

## TERMS AND CONDITIONS FOR INFLUENCER MARKETING SERVICES

### 1. Definitions and Interpretation

The following terms shall have the following meaning:

“**Brand**” means the party which may order Services from ZMS.

“**Brand Material**” means any content provided by Brand to ZMS for the fulfillment of the Services.

“**Brief**” means the document which gives general information about the Brand’s campaign plan, including the campaign story, mentions, etc.

“**Budget**” means the budget that the Brand has defined for each campaign and equals the sum of the Content Creator payout amount.

“**Channel**” means the relevant channel on which the Post Content shall be displayed (e.g. Blog, Instagram Profile, Facebook, etc.).

“**Contract**” has the meaning set out in Section 3.1.

“**Commission Fee**” means individually and collectively the General Commission Fee and the Differing Fee as defined in Section 3.1.

“**Confidential Information**” means all information disclosed by one Party to the other, irrespective in which form, which is either marked as confidential or reasonably to be considered confidential considering its nature and the circumstances of its disclosure. Confidential Information comprises any details about the Services not publicly known.

“**Content Creator**” means natural persons or agencies representing such persons who are users of social media and/or who run a blog or website and who have access to a large audience and can persuade others by their authenticity and reach.

“**Offer**” means the details of services to be rendered by as well as the payment due to Content Creator which have been finally negotiated between ZMS and the Content Creator and are based on the Brief.

“**Post**” means the display of the Post Content in the relevant Channel.

“**Post Content**” means the marketing material and artwork to be provided by Content Creator and hosted by Brand or Content Creator in connection with the Services in the relevant Channel.

“**Party**” / “**Parties**” refers to either ZMS or Brand or both.

“**Services**” or “**Influencer marketing services**” means the management and execution of Brand’s campaigns through collaborations with Content Creators as set out in the relevant Contract.

### 2. Subject Matter

**2.1.** Subject matter of these Terms and Conditions (“**T&C**”) is to provide a framework for the purchasing of Services by Brand from ZMS.

**2.2.** Obligations to provide specific Services (e. g. specific outputs) or details regarding remuneration for such are not established by these T&Cs itself, but only upon agreement on each single campaign through the relevant Contract.

### 3. Conclusion and Fulfillment of Contract

**3.1.** To conclude a Contract (as defined below) with ZMS,

(a) the Brand accepts the IO as further described in the FA, such IO is substantiated as further set out in paragraphs (b) to (d) below;

(b) the Brand fills out the Brief which shall contain, at a minimum but not limited to, information on the Brand, the (e.g. image) requirements, hashtags, mentions, campaign goals, campaign budget, usage rights and Start Date / End Date;

(c) ZMS offers the Services at a commission fee of 15% of the Budget (“**General Commission Fee**”). Should the Brand not be willing to pay the General Commission Fee, the Brand shall provide ZMS a proposed commission fee. In the event of agreement by Brand and ZMS on a commission fee differing from the General Commission Fee (“**Differing Fee**”), such Differing Fee shall apply for the respective Services;

(d) ZMS will provide Content Creator with the Offer, which Content Creator may accept or decline. In case of acceptance, Brief, Insertion Order, these T&Cs and the Framework Agreement will be considered an agreed single contract legally binding between Brand and ZMS (“**Contract**”).

**3.2.** The respective Contract is deemed to be fulfilled on the day the Post is published. The Brand will receive a URL/Link to the Post. The non-receipt of the URL/Link does not affect the fulfillment of the Contract.

**3.3.** For purpose of clarification, the Content Creator will not be part of the Contract concluded between ZMS and Brand. The obligations according to the Contract are solely between ZMS and Brand.

**4. Additional Services Provided by ZMS**

ZMS is responsible for providing ZMS's website (including its functionalities) Additionally, ZMS will also provide reports about the performance of Content Creators and the Services in the format and frequency as ZMS deems fit.

