|  |  |
| --- | --- |
|  | **Insertion Order** ${orderNumber} |

|  |  |
| --- | --- |
| **Advertiser Name** | ${company\_name} |

|  |  |  |  |
| --- | --- | --- | --- |
| **Advertiser Main Contact** | ${company\_contact} | **Company Main Contact** | ${secco\_contact} |
| **Phone Number** | ${company\_phone} | **Phone Number** | ${secco\_phone} |
| **Fax Number** | ${company\_fax} | **Fax Number** | ${secco\_fax} |
| **E-Mail Address** | ${company\_email} | **E-Mail Address** | ${secco\_email} |
|  |  | **Account Manager** | ${account\_manager} |
| **Advertiser Business Address** | ${company\_address}  ${company\_address2}  ${company\_city}  ${company\_state}  ${company\_country},  ${company\_zip} | **Advertiser Account Payable Address** | ${billing\_contact}  ${billing\_address}  ${billing\_address2}  ${billing\_city},  ${billing\_state},  ${billing\_country}  ${billing\_zip} |

|  |  |  |  |
| --- | --- | --- | --- |
| **Campaign Name** | ${campaign\_name} | **SPECIAL Payment Terms:** | ${pymntTer} ${pTerCust} |
| **Cost of Actions**  **(CPC/CPA/CPL/CPM)** | **CPC:** ${cr}${compCpc} **CPA:** ${cr}${compCpa} **CPL:** ${cr}${compCpl}  **CPM:** ${cr}${compCpm} **CPD:** ${cr}${compCpd} **CPI:** ${cr}${compCpi}  **CPS:** ${cr}${compCps} | **Pre-Payment**  **Initial Cap Amount:**  **Cap Type:** | ${prePay}  ${preAmnt}  ${capAmnt}  ${capType} |

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Advertising and Marketing Services** | |  |  |  |  | | --- | --- | --- | --- | | ${traffic\_1} | ${traffic\_3} | ${traffic\_5} | ${traffic\_7} | | ${traffic\_2} | ${traffic\_4} | ${traffic\_6} | ${traffic\_8} | | ${traffic\_9} | ${traffic\_10} |  |  |     ${noAdult} ${noIncent} ${noRebrokering} ${noAffiliateNetwork} ${None}  **For Pay Per Call (PPC) Only:**   |  |  |  |  | | --- | --- | --- | --- | | ${tf\_ppc\_1} | ${tf\_ppc\_3} | ${tf\_ppc\_5} | ${tf\_ppc\_7} | | ${tf\_ppc\_2} | ${tf\_ppc\_4} | ${tf\_ppc\_6} | ${tf\_ppc\_8} | | ${tf\_ppc\_long\_1} | | ${tf\_ppc\_long\_3} | | | ${tf\_ppc\_long\_2} | | ${tf\_ppc\_long\_4} | | |

${mobAttrPlatform}

|  |
| --- |
| **Notes:** ${ionotes} |

This Insertion Order, and any other written agreement of the parties via email correspondence, regarding this I/O and/or any additional Campaign, shall be governed by the then governing Secco Squared Terms and Conditions for Advertising. In the event of a discrepancy and/or inconsistency between the Terms and Conditions and this Insertion Order, the Insertion Order shall prevail re: that specific issue, otherwise the Terms and Conditions shall prevail over any other written or oral understanding between Secco Squared and the Advertiser.

**Terms and Conditions for Advertising**

The following terms and conditions govern the Company’s provision of the advertising and marketing services (the "Services") selected in the Insertion Order ("IO") by and between Secco Squared, LLC (the "Company") and Advertiser ("Advertiser") to which these terms and conditions are attached (the IO and these terms and conditions are collectively referred to herein as this "Agreement").

**1. Ads; Network Advertising**

(a) As used herein, the term “Ads” means all Internet advertising vehicles including, without limitation, banners, buttons, clicks, co-registrations, e-mails, audio and video files, content, text, graphic files and similar media and/or data. Advertiser will, at its sole cost and expense, create and deliver to the Company any and all content required for any Ad. Ads, including, without limitation, artwork and copy, must be delivered by Advertiser to the Company at least five (5) days in advance of the publication, transmission or posting date and in a format and size that fully complies with the Company’s requirements. No changes to the Ads will be accepted after the third (3rd) day before the publication date. The Company reserves the right, in its sole discretion, to change any of its Ad specifications at any time. All subject matter, form, size, wording, illustration and typography of any Ad will be subject to the Company’s prior approval prior to publication. The Company also reserves the right, in its sole discretion and without liability, to reject, omit, exclude or terminate any Ad or URL link embedded in an Ad for any reason at any time, with or without notice to the Advertiser, and whether or not such Ad was previously acknowledged, accepted or published.

