



Terms and Conditions

The following terms and conditions ("Terms and Conditions" or "Agreement") shall govern all current, prior and future insertion orders ("IOs") entered into between Advertiser and SpaceJet, LLC ("Network") with respect to Advertiser's retention of Network for the marketing of Advertiser's products or services. No term herein shall be changed unless such change is specifically referenced in the IO. Shortly after registration on the <http://spacejetmedia.com/> site, Advertiser will be contacted by Network. It shall be within the sole discretion of Network as to whether it elects to do business with any Advertiser. Registration with Network shall not confer any right on Advertiser to have its Ads (as defined below) carried by Network. Network reserves the right to make changes to these Terms and Conditions at any time upon written notice. Advertiser's continued use of Network's Services (as defined below) after any such notice shall constitute consent to such modifications. This Agreement supersedes and replaces any previously agreed-upon terms and conditions.

1. Definitions

1.1 "**Action**" shall be defined in the IO and shall be the basis for determining how Network is paid by the Advertiser.

1.2 "**Ad**" means an advertisement provided by, or on behalf of, Advertiser to Network pursuant to any IO.

1.2 "**Publisher**" means any third-party publisher, either individual or network of sub-publishers, which generates leads via website, newsletter, search engine, email or any other manner.

1.3 "**Network**" means the internet advertising network operated by Network, which is comprised of Publishers.

1.4 "**Advertiser Website**" means any website that is owned and operated by or on behalf of Advertiser, or which is designated by Advertiser in writing as an Advertiser website.

1.5 "**Confidential Information**" means any and all information that is disclosed by one party to the other that relates to the disclosing party's trade secrets, products, promotional material, developments, proprietary rights or business affairs, together with the intellectual property and all other information collected, prepared, developed, generated or acquired by the receiving party or any of its employees or agents as a result of or in connection with the Services, excluding information that: (a) is or becomes publicly known, through no fault of the receiving party; (b) the receiving party can demonstrate was known by the receiving party prior to disclosure hereunder; (c) the receiving party can demonstrate is disclosed to the receiving party by a third-party with no violation of confidentiality to the disclosing party; or (d) the receiving party can demonstrate is developed by the receiving party independent of any use of information disclosed by the disclosing party. Network's Confidential Information includes, but is not limited to: (i) Publishers comprising the Network; (ii) media rates negotiated by Network; (iii) Network's technology providers; and (iv) Network's media planning and buying methodologies.

1.6 "**User**" means a person using the Internet.

1.7 "**Campaign Specifications**" refers to the parameters of Advertiser's advertising campaign, including pricing information, as set forth in the IO.

2. Network's Services (the "Services")

2.1 IO. The IO shall specify (i) the User Action for which Network will be paid, (ii) the amount Network will be paid for each User Action, and (iii) other requirements that are specific to the campaign.

3. Responsibilities of Advertiser

3.1. Creative. Advertiser will provide Network with the creative materials required to deliver the Ads of Advertiser, including product/service descriptions, graphic images, logos, and offer copy for each promotion or campaign. Offer copy shall include subject and from lines (for emails); offer description (in text and html formats), terms and conditions (if applicable), and any other information necessary to comply with applicable laws and regulations (including the CAN-SPAM Act). Advertiser will submit changes or cancellations of any creative materials in writing to Network at least ten (10) business days in advance of requested change date.

3.2. Non-circumvention. During the Term of any IO in effect and for a period of 30 days thereafter, Advertiser agrees that it will not engage, contract with, work with, license, or permit any person, firm, or entity to represent Advertiser in any performance-based advertising relationship with any Publishers within the Network, unless a previously existing business relationship between Advertiser and such Publishers can be demonstrated to Network's reasonable satisfaction. In the event a Publisher does contact Advertiser and Advertiser finds out at a later time that such Publisher is a Publisher within Network, then Advertiser shall notify such Publisher immediately that it must work directly with Network and immediately halt any marketing campaigns it is conducting with such Publisher. Both parties agree and acknowledge that if Advertiser violates its obligations under this Section 3.2, Network will be entitled to liquidated damages in the amount of fifty percent (50%) of the gross revenues resulting from sales conducted by Advertiser through the advertising or marketing efforts of such Publisher(s), in addition to any other remedies Network may have at law or in equity. The parties agree that this amount is not a penalty, but rather a reasonable estimate of damages that would otherwise be difficult or impossible to calculate.

