

Zucks Advertising Service Terms & Conditions (for Advertisers)

BEFORE YOU USE ZUCKS' SERVICES, CAREFULLY READ THE TERMS OF THIS AGREEMENT. BY EXECUTING AN INSERTION ORDER OR OTHER FORM THAT REFERENCES THIS AGREEMENT ("INSERTION ORDER"), OR BY USING ZUCKS' SERVICES, YOU AGREE TO THE TERMS OF THIS AGREEMENT. YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND THE CLIENT OR OTHER LEGAL ENTITY ON WHOSE BEHALF YOU ARE ENTERING INTO THIS AGREEMENT TO THESE TERMS AND CONDITIONS. THE TERM "CLIENT" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE ZUCKS SERVICES. These Terms and Conditions, the applicable Insertion Order and the applicable selections made by Client in its initial or ongoing online configuration of its Zucks account ("Configuration") shall be collectively referred to as the "Agreement".

1. Grant of License

Client hereby grants to Zucks the worldwide, non-exclusive, royalty-free (except as otherwise expressly provided herein) right and license to use, copy, reproduce, distribute and display, in any medium now known or hereafter developed, the advertisements and all related materials and metadata submitted by Client to Zucks (collectively, the "Advertisements").

2. Advertisement Specifications; Implementation

Client agrees to deliver the Advertisements, implement conversion tracking, and measure the volume of Advertisements clicks and/or impressions, both in accordance with the technical specifications provided by Zucks to enable proper display of such Advertisements and tracking the results thereof in connection with the Zucks Advertising Service(s) ("Zucks Services"). Client will be solely responsible for any and all costs Client incurs for the production and delivery of the Advertisements in accordance with such specifications and for any programming related to the same which Client elects to undertake. Zucks shall not modify or alter the content, text or appearance of any Advertisement without Client's prior written consent. Client will be solely responsible for daily spends, budgeting and campaign delivery, and for avoidance of doubt, Zucks shall not be liable for overspends, if any. Client acknowledges that any daily spends or install targets are estimates and Zucks doesn't guarantee them. Client shall provide Advertisements with Zucks at least three (3) business days before the advertising campaign starts in the agreed format and medium. Zucks has the sole discretion when Advertisements are published during the advertising campaign period specified in Insertion Order. Client will inform Zucks at least ten working days in advance of any planned changes to the Client Site that might affect the performance of any part of Zucks' obligations hereunder.

3. Service Circumvention; Notification

Client acknowledges the value of obtaining access to the applications, webpages, mobile media and other advertising inventory of publishers that work with Zucks, and agrees not to transact or seek to transact with such inventory directly by circumventing or bypassing the Zucks Service or in any other way during the term of this Agreement and for six months thereafter. Unless Zucks approves specifically in writing, Client may only use the Zucks Services (including any SDK) as provided by Zucks, without modification. Without limiting the generality of the foregoing, Client shall not seek or set up a direct linking or other arrangement whereby the Zucks Service or parts thereof is circumvented and Zucks is unable to fully track and monitor the clicks, impressions, conversions and other events that are the basis for the fee payable to Zucks. Client shall not otherwise interfere with or manipulate in any way Zucks' tracking and/or payment calculation processes or the Zucks Service generally. For all pay-per-install campaigns Client must provide to Zucks a notification each and every time the relevant mobile application is run.

4. Restrictions

Client acknowledges that Zucks does not provide the Zucks Services for Advertisements with any entities that run, provide, enable or promote, for themselves or for others, services similar to any Zucks services. Client represents, covenants and warrants that it is not and shall not be such an entity during the term of this Agreement.

