

## Banzai Master Services Agreement

*Last Update: March, 2021*

This Banzai Master Services Agreement (the “**Agreement**”) is entered into as of the date specified above (“**Effective Date**”) between Banzai International, Inc., a Delaware corporation (“**Banzai**”) and the customer identified above (“**Customer**”). This Agreement incorporates by reference any and all attachments to this Agreement and Order Forms (as defined below) executed by the parties.

### Contents

#### 1. Services.

1. **Provision of Services.** This Agreement governs access to and use of Banzai products and services (together, the “**Services**”) purchased under Banzai order forms (“**Order Form(s)**”). Customer and users of Customer’s Services account (“**End Users**”) may access and use the Services in accordance with this Agreement. End Users may include Customer’s and its affiliate’s employees and consultants.
2. **Modifications to the Services.** Banzai may update the Services from time to time. If Banzai changes the Services in a manner that materially reduces their functionality, Customer may provide notice within 30 days of the change to terminate the Agreement and receive a pro-rata refund of prepaid fees for the Services. This termination right will not apply to features provided on a beta or evaluation basis.

#### 2. Customer Obligations

1. **Compliance.** Customer is responsible for use of the Services by its End Users. Customer and its End Users must use the Services in compliance with the Banzai Terms and Conditions (available at <https://www.getbanzai.com/legal/terms-and-conditions/>), including the Acceptable Use Policy (available at <https://www.getbanzai.com/legal/acceptable-use-policy/>). Customer will:
  2. Obtain from End Users and third parties any consents necessary to allow Banzai to provide the Services;
  3. Ensure that all marketing opt-in language offered and communications sent on behalf of Customer through the Services comply with Customer’s legal obligations;
  4. Provide Banzai with a list of any third parties that must not be contacted pursuant to applicable contact opt-out or other laws; and
  5. Comply with laws and regulations applicable to Customer’s use of the Services and ensure its End Users do the same.
6. **Contacts.** Customer represents and warrants that it has the right to use all Customer Data in the Services under all applicable laws, including obtaining any necessary consent to email or otherwise contact individuals through the Services. “**Customer Data**” means data submitted to Banzai through or in relation to the Services.
7. **Unauthorized Use & Access.** Customer will prevent unauthorized use of the Services, including by its End Users, and terminate any unauthorized use of or access to the Services if possible. Customer will promptly notify Banzai of any unauthorized use of or access to the Services. Customer will further ensure that its End Users safeguard their account credentials and will take responsibility for any account activity resulting from End Users (mistakenly or purposefully) sharing their account credentials or otherwise giving others access to their account.
8. **Restricted Uses.** Customer will not, will ensure that its End Users do not, and will ensure that neither Customer nor its End Users attempt nor assist anyone else to:
  - sell, resell, or lease the Services;
  - reverse engineer the Services;

- send unsolicited communications, promotions or advertisements, or spam;
- send altered, deceptive or false source-identifying information, including “spoofing” or “phishing”;
- promote or advertise products or services other than your own without appropriate authorization;
- probe, scan, or test the vulnerability of any system or network;
- breach or otherwise circumvent any security or authentication measures;
- access, tamper with, or use non-public areas or parts of the Services, or shared areas of the Services you haven’t been invited to;
- interfere with or disrupt any user, host, or network, for example by sending a virus, overloading, flooding, spamming, or mail-bombing any part of the Services;
- access, search, or create accounts for the Services by any means other than our publicly supported interfaces (for example, “scraping” or creating accounts in bulk);
- publish or share materials that are unlawfully pornographic or indecent, or that contain extreme acts of violence;
- advocate bigotry or hatred against any person or group of people based on their race, religion, ethnicity, sex, gender identity, sexual preference, disability, or impairment;
- harass or abuse Banzai personnel or representatives or agents performing services on behalf of Banzai;
- violate the law in any way, including storing, publishing or sharing material that’s fraudulent, defamatory, or misleading; or
- violate the privacy or infringe the rights of others.

In each case these restrictions are void if prohibited by law.