3.3. Operations/Tracking.

- a) Website. Advertiser will keep the Advertiser website running and functional, allowing for User actions (sales, registrations, leads, etc.) to be processed.
- b) CPA Tracking. With respect to all cost per acquisition ("CPA") Campaigns, Advertiser will provide Network with unique tracking links (URL's) that will record the origin of each User Action including clicks and sales by unique tracking link. Advertiser will allow Network online access to the stats of such User actions by unique tracking link. Advertiser will ensure Network's tracking methods are in place and functioning at all times. Advertiser will provide access to records as they become available that will allow Network to monitor the volume of User Actions it has generated.
- c) Other Tracking. With respect to all other Campaigns, including cost per impression ("CPM"), cost per click ("CPC") and co-registration Campaigns, Network shall have sole and absolute responsibility for Calculation of the User Actions that comply with the terms of the IO. If requested by the Advertiser, Network shall transfer User Action data supporting Network' count for review by Advertiser. Unless Advertiser objects to Network' count within 48 hours, Network' count shall be final. If Advertiser contests Network' count, Advertiser shall provide a written report to Network identifying, in detail, the discrepancies, between the Advertiser's count and Network' count. Network shall, in good faith, consider such documentation, but shall have final authority in determining the correct count.

3.4. Data Suppression. To the extent required by law or as may be desired by Advertiser, Advertiser shall provide Network its suppression list of opt-outs and unsubscribes promptly before any delivery of emails containing Ads hereunder, which Network shall make available to the Publishers in the Network. Network assumes no liability whatsoever, if (a) Advertiser does not timely provide Network with its suppression list; (b) any suppression list provided by Advertiser is in any way inaccurate or incomplete; and (c) if the applicable Publishers fail to scrub their database against such suppression list provided by Advertiser. Network's sole obligation is to make such suppression list available to its Publishers following its receipt thereof from Advertiser. If Advertiser elects to provide such a suppression list, Advertiser represents and warrants that it has the right to provide such suppression list and the data contained therein to Network and to authorize Network to provide such suppression list to its Publishers. Advertiser shall be solely responsible for, and shall indemnify Network and its Publishers from and against, any and all Claims (as defined below) arising from Advertiser's acts or omissions in connection with the foregoing provisions of this Section 3.4.



4. Payments

4.1. **Payment Obligations.** Advertiser is obligated to pay Network according to the pricing specified in each IO. Network shall invoice Advertiser and Advertiser shall pay the invoiced amount upon receipt of each invoice. In the event Advertiser fails to pay within fifteen (15) days after payment is due, all outstanding charges shall bear interest at the rate of 1.5% per month or the maximum interest rate permitted under applicable law, whichever is less. Advertiser agrees to pay all costs of collection (including court cost and reasonable attorneys' fees) incurred by Network in connection with its enforcement of any IO.

4.2. **Payment Records.** Advertiser shall insert Network's tracking pixel on the confirmation page for each Ad to be delivered hereunder. Advertiser will provide Network with a link to the confirmation page where Network can view the pixel for approval prior to initiating the advertising Campaign. Payment will be based Advertiser's pixel count. All such records provided by Advertiser shall be the sole property of Advertiser. In the event that the tracking methods employed malfunction or the Advertiser Website becomes inoperable, for the period in question, invoicing will be determined by Network at its sole discretion.

4.3. **Non-Viable Leads.** Unless otherwise provided in the IO, no offsets or chargebacks may be taken for any non-viable or duplicate leads. Network shall determine in its reasonable discretion what constitutes a non-viable lead. Non-viable leads may include leads with incomplete contact information (no e-mail address, no phone number, no physical address), leads from non-United States citizens, leads from consumers under 18 years of age, etc.

