

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 ("**Effective Date**") between Your Corporation ("**You**" or "**Your**") and Fanplayr Inc, 725 Alma Street, Palo Alto, CA 94301, USA ("**Fanplayr**").

1. Definitions

- a. "**Fanplayr Portal**" means the administration portal provided by Fanplayr for Your Account at <http://portal.fanplayr.com/>.
- b. "**Fanplayr Service**" means the Fanplayr web-based interactive onsite analytics, segmentation and targeting service for ecommerce and websites which allows display of personalized content and offers to Users based on their web browsing and online shopping behavior, demographics and other information and any other feature as described on <http://www.fanplayr.com>.
- c. "**Fanplayr Tags**" means the Javascript snippets as described on <http://www.fanplayr.com/docs/> that when implemented on Your Website enable Fanplayr to track and target Your Users through the Fanplayr Service.
- d. "**FP Offers**" means Offers setup for use in the Fanplayr Service on Your Website.
- e. "**FP Promo Code**" means a promo code specifically allocated on the Fanplayr Portal for use in FP Offers.
- f. "**Monthly Service Fees**" means the monthly fees attributed to monthly campaign, application hosting, reporting, account management and analytics as set forth in Your Subscriber Agreement.
- g. "**Offers**" means offers in the form of promotional codes used on Your Website.
- h. "**Offer Wallet**" means the software that allows Users to accumulate store, retrieve and use FP Offers and FP Promo Codes.
- i. "**Parties**" means Fanplayr and You.
- j. "**Service Fees**" means the fees (if any) payable under Your Subscriber Agreement for consulting services from Fanplayr.
- k. "**Set-Up Fees**" means the fees (if any) attributed to initial set-up and integration of the Fanplayr Service as set forth in Your Subscriber Agreement.
- l. "**Shopping Cart**" means the online shopping cart software on Your Website that allows Users to purchase items.
- m. "**Subscriber Agreement**" means the subscriber agreement between You and Fanplayr (or a subsidiary or distributor of Fanplayr), and if no such agreement is signed the form of subscriber agreement set out in Schedule A.
- n. "**Term**" shall have the meaning set forth in Section 7.
- o. "**Transaction Fees**" means the fees (if any) set forth in Your Subscriber Agreement attributed to the of the value of each conversion or order including lead capture, and may include per message charges for SMS (exclusive of shipping and taxes), attributed to Fanplayr.
- p. "**User**" means a natural person who receives, views, or interacts with the features of Your Website.
- q. "**User Data**" means the User PI Data and User non-PI Data.
- r. "**User PI Data**" information that can be used on its own or with other information to identify, contact, or locate a single person, collected with respect to the Users of Your Website in connection with the Fanplayr Service.
- s. "**User non-PI Data**" means non-personally identifiable information collected with respect to Users of Your Website in connection with the Fanplayr Service.
- t. "**Your Media**" means Your copyrightable or trademarked images or text used on Your Website or added by You into the Fanplayr Service.
- u. "**Your Website**" means the website, e-commerce site, mobile site, or mobile application owned by You or under Your control which uses the Fanplayr Service.

2. Fanplayr Services

- a. **Access to the Fanplayr Service.**
Following implementation of the Fanplayr Tags on Your Website:
 - i. Fanplayr shall use commercially reasonable efforts to provide the Fanplayr Service in accordance with the instructions and directions provided via the Fanplayr Portal, and Fanplayr grants You permission to use the Fanplayr Service on a non-exclusive basis for Your Website;
 - ii. you agree to provide access to Fanplayr to Your Website, and Your Shopping Cart for Fanplayr to provide the Fanplayr Services;
 - iii. Fanplayr will provide the Fanplayr Service to You in accordance with Your Subscriber Agreement.
- 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:
 - i. for maintaining the confidentiality of account passwords,
 - ii. for restricting access to Your account on the Fanplayr Service, and
 - iii. for all activities that occur under Your account or passwords. If You have reason to believe that Your account is no longer secure (e.g., in the event of 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.

3. **License by You.** You grant to Fanplayr the non-exclusive right to reproduce, distribute and use Your Media, 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.