**5. Brand Material**

- 5.1.** Brand will be fully liable for Brand Material and the Brand Material shall be provided in a common format and be in line with current market standards. Brand Material will not be returned to Brand (independent of the format of the Brand Material).
- 5.2.** The Brand grants to ZMS a non-exclusive, transferable, fully paid-up, worldwide and unlimited right and license to use (including to copy, modify, translate, make available, assign and sublicense to its affiliates, Content Creators or subcontractors) Brand Material, solely as is reasonably necessary for ZMS to perform its obligations and exercise its rights relating to the performance of the relevant Contract.
- 5.3.** Brand shall not include or use any mechanism or functionality in connection with the Brand Material that tracks or collects information regarding users to whom the Post is displayed without ZMS's prior written approval.
- 5.4.** Brand ensures ("*stellt sicher*") that Brand Material (i) will not violate the trademark, trade names, copyright or other intellectual property or proprietary rights (including domain names) or any other rights (including the rights to privacy, confidentiality and publicity) of any third party ; (ii) the materials and the display of Brand Material as contemplated in the Contract will not be false or misleading and will not constitute an unfair competition practice or unfair commercial practice; (iii) Brand Material will comply with all applicable laws; (iv) Brand Material does not contain any material which is libelous, slanderous, fraudulent or defamatory; (v) Brand Material will not contain nor transmit any malware, viruses, worms, Trojan horses, adware, spyware, or other harmful code or programs; (vi) Brand Material will contain all legally required information, or (vii) Brand Material will contain all other necessary information which has to be given according to platform guidelines and/or regulations on which Brand elected to advertise (e.g. facebook, Pinterest, etc.).
- 5.5.** Brand shall indemnify and hold harmless ZMS against all claims made by third parties in connection with the Brand Material and compensate ZMS for all costs (including reasonable attorney's fees) and damages arising in connection with such claim or alleged claim.

**6. Post Content**

- 6.1.** ZMS is not obliged to and will not review the Post Content (including compliance with applicable law and platform guidelines and regulations). Without limitation to the foregoing, ZMS may, however, reject or at any time remove Post or any portion thereof if: (a) it is directed to do so by any law enforcement authority, court, government authority or industry organization; or (b) such Post, or any portion thereof (including the advertised product/service) violates any applicable law and/or platform guidelines and/or regulations.
- 6.2.** ZMS will not verify whether a Post Content is in line with the respective Contract and whether the Post Content is in accordance with Brand's internal rules on advertising. ZMS shall not be obliged to serve any Post to the extent this would lead to ZMS or a Content Creator being in breach of applicable law.
- 6.3.** ZMS grants to Brand the rights to the Post Content as set out in the respective Insertion Order and/or Brief.

**7. Remuneration and Invoicing**

- 7.1.** When ordering Services, Brand shall pay to ZMS the Commission Fee for the Services as set forth in the relevant Contract.
- 7.2.** Invoicing will be done by ZMS upon completion of the Services (e.g. day of the Post). Payments are due 14 days upon issuance of the relevant invoice by ZMS and shall be paid to the bank account set forth in the invoice.
- 7.3.** Brand shall raise any objections against an invoice within 14 days upon issuance of the same.
- 7.4.** Unless agreed otherwise, the prices do not include the applicable value-added tax. Unless agreed otherwise, the Brand is responsible for paying all taxes, customs and similar charges related to the Services, except for value-added taxes (VAT), sales taxes, transaction taxes or similar.

**8. Term and Termination**

- 8.1.** Any Contracts have the term as defined therein. If no term is defined, it ends automatically upon (i) 12

months after its conclusion, or (ii) after all Services specified in the Contract are delivered, or (iii) the End Date for all Services under the Contract is reached, whichever occurs later.

**8.2.** Rights of the Parties to terminate any Contract for cause remain unaffected. Good cause for ZMS shall be deemed to exist in particular:

(i) if the Brand fails to pay an outstanding invoice or a substantial portion thereof within 30 days after the invoice has been issued;

(ii) if Brand fails to provide Brand Material in full and in full compliance with the requirements set forth in the Contract (in particular pursuant to Section 5) in due time or as otherwise specified in the Contract.

## **9. Reference**

**9.1.** ZMS may use Brand's name, logo and trademarks on App.collabary.com and the ZMS website and social media channels as well as in ZMS's affiliates' websites and social media channels.

**9.2.** ZMS may also conduct case studies with specific Brands. However, such case studies may only be published with Brand prior consent.

## **10. Miscellaneous**

**10.1.** ZMS may, at its own discretion, choose to alter or amend the terms of these T&Cs (individually and collectively, the "**Modification**"). Such Modification become legally binding if

a) ZMS notifies Brand by email of the Modification and

b) Brand does not object to the Modification within two weeks after the notification.

**10.2.** The Modification becomes effective at the end of this objection period, if Brand has not objected. However, such Modification shall not affect any IO that has been fully processed at and/or the start date of which is prior to the effective date of the Modification.

**10.3.** In the event of ambiguities or contradictions among the provisions in the Insertion Order and the Brief, the provisions of the Brief shall prevail.