(b) Advertiser acknowledges that the Services may be provided by the Company or through a network of websites and properties owned and/or operated by one or more third parties (“Publishers”). NOTWITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY, THE COMPANY WILL NOT BE HELD LIABLE OR RESPONSIBLE FOR ANY ACTIONS OR INACTIONS OF ITS PUBLISHERS.

(c) Advertiser shall maintain a regularly updated suppression list containing current unsubscribe requests in conformance with the CAN-SPAM Act of 2003. Further, Advertiser shall provide the Company with updated suppression files at a minimum of once per week. Failure to do so shall constitute a material breach of this Agreement.

**2. Payment.**

(a) Advertiser shall send all payments due to the Company under this Agreement ("Payments") as set forth below:

|  |  |
| --- | --- |
| *Checks should be made payable to* | *Wires should be made to* |
| Secco Squared, LLC  255 W 36th Street  Suite 1501  New York, NY 10018 | Bank Name: JP MORGAN CHASE  Account Number: 470386728  ABA Number: 021000021  Swift Code: CHASUS33  Bank Address: 11166 Avenue of the Americas  New York, New York 10036 |

(b) Unless the provisions of Section 2(c) apply, Advertiser shall pay the Company on a weekly basis for the Services in accordance with the pricing specified in each IO or as otherwise documented in writing between the parties. The Company will calculate the payments due from Advertiser hereunder on a weekly basis (defined as Monday through Sunday) and deliver to Advertiser a weekly invoice. Advertiser shall pay the invoiced amount in full within three (3) days after the date of such invoice.

(c) If the amount payable by Advertiser hereunder is less than 3,000 USA dollars each week for four (4) consecutive weeks, the Company will invoice Advertiser on a monthly basis. Advertiser shall pay the invoiced amount in full within three (3) days after its receipt of the applicable invoice. If the amount payable by Advertiser hereunder is 3,000 USA dollars or more per week for four (4) consecutive weeks, the Company will invoice Advertiser on a weekly basis as provided in Section 2(b).

(d) If Advertiser wishes to dispute an invoiced amount (either in whole or in part), Advertiser must deliver a written notice of such dispute to the Company within forty-eight (48) hours of Advertiser’s receipt of the applicable invoice. Such notice must set forth in reasonable detail the basis of the dispute. If the Company receives such notice after the expiration of such 48-hour period, the amount subject to dispute shall be limited to an amount not to exceed five percent (5%) of the total invoiced amount in question. If the Company does not receive such notice within ten (10) calendar days of the date of the applicable invoice, the amount set forth in such invoice will be deemed final and binding on both parties.

(e)The parties shall negotiate in good faith to resolve any dispute timely noticed to the Company. In connection with any such negotiation each party must provide to the other (subject to the confidentiality provision of this Agreement) any and all documentation and other information in such party’s possession or control that is reasonably necessary to substantiate the applicable invoice. If such dispute is not resolved within thirty (30) days of notice from either party to the other that a dispute exists, then either party shall have the right to terminate this Agreement immediately. Nothing herein will affect the right of either party to seek judicial review of such dispute after termination. Amounts that are not in dispute must be paid promptly in accordance with this Agreement.

(f) In the event of a pre-payment from Advertiser to the Company, payment due to the Company will first be deducted from Advertiser’s pre-payment. If the Services generate fewer than the anticipated number of Actions (if a specific minimum is so stated), the Company may either: (i) refund the amount paid on a pro rata basis for the number of Actions actually delivered or (ii) continue to deliver additional Actions until such specified number of Actions are delivered or (iii) continue to run Ads until pre-payment monies are consumed.

(g) If any payment is not made timely, the Company may, at its option, immediately terminate this Agreement and/or IO. Interest will accrue on any past due amounts at the rate of the lesser of one and one-half percent (1.5%) per month or the maximum amount permitted by law (the “Default Rate”). In addition, Advertiser shall be liable to the Company for all attorneys’ fees and other costs of collection to collect such unpaid amounts.

