

MEDIA SERVICES AGREEMENT

This Media Services Agreement (this "Agreement") is a legal agreement between you (either an individual or entity) as identified by you during the registration and Fanplayr Inc., a Delaware corporation located at 530 University Ave. Palo Alto, CA 94301, USA ("Fanplayr") regarding the use of Fanplayr services as further described below. BEFORE YOU CLICK ON THE "I ACCEPT AND AGREE" BUTTON AT THE END OF THIS DOCUMENT, CAREFULLY READ THE TERMS AND CONDITIONS OF THIS AGREEMENT. BY CLICKING ON THE "I ACCEPT AND AGREE" BUTTON, YOU ARE (OR IN THE EVENT YOU REGISTER ON BEHALF OF A COMPANY AS INDICATED IN THE REGISTRATION PROCESS, SUCH COMPANY IS) AGREEING TO BE BOUND BY AND ARE BECOMING A PARTY TO THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, CLICK THE "DECLINE" BUTTON AND THE FANPLAYR SERVICE (AS DEFINED BELOW) WILL NOT BE MADE AVAILABLE TO YOU AND YOU WILL NOT BE BOUND BY THIS AGREEMENT.

1. Definitions.

- a. "Effective Date" means the earliest date on which You accept the terms of this Agreement by either:
 - i. checking the "I Accept" box during registration as a user; or
 - ii. the date that you first use, directly or indirectly, Fanplayr services or materials as presented on this website:.
- b. "Fanplayr Service" means Fanplayr's web-based interactive advertising tool which allows You to customize Fanplayr's standard offers and to serve Your Offer(s) to Users.
- c. "Offer Code" means the unique HTML code, link or access to the Fanplayr Facebook Application that You implement, embed, or link to on Your website, Your emails, Your micro-site, Your Facebook Pages, or Your advertisements, or any other media properties that enable Fanplayr to serve up Your Offer(s) through the Fanplayr Service.
- d. "Party(ies)" means Fanplayr and/or You.
- e. "Term" shall have the meaning set forth in Section 7 below.
- f. "User" means a natural person who receives, views, interacts with the features of Your Offer(s) with and/or redeems any offer, promo code or coupon included in Your Offer(s).
- g. "User Data" means the User PI Data and/or User non-PI Data.
- h. "User PI Data" personally identifiable information collected with respect to the Users of Your Offer(s) in connection with the Fanplayr Service.
- i. "User non-PI Data" means non-personally identifiable information collected by Fanplayr or You with respect to Your Offer in connection with the Fanplayr Service, which may include technical information about viewers and Users of Your Offer, related metrics such as impressions, clicks, conversions, date, media source, forwarding and cost, as well as audience target tactics and data sources employed in the provision of the Fanplayr Service.
- j. "Your Media" means copyrightable or trademarked images and/or text added into a standard offer within the Fanplayr Service to create a customized Your Offer.
- k. "Your Offer(s)" means interactive digital advertisement(s) run on behalf of You which utilize the Fanplayr Service.

2. Fanplayr Services.

- a. Access to the Fanplayr Service. Subject to the terms and conditions of this Agreement, including without limitation the payment of any and all applicable Fees (defined below): (1) in response to Your request submitted through the Fanplayr Service, Fanplayr provides You the Offer Code and instructions to implement the Offer Code, (2) following Your creation of Your Offer(s) and implementation of the Offer Code in accordance with applicable instructions, Fanplayr shall use commercially reasonable efforts to provide Your Offer(s) through the Fanplayr Service in accordance with the instructions and directions provided by You through the tools included within the Fanplayr Service, (3) Fanplayr will provide the Fanplayr Service to You in accordance with the service level chosen and paid for by You from the service levels described on <http://www.fanplayr.com/products/pricing/> ("Subscribed Service Level") and (3) Fanplayr grants You permission during the Term to access and use the Fanplayr Service on a non-exclusive basis for the purpose of customizing Your Offer(s) in connection with the

Fanplayr Service, and to insert the Offer Code in order to enable the serving of Your Offer(s) to Users as part of the Fanplayr Service.

