

Terms of Service

Current as at 30 March 2016

## **Welcome to Populr®**

Populr is owned and operated by Us&Co Talent Limited ("Populr", "we", "us" or "our"). We provide our services to you through our website [www.populr.co](http://www.populr.co) and through our related mobile applications and services as described below (collectively such services including any new features and applications, and the Site the "Services" subject to the following Terms of Service (as amended from time to time, the "Terms of Service").

By setting up your account you agree to be bound by the Terms of Service. We reserve the right, at our sole discretion, to change or modify portions of these Terms of Service at any time without further notice. You should periodically visit this page to review the current Terms of Service so you are aware of any revision to which you are bound. If we do this, we will post the changes to these Terms of Service on this page and will indicate at the top of this page the date these terms were last revised. Your continued use of the Services after any such changes constitutes your acceptance of the new Terms of Service.

## **Services description**

Populr is a platform that connects brands and influencers. It facilitates the marketing of products and services utilising the online reach and profile of a network of connected people. As each of these services differ per brief these Terms are divided into terms for Influencers, and terms for Brands. In many instances the terms are the same but there are significant differences and it is important you understand those terms that relate to you.

## **Terms of Service for Influencers**

By joining Populr you are agreeing to make yourself and your online profiles available for such marketing. We will create agreed campaign briefs for marketing products and services utilising your online profiles and platforms in any media worldwide (including but not limited to Facebook, Twitter, Instagram and Snapchat).

### **Consent**

The success of Populr depends on your credibility and independence being maintained at all times. We will always ask you whether you wish to participate in a campaign, and will not require you to do anything you do not want to do. If at any point you no longer wish to be involved then all you need do is notify us james@populr.co and we will remove your details from the Service. We agree that we do not acquire any rights to the content on your social media channels unless expressly agreed beforehand.

### **What we will do**

We will actively seek and accept campaign briefs for marketing activations utilising our networks of influencers from brands; if your profile is appropriate for a particular campaign we will submit the brief and the proposed fee for the activations for you. Unless you advise us by email to james@populr.co within 72 hours of receipt of the brief that you do not wish to participate we will then obtain approval from our clients to include you as one of the influencers for that campaign. Once that approval has been obtained we will supply you with the necessary creative to meet the brief along with advice and requirements as to how that creative should be posted or otherwise presented. You will then be included in the campaign and will be required to undertake the activity and comply with the brief and the timeframe involved. On the completion of the activity and the campaign and upon receipt of your invoice we will pay you the fee. We will manage the day-to-day relationship with any of our clients and will advise you in relation to the requirements to fulfil the brief.

We will maintain your privacy and will not use any information that we acquire as a result of this Agreement except as is allowed for and contemplated by this Agreement without your express consent.

### **What we need you to do**

Review all briefs received in a timely manner and use your best endeavours to advise of your approval and your agreement to being included in the activation within 72 hours. If you fail to do so we may withdraw the offer without further reference to you. Once we confirm your inclusion in a campaign, we will supply you with the necessary creative and the instructions as to how to create the activation. You will approve or disapprove the creative you receive in relation to a brief within 48 hours of having received it from us or that approval will be deemed to have been given. Following that approval you agree to include the creative in your posts on your designated and agreed social media channels within the reasonable timelines set out in those instructions. You agree that you will only utilise that creative in the manner and way agreed with you in the above mentioned approval process for the brief and of the creative. You will be responsible for all posts on your social media channels and agree to do nothing to devalue or demean any campaign or treat in a derogatory manner the subject of a brief that you have approved either on your social media channels or anywhere else. You indemnify us against any claim from a client or third party should you fail to comply with this provision. You give us an irrevocable right during the Term to use your name, likeness, and biographical details in any way to seek social media marketing opportunities and as part of any brief, as well as to publicise our relationship and that of you and our clients as may be required from time to time. You will support, aid and co-operate with us to the fullest extent possible in the fulfilment of the brief and in any activities where we could potentially secure further opportunities for you. You will advise us of all social media marketing opportunities submitted to you or any other management or representation that you may have to avoid cross-over and conflict with our existing clients and potential social media marketing opportunities. You will be solely responsible for any content on any of your social media pages and agree to indemnify us against any claims (whether actual or threatened), losses