**3. Right to Examine and/or Audit.**

Advertiser must retain accurate books and records pertaining to the Services on a campaign-by-campaign basis for a minimum of one (1) year after the conclusion of each campaign. The Company may examine and/or audit these books and records at any time upon giving the Advertiser reasonable notice of its request to examine and/or audit. Advertiser acknowledges and agrees that the Company may conduct such examination and/or audit through a reputable independent consulting or other professional firm and/or, as applicable, through reputable independent third party technology designated by Company. If pursuant to such examination and/or audit the Company discovers an underpayment of more than one and one-half percent (1.5%), Advertiser shall pay the Company the discovered underpayment amount along with interest at the Default Rate, along with the Company’s out of pocket cost to examine and/or audit, including, but not limited to, reasonable attorneys’ fees, court costs and related expenses. Advertiser shall also pay all sales, use, excise and other taxes which may be levied upon this Agreement, except for the Company’s income taxes.

**4. Intellectual Property.**

(a) The parties agree that (i) Advertiser will retain and own all proprietary rights in and to its business, any data provided by Advertiser to the Company and Advertiser’s trademarks and (ii) the Company will retain and own all proprietary rights in and to all of the Company’s intellectual property, including, without limitation, to (A) any Services provided hereunder (including, without limitation, all software, source codes, modifications, updates and enhancements thereof or any other aspect of the Services), (B) all data obtained by the Company from commercially available sources or from other sources that are overlayed onto data provided by Advertiser, (C) any responses, confirmations or other forms of information from individuals contacted by the Company utilizing data provided by Advertiser to the Company, (D) the Company’s marketing materials, (E) any and all information generated as a result of the Company’s provision of Services, including, without limitation, information based upon the Company’s marketing efforts or data, reports, files of clicks, opens, unsubscribes and other similar data and information, (F) the Company’s websites and (G) any trademarks and logos which are owned or controlled by the Company and made available to Advertiser through the Services or otherwise

(b) If the Services include search engine optimization or search engine marketing, any and all keywords and/or search terms purchased or leased for Advertiser, keyword pricing, search engine selection, cost per click campaign information, Advertiser accessible computer interface(s) and search engine optimization or search engine marketing techniques and processes, will be the sole property of the Company, and Advertiser will have no right, title or interest of any kind therein.

(c) The parties agree that the Company is the sole owner of any and all intellectual property rights associated with all creative copy, graphics, design, content, materials or other information created by the Company on Advertiser’s behalf. No images, graphics, copy, content, materials or subject lines created by the Company on Advertiser’s behalf may be used by Advertiser without the prior express written permission of the Company.

(d) All suggestions, solutions, improvements, corrections, and other contributions provided by Advertiser to the Company regarding the Services or other Company materials provided to Advertiser, will be owned by the Company, and the Advertiser hereby agrees to assign any and all such rights to the Company. Advertiser shall execute any documents necessary to make such assignment effective. Nothing in this Agreement will preclude the Company from using in any manner or for any purpose it deems necessary, the know-how, techniques, or procedures acquired or used by the Company in the performance of any Services hereunder.

(e) Advertiser shall not reverse engineer the Service, or disassemble, decompile, or otherwise apply any procedure or process to the Service in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings for the Services or other software provided under this Agreement, or any algorithm, process, procedure or trade secret information contained in the Service or any software provided by the Company.

(f) The results of all Services performed by the Company alone or with others pursuant to this Agreement or otherwise in connection with the performance of the Company’s duties hereunder including, without limitation, all concepts, designs, ideas, applications, research, discoveries, inventions, know-how, technology, plans, writings, drawings and the Company-created Ads (collectively referred to as the “Work Product”), will be the exclusive property of the Company, and all evidence and physical embodiments thereof, including, without limitation, all finished and unfinished outlines, drafts (whether manual, typewritten or stored in or on electronic or optical media), notes, printed materials, designs, models, processes, methods, records, notebooks, printouts, programs, software, or microfilm will, without any compensation to Advertiser (except as specifically provided in this Agreement), be the exclusive property of the Company. The Company shall have full and complete ownership rights to use, license and sell any and all of the Work Product in any manner determined by the Company, in the Company’s sole and exclusive discretion, in the United States and any and all territories, protectorates and foreign jurisdictions. Advertiser further acknowledges and agrees that all patent, copyright, trade secret, trademark and other intellectual property rights in and to the Work Product and any improvements or enhancements thereto and any derivative works based thereon shall be the sole and exclusive property of the Company.

