

FANBANK MERCHANT TERMS OF SERVICE  
Last Updated April 19, 2018

Welcome to FanBank! FanBank operates a technology enabled platform that uses a variety of strategies to provide marketing, loyalty and commerce Programs to locally-owned, participating businesses (“Services”). FanBank’s technology platform and Program is designed to leverage social media, promotions, automated communications, data and incentives to elevate awareness of participating Merchants and motivate consumers to purchase goods and services at participating Merchants.

**1. Acceptance of Terms of Use Agreement.**

- a. This Agreement is an electronic contract that establishes the legally binding terms between FanBank, Inc. (“**FanBank**” or “**we**” or “**Company**”) and you, an individual or entity (“**Merchant**” or “**you**”) (“**Agreement**”). By electronically or verbally providing consent to participate in the FanBank Program (the “**Service**”), you are agreeing that you have read and understand, and agree to be bound by, the terms and conditions in this Agreement. In addition to this Agreement, you should read the FanBank Privacy Policy. In the event of a dispute, you agree to the mandatory arbitration procedure defined herein. As used in this Agreement, FanBank and Merchant or you may be individually referred to as a “Party” and collectively referred to as the “Parties.”
- b. By accessing the Website or using the Program, you accept this Agreement and agree to the terms, conditions and notices contained or referenced herein and consent to have this Agreement and all notices provided to you in electronic form. Please print a copy of this Agreement for your records. To receive a non-electronic copy of this Agreement, please Contact Us at connect@Fanbank or send a letter and self-addressed stamped envelope with sufficient postage to: FanBank, 1351 Third Street Promenade, Santa Monica, CA 90401. This Agreement may be modified by the Company from time to time, such modifications to be effective upon posting by the Company on the Website.
- c. By using the Service, you consent to receive this Agreement in electronic form by using the Service. To withdraw this consent, you must cease using the Service and terminate your account.
- d. As a participating Merchant, Merchant agrees to allow FanBank and its Third Party Providers, to a) collect Payment from Merchant as specified below; b) collect and track certain Participant Data, as specified below, from Participant purchases; c) compile, and report to Merchant, Merchant specific consumer data; d) provide the Merchant a platform for enabling Merchant to offer valuable incentives to likely shoppers; e) grant Merchant access to a rewards network comprised of participating Merchants and other third party businesses; and f) issuing Participants incentives in conjunction with Merchant prescribed Participant behavior. FanBank reserves the right to make updates, additions and technological changes to the Programs at any time.

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2. **Definitions.**

“**Campaign**” shall mean advertising, promotional or marketing campaigns featuring a variety of programs which enables allows Participants to Link registered Payment Cards via the Collinson Platform in order to have loyalty rewards credited to their Loyalty Accounts.

“**Collinson**” means Collinson Group or such other data aggregator that FanBank may contract with to provide to FanBank certain data matching transactions between the Merchant and Participants.

“**Collinson Platform**” shall mean Collinson’s technology and platform (including software, servers, and associated user interface) by which Collinson matches Participant’s registered Payment Card transactions with Merchants, and transmits Transaction Data.

“**Collinson Services**” shall mean the Loyalty Transaction Matching services and transmission of Transaction Data to FanBank to be performed by Collinson to FanBank as enabled by the Collinson Platform.

“**FanCoin**” means a virtual denomination that represents Participant’s loyalty points issued by or on behalf of Merchant to Participant to reward Participant for engaging in Merchant prescribed behavior.

“**FanStore**” means a virtual store populated with Merchant’s and, where applicable, certain third party rewards (goods, services and experiences) which can be redeemed by Participant using Rewards.

“**Financial Institutions**” shall mean those financial services institutions that have arrangements with Collinson Group to facilitate the validation of Redemptions, including, without limitation, payment network partners (such as American Express, MasterCard and VISA).

“**Link**” (and variations thereof) shall mean the act of connecting a Loyalty Program with a Payment Card registered with Collinson Group so as to allow tracking and validation of Redemptions and transmission of Loyalty Transaction Matching information.

