



Zumby.IO  
Terms of Service

YOUR ACCESS AND USE OF ZUMBY.IO (THE “SERVICE”) IS SUBJECT TO YOUR COMPLIANCE WITH: (1) THIS AGREEMENT, (2) THIRD PARTY AGREEMENTS TO WHICH YOU ARE SUBJECT AND (3) ALL APPLICABLE LAWS, RULES AND REGULATIONS.

BY CLICKING “I AGREE” BELOW YOU ACKNOWLEDGE AND AGREE THAT YOU HAVE READ AND ACCEPT THIS AGREEMENT. IF YOU DO NOT AGREE WITH ALL OF THIS AGREEMENT, DO NOT CLICK “I AGREE” AND YOU MAY NOT USE ANY PORTION OF THE SERVICE.

WE RESERVE THE RIGHT TO UPDATE OR CHANGE THIS AGREEMENT AT ANY TIME BY POSTING SUCH CHANGES ON THE SERVICE. YOUR CONTINUED USE OF THE SERVICE AFTER WE POST ANY CHANGES SIGNIFIES YOUR AGREEMENT TO ANY SUCH CHANGES. IF YOU DO NOT AGREE TO THESE CHANGES, YOU MUST STOP USING OR ACCESSING THE SERVICE.

UNDER THIS AGREEMENT, YOU ARE AGREEING TO ACT AS A SOCIAL INFLUENCER ON BEHALF OF THE COMPANY AND ITS MEDIA PUBLISHER CLIENTS.

Section 1. Overview:

(a) The Service. The Company in its sole discretion may provide you with online access to the Service as further described in this Agreement for the purposes contemplated herein. The Service enables you to serve as a social influencer on behalf of the Company’s publisher clients who utilize the Service. You will receive an online account through which you can serve as an influencer for the Company’s publisher clients. By participating as an influencer, you may post and comment on content from the publisher client’s websites or digital properties and drive Internet traffic to such websites or digital properties.

(b) Grant of Rights. You hereby agree that the Company shall own all of your work product in connection with this Agreement as a “work for hire” under applicable copyright and other laws. To the extent that any of your work product does not constitute a work for hire, then you hereby irrevocably assign, transfer, convey and otherwise transfer all of your rights in and to such work product to the Company. The foregoing applies to any media, format or technology, whether now known or hereafter discovered, and in any manner. You further agree and grant to the Company the right to use your name/likeness/social media handle or channel/blog name and any other personal attributes in any manner that the Company determines supports the work product, including use in any media, whether now known or hereafter discovered, and in any manner that accepts advertising or promotional content or communications (such as, but not limited to, digital, print, television or radio).

Section 2. Permitted Use of the Service: You may use the Service solely for you own use (and not resell, license, sub-license or otherwise use it in a commercial manner) and in strict compliance with this Agreement. The Company reserves the right to deny you from using the Service in whole or in part.

Section 3. Registration: In order to use the Service, you must register with the Service and agree to the terms hereof. All information that you provide must be truthful, and you may not use any aliases or other means to mask your true identity. You may not share your account information or log-in user name or password with any other party. You are solely responsible for the security of your account and will be solely liable for any use or unauthorized use of the Service under such account. All activity under your

user name and password shall be deemed conducted by you. If you suspect any unauthorized use of your user name and password, you must notify the Company of such activity immediately.

#### Section 4. Fees and Payouts:

(a) In full consideration of your performance under this Agreement and the rights granted herein, you shall be paid by the Company in an amount set forth on the Services relating to the promotion of any publisher client. The Company shall have no obligation to reimburse you for any costs and you shall bear all costs associated with your performance hereunder. You are acting as a consultant and will supply your own tools, resources, and equipment. The agreed upon compensation represents your entire compensation payable to you in connection with this Agreement and the Company has no other obligation to you for any other compensation to or expenses or costs in connection with your services under this Agreement. You acknowledge and agree that the Company shall only have payment obligations to you to the extent the Company has received the applicable amounts from the applicable publisher client.