5. Terms of Payment

Client is responsible for payment to Zucks for (i) all conversions generated during each advertising campaign and for a period of seventy-two (72) hours following the conclusion of such advertising campaign using the Zucks Services whether or not Client has properly reported such transactions to Zucks, and (ii) all clicks and/or impressions generated during each calendar month. Zucks shall issue an invoice in three (3) business days after the end of each calendar month. Client shall pay Zucks the fees as calculated by Zucks' system and based solely on the measurement by Zucks. Unless specified in each Insertion Order, Client shall pay the invoiced amount within thirty (30) days of invoiced date. Client may object for a period of seventy-two (72) hours following the receipt of measurement report by Zucks. Payment of the invoiced amount constitutes the acceptance of the invoice and shall not be revocable. Zucks may request Client to make a prepayment. To the extent that Client makes a prepayment for any advertising campaign, such prepaid balances are non-refundable and will be reduced to offset fees when they are incurred. All the term in the Agreement are based on Coordinated Universal Time. All the fees and payment are calculated in United States Dollars ("US Dollars") and do not include taxes. If withholding tax or any other kinds of taxes are imposed on the transactions pursuant to this Agreement, Client shall pay such taxes to ensure that Zucks receives the full amount invoiced to Client without offset or deduction. Remittance fee shall also be burdened by Client. Client shall promptly furnish to Zucks the applicable receipts and/or certificates of remittances. Without prejudice to any other rights and remedies of Zucks, Client shall pay to Zucks interest on the amount of overdue payment outstanding from the due date at the rate of fourteen per cent (14%) per annum until the payment is made.

6. Content

Zucks will not be responsible for any content with which the Advertisements may be associated through the Client's web site, and has no obligation to monitor such third-party content or web site. Client is solely responsible (and assumes all liability and risk) for determining whether or not such content is appropriate or acceptable. Notwithstanding the foregoing, Zucks reserves the right at all times, at its discretion and without notice, to remove or refuse to distribute any content or Advertisements on or distributed through the Zucks Services. Zucks also reserves the right to access, read, preserve and disclose any information as it reasonably believes is necessary to (a) satisfy any applicable law, regulation, legal process or governmental request; (b) enforce this Agreement, including investigation of potential violations hereof; (c) detect, prevent, or otherwise address fraud, security, or technical issues; (d) respond to user support requests; or (e) protect the rights, property or safety of Zucks, its users and the public. Notwithstanding the foregoing, if such information constitutes Confidential Information (as defined in Section 13) of the Client, the provisions of Section 13 shall control over the foregoing provisions.

7. Compliance with Laws

Client agrees that it will use the Zucks Services and provide Advertisements in compliance with all applicable local, state, national and international laws, rules and regulations, including any laws regarding the transmission of technical data exported from Client's country of residence. Client will not, will not agree to, and will not authorize or encourage any third party to: (a) use the Zucks Service to transmit or otherwise distribute any Advertisement or content that is unlawful, defamatory, libelous, harassing, abusive, fraudulent or obscene, that contains viruses, or is otherwise objectionable, as reasonably determined by Zucks; (b) interfere or attempt to interfere with the proper working of the Zucks Service or prevent others from using the Zucks Service; or (c) use the Zucks Service for any fraudulent or unlawful purpose. Violation of any of the foregoing may

result in immediate termination of this Agreement, at Zucks's sole discretion, and may subject Client to state and federal penalties and other legal consequences. Zucks reserves the right, but will have no obligation, to review Client's Advertisements and use of the Zucks Service in order to determine whether a violation of this Agreement has occurred or to comply with any applicable law, regulation, legal process, or governmental request.

8. Representations and Warranties

Without limiting any other representation, warranty or covenant of either party herein, each party hereby represents and warrants to the other that: (a) it has the full right, power and authority to enter into this Agreement; (b) this Agreement is a valid and binding obligation of such party; and (c) it has obtained and shall maintain throughout the term of this Agreement all necessary licenses, authorizations, approvals and consents to enter into and perform its obligations hereunder in compliance with all applicable laws, rules and regulations. Without limiting any other representation, warranty or covenant of the Client herein, Client hereby represents and warrants to Zucks that (i) it has the right to grant to Zucks the rights granted herein and that none of the Advertisements provided by Client hereunder contain any material that infringes upon any third-party right, including rights arising from contracts between Client and third parties, copyright, trademark, class action, patent, consumer protection laws, trade secret, moral rights, privacy rights, rights of publicity, or any other intellectual property or proprietary right, or which slanders, defames, libels, or invades the right of privacy, publicity, or other property rights of any person; (ii) none of the Advertisements provided by Client hereunder contain any viruses, Trojan horses, trap doors, back doors, Easter eggs, worms, time bombs, cancelbots, or other computer programming routines that may potentially damage or interfere with the Zucks Service, or intercept or expropriate any system data or personal information from the Zucks Service; and (iii) any Advertisements directed to children will comply with the guidelines of the Children's Advertising Review Unit.