“**Loyalty Account**” shall mean a Participant’s Loyalty Program account in which Participant’s Rewards are credited

“**Loyalty Program**” shall mean a variety of Reward programs that incentivizes Participants to engage in desired and repeated purchasing behavior, or other behavior prescribed by Merchant, through Rewards or other benefits.

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**“Loyalty Transaction Matching”** shall mean the validation of qualifying Participant transactions executed with Merchants using a Payment Card and transmitting relevant Transaction Data to FanBank to complete the process for crediting Rewards to Loyalty Accounts.

**“Participant(s)”** shall mean a user, consumer, or customer of a Merchant who has registered for the Loyalty Program and uses his or her Payment Card for the purposes of earning Rewards.

**“Participant Data”** shall mean Participant data collected from the promotion of Loyalty Programs and related Campaigns from a Party’s respective websites and platforms.

**“Pay for Performance”** shall mean specific Programs provided by FanBank where Merchant agrees to pay additional fees above the monthly Payment for issuance of Rewards, FanCoins, or other incentives or Merchant agrees to a revenue share agreement.

**“Payment Method”** shall mean your chosen payment provider provided at the time of enrollment to be used for collection of Payment by FanBank. You may update your Payment Method by contacting FanBank.

**“Payment Card”** shall mean any registered payment card, debit card or credit card issued by Financial Institutions and supported by the Collinson Services.

**“Program”** shall mean variety of activities deployed by Fanbank on behalf of participating Merchants designed to leverage social media, promotions, automated communications, data, Rewards, and incentives to increase consumer awareness of participating Merchants and motivate consumers, and to purchase goods and services at participating Merchants.

**“Redemption”** (and variations thereof) shall mean the act of consummating a purchase of goods or services in accordance with the terms and conditions of a Loyalty Program Campaign with the use of a Payment Card to which it is Linked.

**“Redemption Value”** shall mean the value of the discount, rebate or other benefit of a validated Redemption.

**“Rewards”** shall mean FanCoin, goods, services, experiences, gift codes and such other incentives as FanBank may offer Participants from time to time for such Participant’s participation in the Loyalty Program.

**“Service”** shall mean a variety of Programs and Campaigns provided to Merchant by FanBank

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“**Third Party Providers**” shall mean third party service providers (including Linkable Collinson), publishers, resellers, contractors, agents, and Financial Institutions used by FanBank and/or Collinson during the course of this Agreement.

“**Transaction Data**” shall mean all transaction data relating to Campaigns, including Linking, Redemption, Loyalty Transaction Matching data related thereto, collected by Collinson.

3. **Term and Termination.**

- a. This Agreement will remain in full force and effect while you use the Service and/or are a participating Merchant.
- b. You may terminate this agreement by providing a written notice of cancellation via email to [connect@fanbank.com](mailto:connect@fanbank.com) or sending a cancellation request to FanBank, Inc. 1351 Third Street Promenade, Santa Monica, CA 90401.
- c. Fanbank may terminate this agreement (a) by providing 72 hour written notification to Merchant, notice by email is an acceptable method of notice (b) automatically if Merchant materially breaches this Agreement, including not providing sufficient Payment (c) without notice to Merchant if FanBank, in its sole discretion, determines that Merchant’s actions and practices relating to FanBank are unlawful or commercially unreasonable towards FanBank, the FanBank Platform, other FanBank Merchants or Participants.
- d. If Merchant requests cancellation, FanBank will not provide a refund for a partial month of Service. Upon cancellation request, FanBank will suspend Merchant’s next scheduled payment and terminate services for Merchant.
- e. You may cancel this agreement, without penalty or obligation, at any time prior to midnight of the third business day following the original date of this contract, excluding Sundays and holidays. To cancel this agreement, email [connect@fanbank.com](mailto:connect@fanbank.com) with the information that you are cancelling the agreement including your Business name and associated email address. If you cancel within the stated time period, Fanbank will refund, within ten days of the date on which you give notice of cancellation, any payments you have made. If you send or deliver the notice to cancel your subscription agreement within such three day period, we will refund the full amount of your subscription.