or damages resulting as a purported or actual breach of any third party rights including but not limited to intellectual property or other ownership rights (for example copyright, trademarks and the like), defamation, breach of privacy, breach of any regulation or statute whether in New Zealand or elsewhere in the world. This and all other indemnities contained in this agreement covers any and all losses, debts, or liability, whether criminal or civil that we suffer including all of our legal fees (on a solicitor/client basis) should we become involved in any claim made as a result of your social media activities or content. You agree that you will not seek, or agree to undertake similar or the same social media marketing for any client (or its designee, or agent) that has commissioned you for a campaign either during the Term of this agreement or for six months following its termination. Should a client brief that you agree to require that you not provide similar services to any competitor to that client for the duration of their campaign or contain any other restrictions then you agree to abide by and be bound by those restrictions and you indemnify us against any breach by you of those restrictions. The obligations in this clause will survive any termination of this agreement.

### **How you get paid**

The revenue you generate from each piece of activity will be itemised in each brief. The amount will vary from brief to brief based on the complexity of the activity you will be required to undertake. We are entitled to charge and to deduct 10% commission and ("Commission") from all revenues that are collected by us and covered by this agreement. If for any reason you receive any income or revenue for any Sponsorship and Brand Funded Opportunities or for any other agreed monetisation activity covered by this agreement then we will be entitled to invoice you for our Commission and fees and you will pay that amount within 14 days. Any revenues or income that are earned or accrued by you after end of the Term but which were paid or accrued as a result of a deal/agreement obtained by us during the Term shall be treated for the purposes of Commission as if such income had been earned during the Term. You are solely responsible for payment of all of your own expenses. If we advance any money for payment of any fees, costs or expenses on your behalf, or we incur any other reasonable

expenses in connection with your social media activities or content then you will promptly reimburse us for such fees, costs and expenses.

### **Social media services**

To use the Services, you may be required to enable or log in to the Services via certain online third party services, such as Twitter or Facebook ("Social Media Services"). To take advantage of this feature and capabilities, we may ask you to authenticate, register for or log into Social Media Services on the websites of their respective providers (you will provide your login information, like your password, directly to such Social Media Services, and not to Us). As part of such integration, Social Media Services will provide us with access to certain information that you have provided to such Social Media Services, and we will use, store and disclose such information in accordance with our Privacy Policy. For more information about the implications of activating these Social Media Services and Our use, storage and disclosure of information related to you and your use of such services within Populr, please see our Privacy Policy. However, please remember that the manner in which Social Media Services use, store and disclose your information is governed solely by the policies of such third parties, and Populr shall have no liability or responsibility for the privacy practices or other actions of any third party site or Services that may be enabled within the Services. In addition, Populr is not responsible for the accuracy, availability or reliability of any information, data, content, goods, opinions, advice or statements made available in connection with Social Media Services. As such, Populr is not liable for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such Social Media Services.

### **Indemnity and release**

You agree to release, indemnify and hold Us&Co Talent Limited and its affiliates and officers, employees, directors and agents harmless from any and all losses, damages, expenses, including reasonable attorneys' fees, rights, claims, actions of any kind and injury (including death) arising out of or relating to your use of the Services, your

connection to the Services, your violation of these Terms of Services or your violation of any rights of another.

### **Disclaimer of warranties**

Your use of the services is at your sole risk. The services are provided on an "as is" and "as available" basis. Populr expressly disclaims all warranties of any kind, whether express, implied or statutory, including, but not limited to the implied warranties of merchantability, fitness for a particular purpose, title and non-infringement.