**5. Actions.**

For purposes of this Agreement, “Action” means an act or event by a third party upon which the Cost Per Acquisition (CPA), Cost Per Click (CPC), Cost Per Thousand (CPM), Cost Per Lead (CPL), Cost Per Download (CPD), Cost Per Install (CPI), Cost Per Sale (CPS) or any other Payment is based, as set forth in the IO. In the event that Advertiser uses a third party to serve the Ads, or any other tracking software to track leads or sales, Advertiser agrees to provide the Company with daily reports or online access to details regarding the number of impressions delivered, click-throughs, sales, conversions opens and/or related information for each Ad on a real time basis. If an Action is presented to Advertiser and Advertiser rejects it and/or does not compensate the Company for such lead, then Advertiser is expressly prohibited from contacting such individual in any manner and by any means.

**6. Reporting.**

Advertiser will at all times place the Company’s tracking code(s) (sometimes known as “pixels”) on its site(s) with populated transaction variables, as requested by the Company, for network tracking and reporting purposes. In the event of a discrepancy between Advertiser’s reports and the Company’s pixel tracking, the greater number of Actions recorded between the two methods will take precedence in the determination of the number of Actions, except as to Actions which are the subject of dispute under section 2 of this Agreement. If, through any act or omission by Advertiser (including, but not limited to, the redirecting of a hyperlink), Advertiser causes the tracking codes from the Company to cease functioning or to function improperly, then Advertiser shall pay the Company an amount equal to the mean number of Actions that would have occurred during the time period in which Advertiser caused the Company’s tracking codes to function improperly and or malfunction. Advertiser will provide the Company with a link to the landing page or confirmation page prior to launching ad to test the functionality of the Company’s pixel.

**7. Representations and Warranties.**

Advertiser represents and warrants to the Company that: (a) Advertiser has the power and authority to enter into, and perform its obligations under, this Agreement; (b) Advertiser will at all times comply with all international, foreign, United States, federal, state, or local laws, rules, regulations and ordinances, including, without limitation, the CAN-SPAM Act of 2003,the Children’s On-Line Privacy Protection Act, laws regulating privacy and spyware/adware, laws and regulations governing export control, false advertising or unfair competition, all as they relate to this Agreement, the Services and the transactions contemplated hereby and as they may be modified or amended from time to time (collectively, “Laws”); (c) Advertiser owns and/or has any and all rights (including, without limitation, rights as licensee) necessary to permit the use of the Ads by the Company as contemplated by this Agreement and each IO; (d) the advertising, sale, operation and use of Advertiser’s goods and services, or the goods and services of Advertiser’s clients, advertised in any Ad and the transmission, display or serving of any Ad will not violate any Laws or any rights of any third party, including, without limitation, infringement or misappropriation of any copyright, patent, trademark, trade secret or other proprietary, property or other right; (e) Advertiser will not disable the “back” browser functionality to prohibit consumers from returning to the website from which the Ad was selected; (f) Advertiser has a reasonable basis for any and all claims made within the Ads and possesses appropriate documentation to substantiate such claims; (g) for “cost per acquisition” or CPA campaigns, the Ads, and/or the landing page from each Ad where an action is completed (for example, the Advertiser’s website page where a consumer is directed when the consumer clicks on an Ad, fills in a registration form or takes a similar action on an Ad) contains a prominent link to Advertiser’s privacy policy, which policy provides, at a minimum, adequate notice, disclosure and choices to consumers regarding Advertiser’s use, collection and disclosure of personal information; (h) Advertiser and/or its clients will fulfill all commitments made in the Ads; (i) no Ad is targeted to consumers under the age of eighteen (18) years; (j) prior to loading any computer program onto an individual’s computer including, without limitation, programs commonly referred to as adware and/or spyware, but excluding cookies (provided that cookies are disclosed in Advertiser’s privacy policy), Advertiser will provide clear and conspicuous notice to, and shall obtain the express consent of, such individual to install such computer program; (k) no part of the Ads will: (i) violate any Law, (ii) be defamatory or libelous; (iii) be pornographic or obscene; or (iv) contain viruses, trojan horses, worms, time bombs, cancelbots or other similar harmful or deleterious programming routines; and (l) the goods or services that are being promoted through any campaign hereunder are not the subject of any ongoing investigation by any local, state or federal regulatory or quasi-regulatory authorities.

