contact Information and Feedback

- 17.7 If you wish to leave any feedback or make a complaint, you can do so by emailing the Company at **team@360app.io**.

## Privacy Policy

- 17.8 The Company values your privacy. To learn how your privacy is protected and how the Company handles your information when you use the Platform, you may access the Company's Privacy Policy at [\[insert link to Privacy Policy\]](#). The Company recommend you carefully read our Privacy Policy as you are deemed to have agree to the policy when you use of access the Platform.

## Entire Agreement

- 17.9 The Terms constitute the entire agreement between you and the Company in respect to its subject matter.