4. **Payment and Subscription.**

- a. Merchant agrees to provide payment to FanBank in return for Services provided by FanBank.
- b. FanBank will automatically bill you through the Payment Method you provided at the time of enrollment for use of the Service. You agree to pay FanBank all charges at the prices you agreed to for any use of the Service by you or other persons (including your agents), and you authorize FanBank (through our third-party processor) to charge your chosen payment provider for the Service. You agree to make payment using that selected Payment Method. FanBank may correct any billing errors or mistakes that it makes even if it has already

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requested or received payment. The terms of your payment will be based on your Payment Method and may be determined by agreements between you and the financial institution, credit card issuer or other provider of your chosen Payment Method. If you initiate a chargeback or otherwise reverse a payment made with your Payment Method, FanBank may in its discretion terminate your account immediately. If the FanBank successfully disputes the reversal, and the reversed funds are returned, you are not entitled to a refund or to have your account or subscription reinstated.

- c. Your subscription will continue indefinitely until cancelled by you. After your initial subscription commitment period (usually 1 month), and again after any subsequent subscription period, your subscription will automatically continue for an additional equivalent period, at the price you agreed to when subscribing. You agree that your account will be subject to this automatic renewal feature. Payment is due at the beginning of each subscription period, and on the anniversary date of each renewal period thereafter. For example, if Merchant enrolls on the 15<sup>th</sup> of the month, Merchant will be charged for the first month of service on the date of enrollment and on the 15<sup>th</sup> of every month thereafter. If Merchant's Payment shall fall on a date in a month with no anniversary date, 31<sup>st</sup> in a month with 30 days, Merchant will be charged on the last day of that month.
- d. If you do not wish your account to renew automatically, or if you want to terminate your subscription, you must provide cancellation notice. If you cancel your subscription, you won't be eligible for a prorated refund of any portion of the subscription fee paid for the then-current subscription period. By subscribing, you authorize the Company to charge your Payment Method now and again at the beginning of any subsequent subscription period. You also authorize the Company to charge you for any sales or similar taxes that may be imposed on your subscription payments. Upon the renewal of your subscription, if the Company does not receive payment from your Payment Method provider, you agree to pay all amounts due on your Billing Account upon demand and/or you agree that the Company may either terminate or suspend your subscription and continue to attempt to charge your Payment Method provider until payment is received (upon receipt of payment, your account will be activated and for purposes of automatic renewal, your new subscription commitment period will begin as of the day payment was received).
- e. You must provide current, complete and accurate information for your Payment Method. You must promptly update all information to keep your Payment Method current, complete and accurate (such as a change in billing address, card number or expiration date), and you must promptly notify FanBank if your Payment Method is canceled (including if you lose your card or it is stolen), or if you become aware of a potential breach of security (such as an unauthorized disclosure or use of your name or password). Changes to such information can be made by contacting Fanbank at [connect@fanbank.com](mailto:connect@fanbank.com). If you fail to provide the Company any of the foregoing information, you agree that you are responsible for fees accrued under your account. In addition, you authorize us to

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obtain updated or replacement expiration dates and card numbers for you credit or debit card as provided by your credit or debit card issuer. You also authorize us to update your Payment Method to include any credit or debit card or other payment method provided by you to purchase any feature or service throughout your use of the Website or Service when automatically renewing your account, as set forth in Section 4.