4. **Support.** Fanplayr shall use reasonable efforts to provide the support services with respect to the Fanplayr Service, in accordance with Your Subscriber Agreement with Fanplayr.

5. **Datata**

- a. Data Collection.

You authorize Fanplayr:

- i. to collect, consolidate, manipulate and analyze data about Your Website and visitors that interact electronically with Your Website;
 - ii. to implement Fanplayr Tags, tracking pixels, cookies, or other tracking elements within Your Website;
 - iii. to collect data from Facebook, other social media sites or other data services relating to Your Website;
 - iv. to collect User Data, including e-mail addresses, SMS numbers, 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' Offer Wallet, data relating to orders, the amount of time spent interacting with Your Offers and Your Websites, and all other data relating to user activity on Your Website, interaction data relating to emails and SMS messages, site speed data, data relating to social sharing of Offers on Facebook, Twitter or any other site, demographic data collected via Facebook, Twitter or any other site, the dates and times of requests, and other similar or related data; and
 - v. to use such data 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.
 - i. You acknowledge and agree that all User Data (excluding any User Data provided directly by You to Fanplayr ("Your Data") collected, produced, calculated 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.
 - ii. You may request from Fanplayr, an electronic file of the Fanplayr Data at Fanplayr's then current prices. Within 14 days of receiving payment, Fanplayr will provide You with such electronic file and grant You a perpetual, non-exclusive license to use such data solely for Your internal business purposes.
 - iii. You agree not to use Fanplayr Data for any other purpose or in any other manner that violates applicable law.
 - 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. User Data may be used to access extended data from third party services for delivering add-on Fanplayr services to You and Users of Your Website.
 - e. Privacy Policies. You and Fanplayr will post on their websites their privacy policies and adhere to their privacy policies, which policies will be consistent with applicable laws, including the European General Data Protection Regulation.
Fanplayr updates on its website the data protection policy according to the European GDPR and you should update yours on your website.
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 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.

6. **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, or 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 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.

7. 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, Service Fees, and Monthly Fees (collectively, the “Fees”).
- b. **Payment.**
 - i. **Payment Information.** Registration for the Fanplayr Service or Your Subscriber Agreement may require You to submit to Fanplayr online payment information service account (“Payment Account”) or credit card information. You agree that by submitting such Payment Account or credit card information, Fanplayr is authorized to charge such Payment 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 upon completion of that work. Transaction Fees and Monthly Fees will be billed and charged at the end of each calendar month in arrears, payable within 15 days of invoice (or as otherwise specified in the Subscriber Agreement). You will make payment of invoices for customization and other services in advance prior to commencement. Past due amounts will accrue interest at a rate of one and one half percent (1.5%) per month.
- c. **Calculation of Conversion and Transaction Fees and Use of Promo Codes.**
 - i. To calculate the monthly Transaction Fees, Fanplayr tracks purchases that use FP Promo Codes that are displayed to the on-site shopper by a Fanplayr banner or widget. Fanplayr recommends the use of a consistent format for these FP Promo Codes and will provide such format to You prior to the launch of the first campaign.
 - ii. Fanplayr will not refund any Fees charged to You because of Your use of a general promotional code that is identical to a FP Promo Code.
 - iii. Although the Fanplayr service contains features that provide for security for FP Promo Codes, these features are optional, and Fanplayr will not be responsible for the unintended distribution of FP Promo Codes.
 - iv. Additionally, further definitions of what a conversion attributable to Fanplayr is can be specifically defined as part of Your Subscription Agreement, in accordance with the features of the Fanplayr service You are subscribing to.
 - v. SMS message fees, email fees and web push notification fees shall be charged by Fanplayr in accordance with your Subscription Agreement.

8. 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 including relating to: (1) Fanplayr Data, (2) trade secrets or know-how, (3) finance or accounting, (4) technology, research, or development, (4) internal processes or procedures, (5) algorithms, digital data, or designs, (6) business, operations, or planning, (7) sales or marketing strategies, and (8) the terms of the Subscriber Agreement related to payment, pricing or consideration, and the discussions, negotiations, or related proposals.
- b. **Exceptions.** “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.