- b. Account and Passwords. The Fanplayr Service includes a mechanism that allows You to create an online account in order to manage and customize Your Offer(s). You are solely responsible: (1) for maintaining the confidentiality of account password(s), (2) for restricting access to Your account on the Fanplayr Service, and (3) for all activities that occur under Your account or password(s). If You have reason to believe that Your account is no longer secure (e.g., in the event of a loss, theft or unauthorized disclosure or use of account credentials), You shall immediately notify Fanplayr by sending an email to support@fanplayr.com. You shall be liable for the losses incurred due to any unauthorized use of Your account on the Fanplayr Service.
- c. License by You. Subject to the terms and conditions of this Agreement, You grant to Fanplayr the non-exclusive right to reproduce, distribute and use the Your Media as submitted by You, in order to enable Your Offer(s) in connection with the Fanplayr Service. In addition, you grant Fanplayr the non-exclusive and royalty free right during the Term of this Agreement to use your name and trademarks, service marks or logos for the purpose of listing You as a customer of the Fanplayr Service, including on the Fanplayr website and marketing materials.
- d. Support. Subject to the terms and conditions of this Agreement, Fanplayr shall use reasonable efforts to provide the support services with respect to the Fanplayr Service, in accordance with the Subscribed Service Level.

3. Data.

- a. Data Collection. You authorize Fanplayr to implement tracking pixels, cookies, or add other tracking elements within Your Offers and to collect data from Facebook, other social media sites or other data services to track and monitor activities with respect to Your Offers, including collection of User non-PI Data, including without limitation, IP addresses, cookies data, web requests, browser type, browser language, referring / exit pages and URLs, platform type, number of clicks, domain names, landing pages, pages viewed and the order of those pages, features used, the amount of time spent interacting with Your Offers, and the dates and times of requests. Nothing in this Agreement shall restrict Fanplayr from using User Data in any way for the purposes of the Fanplayr Service.
- b. Reporting. Subject to the terms and conditions of this Agreement, Fanplayr shall use reasonable efforts to provide the reports with respect to Your use of the Fanplayr Service, in accordance with the reporting levels for your Subscribed Service Level.
- c. Fanplayr Data. You acknowledge and agree that all User Data collected by Fanplayr in connection with its performance of this Agreement (“Fanplayr Data”) will, as between You and Fanplayr, be the property of Fanplayr. To the extent that You obtain access to such Fanplayr Data: (1) You shall treat such information as the Confidential Information of Fanplayr pursuant to Section 6 of this Agreement and (2) Fanplayr grants to You an unlimited, worldwide, nonexclusive, royalty free, fully paid non-transferable and non-sublicensable license to use, reproduce, disclose, distribute, modify and otherwise exploit such Fanplayr Data to the extent necessary for You to utilize the Fanplayr Service in accordance with this Agreement. You agree not to use the Fanplayr Data for any other purpose or in any manner that renders Fanplayr ascertainable as a source of such Fanplayr Data or in any other manner that violates applicable law.
- d. Privacy Policies. You and Fanplayr will post on their respective Web sites their privacy policies and adhere to their privacy policies, which policies will be consistent with applicable laws. Failure by You, on the one hand, or Fanplayr, on the other, to continue to post a privacy policy, or non-adherence to such privacy policy, is notwithstanding Section 7, grounds for immediate cancellation this Agreement by the other Party.
- e. Data Retention. You and Fanplayr agree that Fanplayr shall not be obligated to retain User Data for period of time that is the lesser of (1) one year after the expiration of the relevant campaign or (2) one year after the termination or expiration of this Agreement.

4. Ownership. Nothing in this Agreement shall be deemed an assignment of a Party’s pre-existing intellectual property rights.