- f. If you elect to use your bank account as the Payment Method, you authorize FanBank to charge your bank account through an Automated Clearing House Transaction (ACH) for your payment amount. You certify that you are an owner or authorized representative of the Merchant with the authority to authorize these payments on the Merchant's behalf. You understand that this authorization will remain in effect until this agreement is cancelled per Section (3). If the scheduled payment dates fall on a weekend or holiday, payments may be executed on the next business day. You agree to keep sufficient funds in the account. If the transaction is returned for Non-Sufficient Funds (NSF) FanBank may re-attempt to process the charge again within 30 days. You are responsible for any bank charges resulting from transactions returned for any reason and agree to pay FanBank \$25 per incident. You affirm that the bank account provided is enabled for ACH transactions. You agree not to dispute these scheduled transactions provided the transactions correspond to these terms. Both parties agree to be bound by NACHA Operating Rules and U.S. Law as they pertain to these transactions.
  - g. If you elect to participate in a Pay for Performance Program, you authorize FanBank to charge your Payment Method for the fees associated with Pay for Performance Programs as they are incurred.
  - h. FanBank agrees to use industry accepted practices to secure all private information obtained for the execution of this Agreement.
5. **Advertising and Promotions.**

The logos, trademarks and other designations of each Party are collectively referred to as the "**Trademarks**" of that Party. FanBank (and its Third Party Providers) may use the Merchant's Trademarks in FanBank's sales and marketing. FanBank agrees to follow any Trademark use guidelines provided by the Merchant in writing. In no event shall FanBank use Merchant's Trademarks in any defamatory or obscene manner or, as determined by Merchant in its reasonable discretion, in any manner likely to harm the Merchant's reputation or goodwill. FanBank grants Merchant a non-exclusive, non-transferable license to use FanBank's Trademarks solely to promote FanBank, the FanStore and FanBank related events during the term of this Agreement. Merchant will present to FanBank, for its prior approval, any item or material that uses or refers to FanBank's Trademarks. Merchant shall not use FanBank's Trademarks in advertisements or promotions that contain any reference to any entity that is not related to FanBank. Merchant consents to receive periodic advertisements, promotions, and marketing from FanBank about FanBank promotions. FanBank agrees to use Merchant information solely for the purposes of active promotions and as otherwise permitted

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herein, and will not sell, deliver, or otherwise transfer Merchant information to another except as permitted herein or unless required by the federal or applicable state laws of the United States of America.

6. **Consent to Collection of Certain Participant Data.**

FanBank and/or its Third Party Provider must collect certain Transaction Data related to purchases made from the Merchant with registered Payment Cards. To facilitate the collection of this data, FanBank may establish data and/or telecommunications links, and: (a) the Merchant, its employees, and/or appointed agents authorize FanBank and its Third Party Providers to use the Merchant's Transaction Data as contemplated by and in furtherance of the objectives of the FanBank promotions, including for determining the qualification of Participant transactions for credit and for identifying and tracking participating merchant members activity; (b) Merchant authorizes Collinson to enroll Merchant as a participating merchant enabled by Collinson Services and applicable Financial Institutions; and (c) Merchant permits the monitoring, collection, use, disclosure and sharing of related Payment Card Transaction Data for the purpose of enabling the Collinson Services; (d) Merchant acknowledges that it will remain responsible for any fees imposed by its settlement bank, settlement processor, authorization network processor, or the like in its normal course of processing payment transactions; and (e) FanBank shall otherwise treat transaction, financial, and Participant information obtained and/or processed by FanBank as a result of this Agreement in strict confidence. FanBank agrees that it will only use Transaction Data provided to it in connection with this Agreement for purposes of fulfilling its obligations to the Participant(s) and the Parties in connection with the execution of this Agreement.

7. **Data Rights.**

Merchant consents to FanBank's access and processing of Participant Data and Transaction Data collected from the Loyalty Programs in connection with the Collinson Services, and acknowledges and agrees that FanBank, Collinson and its Financial Institutions may use such data for purposes of generating anonymous, aggregated, statistical models and compilations, trend analyses, program performance analyses, benchmarking, the development of case studies and for internal business purposes so long as such data is not publicly attributable to and no reference is made to the Merchant, and that such data may be otherwise used by Financial Institutions with respect to its card holders in accordance with its Payment Card member rules. In addition to the foregoing, Merchant consents to FanBank receiving access to other Merchant data held by Financial Institutions for FanBank business purposes including, but not limited to, meeting certain FanBank obligations to Merchant hereunder.