(b) You agree that the Company has not guaranteed to you any specific amount of work or payments, and at any time your participation in the Services may be terminated in whole or in part.

(c) The Company shall pay to you any applicable amounts due to you within thirty days following the end of each calendar month in which any payments have been received by the Company with regard to your work product from the publisher client, provided that the amount payable to you is at least \$100; otherwise the Company may retain any such payments until such amount payable exceeds \$100. You must have a current W-9 on file with the Company before payouts will be made. You will need to create and maintain appropriate payment information with the Company. The Company in its sole discretion may discount, adjust or otherwise compromise any amounts payable to it by publisher clients and you shall be entitled to your payment from such adjusted amount. You shall have no claim against the Company with regard to such adjustments or compromise.

(d) The Company may change the fee structure or minimum fee at any time by providing you thirty (30) days prior written notice, provided that, you may terminate this Agreement without liability during such notice period or later if you do not accept such changes. Use of the Service after the expiration of the thirty (30) day notice period shall be deemed acceptance of the revised fee terms.

(e) Taxes. You are responsible for all taxes as a result of your services in connection with this Agreement and the Services, excluding taxes based upon Company's net income.

Section 5. Acceptable Use Policy: You shall comply with the terms of the Acceptable Use Policy ("AUP"), set forth on Exhibit 1 and the Company's Terms of Use and Privacy Policy displayed on its website from time to time. The Company may update such policies at any time upon written notice to you. If you become aware of any violation of the AUP by any user, you must immediately contact the Company at [            ].

#### Section 6. Representations and Warranties:

(a) You represent and warrant that: (i) you have the full right, power and authority to enter into this Agreement, grant the rights granted herein, and fully perform your obligations hereunder without violating the rights of any third party; (ii) your work product is wholly original, and the Company's use of such work product will not infringe any patents, copyrights, trademarks, trade secrets or other intellectual property rights or violate the right of privacy, publicity or other rights of any third party, nor has any claim of such infringement or violation been threatened or asserted against you and you have not previously assigned, or pledged any work product; (iii) you will comply with any Internet or digital

platforms' terms of use and policies in connection with your services hereunder; (iv) you will not commit any act which brings the Company or any publisher client into public disrepute, contempt, scandal, or ridicule, or which insults or offends the general community to which publisher client's content is directed, or which might tend to injure the success of the publisher client or its products or services; and (v) you will not violate any applicable federal, state and local laws and regulations in providing the work product and services hereunder, including, without limitation, any applicable, sweepstakes, contest or promotion laws or the Federal Trade Commission's "Guides Concerning the Use of Endorsements and Testimonials".

(b) You may not transmit any unsolicited messages (whether through email, SMS, social media or any other electronic medium) to any recipient from whom you have not received prior demonstrable consent or in a manner that violates any law or obligation regarding the transmission of email messages. Further, you shall ensure compliance with the Can Spam Act of 2003. In addition, you may not use or develop any automated process to transmit messages through use of the Service.

#### Section 7. Unauthorized Use of the Service:

(a) Access. Except as authorized by the Company, you may not use spiders, robots, data mining techniques or other automated devices or programs to catalog, download or otherwise reproduce, store or distribute content available on the Service. Further, you may not use any such automated means to manipulate the Service or attempt to exceed the limited authorization and access granted to you under this Agreement. You may not resell use of, or access to, the Service to any third party or otherwise try to reverse engineer, disassemble or otherwise try to obtain the underlying source code from the Service.

(b) Initiating Offline Connections. You may not use the Service to initiate business transactions with our publisher clients or the Company that take place anywhere except for through the Service.

#### Section 8. Term and Termination:

(a) Term. This Agreement shall have an initial term of one (1) year and shall automatically renew for additional one (1) year terms thereafter, unless either party provides thirty (30) days prior written notice of its intention not to renew the Agreement.

