

FANPLAYR MEDIA SERVICES AGREEMENT

This Fanplayr Media Services Agreement (this "Agreement") is entered into as of the date of commencement of the Fanplayr Services at Your Website(s) ("Effective Date") between Your Company or Corporation ("You" or "Your") and Fanplayr Inc., a Delaware corporation located at 525 Lytton Ave. Palo Alto, CA 94301, USA ("Fanplayr").

1. Definitions.

- a. "Fanplayr Service" means the Fanplayr web-based interactive services selected by You upon registration and from time to time, collectively known as the Fanplayr Targeted Conversions Platform and presently consisting of: "Smart and Targeted Offers," a data analytics system which allows You to better target Your Offer(s) to Users based on their web browsing and online shopping behavior and as further described in the Smart & Targeted Offers Datasheet on [<http://www.fanplayr.com/datasheets/>]; and "Exit Intent" a data analytics system that allows You to target certain Users who appear to be in the process of abandoning their cart.
- b. "Managed Service Fees" means the fees (if any) attributed to monthly campaign application hosting, reporting and analytics pursuant to Your Subscribed Service Level and as set forth in Your Subscriber Agreement with Fanplayr.
- c. "Offer Code" means the unique HTML code, link or access to the Fanplayr Targeted Conversions Platform that You implement, embed, or link to on Your website, Your e-commerce site, Your emails, Your micro-site, Your Facebook Pages, or Your advertisements, or any other media properties that enable Fanplayr to track and target Your Users through the Fanplayr Service.
- d. "Offers Wallet" means the software that allows Users to accumulate store, retrieve and use Your Offers.
- e. "Party(ies)" means Fanplayr and/or You.
- f. "Promo Code" means the promotional codes that Fanplayr applies to Your Offers.
- g. "Set-Up Fees" means the fees (if any) attributed to initial set-up of the Fanplayr Service pursuant to Your Subscribed Service Level and as set forth in Your Subscriber Agreement with Fanplayr.
- h. "Shopping Cart" means the online shopping cart software implemented on Your Website that allows Users to accumulate a list of items for purchase and to process such purchase if the User so decides.
- i. "Subscribed Service Level" means the service levels (if any) chosen and paid for by You from the service levels described in Your Subscriber Agreement with Fanplayr.
- j. "Support Fees" means the fees attributed to support of the Fanplayr Service (if any) pursuant to Your Subscribed Service Level and as set forth in Your Subscriber Agreement with Fanplayr.
- k. "Term" shall have the meaning set forth in Section 7 below.
- l. "Transaction Fees" means the fees attributed to the performance of the Fanplayr Service pursuant to Your Subscribed Service Level and as set forth in Your Subscriber Agreement with Fanplayr.
- m. "User" means a natural person who receives, views, interacts with the features of Your Website(s) and/or redeems any offer, promo code or coupon included in Your Offer(s).
- n. "User Data" means the User PI Data and/or User non-PI Data.
- o. "User PI Data" personally identifiable information collected with respect to the Users of Your Offer(s) in connection with the Fanplayr Service.
- p. "User non-PI Data" means non-personally identifiable information collected with respect to Your Website(s) in connection with the Fanplayr Service, which may include technical information about viewers and Users, related metrics such as impressions, clicks, pages viewed, conversions, date & time, media source, forwarding and cost, as well as audience target tactics and data sources employed in the provision of the Fanplayr Service.
- q. "Your Media" means copyrightable or trademarked images and/or text added into an offer or notification within the Fanplayr Service to create a customized Your Offer.
- r. "Your Offer(s)" means digital advertisement(s) run on Your behalf which utilize the Fanplayr Service.
- s. "Your Website(s)" means the website(s), e-commerce site(s), microsite(s) and/or Facebook pages owned by You or under Your control for which you request Fanplayr to apply the Fanplayr Service to.

2. Fanplayr Services.

a. Access to the Fanplayr Service.

- i. If you use 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, 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.
- ii. If you use the Fanplayr Service, subject to the terms and conditions of this Agreement: (1) you agree to provide access to Fanplayr to Your Websites, including to Your Shopping Cart as necessary for Fanplayr to integrate the Fanplayr Service with Your Websites and understand that Fanplayr cannot provide the Fanplayr Services without such access; and (2) through such integration, Fanplayr shall use commercially reasonable efforts to implement proprietary algorithms and tools on Your Websites to analyze Users' browsing and online shopping behavior to target Your Offers to Users based on such browsing and shopping behavior.
- iii. Fanplayr will provide the Fanplayr Service to You in accordance with Your Subscriber Agreement with Fanplayr.

b. Account and Passwords. The Fanplayr Service includes a mechanism that allows You to create an online account in order to manage the Fanplayr Service. 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 Your Media as submitted by You, in order to provide 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 and payment of the applicable Fees, Fanplayr shall use reasonable efforts to provide the support services with respect to the Fanplayr Service, in accordance with Your Subscriber Agreement with Fanplayr.

