

# TERMS AND CONDITIONS

The present Terms and Conditions (hereinafter referred to as “Terms”) establish and govern legal relations between the Parties specified in the Insertion Order. The following Terms, Non-Disclosure Agreement and Insertion Order create a contract (hereinafter referred to as the “Agreement”) between the Parties specified in the Insertion Order (hereinafter referred to as the “Performer” and the “Customer” respectively, and jointly referred to as “Parties”).

## 1. BASIC DEFINITIONS USED IN THE AGREEMENT

For the purposes hereof the Parties shall use the following definitions:

- 1.1. **Insertion Order** – shall mean an initial document or communication by mail or chat program in which the Parties specify the conditions and costs of lead placement under the Terms and Conditions hereinafter.
- 1.2. **Non-Disclosure Agreement** – shall mean an initial document or communication by mail or chat program in which the Parties specify the conditions and costs of lead placement under the Terms and Conditions hereinafter.
- 1.3. **Internet** - shall mean the worldwide system of connected computer nets.
- 1.4. **User** - shall mean a Natural Person or Legal Entity using the Internet for receiving, transmitting and viewing information as well as for goods and services purchasing or selling.
- 1.5. **Website** - shall mean an information resource on the Internet with a unique URL address and representing a complex of interconnected web pages united on subject characteristics and meant for publication of information on the Internet.
- 1.6. **Web Page** shall mean an independent composite part of a web-site, a separate document on the Internet created on the basis of HTML language, identified by a unique address (URL), containing information (text, graphics, audio and video files).
- 1.7. **Advertising and Informational Module (AIM)** shall mean an information unit either static (with a non-changing image), or animated, or graphic, or textual and graphic, rectangular, square, or shaped otherwise, placed on the Internet web-pages chosen by the Performer and containing a transfer code (hypertext link) to the Customer’s web-site (web-site of a lead performance). Types (formats) of AIM placed by the Performer in order to fulfill the Agreement shall be chosen by the Performer independently.
- 1.8. **Prototype of an Advertising and Informational Module** shall mean an example of Customer’s Advertising and Informational Module which is ready to be placed on the Internet.
- 1.9. **Lead** shall mean performance by the Internet user of an action defined beforehand by the Customer on the Customer’s website on which the Performer insert a post-back URL, which technically defines the source of performed purchase. The characteristics and conditions of lead placement and lead performance shall be determined by the Parties in the Insertion Order to this agreement.
- 1.10. **Statistical Data** shall mean a detailed report on the Customer’s lead performance on Internet web-sites, specifying information on amount of provided services.
- 1.11. **System of Internet Advertising and Audit Management of the Performer** (hereinafter referred to as “**System**”) shall mean a computer program which is applied by the Performer for gathering statistical data on the services provided by the Performer hereunder.

1.12. **Integration methods** – technical means of information transfer from the Performer to the Customer and vice versa.

The following types of integration may be applied between the Performer and the Customer:

- 1) API integration – a cooperation interface between the systems of the Performer and the Customer for lead metering and data exchange;
- 2) postback URL – is a specific link created to enable the system for registering leads. Additional parameters of this URL enable for identifying the lead source and other features of the order;

1.13. **CPA** shall mean an acronym for Cost Per Action, which is an Internet advertising pricing model where the Customer pays for each specified action linked to the advertisement.

1.14. **Level Next Direct (brand name Affiliate Ninjas)** – global CPA network. The communication between the Performer and the Customer shall be realized through the Customer's Personal Account, which is placed at the following link: <https://partner.affiliateninjas.com>. Each Customer has its own unique Personal Account, which contains confidential information. Login and Password for access to Personal Account shall be requested from personal manager from the Performer's side.

1.15. **Offer** shall mean a request from the Customer for the advertising and promotion of the particular Customer's product at a price (payout) generated by Level Next Direct (brand name Affiliate ninjas) and in a particular geographic area.

1.16. **Hold time** shall mean a period of time after Lead termination by a user, equal to 10 (ten) days, which is given to the Customer to inform the Performer about the Lead status. Once this period expires, all the Leads not declined by the Customer in the Statistic System of the Performer shall be considered approved and are subject to payment in case no reasons or explanations with respect to its non-processing were provided by the Customer.