(b) Termination for breach. Either party may terminate this Agreement upon ten (10) days prior written notice if the other party breaches this Agreement and does not cure such breach within such time period. In addition to any right or remedy that may be available to the Company under this Agreement or applicable law, In addition, in the event that you breach this Agreement, the Company may (i) immediately suspend, limit or terminate your account and/or (ii) instruct you to cease all promotional activities or make clarifying statements, and you shall immediately comply.

(c) Termination without cause. Either party may terminate this Agreement at any time without cause upon sixty (60) days prior written notice to the other party.

(d) Termination for inactivity. If your account is dormant for twelve consecutive months the Company may terminate it.

Section 9. Effect of Termination: Upon termination of your account for any reason, you must cease using the Service. The provisions of the following sections shall survive the termination of this Agreement: Unauthorized Use of the Service; Proprietary Rights; Limitations of Liability; Indemnification; Governing Law; Confidentiality; Severability; Waiver – Remedies; and Assignment.

Section 10. Content Origination: The Company is not responsible for the content provided by publisher clients or other web sites or services.

Section 11. Proprietary Rights: The Company is the exclusive owner or authorized licensor of the Company web site and the Service, including all copy, software, graphics, designs and all copyrights, trademarks and other intellectual property or proprietary rights contained therein. Except as set forth herein, you agree not to copy, distribute, modify or make derivative works of any materials without the prior written consent of the owner of such materials. The Service may not be reverse engineered, decompiled or modified, nor may derivative works be created based on the Service, by you, without the prior written consent of the Company. All rights not granted under this Agreement are reserved by the Company.

Section 12. Service Warranty: The Company does not and cannot guaranty that the operation of the Service will be completely uninterrupted, error free or that the Service and the information it stores will be entirely free from viruses, hackers, intrusions, unscheduled downtime or other failures. For any breach of the foregoing warranty, your exclusive remedy, and the Company's sole liability, is for you to cease using the Service and be paid all undisputed fees. You expressly assume the risk of such problems by using the Service. except as set forth herein, the Service, including all software, content, operations and materials, are provided "as is" and the Company makes no representations or warranties of any kind whatsoever for the operation of the service. further, the Company disclaims any express or implied warranties, including, without limitation, non-infringement, title, merchantability, fitness for a particular purpose and any warranties arising out of course of dealing, usage or trade.

Section 13. Limitations of Liability: excluding an obligation of indemnification or breach of confidentiality, (i) in no event will the Company be liable under any theory of tort, contract, strict liability or other legal or equitable theory for any lost profits, lost data, lost opportunities, costs of cover, exemplary, punitive, personal injury/wrongful death, special, incidental, indirect or other consequential damages, each of which is hereby excluded by agreement of the parties regardless of whether or not the Company has been advised of the possibility of such damages and (ii) in no event shall the Company's liability for any direct damages exceed the amounts actually paid under this agreement during the most recent six (6) months. You acknowledge that the Company has entered into this Agreement relying on the limitations of liability stated herein and that the Company would not offer you the Service without those limitations, which are an essential basis of the bargain.

Section 14. Indemnification: You agree to indemnify, defend and hold the Company and the Company's representatives and agents harmless from and against any and all third party claims, demands, liabilities, costs or expenses, including attorney's fees and costs, arising from, or related to, (i) your use of the Service, including but not limited to, fraudulent or deceptive acts or transactions through your use of the Service (except to the extent that the Company has breached this Agreement), (ii) your web sites, products or services, (iii) your breach of this Agreement and/or any of its representations and/or warranties contained herein, and/or (iv) a violation by you of the AUP or any applicable law, rule or regulation.

Section 15. Release: You hereby agree, for yourself, your heirs, executors and administrators, to release, waive, discharge, absolve, agree to hold harmless and covenant not to sue the Company from and against any and all claims, suits, actions, demands, liabilities and damages of any kind whatsoever arising out of or in connection with the use of the content from any publisher content, including, without limitation, any and all claims for copyright infringement, invasion of privacy, violation of the right of publicity or of moral rights, and/or defamation. Without limitation of the foregoing, in no event will you be entitled to, and you waive any right to, enjoin, restrain or interfere with use of your work product or the exploitation of any of publisher client's rights as provided herein.