5. Confidential Information and License

5.1. **Confidential Information.** Each party agrees to use the other party's Confidential Information solely for the purposes contemplated by the IO and these Terms and Conditions, and to refrain from disclosing the other party's Confidential Information to any third-party, unless (a) any disclosure is necessary and permitted in connection with the receiving party's performance of its obligations or exercise of its rights under any IO or these Terms and Conditions or any other agreement between the parties; (b) any disclosure is required by applicable law; provided, that the receiving party uses reasonable efforts to give the disclosing party reasonable advance notice thereof so as to afford the disclosing party an opportunity to intervene and seek an order or other appropriate relief for the protection of its Confidential Information from any unauthorized use or disclosure; or (c) any disclosure is made with the consent of the disclosing party.

5.2. **Services License.** While any IO is in effect, Advertiser hereby grants to Network, and all Publishers in the Network, a personal, non-exclusive, revocable, non-transferable, limited license to all intellectual property rights, owned or controlled by Advertiser (including but not limited to copyrights, trademarks, and service marks) as required for performance of Services. Nothing in any IO or these Terms and Conditions shall transfer ownership of any intellectual property to Network or any of its Publishers, nor grant any right or license other than the limited license stated above. Such License shall terminate immediately upon termination, for any reason, of all IO's in effect.

5.3. **Marketing License.** Advertiser grants Network a non-exclusive license to use, reproduce, publicly and digitally display and perform, transmit and broadcast Advertiser's name, logos, trademarks, trade names, service marks, URLs and slogans to advertise, market, promote and publicize the Services including the inclusion of Advertiser in Network's marketing materials and on Network's "Advertisers" and "testimonial" page on its web site.

6. Termination

Either party may terminate any IO at any time for any reason upon fifteen (15) days prior written notice to the other party. Such termination shall not relieve Advertiser of the obligations to pay any amounts then due and owing to



Network through the effective date of termination. In addition, Sections 3.4, 5.1, 7.1, 7.2, 7.3, 8.2 and 8.3 hereof shall survive termination of any IO.

7. Representations, Warranties and Liabilities

7.1. Representations and Warranties. Each party represents and warrants that: (a) it has the right to enter into and fully perform the services contemplated by the IO, consistent with these Terms and Conditions; (b) as of the date each IO is signed by Advertiser, there is no outstanding contract, commitment or agreement to which it is a party that conflicts with these Terms and Conditions and the IO; and (c) at all times while any IO remains in effect, it shall comply with all applicable laws and regulations, including, without limitation, the CAN-SPAM Act. Advertiser further represents and warrants to Network that Advertiser is the owner of, or is licensed or otherwise authorized to use the entire content of Ads, including, but not limited to: (a) names and pictures of persons; (b) copyrighted materials, trademarks, service marks, or depictions of trademarked goods or service marked services or other intellectual property of any kind; and (c) testimonials or endorsements. In addition, Advertiser represents and warrants that the products or services to be advertised are: (a) legitimate and lawful products or services that satisfy all standards of quality and performance referenced in any Ad; (b) in compliance with all applicable laws and regulations (and that the Ads hereunder will be compliant with all such laws and regulations); and (c) not the subject of any current and pending litigation. Network makes no guarantees or representations as to the level of user actions (sales, registrations, leads, etc.) that will be generated under any IO. EXCEPT AS EXPRESSLY STATED IN THESE TERMS AND CONDITIONS, THE PARTIES HEREBY DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7.2. Limitation of Liability. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY LOST PROFITS OR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR OTHER INDIRECT DAMAGES OF ANY NATURE, FOR ANY REASON, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE AND WHETHER OR NOT EITHER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The foregoing shall not limit the liability of any party hereunder under Sections 3.4, 5.1 and 7.3 hereof.