3. Data.

a. Data Collection. In connection with its provision of the Fanplayr Service You authorize Fanplayr to collect, consolidate and analyze information and data about Your Website and third parties that interact electronically with Your Website including, without limitation, implement tracking pixels, cookies, or add other tracking elements within Your Offers, Your Websites and to collect data from Facebook, other social media sites or other data services to track and monitor activities with respect to Your Offers and Your Users, including collection of User Data, including without limitation, e-mail addresses, 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, items placed in or removed from Users' Shopping Carts, Offers added to or used from Users' Offers Wallet, data relating to orders, the amount of time spent interacting with Your Offers and Your Websites, data relating to social sharing of Offers on Facebook, Twitter or any other site, demographic data collected via Facebook, Twitter or any other site, 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 and use by Your Users of the Fanplayr Service, in accordance with Your Subscriber Agreement with Fanplayr.

- c. Fanplayr Data. You acknowledge and agree that all User Data (excluding any User Data provided directly by You to Fanplayr (“Your Data”)) collected or derived 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 You shall treat such information as the Confidential Information of Fanplayr pursuant to Section 6 of 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. You may request from Fanplayr, in writing and at any time during the Term, as defined in Section 7, an electronic file of the User Data collected at Your Website at Fanplayr’s then current prices therefor. Within thirty (30) days of receiving such written request and payment, Fanplayr will provide You with such electronic file and grant You a perpetual, non-exclusive, worldwide license to use such User Data solely for Your internal business purposes.
- d. Fanplayr’s Use of User Data. Fanplayr shall not sell or otherwise use or distribute User Data collected at Your Website to, or share that User Data with, anyone other than You, except: (i) in connection with its performance of the Fanplayr Service and to improve the Fanplayr Service; and (ii) in anonymized, blinded formats that do not identify, reference or imply an association with You, for the purposes of creating benchmarking, statistical, research and marketing analyses, surveys, reports and studies. Notwithstanding the foregoing, User Data may be used to access extended data from third party services for the purpose of delivering add-on Fanplayr services to You and Users of Your Website. Fanplayr reserves the right not to display a small percentage of Your Offers to Your Users for the express purpose of monitoring and optimizing performance.
- e. Privacy Policies. You and Fanplayr will post on their respective websites 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 of this Agreement by the other Party.
- f. Data Retention. You and Fanplayr agree that Fanplayr shall not be obligated to retain User Data, unless otherwise required to do so by law, 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, 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 right, title, and interest, including all intellectual property rights, in and to Your Media, Your Websites, 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 (other than any feedback which You designate in writing at the time it is provided as being Your IP) You grant to Fanplayr and its successors and assigns an unlimited, perpetual, irrevocable, worldwide, nonexclusive, royalty free, fully paid, transferable, sub-licensable license to use, and incorporate that feedback into the Fanplayr Service, and to otherwise improve that service.

5. Fees and Payment.

- a. Fees. You agree to pay Fanplayr the fees specified in Your Subscriber Agreement with Fanplayr, including any Set-Up Fees, Transaction Fees, Minimum Monthly Fees, Managed Service Fees and Support Fees (collectively, the “Fees”).
- b. Payment.
 - i. Payment Information. Registration for the Fanplayr Service may require You to submit to Fanplayr PayPal payment account or credit card information. You agree that by submitting such PayPal account or credit card information, Fanplayr is authorized to charge such PayPal account or credit card the Fees due and You agree to pay the same.

- ii. Timing of Payment. Any Set-Up Fees will be billed and charged to the payment method on file upon registration. Transaction Fees and any Minimum Monthly Fees will be billed and charged to the payment method on file within 15 days of the end of each month. Any Managed Service Fees will be billed and charged to the payment method on file monthly in advance. You will make payment of invoices for customization and other services in advance prior to commencement, and regular monthly fees will be paid fifteen (15) 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.
- c. Calculation of Transaction Fees and Use of Promo Codes. To calculate the monthly Transaction Fees, Fanplayr will track purchases made with a Promo Code via the integration of the Fanplayr Service with Your Shopping Carts. Fanplayr agrees to use a consistent format for the Promo Codes and will provide such format to You prior to the launch of a particular campaign utilizing the Fanplayr Service. The Fanplayr Service cannot distinguish between a Promo Code and an equivalent promotional code that is independently applied to an online coupon by You or Your agent. For that reason, Fanplayr recommends that, to the extent that You apply promotional codes to online coupons independent of the Fanplayr Service, You use promotional codes that are distinct from the Promo Codes. Fanplayr will not refund any Fees charged to You as a result of Your use of a promotional code that is equivalent to a Promo Code.