- a. Fanplayr owns, and shall own, all right, title, and interest, including all intellectual property rights, in and to the Fanplayr Service and associated technology, software, and documentation, including any improvements, modifications, and enhancements made or provided by or on behalf of Fanplayr utilized by Fanplayr in performing the Fanplayr Services (including Offer Code), the Fanplayr Data and all intellectual property rights with respect thereto (excluding only Your Media) (along with Fanplayr’s Confidential Information, collectively the “Fanplayr IP”). Fanplayr reserves all right, title and interest in and to the Fanplayr IP not expressly granted to You herein.
- b. You own, and shall own, all of Your right, title, and interest, including all intellectual property rights, in and Your Media, technology, software, and hardware owned by the You, including any improvements, modifications, and enhancements made or provided by or on behalf of You and all of its intellectual property rights with respect

thereto (excluding the Fanplayr IP) (along with Your Confidential Information, collectively "Your IP"). You reserve all right, title and interest in and to the Your IP not expressly granted to Fanplayr herein.

- c. In the event that You provide feedback to Fanplayr concerning the functionality and performance of the Fanplayr Service, You grant to Fanplayr and its successors and assigns an unlimited, perpetual, irrevocable, worldwide, nonexclusive, royalty free, fully paid, transferable, sublicensable license to use, reproduce, disclose, sublicense, distribute, modify and otherwise exploit such feedback, without restriction.

5. Fees and Payment. You agree to pay Fanplayr the fees associated with the Subscribed Service Level (the "Fees"). Registration for subscription levels Bronze, Silver and Gold will require a PayPal payment or credit card submission and will be subject to Fees. You agree that by submitting such PayPal or credit card information, Fanplayr is authorized to charge such fees and you agree to pay the same. Notwithstanding, if you have "White Labeled Service" as your Subscribed Service Level, an initial invoice will be sent by Fanplayr prior to commencement of the first month's Services to the billing address, street address or email, provided by You at registration and subsequent invoices shall be sent on a monthly basis. You will make payment of invoices for customization and other services in advance prior to commencement, and regular monthly fees will be paid fourteen (14) days from Your receipt of invoice. Past due amounts will accrue interest at a rate of one and one half percent (1.5%) per month.

6. Confidentiality.

- a. Definitions. "Confidential Information" includes any and all information or data of a Party ("Discloser") that is disclosed to the other Party ("Recipient"), either directly or indirectly, whether in writing, verbally, or by visual means, and which is designated (either in writing or verbally) as confidential, proprietary, or the like. However, such designation shall not be necessary to deem information as Confidential Information if the nature of the information makes it generally considered confidential commercially, which information includes information that relates to: (1) trade secrets or know-how, (2) finance or accounting, (3) technology, research, or development, (4) internal processes or procedures, (5) algorithms, digital data, or designs, (6) business, operations, or planning thereof, (7) sales or marketing strategies, and (8) the terms of any agreement between the Parties related to payment, pricing or consideration, and the discussions, negotiations, or proposals related thereto, including under this Agreement.
- b. Exceptions. Notwithstanding anything contained herein to the contrary, the term "Confidential Information" will not include information which: (1) was previously known to Recipient, (2) was or becomes generally available to the public through no fault of Recipient, (3) was rightfully in Recipient's possession free of any obligation of confidentiality at, or prior to, the time it was communicated to Recipient by Discloser, (4) was developed by employees or agents of Recipient independently of, and without reference to, Confidential Information, or (5) was communicated by Discloser to an unaffiliated third party free of any obligation of confidentiality.
- c. Obligations. Recipient will protect Confidential Information in the same manner that it protects its own information of a similar nature, but in no event with less than reasonable care. Recipient shall not disclose Confidential Information to anyone except an employee, agent, affiliate, or third party who has a need to know same, and who is bound by confidentiality and non-use obligations at least as protective of Confidential Information as are those in this section. Recipient will not use Discloser's Confidential Information other than as provided for in this Agreement. Notwithstanding the foregoing, the Recipient may disclose Confidential Information of the Discloser in response to a valid order by a court or other governmental body, as otherwise required by law or the rules of any applicable securities exchange, or as necessary to establish the rights of either Party under this Agreement; provided, however, that both Discloser and Recipient will stipulate to any orders necessary to protect such information from public disclosure.