9. Indemnification

Each party agrees to indemnify and hold the other and its affiliates harmless from and against any losses, costs, liabilities and expenses, including reasonable attorneys' fees, arising out of any breach of the representations or warranties made by such party herein. The indemnifying party reserves the right, at its expense, to assume the exclusive defense and control of any matter for which it is required to indemnify the indemnified party and the indemnified party agrees to cooperate with the indemnifying party's defense of such claims. The indemnifying party agrees not to enter into any settlement of any claim without the prior consent of the indemnified party, such consent not to be unreasonably withheld or conditioned.

10. Disclaimers; No Warranties

EXCEPT AS EXPRESSLY SET FORTH HEREIN, ZUCKS MAKES NO WARRANTY, OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, OR ARISING BY STATUTE, CUSTOM, COURSE OF DEALING OR TRADE USAGE, WITH RESPECT TO ANY MATTER, INCLUDING ADVERTISING, THE ZUCKS SERVICES, OTHER SERVICES, AND EXPRESSLY DISCLAIMS THE WARRANTIES OR CONDITIONS OF NONINFRINGEMENT, TITLE, MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, OR THAT THE ZUCKS SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. FURTHER, ZUCKS MAKES NO GUARANTEE REGARDING THE VOLUME OR TIMING OF ACTIONS IN CONNECTION WITH THE ZUCKS SERVICES. ZUCKS DOES NOT WARRANT THE RESULTS OF USE OF THE ZUCKS SERVICES, INCLUDING THE RESULTS OF ANY ADVERTISING CAMPAIGN, AND CLIENT ASSUMES ALL RISK AND RESPONSIBILITY WITH RESPECT THERETO. Without limiting the generality of the foregoing, Zucks disclaims all guarantees regarding positioning, ranking, ratings or the levels or timing of: (i) Advertisements' delivery on specific publishers inventory, or (ii) clicks, conversion rates, impressions, or other user actions. Client acknowledges that the Zucks Services are based on an auction model and that volumes and revenue vary based on price, conversion rates and other factors that may not be within Zucks' control. Client

acknowledges that, unless otherwise agreed in writing, Client receives and shall use without modification the standard Zucks Services, and any special placement and promotion in the Zucks network shall be, as between the parties, at Zucks' discretion.

11. Limitation of Liability and Damages

UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE, WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOST PROFITS, DATA OR BUSINESS, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR EXEMPLARY DAMAGES THAT RESULT FROM THIS AGREEMENT, EVEN IF SUCH PARTY OR A SUCH PARTY'S AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT IN THE CASE OF BREACHES OF CONFIDENTIALITY PURSUANT TO SECTION 13, AND EXCEPT FOR AMOUNTS EXPRESSLY DUE AND OWING HEREUNDER, IN NO EVENT WILL ZUCKS'S OR ITS AFFILIATES' TOTAL LIABILITY TO CLIENT OR ANY OTHER PARTY FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE, WARRANTY, INDEMNIFICATION OR OTHERWISE) EXCEED THE LESSER OF THE AMOUNT RECEIVED BY ZUCKS FROM CLIENT FOR THE ORDER TO WHICH THE CLAIM RELATES OR FIVE THOUSAND US DOLLARS (USD 5,000.00). CLIENT SHALL NOT COMMENCE ANY ACTION, SUIT OR PROCEEDING AGAINST ZUCKS MORE THAN ONE (1) YEAR AFTER THE DATE UPON WHICH THE CLAIM AROSE.

12. Ownership

As between the parties, Zucks will own and retain all rights, title, and interest in and to the Zucks Services, including all software and data related thereto. Client acknowledges that the software and data related to the Zucks Services (including any usage data or compilations thereof but expressly not including any customer information submitted to Client through the Zucks Services) are copyrighted by Zucks and may contain trade secrets or other intellectual property owned by Zucks. Client agrees not to copy, alter, modify, or create derivative works of the Zucks Service or otherwise use the Zucks Service in any way that violates the use restrictions contained in this Agreement. Zucks does not grant to Client any license, express or implied, to the intellectual property of Zucks or its licensors.