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 from the Effective Date for one (1) year and will then automatically renew for additional one (1) year terms unless either party provides notice of nonrenewal at least sixty (60) days in advance of the expiration of the then current term or the Agreement is otherwise terminated as set forth herein (the initial and any renewal terms are collectively referred to as the “Term”). Fanplayr reserves the right in its sole discretion and at any time to upon notice in writing to You to modify or discontinue providing the Fanplayr Service, or any part thereof. Either party may terminate this Agreement for any breach by the other party of any of its obligations hereunder which breach is not cured within thirty (30) days written notice by the non-defaulting party. 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 Your Media (including without limitation under the intellectual property rights in and to any third party content contained therein) in order to use Your Media in connection with the Fanplayr Service, (2) Your Offers and Your Websites 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 the Fanplayr Service, You represent and warrant that Fanplayr's use of Your Data and Your Media as provided herein complies with 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 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. You agree that Fanplayr will determine the value and frequency (within a set of parameters selected by You) of Your Offers. 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 and conversion, 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.

9. Warranties and Disclaimer.

- a. Mutual. Each Party represents and warrants to the other that: (i) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; and (ii) the execution, delivery, and performance of this Agreement does not violate any other agreement to which it is a party or by which it is otherwise bound
- b. By You. You represent and warrant that (i) all information provided by You at the time of 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; (ii) You have the necessary rights to use and to permit the use of Your Data and Your Media; and (iii) You are in compliance with, and shall not violate any applicable law, including without limitation privacy and data protection laws and regulations, or your internal privacy policies, in connection with the collection, use or processing of User Data. In the event of a breach or reasonably anticipated breach of the foregoing warranties, in addition to any other remedies available at law or in equity, We will have the right to immediately, in our sole discretion, suspend the Fanplayr Service if deemed reasonably necessary by Fanplayr to prevent any liability accruing to it.
- c. By Fanplayr. Fanplayr represents that it will provide the Services in a professional manner consistent with applicable industry standards.
- d. The Fanplayr Service is controlled and operated by Fanplayr from its offices within the State of California. Fanplayr makes no representation that materials on the Fanplayr Service are appropriate or available for use in other locations. Those who choose to access or use the Fanplayr Service from other locations, including from outside the United States of America, do so on their own initiative and are responsible for compliance with local laws, if and to the extent local laws are applicable. Access to the Fanplayr Service from jurisdictions where the contents or practices of the Fanplayr Service are illegal, unauthorized or penalized is strictly prohibited.
- e. 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 any games included in Your Offers as part of the Fanplayr Service are compliant with all applicable legal requirements, will be sufficient to limit Your liability under applicable law or otherwise will meet Your needs. **Your use of such sample language is at Your own risk; PLEASE CONFER WITH YOUR OWN LEGAL COUNSEL WITH REGARD TO SUCH MATTERS.**

- f. EXCEPT AS SET FORTH IN THIS SECTION 9, THE FANPLAYR 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 QUALITY, 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 DURING THE ONE (1) YEAR PERIOD IMMEDIATELY PRECEDING THE DATE THE CAUSE OF ACTION AROSE AND IN NO EVENT SHALL FANPLAYR HAVE LIABILITY FOR ANY LOSS OR 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.

- a. By You. 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 this 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.
- b. By Fanplayr. Fanplayr will defend or at its option settle any Claim brought against You to the extent it alleges that the Fanplayr Service infringes any third party's intellectual property rights.
- c. Process. The indemnified Party will promptly notify the indemnifying Party of all Claims of which it becomes aware (provided that a failure or delay in providing such notice will not relieve the indemnifying Party of its obligations hereunder except to the extent such Party is prejudiced by such failure or delay), and will: (i) provide reasonable cooperation to the indemnifying Party at the indemnifying Party's 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. The indemnified Party agrees that the indemnifying Party may have control over the defense and settlement of all third party Claims; provided, however, the indemnifying Party will not acquiesce to any judgment or enter into any settlement, either of which imposes any obligation or liability on the indemnified Party 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 the foregoing, 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 supersedes 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 (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