1.17. **Lead status** – the Lead situation at a particular period of time. Status is put on the Customer's side and shall be sent to the Performer through the used integration method. Types of Lead status:

- 1) Sales – confirmed leads;
- 2) Hold –pending leads;
- 3) Reject – lead, which is cancelled by the user for any reasons and circumstances;
- 4) Trash – wrongly generated lead.

1.18. **Life duration Post Click Cookie** shall mean a period of binding the Customer to the Performer's traffic and equal to 45 (forty-five) days. If a user makes a lead during indicated period of time after transfer to the Customer's site, that lead should be counted in favor of the Performer.

1.19. **Parameters of Lead Performance** shall mean conditions and algorithm of determination of users' actions as leads on the Customer's web-site.

1.20. Other definitions not provided in the present Article shall be interpreted in accordance with the commercial practice and applicable legislation.

## 2. SUBJECT-MATTER OF THE AGREEMENT

2.1. Based on the Offers provided by the Customer the Performer shall render services in time, order and on conditions under the Agreement to the Customer as following:

- 2.1.1. Perform the placement of Customer's AIM on the Internet web-sites at his discretion.
- 2.1.2. Make an inventory of lead performances and provide the Customer with the statistic reports on rendering services according to the conditions hereof.

2.2. Parameters of Lead Performance, amount and period of rendering services and other essential conditions shall be reconciled by the Parties based on the peculiarities of the Offer and Insertion Order.

2.3. All conditions, which are not mentioned in this Agreement, shall be agreed by e-mail between the Customer and its personal manager from Performer's side. Such correspondence shall be considered valid.

2.4. The Parties came to an agreement to use the System of Internet Advertising and Audit Management of the Performer in order to make an inventory of rendering services according to the Agreement including lead performances and processing of statistics. The data of the system shall be used to estimate the amount of provided services and evaluate their cost. The Customer agrees that any other inventory system of provided services including lead performances shall not be considered as an official source of information for inventory.

### **3. RIGHTS AND OBLIGATIONS OF THE PARTIES**

#### **3.1 The Performer shall:**

3.1.1. ensure the start of placement of the Customer's AIM on the Internet resources in amount determined by the Performer at his discretion and on the basis of and in accordance with the Offer of the Customer;

3.1.2. provide with the permanent record of the Customer's lead performances through the Personal Account of the Customer;

3.1.3. notify the Customer about all changes in payout rates by e-mail an hour before changes take force.

**Note:** All the web-sites on which the Customer's AIM is placed shall be obligatory examined beforehand by the Customer for decency adequacy of the content and absence of obvious illegality signs. Therewith the Customer is aware and agree with the fact that as the Performer is not an Administrator (Owner) of the web-sites on which the Customer's AIM is placed, he is not able to control constantly the content of the placed information and therefore is not responsible for complete observance by owners of restriction on placement of certain types of information.

#### **3.2. The Performer shall be entitled to:**

3.2.1. refuse to accept and place the AIM in case if the activity promoted by placement of the AIM contradicts to the applicable legislation, as well as contains any signs of improper advertising and (or) obviously does not correspond with the generally accepted moral and ethical standards. Such refusal shall be forwarded to the Customer by e-mail;

3.2.2. engage third parties for rendering services (work performance) hereunder, including distributors of advertising, however remaining responsible to the Customer for actions of those third parties, including their non-performance or improper performance of their obligations connected with fulfillment hereof. Upon initiating the Performer and third parties' collaboration on rendering services to the Customer, the Customer shall not without consent of the Performer collaborate with above mentioned third parties on rendering services similar to that hereof for the period of 2 (two) years. If such

collaboration is discovered the Customer shall pay a fine to the Performer in an amount of the cost of the similar services provided in a similar period, as if they were accommodated by the Performer itself;

3.2.3. refuse to accept next Customer's Offers in case of delayed payment of services by the Customer till the debt payment for the previous periods;

3.2.4. terminate the Agreement unilaterally and without judicial procedures in case of significant breach of the conditions of the Agreement by the Customer. The following shall be deemed as significant breach of the conditions of the Agreement:

- 3.2.4.1. delay of service payment for more than 10 (ten) business days since the day established by the System of Internet Advertising and Audit Management of the Performer;
- 3.2.4.2. repeated discovery by the Performer within the duration period of this Agreement of the absence of correct integration with the technology platform of the Customer.

3.2.5. terminate the Agreement unilaterally if there are no positive results from advertising campaign;

Unilateral termination of the Agreement at the initiative of the Performer shall be executed by sending a written notice to the Customer 3 (three) days prior to possible date of refusal to execute the Agreement.