7.3 Indemnification. Each party will defend, indemnify, and hold harmless the other party, and its respective affiliates (including with respect to Network, the Publishers in the Network), directors, employees, agents, successors and assigns from all claims, actions, losses, liability, damages, costs, and expenses (including reasonable attorney's fees and expenses) (collectively "Claims") arising from any breach of any IO or of these Terms and Conditions (including any representations and warranties made herein). Without limiting the foregoing, Advertiser shall indemnify and hold harmless Network and its Publishers against all liabilities arising from: the products or services offered by Advertiser; any actual or alleged defamatory, illegal or otherwise improper material provided by Advertiser to Network in connection with any Ad; and any material provided by Advertiser to Network, which actually or allegedly infringes on the intellectual property or personal rights of a third party. Each party agrees to (i) promptly notify the other party in writing of any Claim and give the other party the opportunity to defend or negotiate a settlement of any such Claim at that party's expense, and (ii) cooperate fully with the other party, at that other party's expense, in defending or settling such Claim. Each party reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by the indemnifying party hereunder.

7.4. Force Majeure. Neither party shall be deemed in default of any IO or these Terms and Conditions to the extent that performance of its obligations are delayed or prevented by reason of any act of God, fire, natural disaster, accident, riots, acts of government, shortage of materials or supplies, or any other cause beyond the reasonable control of such party; provided, that the party whose performance is affected by any such event gives the other party written notice thereof within three (3) business days of such event or occurrence.

8. General



8.1 Entire Agreement. These Terms and Conditions, together with the IO(s) constitutes the entire agreement between the parties and supersedes all prior agreements or understandings between the parties. In the event a party is required to digitally sign or agree to additional terms when using the other's website, or tracking platform, the parties agree that such digital agreement is inconsequential and not binding as it is the result of a technical requirement to view stats or access content. Therefore, such terms are to be disregarded, and shall be superseded by this Agreement.

8.2 Controlling Law. Any IO and these terms and conditions shall be governed by the laws of the State of Virginia, without giving effect to principles of conflicts of law. Each party, to the extent permitted by applicable law, hereby irrevocably and unconditionally (i) submits to the general jurisdiction of the federal and state courts located in Fairfax County, Virginia; (ii) agrees that any action or proceeding concerning this Agreement will be brought exclusively in such courts; and (iii) waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding in any such court was brought in an inconvenient court, and agrees not to claim or plead the same.

8.3. Audit Rights. For at least one year after the termination of each IO, Advertiser shall keep proper records and books of account relating to the computation of payments to be made thereunder. Network or its designee may inspect such records to verify reports. Any such inspection will be conducted in a manner that does not unreasonably interfere with Advertiser's business activities and, except as provided below, shall be conducted no more frequently than once every six months. Advertiser shall immediately make any overdue payments disclosed by the audit plus applicable interest. Such inspection shall be at Network's expense; however, if the audit reveals overdue payments in excess of 5% of the payments owed to date, Advertiser shall immediately pay the cost of such audit, and Network may conduct another audit during the same six month period.

8.4. Waiver. No waiver by either party of any breach of any provision hereof shall be deemed a waiver of any subsequent or prior breach of the same or any other provision.

8.5. Assignment. No IO may be assigned by Advertiser without the prior written consent of Network

8.6. Severability. In the event that any provision of these Terms and Conditions is found invalid or unenforceable pursuant to any judicial decree or decision, such provision shall be deemed to apply only to the maximum extent permitted by law, and the remainder of these Terms and Conditions shall remain valid and enforceable according to its terms.

8.7. Relationship. The parties agree that Network is acting as an independent contractor in performing the Services and that the relationship between Network and Advertiser shall not constitute a partnership, joint venture or agency. Neither Network nor any of Network's employees or agents (collectively referred to herein as the "Employees") (i) is an employee, agent or legal representative of Advertiser, or (ii) shall have any authority to represent Advertiser or to enter into any contracts or assume any liabilities on behalf of Advertiser. Network retains all the rights and privileges of sole employer of its Employees, including, without limitation, the right to control, hire, discipline, compensate and terminate such Employees. Neither Network nor any of its Employees shall have any right to receive any employee benefits as are in effect generally for Advertiser's employees.

Each party represents and warrants that it has the right, title and authority to enter into this Agreement and to fully perform its obligations hereunder, and that the rights granted hereunder shall not violate the rights of any third party. Each party represents and warrants that its conduct hereunder shall conform to all applicable federal, state and local law and regulations.