**8. License.**

Subject to the terms of this Agreement, Advertiser hereby grants to the Company and its Publishers the worldwide, fully paid, royalty-free, right and license to use, perform, copy, publish, sublicense, display and adapt the Ads for use in connection with the performance of the Services. In addition, subject to the terms of this Agreement, Advertiser hereby grants to the Company and its Publishers the worldwide, fully paid, royalty-free, right and license to use, perform, copy, publish, sublicense, display and adapt the trademarks, service marks, trade names and other indicia of origin associated with Advertiser and/or the goods and/or services offered by Advertiser which are the subject of the Services performed hereunder.

**9. Incentivized Offers.**

For all Services involving Ad(s) with incentivized offers, e.g., offers where a consumer is provided something of value in exchange for either providing their personally identifiable information (“PII”) and/or agreeing to receive a product or service on a “free trial” basis (“Incentivized Offers”), Advertiser shall be responsible for ensuring that the Advertiser has a system in place to prevent multiple submissions from the same Visitor, and systems in place to ensure that consumers properly register (and that their registration is confirmed) for the offer contained within the Ad(s).

**10. DISCLAIMER OF WARRANTIES.**

THE COMPANY PROVIDES ITS SITES AND THE SITES OF ITS AFFILIATES, PUBLISHERS AND PARTNERS, AND ALL ITS SERVICES AND THE SERVICES OF ITS AFFILIATES, PUBLISHERS AND PARTNERS, AS PERFORMED HEREUNDER, ON AN “AS IS,” “WHERE IS” AND “AS AVAILABLE” BASIS, WITHOUT ANY WARRANTY OF ANY KIND AND WITHOUT ANY GUARANTEE OF CONTINUOUS OR UNINTERRUPTED DISPLAY OR DISTRIBUTION OF ANY AD. IN THE EVENT OF INTERRUPTION OF DISPLAY OR DISTRIBUTION OF ANY AD, THE COMPANY’S SOLE OBLIGATION WILL BE TO RESTORE SERVICE AS SOON AS COMMERCIALLY PRACTICABLE. THE COMPANY HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE AND NONINFRINGEMENT, THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

**11. LIMITATIONS OF LIABILITY.**

IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR INTERRUPTED COMMUNICATIONS, LOSS OF USE, LOST BUSINESS, LOST DATA OR LOST REVENUES OR PROFITS (EVEN IF SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING), ARISING IN ANY WAY OUT OF OR IN CONNECTION WITH THIS AGREEMENT. THE COMPANY WILL NOT BE LIABLE, OR CONSIDERED IN BREACH OF THIS AGREEMENT AND/OR ANY APPLICABLE IO, ON ACCOUNT OF ANY DELAY OR FAILURE TO PERFORM UNDER THIS AGREEMENT AND/OR ANY APPLICABLE IO AS A RESULT OF CAUSES OR CONDITIONS THAT ARE BEYOND THE COMPANY’S CONTROL. THE COMPANY’S LIABILITY UNDER ANY CAUSE OF ACTION WILL BE LIMITED TO THE AMOUNTS PAID TO THE COMPANY BY ADVERTISER PURSUANT TO THIS AGREEMENT DURING THE PERIOD OF TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT ON WHICH SUCH LIABILITY IS BASED. THE DISCLAIMERS AND LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 11 WILL NOT APPLY TO INDEMNITY OBLIGATIONS UNDER SECTION 13, A BREACH OF CONFIDENTIALITY OBLIGATIONS UNDER SECTION 14, OR DAMAGES BASED ON OR ARISING FROM GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

**12. Termination.**

In addition to any other remedies that may be available to it, either party may immediately terminate this Agreement in the event of any breach by the other party of the terms of this Agreement, if such breach remains uncured thirty (30) days after the breaching party’s receipt of written notice of such breach from the non-breaching party. Either party may cancel any IO, for any reason, on ten (10) days prior written notice. Sections 1, 2, 4, 10 through 16, and 18 through 20, any accrued but unpaid payment obligations, shall survive termination. In the event of termination, Advertiser shall pay the Company for any Actions that result from advertising placed or sent by the Company, its affiliates termination and for ten (10) days after for any residual campaign traffic.