7. Term and Termination. This Agreement will remain in effect until terminated in accordance with this Agreement (the "Term"). Fanplayr reserves the right in its sole discretion and at any time to modify or discontinue providing the Fanplayr Service, or any part thereof, or to terminate this Agreement for convenience effective upon thirty (30) days prior written notice to You. Company may terminate this Agreement for any breach by Fanplayr of any of its obligations hereunder which breach is not cured within thirty (30) days written notice by You to Fanplayr. The provisions of Sections 3(c), 3(d), 4, 5 (for amounts owing accrued during the Term), 6, 7, 8, 9, 10, 11 and 13 shall survive termination. You acknowledge and agree that Your obligation to fulfill Your Offers survives any expiration or termination of this Agreement.

8. Fanplayr Service Restrictions and Limitations.

- a. You agree not to: (1) interfere with or disrupt the integrity or performance of the Fanplayr Service, (2) attempt to gain unauthorized access to the Fanplayr Service or its related systems or networks, (3) use the Fanplayr Service or access to the Fanplayr Service for the purpose of reverse engineering or copying all or part of the Fanplayr Service, or producing or contributing to a service or product which is or is likely to be in any way competitive to the Fanplayr Service, (4) intentionally or unintentionally violate any applicable local, state, national, or international

law in connection with Your use of the Fanplayr Service, (5) resell the Fanplayr Service (or information derived therefrom) without the prior written consent of Fanplayr, or (6) send offers or promotions on behalf of third parties where You do not have legal authority to bind such third party.

- b. You agree that: (1) You have and will maintain throughout the Term of the Agreement adequate rights in and to the Your Media (including without limitation under the intellectual property rights in and to any third party content contained therein) in order to use such Your Media in connection with the Fanplayr Service, (2) Your Offers will not portray or promote illicit drugs; and do not contain pornography, adult or mature content or any content that otherwise promotes violence, illegal activity or infringes on the rights of others, and (3) you will comply with Fanplayr's acceptable use policy for the Fanplayr Service as may be promulgated and amended by Fanplayr from time to time and posted on the Fanplayr website.
- c. You and Fanplayr will at all times comply with all federal, state, and local laws, ordinances, regulations, and codes which are applicable to each Party's performance of their respective obligations under this Agreement. By providing Your Data, and permitting Fanplayr access to the Your Media in order to provide Your Offer(s) through the Fanplayr Service, You represent and warrant that Fanplayr's use of the Your Data and Your Media as provided herein complies with the Your privacy policy, and will not violate any agreements with third parties, applicable law (including CAN-SPAM) or applicable privacy policies.
- d. The Fanplayr Service includes a mechanism that allows You to create and offer coupons and other incentives to Users as part of the interactive aspects of Your Offer(s). As between the Parties, You are solely responsible for creating the terms of, and honoring, all of Your Offers, and to ensure that all of Your Offers are compliant with legal requirements in the jurisdictions that Your Offers are made available to Users. The Fanplayr Service allows a You to specify the value and number of available coupons that can be distributed and part of Your Offers, and You are responsible to provide coupons that comply with local laws. Specifically, the coupons in Your Offers should represent a reasonable discount for a product or service purchase or a small incentive to increase customer traffic, but not represent an opportunity for a material giveaway or reward to any individual. The Fanplayr Service does include tools that can detect and monitor rewards that fall outside certain boundaries, but such tools may not operate properly and ultimately it is Your responsibility to ensure compliance with respect to Your Offers.
- e. The Fanplayr Service includes a mechanism wherein coupons and other incentives are randomly awarded through game play and User Interaction, but you acknowledge and agree that Users will always be provided with a valuable offer regardless of the outcome of a User's interaction with Your Offers. The Fanplayr Service may include an alternative mechanism through which the minimum available reward of Your Offers can be obtained by a User through the submission of their respective email address, or responses to opinion surveys, or other submissions by Users, regardless of the outcome of any ensuing game-play or even in absence of such game-play or chance element. You are responsible to honor all of Your Offers that are awarded to Users in these ways.