9. Term and Termination.

- a. This Agreement will remain in effect from the Effective Date and during the term of the Subscriber Agreement or (if applicable) for such additional period during which You use the Fanplayr Service.



- b. 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.
- c. 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.
- d. The provisions of Sections 3, 4, 5 (for amounts owing accrued during the Term), 6, 7, 8, 9, 10, 11, 12 and 13 shall survive termination.

10. 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 messages, emails 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 Website, Your Offers and content 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 (if any) 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 international, 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 per mitting Fanplayr access to 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 Offers. You are solely responsible for creating the terms of, and honoring, Your Offers, and ensuring that Your Offers are compliant with the law. 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.
- e. Fanplayr will determine the timing and frequency of personalized content and Offers to selected groups of visitors as determined by a set of parameters selected in the Fanplayr Portal.
- f. Fanplayr reserves the right not to display a small percentage of personalized content or Your Offers or Your content to Your Users for the express purpose of monitoring and optimizing performance, through AB testing.

11. Warranties and Disclaimer.

- a. 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; (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, Fanplayr will have the right to immediately, in its sole discretion, suspend the Fanplayr Service if deemed reasonably necessary by Fanplayr to prevent any liability accruing to it.
- b. By Fanplayr. Fanplayr represents that it will provide the Services in a professional manner consistent with applicable industry standards.
- c. The Fanplayr Service is controlled and operated by Fanplayr from its offices within the State of California USA and its other offices as listed on <http://www.fanplayr.com/contact/>. 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, 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.
- d. The Fanplayr Service may include 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, 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 REGARDING SUCH MATTERS.

- e. 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, FITNESS FOR ANY PARTICULAR PURPOSE OR USE, NON-INFRINGEMENT, 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.

12. 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.

13. 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 Website, 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 10, or 11(a) ; and/or (c) that Your Website, 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.

14. 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, pandemics, 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.

15. Miscellaneous.

- a. 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.
- b. 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.



- c. 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.
- d. 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.
- e. This Agreement and Your Subscriber 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.
- f. No modification of this Agreement or Your Subscriber Agreement will be binding unless in writing and signed by both Parties. No waiver or modification of this Agreement or Your Subscriber Agreement shall be valid unless in writing signed by each Party.
- g. The waiver by either Party of any default or breach of this Agreement or Your Subscriber Agreement will not constitute a waiver of any other or subsequent default or breach.
- h. If any provision herein is held to be unenforceable, the remaining provisions will remain in full force and effect.
- i. All rights and remedies hereunder are cumulative.
- j. Section or paragraph headings used in this Agreement are for reference purposes only, and should not be used in the interpretation hereof.
- k. The singular includes the plural and vice-versa. A reference to one gender includes any gender. A reference to a grammatical part of speech includes all other parts of speech.
- l. 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



SCHEDULE A

Standard Form Subscriber Agreement

This applies if no signed Subscriber Agreement is entered into between You and Fanplayr (or its subsidiaries or distributors)

SUBSCRIPTION AGREEMENT

A. Recitals

This Subscription Agreement ("Agreement") is made between Fanplayr Inc. ("Fanplayr"), and the "Client" listed below, for implementation and execution of the Fanplayr Service ("the Service") on the Client's website(s) listed below ("the Site"), subject to the Media Services Agreement and Privacy Policy available at <https://fanplayr.com/legal>.

"FANPLAYR"
Fanplayr Inc.
725 Alma St
Palo Alto, CA, 94301
USA

"CLIENT" (Company Name):

Client's Site:

Bill To Address:

VAT No.:

Billing Contact:

Billing Contact email:

eInvoicing (if applicable):

Purchase Order No. (if applicable):

B. Services

Fanplayr agrees to provide the following services:

1. Undertake data collection on the Site;
2. Provide the Service to the Client for use on the Site, which includes use of the features described in section D of this Agreement and access to the Fanplayr Portal for their management;
3. Support ongoing operations of the Service on a continuous basis (7 days a week, 24 hours a day) using system resources;
4. Provide a reasonable response via phone or email from designated support staff members.

Support from Fanplayr staff members is included in the services for up to 10 hours per 1 million monthly visitors' sessions per month.