### **Limitation of liability**

You expressly understand and agree that Populr will not be liable for any indirect, incidental, special, consequential, exemplary damages, or damages for loss of profits including but not limited to, damages for loss of goodwill, use, data or other intangible losses (even if Populr has been advised of the possibility of such damages), whether based on contract, tort, negligence, strict liability or otherwise, resulting from: (i) the use or the inability to use the services; (ii) unauthorized access to or alteration of your data; or (iii) any other matter relating to the services. In no event will Populr's total liability to you for all damages, losses or causes of action exceed one hundred dollars (\$100). If you are dissatisfied with any portion of the services or with these terms of service, your sole and exclusive remedy is to discontinue use of the services.

### **Termination**

You agree that We, in our sole discretion, may suspend or terminate your account (or any part thereof) or use of the Services for any reason, including, without limitation, for lack of use or if we believe that you have violated or acted inconsistently with the letter or spirit of these Terms of Service. We may also in its sole discretion and at any time discontinue providing the Services, or any part thereof, with or without notice. You agree that any termination of your access to the Services under any provision of this Terms of Services

may be effected without prior notice, and acknowledge and agree that we may immediately deactivate or delete your account and all related information and files in your account and/or bar any further access to such files or the Services. Further, you agree that we will not be liable to you or any third party for any termination of your access to the Services.

## **General**

These Terms of Service constitute the entire agreement between you and Us and govern your use of the Services. The contents of these terms and conditions and any other information that we provide you about our business or business activities, client briefs or any creative are confidential. As we are a New Zealand company, you agree that these terms and conditions will be governed by the Laws of New Zealand and any matter relating to them will be subject to the exclusive jurisdiction of the New Zealand courts. The failure of Populr to exercise or enforce any right or provision of these Terms of Service will not constitute a waiver of such right or provision. If any provision of these Terms of Service is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavour to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms of Service remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Services or these Terms of Service must be filed within one (1) year after such claim or cause of action arose or be forever barred. A printed version of this agreement and of any notice given in electronic form will be admissible in judicial or administrative proceedings based upon or relating to this agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. The section titles in these Terms of Service are for convenience only and have no legal or contractual effect. Notices to you may be made via either email or regular mail. The Services may also provide notices to you of changes to these Terms of Service or other matters by displaying notices or links to notices generally on the Services.

## **Terms of Service for Brands**

### **What we will do**

We will provide your briefs to our influencers and assign influencers to your brief that we believe best fit and can provide the greatest exposure to your brand. We will of course get your approval on the creative that we assign to your brief. We will then manage your brief and liaise with the influencers to ensure that they meet your brief. This will include reviewing and providing the brief and any associated creative to the influencer and providing them with the necessary advice and requirements in terms of how that creative should be posted or otherwise presented. We will liaise with the influencers to provide them with what will be required to undertake the activity and ensure with compliance with the brief and the timeframe involved. We will pay the influencers their fee. We will manage the day-to-day relationship with any of you and the influencers and will advise them in relation to your requirements to fulfil the brief. We will maintain your privacy and will not use any information that we acquire as a result of this Agreement except as is allowed for and contemplated by this Agreement without your express consent. If you want back any material submitted to us as part of the brief/creative, you must collect that material submitted to us immediately after the end of the campaign. We will endeavour to take reasonable care of material in our custody and control, but will not be responsible for any loss or damage to such material (even if caused by our negligence).

### **What we need you to do**

You will be required to register with us in order to access and use Populr. If you choose to register with us, you agree to provide and maintain true and accurate, current and complete information about yourself as prompted by our registration form. You will create your briefs. Once submitted and if accepted by Populr, your briefs will be considered active and will be actioned. The budgets specified in the brief will be billed on 7-day invoices. As the budget includes creative production, media costs and talent fee, the 7-day invoices are necessary required to pay the various suppliers/publishers Populr

leverage and there will be no obligation on us to action the brief or provide any services until payment has been received. Any amount paid will be non-refundable.