9. Warranties and Disclaimer.

- a. **You represent that You have the authority to enter into this Agreement, and where You have indicated in the registration process that You are entering into this Agreement on behalf of a company or other legal entity, You represent and warrant that You have the legal right and authority to bind such legal entity. You further represent and warrant that all information provided by You at the time of the registration is complete and accurate in all respects and that You shall promptly update this information so that it is complete and accurate in all respects throughout the Term of this Agreement.**
- b. The Fanplayr Service includes certain sample language regarding coupons that may be included in Your Offers, and certain other sample language regarding the privacy of Users and legal disclaimers for Your Offers. You are free to modify or alter such sample language. Fanplayr makes no representation or warranty that such sample language, or that the games included in Your Offers included as part of the Fanplayr Service are compliant with all applicable legal requirements, will be sufficient limit Your liability under applicable law or otherwise will meet the Your needs. **Your use such sample language and games is at its own risk; PLEASE CONFER WITH YOUR OWN LEGAL COUNSEL WITH REGARD TO SUCH MATTERS.**
- c. THE SERVICE, THE FANPLAYR DATA, FANPLAYR IP AND OTHER MATERIALS AND SERVICES PROVIDED BY FANPLAYR HEREUNDER, INCLUDING THE RESULTS ACHIEVED BY YOUR USE OF THE FANPLAYR SERVICE ARE, AND LEGAL TERMS THAT ARE INCLUDED AS DEFAULT LANGUAGE IN YOUR OFFERS, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OUT OF A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR

PURPOSE OR USE, NONINFRINGEMENT, QUALITY, ACCURACY, PRODUCTIVENESS OR CAPACITY AND SATISFACTORY RESULTS. FANPLAYR AND ITS SUPPLIERS AND LICENSORS HEREBY DISCLAIM ALL SUCH WARRANTIES. FANPLAYR DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE FANPLAYR SERVICE WILL BE CORRECT, UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE FANPLAYR SERVICE IS FREE OF HARMFUL COMPONENTS. FANPLAYR MAKES NO GUARANTEE REGARDING THE NUMBER, QUALITY, OR CONTENT OF YOUR OFFERS OR THE TIMING OF DELIVERY OF YOUR OFFERS. YOU UNDERSTAND AND ACKNOWLEDGE THAT THERE IS NO GUARANTEE THAT ANY MINIMUM LEVEL OF REVENUE, OR ANY REVENUE, WILL BE GENERATED AS A RESULT OF THIS AGREEMENT AND YOUR USE OF THE FANPLAYR SERVICE.