8. **Merchant Data Rights.**

If Merchant is provided with any non-aggregated Transaction Data relating to the use of Payment Cards ("**Payment Card Data**"), Merchant shall use such data solely for purposes of completing or validating Redemption-related transactions or rewards, calculating associated rewards or identifying transaction matches, and not for any

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marketing, modeling or for any other purposes, and to retain such data only for so long as it has a legitimate business need to retain them for such purposes. Merchant acknowledges and agrees that the Financial Institutions make no representations or warranties as to the accuracy or availability of Payment Card Data, and that the foregoing data rights are subject to change if the corresponding rights derived from the Financial Institutions are hereafter restricted or modified. If for any reason whatsoever Transaction Data from a data provider is no longer available to FanBank or Collinson for use or sharing as contemplated under this Agreement, FanBank and Collinson reserves the right to discontinue or limit the support of the Loyalty Program as contemplated hereunder to the extent impacted by the loss of such data.

9. **Representations and Warranties.**

Each Party hereby represents and warrants that (a) it has the authority to enter into this Agreement and to fully perform its obligations hereunder, (b) this Agreement does not and will not conflict with any of the Party's other obligations to any third parties, and (c) it complies and will comply with all applicable laws and regulations. Merchant additionally represents and warrants that the Merchant is authorized and has the necessary third party consents to grant the licenses for the Trademarks as contemplated hereby, and the use by FanBank of Merchant's Trademarks, does not infringe or misappropriate any third party copyright, trademark, right of publicity, or other proprietary right.

FANBANK AND ITS THIRD PARTY PROVIDERS PROVIDE THEIR RESPECTIVE SERVICES "AS IS." FANBANK AND ITS THIRD PARTY PROVIDERS DISCLAIM ANY AND ALL PROMISES, REPRESENTATIONS, AND WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE AGREEMENT, THE FANSTORE, AND ANY OTHER DATA, INFORMATION, OR OTHER MATERIAL FURNISHED TO MERCHANT HEREUNDER; AND WARRANTIES OF NON INFRINGEMENT, TITLE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OR USE. NEITHER FANBANK NOR ANY OF ITS THIRD PARTY PROVIDERS WARRANT THAT ITS PLATFORM OR SITE, ANY INTERNET CONNECTIONS, OR THIRD PARTY CONNECTIVITY, WILL OPERATE UNINTERRUPTED OR ERROR-FREE. FANBANK AND ITS THIRD PARTY PROVIDERS DISCLAIM ANY AND ALL LIABILITY ARISING FROM THE TRANSMISSION OF INFORMATION OVER THE INTERNET, OR ANY IMPAIRMENT OR DISRUPTION OF THE INTERNET. IF AND TO THE EXTENT THAT THE SERVICES PROVIDED HEREUNDER ARE DELAYED, SUSPENDED OR TERMINATED FOR REASONS BEYOND FANBANK'S OR ITS THIRD PARTY PROVIDER'S REASONABLE CONTROL, INCLUDING THE INABILITY OR UNWILLINGNESS OF THIRD PARTIES TO PROVIDE SUPPORTIVE SERVICES, FANBANK AND ITS THIRD PARTY PROVIDERS HEREBY DISCLAIM ANY AND ALL LIABILITIES ASSOCIATED THEREWITH. MERCHANT HEREBY ACKNOWLEDGES THAT THE TRANSACTION DATA SUPPLIED BY COLLINSON AND ITS FINANCIAL INSTITUTIONS AND RELATED SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS.



