

TERMS AND CONDITIONS OF SERVICE

1. **SCOPE; TERMS.** These Terms and Conditions of Service (“Terms”) apply to all digital marketing and related services (“Services”) provided by Tom’s Digital Marketing, LLC d/b/a Pinpoint Local Norcross (“Pinpoint Local Norcross”) to its customer (“you”). Such Services shall be subject to these Terms, as modified by Pinpoint Local Norcross’s documentation or Proposal. The current version of the Terms supersedes all prior versions upon posting to Pinpoint Local Norcross’s “Website” at www.norcrossdigitalmarketing.com/Terms. Pinpoint Local Norcross reserves the right to change the Terms at any time without notice, provided that the Terms applicable to a Service shall be those posted on Pinpoint Local Norcross’s Website as of the date such Service is provided.
2. **PRICING.** Unless otherwise agreed in writing, prices in the Proposal are subject to change with thirty (30) days prior written notice from Pinpoint Local Norcross. In addition, any tax or other governmental charge applicable to the Services shall be added to the price and shall not be subject to any reduction.
3. **PAYMENT TERMS.** Payment in full for the Services is due in arrears within ten (10) days of invoice date. In all cases, you must pay the amounts due in full without any withholding, set-off, counterclaim or deduction. Any amounts remaining unpaid 10 days after invoicing are considered late and are subject to a late fee in the amount of 5% of the unpaid amount plus interest in the highest amount allowed by Georgia law. Time is of the essence with respect to this section 3 and any delay in payment constitutes a material breach. You agree to reimburse Pinpoint Local Norcross for any costs, expenses or fees, including reasonable attorney’s fees and professional collection services fees, in connection with the collection or payment of any amounts due.
4. **CONFIDENTIALITY.** Each party acknowledges that in connection with the Services it may receive certain confidential or proprietary information and materials of the other party (“Confidential Information”). Confidential Information includes, but is not limited to, the Proposal, pricing and any information related to the disclosing party’s technology, business affairs, customer or supplier information, marketing or sales information. Each party, its agents and employees will hold and maintain in strict confidence all Confidential Information, will not disclose Confidential Information to any third party, and will not use any Confidential Information except as may be necessary to perform its obligations. The foregoing restrictions on use and disclosure of Confidential Information shall not apply to information that: (a) is required to be disclosed by a court or governmental authority; (b) is or subsequently becomes in the public domain through no fault of the receiving party; (c) is properly received from a third party without an obligation of confidentiality; or (d) is developed independently by the receiving party without reference to the disclosing party’s Confidential Information. Upon termination of the Services for any reason, each party shall promptly return to the other all copies of any data, records, or materials of whatever nature or kind belonging to the other party, including all materials incorporating the Confidential Information of the other party.
5. **LIMITED WARRANTY.** Pinpoint Local Norcross represents and warrants that all Services will be of professional quality and will conform to the then-current documentation provided by Pinpoint Local Norcross. YOUR EXCLUSIVE REMEDY FOR ANY NON-CONFORMING SERVICES PROVIDED BY PINPOINT LOCAL NORCROSS SHALL BE LIMITED, AT PINPOINT LOCAL NORCROSS’ OPTION, TO EITHER REPLACEMENT OF THE NON-CONFORMING PORTION OF THE SERVICES OR REFUND OF THE PORTION OF THE FEES ATTRIBUTABLE TO SUCH NONCONFORMING SERVICES. EXCEPT AS SPECIFICALLY SET FORTH IN THIS PROVISION, PINPOINT LOCAL NORCROSS MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED. PINPOINT LOCAL NORCROSS SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, TITLE, NON- INFRINGEMENT AND FITNESS FOR PARTICULAR PURPOSE. THE FOREGOING DOES NOT AFFECT ANY WARRANTIES WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.
6. **INDEMNIFICATION.** Each party shall indemnify, defend and hold harmless the other party, its subsidiaries, parent companies and each of their respective directors, officers, employees, shareholders and agents (each an “Indemnified Party”) against any losses, claims, damages, liabilities, penalties, actions, proceedings, judgments, or damages of every nature and description (including attorneys’ fees and court costs) (collectively, “Losses”) to the extent such Losses arise out of or result from such party’s breach of any confidentiality obligation, or any third-party claim alleging infringement of such third party’s intellectual property right or misappropriation or unauthorized use of any trade secret belonging to a third party.
7. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL PINPOINT LOCAL NORCROSS BE LIABLE TO YOU OR TO ANY OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES. PINPOINT LOCAL NORCROSS’ TOTAL LIABILITY FOR ANY LOSS OR DAMAGE SHALL BE LIMITED TO THE AMOUNTS PAID BY YOU IN THE ONE (1) MONTH PRECEDING THE EVENTS GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATION SHALL APPLY, TO THE EXTENT PERMITTED BY APPLICABLE LAW, TO ALL CAUSES OF ACTION AND CLAIMS INCLUDING (WITHOUT LIMITATION)

BREACH OF CONTRACT, WARRANTY, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY AND OTHER TORTS. WITHOUT LIMITING THE APPLICABILITY OF THE FOREGOING, PINPOINT LOCAL NORCROSS SHALL NOT BE LIABLE FOR ANY DAMAGES THAT COULD HAVE BEEN AVOIDED BY YOUR USE OF REASONABLE DILIGENCE.

8. EXCUSE OF PERFORMANCE. "Force Majeure Event" means any act or event, whether foreseen or unforeseen, that meets all of the following tests. The act or event: (a) prevents a party, in whole or in part, from performing its obligations hereunder; (b) is beyond the reasonable control of and not the fault of the nonperforming party; and (c) the nonperforming party has been unable to avoid or overcome the event by the exercise of due diligence. Despite the preceding definition, a Force Majeure Event excludes economic hardship, changes in market conditions, and insufficiency of funds. In furtherance of the definition of Force Majeure Event and not in limitation of that definition, each of the following acts and events is deemed to be a Force Majeure Event: war, flood, lightning, drought, earthquake, fire, volcanic eruption, landslide, hurricane, cyclone, typhoon, tornado, explosion, civil disturbance, act of God or the public enemy, terrorist act, military action, epidemic, disease outbreak, famine or plague, shipwreck, action of a court or public authority, or strike, work-to-rule action, go-slow or similar labor difficulty, each on an industry-wide, region-wide or nationwide basis. The foregoing list is not exhaustive, and the principle of ejusdem generis is not to be applied in determining whether a particular act or event qualifies as a Force Majeure Event. If a Force Majeure Event occurs, the nonperforming party is excused from whatever performance is prevented by the Force Majeure Event to the extent prevented. Despite the preceding sentence, a Force Majeure Event does not excuse any obligation by either the performing party or the nonperforming party to make any payment required under this Agreement.

9. PUBLICITY. From time-to-time Pinpoint Local Norcross lists and/or mentions its customers in its Website and in other communications and marketing initiatives. You hereby consent to and agree that Pinpoint Local Norcross may include and use your company's name and logo worldwide, free of charge for such purpose.

10. DISPUTE RESOLUTION. All disputes between the parties, regardless of the legal theory upon which such dispute is asserted and whether arising from the agreement itself or from alleged extra-contractual facts before, during, or after the provision of Services, shall be governed by the laws of the State of Georgia, not including its conflicts of laws rules. NO ACTION SHALL BE BROUGHT FOR ANY CLAIM RELATING TO OR ARISING OUT OF THE SERVICES MORE THAN ONE (1) YEAR AFTER THE ACCRUAL OF SUCH CAUSE OF ACTION, EXCEPT FOR MONEY DUE ON AN OPEN ACCOUNT.

11. NOTICES. Any notices may be delivered by hand, deposited with an overnight courier (signature required) or sent by email and addressed to the other party at the address on the Proposal or such other addresses as will be designated in writing by either party to the other in accordance with this Section. Such notice will be deemed to be given when received.

12. MISCELLANEOUS. No waiver of any provisions hereof by either party will be valid unless the same is in writing and signed by such party. The invalidity or unenforceability of any provision of these Terms shall not affect the validity or enforceability of its other provisions. No course of dealing, course of performance or usage of trade shall be considered in the interpretation or enforcement of these Terms. These Terms shall survive the expiration or termination of any Service provided by Pinpoint Local Norcross.