You must accept the activity produced on their behalf based on the brief and influencers assigned to the relevant brief. In some cases you will be given previews for approval. In other cases, especially on the smaller briefs, the work will go straight out and will only be visible to brands you once it's live on the platform of choice. It's hard to be specific on where the line is for pre-approval or direct post as it's based on the influencer mix and budget set by you so this decision will be made by us at our sole prerogative. Similarly while you can specify timings for your activity these timings are guidelines and not set in stone. For various reasons, activity may not always fall exactly on the dates specified. We deal with talent who have commitments like playing in the world cup so activity may slip a day or two. Additionally, social media has good times and bad times to run activity. Your campaign may start on Friday night but we wouldn't recommend posting it on social until Wednesday as an example. If there are any hard and fast rules about dates, e.g. activity can't run past a certain date because competition entry closes, then these must be supplied as additional notes in the brief.

You will only setup activity on behalf of products/services/brands that you officially represent. We will contact you directly as part of our sign up and vetting process, and you will be expected to provide evidence as required to ensure you are a legitimate representative of the brand. Additionally, to create briefs you must setup the details of the brand you manage. This involves supplying us details for the brands online outlets. e.g. their Facebook, YouTube, Instagram, Twitter, Snapchat profiles.

When you create your brief, we need to assume the information supplied is correct, factual and free to use. Any content that you provide must be fully cleared for the use in the required countries and media. You will be solely responsible for clearing that content and for any issues relating to the usage of the content.

You must approve the influencer that we assign to your brief within 72 hours of our notification of who they are to you. If you fail to do so we may assign that influencer to the brief without further reference to you.

You will have the option to pause, cancel or remove activity but this is done via email with the Populr owner (james@populr.co) and is not currently a facility of the Populr system.

You must not approach any of our influencers directly with a brief or any similar brief once we have made you aware that we represent that influencer, or are assigning that influencer to your brief.

It is your responsibility to keep your login (email address) and your password safe and secure. You are responsible for any activity undertaken with your login details. If you think that your details may have been used by someone else then you must notify us as soon as possible. You must also change your password immediately. You agree to indemnify us against any and all claims arising out of your failure to maintain the confidentiality of your username and password.

We are entitled to charge and to deduct commission ("Commission") from all revenues that are collected by us and covered by this agreement. We will deduct our Commission prior to paying our influencers their fee to take part in your campaign.

Unless otherwise stated by us, all amounts are quoted exclusive of GST and you will pay GST in addition to such rates. Should you decide to pay by credit card, you will where such a charge is charged to us be charged an additional credit card transaction fee plus GST when making payments

### **Social media services**

To use the Services, you may be required to enable or log in to the Services via certain online third party services, such as Twitter or Facebook ("Social Media Services"). To take

advantage of this feature and capabilities, we may ask you to authenticate, register for or log into Social Media Services on the websites of their respective providers (you will provide your login information, like your password, directly to such Social Media Services, and not to Us). As part of such integration, Social Media Services will provide us with access to certain information that you have provided to such Social Media Services, and we will use, store and disclose such information in accordance with our Privacy Policy. For more information about the implications of activating these Social Media Services and Our use, storage and disclosure of information related to you and your use of such services within Populr, please see our Privacy Policy. However, please remember that the manner in which Social Media Services use, store and disclose your information is governed solely by the policies of such third parties, and Populr shall have no liability or responsibility for the privacy practices or other actions of any third party site or Services that may be enabled within the Services. In addition, Populr is not responsible for the accuracy, availability or reliability of any information, data, content, goods, opinions, advice or statements made available in connection with Social Media Services. As such, Populr is not liable for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such Social Media Services.

### **Warranty, indemnity and release**

You warrant that you are authorised to act on behalf of the relevant brand, product or service and that any and all content that you supply as part of the brief for use in the campaign is factually correct and either original to you or you are authorised by the owner of that content to use it in accordance with your brief. Nothing therefore that you provide or in your brief will be a purported or actual breach of any third party rights including but not limited to intellectual property or other ownership rights (for example copyright, trademarks and the like), defamation, breach of privacy, breach of any regulation or statute whether in New Zealand or elsewhere in the world.