**13. Indemnity.**

(a) Advertiser agrees to indemnify, defend, and hold harmless the Company, its members, managers, officers, employees, contractors, affiliates and agents (collectively, the “Company Indemnified Parties”) from and against any and all third party claims, and all liabilities, damages, costs and expenses (including reasonable attorneys’ fees) related thereto, arising out of, resulting from or otherwise relating to (i) Advertiser’s breach of any term of this Agreement, including, without limitation, any representation or warranty of Advertiser contained herein; (ii) the Ads, in any manner whatsoever; (iii) the goods or services advertised in any Ad; and/or (iv) Advertiser’s gross negligence or willful misconduct.

(b) The Company agrees to indemnify, defend, and hold harmless the Advertiser from any and all third party claims, and all liabilities, damages, costs and expenses (including reasonable attorney’s fees) related thereto, arising out of, resulting from or otherwise relating to the Company’s breach of any term of this Agreement, including, without limitation, any representation or warranty of the Company contained herein. Notwithstanding any provision herein to the contrary, the Company will bear no indemnification obligations for any act or omission of its Publishers, and Advertiser agrees to look solely to such Publishers for any remedy it may have in respect of such acts and/or omissions.

**14. Confidential Information.**

As used herein, “Confidential Information” means any information disclosed during the term of this Agreement by one party (the “disclosing party”) to the other party (the “receiving party”) which is or should reasonably be understood to be confidential and/or proprietary, including, without limitation, suppression lists, the material terms of this Agreement and/or any IO (including, without limitation, pricing), technical processes and other unpublished financial information, trade secrets, product and business plans, projections and marketing data. In addition, any information designated “Confidential” by either party will be deemed Confidential Information. The receiving party shall hold the Confidential Information disclosed to it in trust and confidence and, except as may be authorized by the disclosing party in writing, shall not (a) use such Confidential Information for any purpose other than to exercise its rights and perform its obligations hereunder and/or (b) disclose any Confidential Information to any person or entity, except to those of its employees, professional advisers and agents: (i) who need to know such information in order for the receiving party to exercise its rights or perform its obligations hereunder; and (ii) who have been made aware of the confidential nature of such information and the receiving party’s obligations to maintain such confidentiality. Each party shall be responsible for the compliance by each of its employees, professional advisers or agents with the terms of this Section in respect of the Confidential Information of the other party. Confidential Information does not include any information that: (a) is at the time of disclosure available to the general public or at a later date becomes available to the general public through no violation of this Agreement; (b) as shown by written records, was specifically known to, or in possession of, the receiving party at the time of its disclosure by the disclosing party or its agent(s) free of any confidentiality obligation; (c) as shown by written records, is acquired by the receiving party through a third-party which is not thereby breaching any obligation of confidence to the disclosing party known to the receiving party; or (d) is independently developed by the receiving party without reference to any of the disclosing party’s Confidential Information. In the event that the receiving party becomes legally compelled (by deposition, interrogatory, request for production of documents, valid subpoena, civil investigative demand or similar process) to disclose any of the Confidential Information, the receiving party will provide the disclosing party with prompt prior written notice of such requirement so that it may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, or the disclosing party waives compliance with the provisions hereof, the receiving party may furnish only such portion of the Confidential Information that is legally required to be furnished. The receiving party agrees that monetary damages for breach of confidentiality may not be adequate and that the disclosing party shall be further entitled to seek injunctive relief.

**15. Non-Solicitation of Company's publishers.**

(a) Advertiser will not knowingly participate in any performance-based advertising relationship with any Company Publisher, unless a previously existing business relationship between Advertiser and Publisher can be demonstrated to the reasonable satisfaction of the Company. Both parties agree and acknowledge that if Advertiser violates its obligations hereunder, Advertiser shall pay the Company damages in the amount of twenty-five percent (25%) of the Publisher’s gross revenues resulting from actions or leads generated for Advertiser through the advertising or marketing efforts of Publisher during the term of this Agreement and for six (6) months following termination of this Agreement. Upon the Company’s request, Advertiser shall provide to Company complete records and an accounting of all such Publisher’s actions and leads generated, invoiced amounts and payments made to such Publisher within three (3) business days of such request.