- 10. Limitation of Liability.** THE TOTAL LIABILITY OF FANPLAYR ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID BY YOU TO FANPLAYR IN CONNECTION WITH YOUR USE OF THE FANPLAYR SERVICE AND IN NO EVENT SHALL FANPLAYR HAVE LIABILITY FOR ANY LOSS OF CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, OR EXEMPLARY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATIONS, DAMAGES FOR LOSS OF PROFITS OR REVENUES, BUSINESS INTERRUPTION, LOSS OF INFORMATION, AND THE LIKE), WHETHER UNDER TORT, CONTRACT OR OTHER THEORIES OF RECOVERY, EVEN IF FANPLAYR KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE PARTIES AGREE THAT THE FOREGOING LIMITATIONS REPRESENT A REASONABLE ALLOCATION OF RISK UNDER THIS AGREEMENT.
- 11. INDEMNIFICATION.** You will defend, indemnify, and hold harmless Fanplayr from damages, liabilities, costs, and expenses (including reasonable attorneys' fees) (collectively, "Losses") resulting from any claim, judgment, or proceeding (collectively, "Claims") brought by a Third Party and resulting from any claim or allegation: (a) that Your Offer(s) and/or Your use of the Fanplayr Services (1) violate any applicable law, regulation, judicial or administrative action, or the right of a third party, or (2) are fraudulent, misleading, defamatory or obscene, or (3) are otherwise in breach of these Agreement; (b) related to Your breach of Sections 8 and/or 9(a); and/or (c) that Your Media and/or Your Data infringes or misappropriates the intellectual property rights of any third party. Fanplayr will promptly notify You of all Claims of which it becomes aware (provided that a failure or delay in providing such notice will not relieve the indemnifying Party's obligations except to the extent such Party is prejudiced by such failure or delay), and will: (i) provide reasonable cooperation to You at Your expense in connection with the defense or settlement of all Claims and (ii) be entitled to participate at its own expense in the defense of all Claims. Fanplayr agrees that You may have control over the defense and settlement of all third party Claims; provided, however, You will not acquiesce to any judgment or enter into any settlement, either of which imposes any obligation or liability on Fanplayr without its prior written consent.
- 12. FORCE MAJEURE.** Excluding payment obligations, neither Party will be liable for delay or default in the performance of its respective obligations under this Agreement if such delay or default is caused by conditions beyond its reasonable control, including, but not limited to, fire, flood, accident, earthquakes, telecommunications line failures, electrical outages, network failures, acts of God, or labor disputes ("Force Majeure event"). If a Force Majeure event has continued for five (5) business days, Fanplayr has the right to cancel the Agreement effective upon notice.
- 13. Miscellaneous.** Neither Party may resell, assign, or transfer any of its rights or obligations hereunder, and any attempt to resell, assign, or transfer such rights or obligations under this Agreement without the other Party's prior written approval will be null and void. Notwithstanding, Fanplayr may assign or transfer this Agreement in connection with a merger, sale of assets, reorganization and or reincorporation of Fanplayr. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective permitted transferees, successors, heirs and assigns. This Agreement (including information linked thereto and incorporated by reference) will constitute the entire agreement of the Parties with respect to the subject matter thereof and supersede all previous communications, representations, understandings, and agreements, either oral or written, between the Parties with respect to the subject matter. The relationship between the Parties will be that of independent contractors, and this Agreement will not in any way create or be deemed to create any agency, partnership, or joint venture between the Parties. This Agreement will be governed by the laws of the State of California, without reference to its conflict of law principles. The Parties agree that any claims, legal proceedings, or litigation arising in connection with the Agreement hereunder will be brought solely in Santa Clara County, California, and the Parties consent to the exclusive jurisdiction of such courts. No modification of this Agreement will be binding unless in writing and signed by both Parties. No waiver or modification of this Agreement shall be valid unless in writing signed by each Party. The waiver by either Party of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach. If any provision herein is held to be unenforceable, the remaining provisions will remain in full force and effect. All rights and remedies hereunder are cumulative. Section or paragraph headings used in this Agreement are for reference purposes only, and should not be used in the interpretation hereof. Any notice

required to be delivered hereunder will be deemed delivered three days after deposit, postage paid, in U.S. mail, return receipt requested, one business day if sent by overnight courier service, and immediately if sent electronically with receipt confirmed. All notices to You shall be sent to the addresses provided at the time of registration (as may be updated by You from time to time) and all notices to Fanplayr will be sent to the address in the first paragraph of this Agreement registration (as may be updated by Fanplayr from time to time).

Should you have any questions concerning this Agreement, or if you desire to contact Fanplayr for any reason, please contact support@fanplayr.com

BY CLICKING ON THE "I ACCEPT AND AGREE" BUTTON, YOU ARE (OR IN THE EVENT YOU REGISTER ON BEHALF OF A COMPANY AS INDICATED IN THE REGISTRATION PROCESS, SUCH COMPANY IS) AGREEING TO BE BOUND BY AND ARE BECOMING A PARTY TO THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, CLICK THE "DECLINE" BUTTON AND THE FANPLAYR SERVICE WILL NOT BE MADE AVAILABLE TO YOU AND YOU WILL NOT BE BOUND BY THIS AGREEMENT.