3.2.6. In case of working incapacity of the integration for 24 (twenty-four) hours since the date of discovery, the Performer is entitled unilaterally to suspend rendering services until the moment of clarification of all the causes of working incapacity of the reference pixel.

### **3.3. The Customer shall:**

3.3.1. appoint a responsible authorized representative to settle current issues related to rendering of services hereunder;

3.3.2. timely and in full pay for the Performer's services in accordance with the Agreement;

3.3.3. timely provide the Performer with all necessary information and materials required for fulfillment of the Agreement and are consistent with the applicable legislation;

3.3.4. immediately inform the Performer about all changes connected with previously provided materials and information;

3.3.5. secure system integration between technology platforms during the period of performance of obligations hereunder and not to take any action leading to their malfunction and (or) improper operation;

3.3.6 immediately notify the Performer of all actions leading to the failure of the integration method;

3.3.7. notify the Performer about holidays, weekends and excluded days within 7 days prior the Customer will not be able to process leads;

3.3.8. process leads within 10 (ten) days and immediately notify the Performer about increased amount of trash leads (more than 20% from the total amount of leads).

**Note:** The Customer acknowledges and agrees that in the event of malfunction of integration between platforms, the Performer is not responsible for the quality of the services rendered hereunder, including the validity of the data contained in the report on provision of services. The Performer is not responsible for any failure to perform its obligations in case of technical problems of the Customer.

### **3.4. The Customer shall be entitled to:**

3.4.1. provide the Performer with Offers for rendering services within the Agreement duration period. The Offers may be amended if agreed by the Parties. Any amendments shall be forwarded to the Performer within 5 (five) business days from the date of entry into force;

3.4.2. receive information on statistics of rendering services in the Personal Account;

3.5. The Parties shall also have other rights and bear responsibilities arising from the Agreement.

### **4. SERVICE COST AND SETTLEMENT**

4.1. The prices (payouts) for the services rendered by the Performer hereunder shall depend on lead performance parameters and conditions chosen by the Customer in the Personal Account. The total cost of the Performer's services shall be fixed in the invoice.

4.2. The Customer shall pay to the Performer for services rendered by the Performer as specified in the Insertion Order.

4.3. the amount that will remain on the Customer's balance after rendering of the services shall be refunded to the Customer.

4.4. Payment of services provided by the Performer shall be made by non-cash transfer of funds to the Performer's current account. The moment of payment shall be deemed as the date of receipt of funds into the Performer's current account.

4.5. The Customer shall monthly (before the 15 (fifteenth) day of each month) provide the Performer with Report on traffic quality. In case of non-fulfillment of the present condition by the Customer, all provided leads shall be deemed approved and payable.

### **5. LIABILITY OF THE PARTIES**

5.1 The Parties shall be liable for non-performance or improper performance of obligations under the Agreement in order prescribed by the applicable law. The Parties agreed that in case of breach of obligations hereof resulting in infliction of losses; only the actual losses shall be subject to reimbursement.

5.2 As computers and other hardware, communication channels and (or) computer programs which belongs to third parties are used, the Parties agree that the Performer shall not bear liability hereunder for any delays, interruption, direct or indirect damage or losses due to faults of any electronic or mechanical hardware and (or) computer programs, or caused by any other objective technological reasons, as well as a consequence of actions or inactions of third parties, problems with data transmission or connection, irregularity of electrical power occurred not through a fault of the Performer.

5.3. The Performer is not responsible for compliance of published information with the applicable legislation. The Performer shall guarantee to the Customer neither perform nor propagandize any activity against the law. The Performer is not responsible for the content of information provided by the Customer.

5.4. In case of unilateral refusal from material placement by the Customer for less than 3 (three) business days prior campaign starts the Customer shall pay a fine in amount of 30% (thirty percent) of prepayment.

5.5. The extent of the Performer's liability hereunder shall be limited by the amount of service costs for the Reporting period for which breach by the Performer of its obligations hereunder was declared and involved infliction of losses to the Customer. Only actual damage shall be subject to reimbursement. Therewith the Customer is

aware and agrees that the Performer cannot guarantee lead performance in the amount required by the Customer as it directly depends on actions of the Internet users. Information about forecast of lead performance is presented by the Performer on basis of received statistic data. Thereupon the Customer understands and accepts the fact that, as considering objective reasons forecast is presumptive, the Performer at any conditions shall not bear responsibility for non-fulfillment of forecast of lead performance.

5.6. In case of breach of payment time limits by the Customer for more than 5 (five) business days in comparison to the periods specified in Paragraphs 4.2 hereof, the Customer shall pay a fine in amount of 1% (one percent) of the sum of non-paid services for each day of delay, but not more than 10% (ten percent) of the said sum.

5.7. In case of breach of conditions specified in subclauses 3.3.5, 3.3.6 of the clause 3.3 hereof the Customer shall pay to the Performer a penalty in the amount calculated by dividing average daily cost of lead amount (defined on the basis of statistics data for the period from starting performance of the request) by 24 (twenty-four) for each hour of unavailability or failure of integration on the side of the Customer. The Parties agree that on revealing the fact of breach of conditions specified in subclauses 3.3.5, 3.3.6 of the clause 3.3. hereof, the period of integration's inoperability on the side of the Customer shall be calculated from the moment of the last lead fixation in the System of Internet Advertising and Audit Management of the Performer.

5.8. Obligation for fine payment shall arise only in case if a written complaint with demand of fine payment was composed according to the conditions hereof and sent to a Party in fault by the other Party.

## **6. ADVERTISING MATERIALS**

6.1. Customer shall deliver to the Performer all advertising materials necessary to provide advertising services properly, hereinafter referred to as the "Advertising materials".

6.2. To deliver to the Performer Advertising materials means to post on by the Customer the Advertising materials in the required form, quantity and quality in the System of Internet Advertising and Audit Management of the Performer.

6.3. Customer declares that it is entitled to use the Advertising materials on the basis of copyrights and licenses held and that the use of the Advertising materials does not breach any rights and obligations of third parties. Where the Advertising materials are prepared by the Performer on behalf of the Customer, this responsibility belongs to the Performer.

6.4. The Parties may also allow 3rd party webmasters and affiliates to create their own Advertising materials where necessary to generate sales leads. Where the Advertising materials are created by these 3rd party webmasters and affiliates, the responsibility for these materials shall rest solely with these creators. The Parties will be responsible for ensuring that the 3rd party webmasters and affiliates are aware that the Advertising materials created to not contain any content which is in breach of law or good custom.

6.4.1. The Parties declare that copyrights to Advertising materials, except for those provided by the Performer as requested by the Customer, belong exclusively to Customer, both during the term of the Agreement and after termination of the Agreement and in no case shall Customer transfer such copyrights to the advertising materials to the Performer.

6.5. Customer is obliged to deliver to the Performer Advertising materials which shall not contain any content which is in breach of law or good custom. Notwithstanding the aforesaid, all Advertising materials, after being prepared, altered or amended in view of the advertising services provided by the Performer, shall be the sole responsibility of the Performer.

6.6. In case Customer delivers to the Performer Advertising materials infringing point 5 of this paragraph or when a competent authority or institution notifies any objections as to an ability to provide these services because of the character or origin of the Advertising materials delivered by Customer, the Performer is entitled to suspend provision of advertising services with respect to that given Offer. In the above situation, save for the Advertising materials that have been altered or amended by the Performer via the advertising services, the Customer shall not pursue any claims against the Performer.

## **7. FORCE MAJEURE CIRCUMSTANCES**

7.1. In case of occurrence of force majeure circumstances which may impede performance of the Parties' mutual obligations hereunder including natural disasters, strikes, government restrictions, irregularity of electrical power supply, damage to the server storing the placed Advertising and Informational Modules, or other circumstances beyond the Parties' control, fulfillment of the conditions under the Agreement shall be postponed for the duration period of those circumstances.

7.2. In case of duration of above mentioned circumstances for more than 2 months each party shall be entitled to cancel its obligations hereunder. In that case the Agreement shall be deemed terminated, and none of the Parties shall be entitled to claim reimbursement from the other party.

7.3. The Party which is not able to perform its agreement obligations due to occurrence of force major circumstances shall immediately inform the other Party about their occurrence and termination. Non-notification of those circumstances shall deprive the Party of the right to refer to the above mentioned circumstances in case of breach of the obligations hereunder.

## **8. AGREEMENT CONFIDENTIALITY RESTRICTIONS**

8.1. Any information on the Party's business activity, new solutions and technical knowledge which has been received by the other during execution of the Agreement shall be kept confidential and shall not be subject to disclosure to third parties without written consent of the other Party.

8.2. Each Party shall assume a liability not to disclose (make available to any third parties, except if the third parties are authorized by virtue of law) by any means and in any manner the other Party's confidential information to which it got access by entering into the Agreement and during performance of the obligations arising from the Agreement. The present obligation shall be performed by the Parties within the valid period of the present Agreement and for one year after its termination, except if otherwise agreed.

## **9. DISPUTE SETTLEMENT PROCEDURE**

9.1. If any disputes related to execution of the Agreement occur the Parties shall apply precourt dispute procedure.

9.2. This Agreement shall be governed by and construed in accordance with the laws of England. Any dispute arising out of or in connection with this Agreement, including any

question regarding the existence, scope, validity or termination of this Agreement or this Clause, which cannot be resolved within one (1) month by negotiation between the Parties hereto, shall be resolved by one of the following procedures based on the decision of the plaintiff:

- i. The dispute is referred to and finally resolved by arbitration under the Rules of London Court of International Arbitration (hereinafter – the “LCIA Rules”) then in effect, which LCIA Rules are deemed to be incorporated by reference into this Clause. The number of arbitrators shall be 1, chosen in accordance with the LCIA Rules. The seat of arbitration shall be London. The arbitration proceedings shall be conducted in the English language and the award shall be in English. Pursuant to and in accordance with Article 28.4 of the LCIA Rules, the Parties hereto agree that, as a general principle, the losing Party of any arbitration shall pay all costs and expenses of the arbitration including all reasonable costs, fees and expenses of the other Party and the other Party's counsel.
- ii. The dispute is referred to and finally resolved by the Arbitration Institute of the Stockholm Chamber of Commerce (the “SCC”). The Rules for Expedited Arbitrations shall apply where the amount in dispute does not exceed EUR 100,000. Where the amount in dispute exceeds EUR 100,000 the Arbitration Rules shall apply. The Arbitral Tribunal shall be composed of a sole arbitrator where the amount in dispute exceeds EUR 100,000 but not EUR 1,000,000. Where the amount in dispute exceeds EUR 1,000,000, the Arbitral Tribunal shall be composed of three arbitrators. The amount in dispute includes the claims made in the Request for Arbitration and any counterclaims made in the Answer to the Request for Arbitration. The Parties hereto agree that, as a general principle, the losing Party of any arbitration shall pay all costs and expenses of the arbitration including all reasonable costs, fees and expenses of the other Party and the other Party's counsel. The seat of arbitration shall be Stockholm. The arbitration proceedings shall be conducted in the English language and the award shall be in English.
- iii. The dispute is referred to and finally resolved by the national court of the defendant under the laws of the state where defendant is situated or has its main headquarters or under the laws and in the court of the state where the services are rendered.

## **10. AGREEMENT DURATION AND MISCELLANIOUS**

10.1 The Terms and Conditions as a part of the Agreement shall come into force from the moment of signing an Insertion Order and in the version published on the Performer's web site. The Agreement shall be valid for the period of an Advertising Campaign except for payment and confidentiality obligations and liability. Terms concerning payments shall be valid till the final settlement by the Parties. The term of confidentiality obligations is stated in the clause 8.2.

10.2 The Performer shall have the right to amend or change from time to time at its sole discretion the published version of the Terms and Conditions. However, such amendments and changes shall not be applicable to Insertion Orders already signed by the Parties. The Parties shall be entitled to amend and add the Agreement concerning an already signed Insertion Order only upon mutual consent and come into force upon being executed in writing and signed by both of the Parties.



10.3 The Parties agreed that during the term of the Agreement written correspondence solely signed by an authorized person shall be deemed official. Documents sent by electronic mail shall be deemed informative. The exchange of document via electronic and facsimile communication facilities which allow establishing reliably the identity of a sender shall be possible between the Parties under the condition of following obligatory provision with written copy of respective document signed by an authorized person.

10.4 The Parties shall inform each other within the shortest possible time (not later than 5 days) on changes of address (location), bank details, telephone (telefax) numbers, e-mail addresses and authorized representatives.

10.5 Termination of the Agreement shall be made upon two (2) days prior written notice by either Party. In the event of termination of the Agreement on any grounds, the Parties undertake to settle accounts for all monetary obligations and payments based on the volume of the Services rendered.

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