(b) Advertiser agrees that during the term of this Agreement and for a period of one (1) year thereafter, it will not directly or indirectly solicit the employment of any of the Company’s employees, members, officers or directors, provided, that employment solicitations directed to the general public shall not be prohibited pursuant to this Section 15(b).

**16. Representatives.**

If Advertiser is an agent and/or representative signing this Agreement and/or any IO on behalf of a third party, Advertiser will be jointly and severally liable with such third party for all obligations and liabilities herein.

**17. Non-Exclusive Services.**

The services rendered by the Company under this Agreement and any IO are not exclusive to Advertiser. The Company may perform similar or identical services for itself or for any other person or entity in the Company’s sole discretion. With respect to any “cost per acquisition” or CPA campaign, or any co-registration campaign, Advertiser agrees that any Action generated thereby is not exclusive to Advertiser and that Company may, in its sole discretion, transmit any offers to such Action.

**18. Entire Agreement.**

This Agreement sets forth the entire agreement of the parties, and supersedes any and all prior oral or written agreements or understandings between the parties, as to the subject matter hereof. This Agreement also supersedes and neither party will be bound by any “shrink wrap license” or any “disclaimers” or “click to approve” terms or conditions (“Online Terms & Conditions” or “Terms and Policies”) or any website, which the parties use in connection with the Services provided hereunder now or in the future, notwithstanding the fact that the party may have affirmatively accepted such terms as a condition in order to access online services. Such Online Terms & Conditions are procedural only to establish the party in the other party’s system such that the terms of each party’s participation will be governed by this Agreement and payout information will be as specified in the applicable IO. Only a writing signed by both parties may change this Agreement, except for changes in the CPA fees, which may be changed by a written and/or email offer and acceptance between the parties.

**19. Notices.**

All notices or other communications which are required by or may be given pursuant to the terms of this Agreement or any IO must be in writing and must be delivered personally; sent by certified mail, return receipt requested, postage prepaid; sent by facsimile or email (with written confirmation of transmission), provided that notice is also sent via first class mail, postage prepaid; or sent for next business day delivery by a nationally recognized overnight delivery service to the receiving party in accordance with the contact information set forth in the IO above. Any of such contact information may be changed from time to time by written notice (delivered in accordance with this Section) from the party requesting the change. Any such notice will be effective immediately if delivered personally or by facsimile or email (with written confirmation of transmission) during normal business hours, or five (5) days after mailing by certified mail, return receipt requested, first class postage prepaid, or one (1) business day after deposit for next business day delivery by a nationally recognized overnight delivery service.

**20. Miscellaneous.**

This Agreement will be governed and construed in accordance with the laws of the State of New York without giving effect to conflict of laws principles. Both parties consent to the exclusive jurisdiction of the state and federal courts located in New York County, New York in connection with any proceeding arising out of or relating to this Agreement, any IO or the transactions contemplated hereby or thereby. If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force and effect as though the invalid or unenforceable provision(s) had not been included herein. Advertiser may not assign this Agreement without the prior written consent of Company. The parties’ rights and obligations will bind and inure to the benefit of their respective successors, heirs, executors and joint administrators and permitted assigns. The parties hereto are independent contractors,

and no agency, partnership, joint venture or employee-employer relationship is intended or created by this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same instrument. This Agreement may be executed and delivered by facsimile, and the parties agree that such facsimile execution and delivery will have the same force and effect as delivery of an original document with original signatures. This Agreement will become binding only when counterparts hereto have been executed and delivered by both parties. All headings and captions are inserted for convenience of reference only and will not affect the meaning or interpretation of any provision in this Agreement. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party. Each party participated in the preparation of this Agreement. The parties stipulate, therefore, that the rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement to favor either party against the other.

**The undersigned parties through their respective authorized representatives agree that these terms and conditions shall govern the Agreement.**

|  |  |
| --- | --- |
| **SECCO SQUARED, LLC** | **${company\_name}** |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:  Title:  Date: | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:  Title:  Date: |