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10. **Indemnification.**

FanBank agrees to indemnify and hold harmless Merchant from and against third party claims, damages, losses, costs or expenses, including reasonable attorneys' fees, to the extent arising out of FanBank's violation of any law or FanBank's willful misconduct. In no event shall FanBank or its Third Party Providers be liable to Merchant or to any third party for any loss of profits, business interruption, or loss of business information; any incidental, special, exemplary, or consequential damages; or any claims or demands brought against Merchant, even if FanBank has been advised of the possibility of such damages. Merchant shall defend, indemnify and hold harmless FanBank and its Third Party Providers, and their respective affiliates, directors, officers, employees, agents, successors, heirs and assigns (collectively, the "Indemnitees"), from and against any and all losses, costs, liabilities, damages, fines, injuries, interest or expenses (including reasonable attorneys' fees and costs of investigation and defense) suffered or incurred by any Indemnitee (collectively, "**Losses**") to the extent such Losses are attributable to any third party claims, actions or proceedings (collectively, "**Third Party Claims**") arising from, based upon or related to: (a) a claim that any Merchant Trademark infringes or otherwise violates any third party intellectual property or other proprietary rights or privacy rights or otherwise violates law; or (b) any violation of law or breach of any covenant, representation or warranty hereunder by Merchant (including payment defaults). Merchant shall pay any judgments, settlement amounts, reasonable attorney's fees and other costs and expenses of litigation incurred by an Indemnitee of such Third Party Claims. The foregoing indemnity obligation shall survive any termination or expiration of this Agreement. Merchant is responsible for all activity and content such as data, graphics, photos and links that are uploaded by Merchant into a FanStore ("**Store Content**"). Merchant may not use the FanStore for any illegal or unauthorized purpose or violate any laws in its jurisdiction (including but not limited to copyright laws) or of the United States. FanBank does not pre-screen Store Content and it is in FanBank's sole discretion to refuse or remove any Store Content that is available via Merchant's FanStore. FanBank's total liability for any cause of action, claim, damages, fees, costs or expenses, excluding claims under this section (Indemnification), shall be limited to the amount of fees paid by Merchant to FanBank under this Agreement during the six (6) months immediately preceding the date on which the claim at issue accrued.

11. **Release.**

Merchant (on its own behalf or that of its respective representatives and affiliates) hereby releases any and all claims that it (or they) may have against Collinson and/or the Financial Institutions for and in connection with any services provided by such Financial Institutions. Collinson and its Financial Institutions shall be deemed third party beneficiaries of this Agreement.

12. **Mandatory Arbitration.**

In the event of a dispute arising out of this Agreement, the Parties agree to use good faith efforts to reach a resolution amicably. The Parties will have thirty (30) days from the date the dispute originated to reach a resolution. In the event the good faith efforts are

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unsuccessful, the Parties agree to mandatory, binding arbitration, following the processes set forth by the American Arbitration Association. The exclusive venue for any such arbitration shall be Los Angeles, California. The cost of the arbitrator's compensation shall be shared equally by the Parties.

13. **Independent Contractors.**

The Parties are independent contractors. Nothing in this Agreement shall be construed to create any employment, partnership, or agency relationship between the Parties. Except as otherwise expressly stated herein, neither Party shall make any representations or warranties, or enter into any agreement or assume any obligation on behalf of the other Party.

14. **Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to its conflict of laws provisions or your actual state of residence. Any claims, legal proceeding, or litigation arising in connection with this Agreement will be brought solely in Los Angeles, California, and you consent to the jurisdiction of such courts. Merchant shall commence an action in relation to an alleged breach of this Agreement within one (1) year from the date of breach, without regard to the date the breach was discovered. Any action not brought within that one (1) year time period shall be barred, without regard to any other limitations period set forth by law or statute.

15. **Changes to this Agreement.**

FanBank reserves the right to modify, at its sole discretion, this Agreement at any time, so please review frequently. Merchant's continued participation in the FanBank Programs represents Merchant's acceptance of the modified Agreement. If a material change to this Agreement is necessary, Merchant can terminate this Agreement without penalty by providing notice of termination to FanBank at 1351 Third Street Promenade, Santa Monica, CA 90401 within thirty (30) days from the date of the change or contacting FanBank to cancel Merchant's services.

16. **Entire Agreement.**

This Agreement including all attachments hereto, constitutes the entire agreement between the parties, and supersedes all prior agreements, whether written or oral, regarding the subject matter of this Agreement.