13. Confidentiality

"Confidential Information" shall mean (a) the Advertisements, prior to publication; (b) the existence or content of the Agreement; (c) any statistics or other data relating to the Zucks Services; and/or (d) any information designated in writing, or identified orally at time of disclosure, by the disclosing party as "confidential" or "proprietary". During the term of this Agreement, and for a period of two (2) years following termination, each party will keep confidential, neither party will use or disclose any Confidential Information of the other party, except as specifically contemplated herein. The foregoing restriction does not apply to information that: (a) has been independently developed by the receiving party without use of or access to the other party's Confidential Information and without any violation of any obligation of this Agreement; (b) has become publicly known through no breach of this Section 13 by the receiving party; (c) has been rightfully received from a third party authorized to make such disclosure; (d) has been approved for release in writing by the disclosing party; or (e) is required to be disclosed by a competent legal or governmental authority, provided that the receiving party gives the disclosing party prompt written notice of such requirement prior to disclosure and assists in obtaining an order to protect the information from public disclosure. Any and all device ID information provided by Client collected from its users constitutes Confidential Information of Client ("Client User Data"). Client represents that it has obtained and will maintain the rights and grants to Zucks such rights to use the Client User Data to perform the Zucks Services as set forth herein. Zucks agrees that Client Users Data will only be used in connection with the Zucks Services and for conversion tracking purposes, and that Zucks will not sell or resyndicate any data derived from Client user Data, except that Zucks may use any Client

User Data that Zucks collects or has access to solely in aggregate non-personally identifiable form to diagnose problems with and improve the Zucks Services. Client will use identifiers for serving advertisements (Identification For Advertisers (IDFA), Google Advertising ID) provided by Zucks only for the purpose of conversion tracking.

14. Term and Termination

This Agreement shall be effective on the day Zucks accepts the application of Client and shall have an initial term of one year. Thereafter, this Agreement shall automatically renew for additional one-year terms unless either Party provides the other Party with written notice of termination no less than ninety (90) days prior to the expiration of the then-current term; provided, however, this Agreement shall continue to remain in effect with respect to any application form of an advertising campaign until such application form of an advertising campaign is itself terminated or performance thereunder is completed. In the event of a material breach by either party, the non-breaching party may terminate this Agreement immediately upon written notice without liability to the other party. In the event of any termination, Client will remain liable for any amount due under the Agreement through the effective date of termination and such obligation to pay shall survive any termination of this Agreement. Upon termination of this Agreement, the Client shall pay Zucks any and all amounts immediately. Notwithstanding the foregoing, provisions of Section 9 (Indemnification), Section 10 (Disclaimers; No Warranties), Section 11 (Limitation of Liability and Damages), Section 14 (Term and Termination), Section 15 (Miscellaneous) and any payment obligations of a party that accrue prior to the effective date of termination or expiration of this Agreement shall survive termination or expiration of this Agreement for any reason.

15. Miscellaneous

The words "include" and "including" and variations thereof will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words "without limitation". This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by the Client without the prior written consent of Zucks, provided, however, that the Client may assign the Agreement without such consent to any entity who is not a competitor of Zucks in connection with any merger, consolidation, any sale of all or substantially all of its assets or any other transaction in which more than fifty percent (50%) of its voting securities are transferred. Zucks may freely transfer or assign any or all of its rights and obligations associated with this Agreement at any time. Zucks and Client are independent contractors, and neither Zucks nor Client is an agent, representative or partner of the other. This Agreement sets forth the entire agreement between Zucks and Client, and supersedes any and all prior agreements (whether written or oral) with respect to the subject matter set forth herein and through Configuration. Any dispute hereunder will be negotiated in good faith between the parties within ten (10) business days commencing upon written notice from one party to the other, failing which either party may exercise any remedies which it may have at law or in equity. This Agreement shall be governed by and construed in accordance with the laws of Japan, without giving effect to principles of conflicts of law. Client agrees that any action at law or in equity arising out of or relating to this Agreement will be filed only in the Tokyo District Court of Japan and Client hereby consents and submits to the personal and exclusive jurisdiction of such courts for the purposes of litigating any such action. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party. If any provision contained in this Agreement is determined to be invalid, illegal, or unenforceable in any respect under any applicable law, then such provision will be severed and replaced with a new provision that most closely reflects the original intention of the parties, and the remaining provisions of this Agreement will remain in full force and effect. Neither party shall be responsible for failure to perform hereunder due to a cause beyond its reasonable control, including, without limitation, terrorism, fire, civil disturbance, war, rebellion, earthquake, flood and similar occurrences, provided that performance shall resume as soon as possible after the cause no longer prevents performance.

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