You agree to release, indemnify and hold Us&Co Talent Limited and its affiliates and officers, employees, directors and agents harmless from any and all losses, damages,

expenses, including reasonable attorneys' fees, rights, claims, actions of any kind and injury (including death) arising out of or relating to your use of the Services, your connection to the Services, your violation of these Terms of Services (including the warranties) or your violation of any rights of another.

### **Disclaimer of warranties**

Your use of the services is at your sole risk. The services are provided on an "as is" and "as available" basis. Populr expressly disclaims all warranties of any kind, whether express, implied or statutory, including, but not limited to the implied warranties of merchantability, fitness for a particular purpose, title and non-infringement.

Populr is a match making service putting brands in touch with talented individuals. It therefore makes no warranties and gives no undertakings as to the quality of the work produced and the results obtained by virtue of the service. This responsibility rests with the brands and influencers, the brief, budget assigned and assets supplied. Further we expressly disclaim any responsibility for any action taken by any of our influencers which may cause damage to you or to your brand. You acknowledge that should this happen your sole cause of action will be against the relevant influencer.

### **Limitation of liability**

You expressly understand and agree that Populr will not be liable for any indirect, incidental, special, consequential, exemplary damages, or damages for loss of profits including but not limited to, damages for loss of goodwill, use, data or other intangible losses (even if Populr has been advised of the possibility of such damages), whether based on contract, tort, negligence, strict liability or otherwise, resulting from: (i) the use or the inability to use the services; (ii) unauthorized access to or alteration of your data; or (iii) any other matter relating to the services. In no event will Populr's total liability to you for all damages, losses or causes of action exceed one hundred dollars (\$100). If you are dissatisfied with any portion of the services or with these terms of service, your sole and exclusive remedy is to discontinue use of the services.

## **Consumer Guarantees Act**

If you are a consumer under the Consumer Guarantees Act 1993 (the "Act") and acquire or holds yourself out as using the service for the purposes of a business then the Act will not apply and is expressly excluded. Subject to this clause nothing in these Conditions will affect your rights as a consumer under the Act.

## **Termination**

You agree that We, in our sole discretion, may suspend or terminate your account (or any part thereof) or use of the Services for any reason, including, without limitation, for lack of use or if we believe that you have violated or acted inconsistently with the letter or spirit of these Terms of Service. We may also in its sole discretion and at any time discontinue providing the Services, or any part thereof, with or without notice. You agree that any termination of your access to the Services under any provision of this Terms of Services may be effected without prior notice, and acknowledge and agree that we may immediately deactivate or delete your account and all related information and files in your account and/or bar any further access to such files or the Services. Further, you agree that we will not be liable to you or any third party for any termination of your access to the Services.

## **General**

These Terms of Service constitute the entire agreement between you and Us and govern your use of the Services. The contents of these terms and conditions and any other information that we provide you about our business or business activities, client briefs or any creative are confidential. As we are a New Zealand company, you agree that these terms and conditions will be governed by the Laws of New Zealand and any matter relating to them will be subject to the exclusive jurisdiction of the New Zealand courts. The failure of Populr to exercise or enforce any right or provision of these Terms of Service

will not constitute a waiver of such right or provision. If any provision of these Terms of Service is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavour to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms of Service remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Services or these Terms of Service must be filed within one (1) year after such claim or cause of action arose or be forever barred. A printed version of this agreement and of any notice given in electronic form will be admissible in judicial or administrative proceedings based upon or relating to this agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. The section titles in these Terms of Service are for convenience only and have no legal or contractual effect. Notices to you may be made via either email or regular mail. The Services may also provide notices to you of changes to these Terms of Service or other matters by displaying notices or links to notices generally on the Services.