C. Integration

The Client will integrate Fanplayr into its Site using a custom-built integration developed by its own Development Team. Fanplayr will provide support in all the steps of the integration process.

D. Features

Fanplayr agrees to provide the following features as part of the Service:

- Behavioral Analytics Dashboard (Insights);
- Real Time Segmentation;
- On-site Targeting with Personalized Offers and Messages;
- Streams (Integration with 3rd party applications such as Email Service Providers, SMS Providers, etc.);
- Web Push Notifications;
- Product Recommendations;
- Product Rankings;
- Personalized SMS;
- Site Speed Analytics.

E. Term Of Engagement

The initial term of this Agreement shall be valid as of _____ (the "Effective Date") and for a term of 12 months (the "Initial Term").

The billable term of this Agreement will commence on the date that the Fanplayr tags are installed on the Site and data collection is confirmed.

Upon the expiration of the Initial Term and any Renewed Term, this Agreement will automatically renew for a further term of the same duration as the Initial Term ("Renewed Term"), unless any of the Parties gives notice in writing of their will to cancel the Agreement, one month prior to the date of expiration of the Term. In the event of cancellation by the Client, the Client agrees to pay Fanplayr a termination fee equal to all Fees (as such term in defines in the next section F) that would have been payable for each month remaining of the Term. In this Agreement "Term" means Initial Term and any Renewed Terms.



F. Pricing

The Client agrees to pay Fanplayr a one-time set-up and integration fee of \$ 0 plus the applicable value added tax, payable on the first invoice to the Client (“Integration Fee”).

Fanplayr will provide integration support at the following rates:

1. 1 day to 30 days after the Effective Date – \$ 0 additional charge plus the applicable value added tax;
2. 31 days to 60 days after the Effective Date – \$ 5,000 additional charge plus the applicable value added tax;
3. 61 days or more after the Effective Date – \$ 5,000 additional charge plus the applicable value added tax.

The Client agrees to pay Fanplayr the following fixed monthly fees for the usage of each of the following features (“Fixed Monthly Feature Fee”):

- For Behavioral Analytics Dashboard (Insights) a fixed monthly fee of \$ 3,500 per 1 million monthly visitors’ sessions (minimum \$750) plus the applicable value added tax;
- For Real Time Segmentation a fixed monthly fee of \$ 3,500 per 1 million monthly visitors’ sessions (minimum \$750) plus the applicable value added tax;
- For On-site Targeting with Personalized Offers and Messages a fixed monthly fee of \$ 3,500 per 1 million monthly visitors’ sessions (minimum \$750) plus the applicable value added tax;
- For Streams (for email retargeting) \$ 2,000 per 1 million monthly visitors’ sessions (minimum \$750) plus the applicable value added tax;
- For Web Push Notifications a fixed monthly fee of \$ 1,500 per 1 million monthly visitors’ sessions (minimum \$750) plus the applicable value added tax;
- For Product Recommendations a fixed monthly fee of \$ 5,000 per 1 million monthly visitors’ sessions per product catalog (minimum \$2,500) plus the applicable value added tax;
- For Product Rankings a fixed monthly fee of \$ 1,500 per 1 million monthly visitors’ sessions (minimum \$750) plus the applicable value added tax;
- For Personalized SMS a fixed monthly fee of \$ 750 and CPM (cost per thousand SMS sent) of \$150 plus the applicable value added tax;
- For Site Speed Analytics a fixed monthly fee of \$ 1,000 per 1 million monthly visitors’ sessions (minimum \$500) plus the applicable value added tax.

The Client agrees to pay Fanplayr an hourly fee of \$ 250 plus the applicable value added tax for each hour of support from Fanplayr staff members in excess of what defined in section B of this Agreement.

G. Invoicing

Fanplayr or one of its regional subsidiaries will invoice the Client on the 1st calendar day of each month for fees due from the preceding month.

The payment term for these invoices shall be net 15 days. All the amounts due will be paid to the entity issuing invoices.

H. Signature

In witness whereof, the Parties have caused this Agreement to be executed in two counterparts, as of the date _____

Company: Fanplayr Inc.

 Signed By:

 Print Name:

 Title:

Company:

 Signed By:

 Print Name:

 Title:
