



Zucks Affiliate Advertising Service Terms and Conditions [for Publisher]

These Zucks Affiliate Advertising Service Terms and Conditions for Publisher shall be applied to the service provided by Zucks, Inc. (“Zucks”), a Japanese corporation with its principal place of business at Shibuya First Place 8F, Shinsen-cho 8-16, Shibuya, Tokyo.

1. Definitions

“Advertiser” means the advertiser for which Zucks functions as the agent under this Agreement.

“Publisher’s Site” means the media Publisher provides, on which advertisements are displayed.

“This Agreement” means the advertising services agreement between Zucks and Publisher that consists of these terms and conditions.

“This Service” means the advertisement delivery service Zucks provides.

2. Conclusion of this Agreement

- (1) Publisher shall submit Zucks the application form with necessary information to use this Service. This Agreement is concluded when Zucks accepts the application. Zucks will register accepted Publisher on its system.
- (2) Zucks may refuse to accept the application, without duty of explanation, when
 - (i) Publisher is under twenty (20) years old (in case the applicant is a natural person),
 - (ii) Publisher is already concluded the agreement with Zucks,
 - (iii) Publisher was terminated the agreement because of the breach of the agreement,
 - (iv) application form includes the false information, or
 - (v) Zucks considers it isn’t appropriate to enter the contractual relationship with such Publisher.

3. Publisher’s Information; Earlier Termination by Publisher

- (1) Publisher shall notice Zucks when any information registered on the system is changed.
- (2) Publisher may terminate this Agreement with the prior notice to Zucks; however, Zucks reserves the right to confirm the identification of such Publisher.

4. Earlier Termination by Zucks

- (1) Without prejudice to the any other rights or remedies, Zucks may terminate the agreement, without prior notice to Publisher nor duty of explanation, if
 - (i) Publisher breaches the material term or obligation of this Agreement,
 - (ii) Publisher files or is filed a petition in bankruptcy,
 - (iii) Publisher becomes insolvent, bankrupt, or makes a general assignment for the benefit of creditors, or goes into liquidation,
 - (iv) Publisher ceases or threatens to cease to carry on business or transfers the whole or any substantial part of its undertaking or assets, or
 - (v) massive or continuous fraudulence occurs on Publisher’s Site.
- (2) Zucks may terminate this Agreement with one (1) month’s prior notice to Publisher.

5. Additional Conditions

Zucks may designate additional conditions for using this Service. Publisher agrees to incorporate such conditions into the agreement.

6. Unit Price

Unit price for each advertisement delivery shall be solely decided by Zucks.

7. Payments

- (1) Zucks will pay the fees to Publisher for each qualified action (“Conversion”). Conversion is occurred when a user’s action leads directly to a valuable action specified by Advertiser. Notice of Conversion shall include the necessary information that Zucks designates separately. Only Conversions by natural persons are the subject of this Agreement and those by computer generated users such as robots, spiders, computer scripts, or other automated, artificial, deceptive or fraudulent methods are not eligible for calculating the fees. Zucks has the sole discretion to decide whether certain Conversions are fraudulent, incomplete, unqualified or not.
- (2) Zucks will pay the fees calculated by the measurement of Zucks within sixty (60) days after the end of each calendar month. Zucks has the right to reserve the payment to Publisher until Zucks receives the campaign fees from the Advertiser.
- (3) All the fees and payments are calculated in United States Dollar (“US Dollar”) and do not include taxes. Zucks will bear the remittance charge. Zucks may reserve the payment until the amount exceeds three hundred (300) US Dollars, but the reservation doesn’t beyond twelve (12) months.

8. User Information

Publisher shall send the information designated by Zucks, with encryption, in order to measure the Conversion.

9. ID and Password

Publisher shall deal with the ID and password for using this Service with due care of a prudent manager. In case the ID or password is abused which causes damages, Publisher shall be liable for the damages that result from the abuse.

10. Prohibited Activities

Following activities are prohibited;

- (i) use of automated tools, including but not limited to traffic exchanging, lead mails, or autosurf,
- (ii) closure or substaitive modification of Publisher’s Site,
- (iii) removal or alteration of html codes generated or executed through this Service,
- (iv) any activities that disturb the operations of this Service,
- (v) other activities that Zucks reasonably considers inappropriate for this Service.

11. Site Criteria

Publisher ensures that all materials posted on or included in Publisher’s Site;

- (i) are not illegal,
- (ii) do not infringe the intellectual property rights or other rights of any third party,
- (iii) are not harmful, threatening, offensive, defamatory, obscene, sexually explicit, harassing, promoting violence or discrimination (based on sex, religion, race, ethnicity, nationality, disability or age), promoting illegal activities (such as gambling), containing profanity, and
- (iv) are not considered to be objectionable by Zucks.

12. Antisocial Forces

Either party declares and warrants that

- (i) all of its executives and employees have no relationship with antisocial forces,
- (ii) it never trade with antisocial forces, or

(iii) it never give benefit to or accept undue demand from antisocial forces.

In this Agreement, “antisocial forces” means the groups or individuals that pursue economic benefit by making use of violence, force, or other fraudulent means which includes but not limited to gang groups, Yakuza, and Mafia.

13. Notice

Unless otherwise specified in these terms and conditions, notices shall be made by the methods Zucks designates. Notices by other methods shall not considered to the proper communication.

14. Intellectual Property Rights

- (1) Any rights of patent, trademark, industrial design, copyright, trade secret, or any other intellectual property rights (collectively “intellectual property rights”) on any documents, images, and computer programs belong to Zucks or its licensors. Notwithstanding the foregoing, copyright rights on advertisements belong to Advertiser or their rightholders.
- (2) In case any dispute arises in connection with intellectual property rights (excluding the disputes relating to Zucks’ or Advertiser’s intellectual property rights), Publisher shall hold Zucks and Advertiser harmless from and against any losses, costs, liabilities and expenses and settle such disputes at its own costs and expenses.

15. Indemnification

Each party agrees to indemnify and hold the other 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.

16. Disclaimers; No Warranty

EXCEPT AS EXPRESSLY SET FORTH HEREIN, ZUCKS MAKES NO WARRANTY, OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, OR ARISING BY STATUE, 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 THIS SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE. FURTHER, ZUCKS MAKES NO GUARANTEE REGARDING THE VOLUME OR TIMING OF ACTIONS IN CONNECTION WITH THIS SERVICE. ZUCKS DOES NOT WARRANT THE RESULTS OF USE OF THIS SERVICE, INCLUDING THE RESULTS OF ANY ADVERTISEMENTS DELIVERY, AND PUBLISHER ASSUMES ALL RISK AND RESPONSIBILITY WITH RESPECT THERETO.

17. Limitations of Damages

UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE, WILL EITHER PARTY 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 19, AND EXCEPT FOR AMOUNTS EXPRESSLY DUE AND OWING HEREUNDER, IN NO EVENT WILL ZUCKS' TOTAL LIABILITY TO PUBLISHER 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 PUBLISHER FROM ZUCKS IN THE PREVIOUS MONTH OR FIVE THOUSAND (5,000) US DOLLARS. PUBLISHER SHALL NOT COMMENCE ANY ACTION, SUIT OR PROCEEDING AGAINST ZUCKS MORE THAN ONE (1) YEAR AFTER THE DATE UPON WHICH THE CLAIM AROSE.

18. Term and Termination

This Agreement shall enter into force on the date Zucks accepts your application and, unless earlier terminated, remain in force for a period of one (1) year, and shall be automatically renewed and continue on a year to year basis unless either party notices not to renew at least one (1) month before the expiration of the original or any subsequent term of this Agreement.

19. Confidential Information

- (1) "Confidential Information" shall mean (i) the advertisements before publication, (ii) the existence or content of this Agreement, (iii) any statistics or other data relating to this Service, and (iv) any information designated in writing, or identified orally at time of disclosure, by the disclosing party as "confidential" or "proprietary".
- (2) During the term of this Agreement, and for a period of two (3) years following termination, each party shall keep confidentiality of Confidential Information and neither party is permitted to use or disclose any Confidential Information of the other party, unless stipulated differently. The foregoing restriction does not apply to information that (i) 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, (ii) has become public without breach of the obligation under this Section by the receiving party, (iii) has been rightfully received from a third party which is authorized to disclose, (iv) has been approved for release in writing by the disclosing party, or (v) is ordered or 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.
- (3) Any and all information on user device provided by Publisher collected from its users constitutes Confidential Information of Publisher ("Publisher User Data"). Publisher represents that it has obtained and will maintain the rights and grants to Zucks such rights to use the Publisher User Data to perform this Service as set forth herein. Zucks agrees that Publisher Users Data will only be used in connection with this Service and for conversion tracking purposes, and that Zucks will not sell any data derived from Publisher user Data, except that Zucks may use any Publisher User Data that Zucks collects or has access to solely in aggregate non-personally identifiable form to diagnose problems with and improve this Service.

20. Personal Information

Zucks may collect personal information when registering Publisher or providing this Service. Zucks deals with the personal information in accordance with its privacy policy (available at <http://zucks.co.jp/en/privacy/>), which is abide by applicable laws.

21. Amendment

- (1) Zucks reserves the right to change or modify the Service or the terms and conditions in this Agreement from time to time without prior notice to Publisher. Zucks will notice the amendments by the methods Zucks designates.
- (2) If Publisher continues to use the Service, Publisher shall be considered to accept the amendments.

22. No Assignment

This Agreement, or any of the rights and obligations created herein, shall not be assigned, sublicensed or transferred, in whole or in part, by Publisher without the prior written consent of Zucks.

23. Dispute Settlement; Jurisdiction; Governing Law

- (1) Any dispute hereunder shall 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.
- (2) Any claims, legal proceedings, or litigation arising in connection with this Agreement will be brought solely in the Tokyo District Court in Japan.
- (3) This Agreement shall be governed by and construed in accordance with the laws of Japan. Any dispute arising out of or relating to this Agreement shall be governed by the laws of Japan without referring to the choice of law rules.

24. Entire Agreement

This Agreement sets forth the entire agreements of the parties relating to the subject matter hereof except as otherwise set forth herein.

25. No Waiver

The waiver by either party, whether express or implied, of any provisions of this Agreement, or of any breach or default of either party, shall not be construed to be a continuing waiver of such provision, or of any succeeding breach or default or a waiver of any other provisions of this Agreement.

26. Severability

If a court of competent jurisdiction holds that any provision of this Agreement is illegal, invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect, and the parties will replace the invalid or unenforceable provision with a valid and enforceable provision that achieves the original intention of the parties.

27. Survival

Sections 14 to 17, 20, and 22 to 27 will survive the termination or expiration of this Agreement, and Section 19 will survive for 3 years after the termination or expiration of this Agreement.

Revision History:
Released on July 29, 2014