Section 16. Relationship of Parties: Your relationship with the Company and publisher clients is that of an independent contractor, and nothing in this Agreement is intended to, or should be construed to, create a partnership, agency, joint venture or employment relationship. You will not be entitled to any of the benefits that the Company or any publisher client may make available to its employees. You are solely responsible for, and will file, on a timely basis, all tax returns and payments required to be filed with, or made to, any federal, state or local tax authority with respect to the performance of services and receipt of fees under this Agreement.

Section 17. Governing Law: The laws of the State of New York shall govern this Agreement. EACH PARTY HEREBY EXPRESSLY CONSENTS TO EXCLUSIVE JURISDICTION AND VENUE IN THE COURTS LOCATED IN NEW YORK COUNTY, NEW YORK FOR ALL MATTERS ARISING IN CONNECTION WITH THIS AGREEMENT. The prevailing party in any action herein shall be entitled to recover its reasonable attorney's fees and expenses.

Section 18. Confidentiality: Unless authorized by the Company, you agree to hold all Confidential Information in strict confidence, not to disclose Confidential Information to any third parties, and to use Confidential Information solely for the purpose of fulfilling its obligations under this Agreement. Confidential Information means any data or information, oral or written, disclosed by the Company that relates to the current, future, and proposed business activities, technology, developments, inventions, processes, trade secrets, know how, plans, financial information, forecasts, projections, products and services of the Company (including such information received from its publisher clients as well as the identity of publisher clients) and/or anything labeled Confidential Information by the Company. Notwithstanding the foregoing, Confidential Information is deemed not to include information that is publicly available or in the public domain at the time disclosed.

Section 19. Severability: If any part of this Agreement shall be held or declared invalid or unenforceable for any reason by any court of competent jurisdiction, such provision shall be ineffective but shall not affect any other part of this Agreement.

Section 20. Waiver – Remedies: The failure by either party to partially or fully exercise any rights or the waiver of any breach of this Agreement by the other party, shall not prevent a subsequent exercise of such right by such party or be deemed a waiver by such party of any subsequent breach by the other party of the same or any other term of this Agreement. Each party's rights and remedies under this Agreement shall be cumulative, and the exercise of any such right or remedy shall not limit its right to exercise any other right or remedy.

Section 21. Assignment: You may not assign this Agreement, or any rights or remedies hereunder, to any third party without the Company's prior written consent. This Agreement shall inure to the benefit of a party's permitted successors and assigns.

### **Exhibit 1 – Acceptable Use Policy**

You may not use the Service or include in the Services or your services under this Agreements any content which is reasonably objectionable or content which is illegal.

Solely by way of example, you may not:

generate, manipulate or otherwise produce or induce fraudulent clicks, impressions or transactions, including but not limited to using scripts, spyware, robots or other automated tools and/or computer generated requests;

violate the terms, conditions, policies or guidelines of any third party service or website;

act in any manner that violates applicable law, regulations or the Federal Trade Commission's "Guides Concerning the Use of Endorsements and Testimonials" or puts the Company or any of its publisher client of the Company in violation of the foregoing.

violate or infringe upon the intellectual property, personal or proprietary rights of any third party, including but not limited to, copyrights, trademarks, patents, trade secrets or confidentiality obligations; use anything threatening, libelous, defamatory, obscene, scandalous or inflammatory or that could otherwise violate any other applicable law;

use anything adult in nature (such as pornography), gambling related, or "get rich quick" schemes.

use or do anything which may be false, misleading or deceptive;

engage in any other illegal or fraudulent, misleading or deceptive business practice under the laws of any jurisdiction where Influencer is located or the content is displayed or any other conduct that the Company determines may otherwise result in legal liability.