### 3. Suspension

1. **Of End User Accounts by Banzai.** If an End User (i) violates this Agreement or the Banzai Terms and Conditions (available at <https://www.getbanzai.com/legal/terms-and-conditions/>) or (ii) uses the Services in a manner that Banzai reasonably believes will cause it liability, then Banzai may request that Customer suspend or terminate the applicable End User account and may suspend all or some of Customer’s access to the Services.
2. **Security Emergencies.** Notwithstanding anything in this Agreement, if there is a Security Emergency then Banzai may automatically suspend use of the Services. Banzai will make commercially reasonable efforts to narrowly tailor the suspension as needed to prevent or terminate the Security Emergency. **“Security Emergency”** means: (i) use of the Services that does or could disrupt the Services, other customers’ use of the Services, or the infrastructure used to provide the Services and (ii) unauthorized third-party access to the Services.

### 4. Intellectual Property Rights

1. **Reservation of Rights.** Except as expressly set forth herein, this Agreement does not grant (i) Banzai any Intellectual Property Rights in Customer Data or (ii) Customer any Intellectual Property Rights in the Services or Banzai trademarks and brand features. **“Intellectual Property Rights”** means current and future worldwide rights under patent, copyright, trade secret, trademark, moral rights, and other similar rights. Customer agrees not to violate any of Banzai’s Intellectual Property Rights and to ensure that its End Users do the same.
2. **Limited Permission.** Customer grants Banzai only the limited rights that are reasonably necessary for Banzai to offer the Services (e.g., hosting Customer Data). This permission includes rights to Customer Data, other customer intellectual property, and any other information provided by Customer in relation to the Services, and it also extends to trusted third parties Banzai works with to offer the Services (e.g., payment provider used to process payment of fees). For the avoidance of doubt, Banzai may use Customer

trademarks and other brand features in its provision of the Services, including emails and custom domain names.

3. **Suggestions.** Banzai may use, modify, and incorporate into its products and services, license and sublicense, any feedback, comments, or suggestions on the Services that Customer or End Users may send Banzai or post in Banzai's forums without any obligation to Customer.
4. **Customer List.** Banzai may include Customer's name in a list of Banzai customers on the Banzai website or in promotional materials. This right will survive termination of this Agreement.

## 5. Third-Party Services

If Customer uses any third-party service that integrates with the Service (e.g., a service that uses a Banzai API), (a) Banzai will not be responsible for any act or omission of the third party, including the third party's access to or use of Customer Data and (b) Banzai does not warrant or support any service provided by the third party. Banzai may charge Customer reasonable fees for any assistance with third-party services.

## 6. Confidentiality

For purposes of this Agreement, "**Confidential Information**" means any technical or business information disclosed by one party to the other party that under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary, and includes but is not limited to Customer Data, pricing, and all information related to the functioning, development, and usage of the Services.

1. Each party will: (i) take reasonable measures to protect the other's Confidential Information, and at least those measures it takes to protect its own confidential information of a similar nature; (ii) not disclose Confidential Information to any third parties; and (iii) only use any Confidential Information in the course of provision and use of the Services. A party may disclose Confidential Information to its employees, advisors and consultants who have a need to know the Confidential Information solely to the extent necessary to provide and use the Services, if that employee, advisor or consultant is bound to restrictions at least as protective of the other party's Confidential Information as those set forth in this Agreement. A party may disclose Confidential Information to the extent required by any law or regulation if it gives the other party reasonable advance notice (to the extent permitted) so that the other party can seek to prevent or limit such disclosure.

2. The receiving party's obligations in Section 6.a will not apply to the extent any Confidential Information:

1. is or becomes generally known or available to the public, through no act or omission of the receiving party;
2. was known, without restriction, prior to receiving it from the disclosing party;
3. is rightfully acquired from a third party who has the right to disclose it and who provides it without restriction as to use or disclosure; or
4. is independently developed without access to any Confidential Information of the disclosing party.

3. The unauthorized use or disclosure of the disclosing party's Confidential Information would cause the disclosing party to incur irreparable harm and significant damages, the degree of which may be difficult to ascertain. Accordingly, the disclosing party will have the right to obtain immediate equitable relief to enjoin any unauthorized use or disclosure of its Confidential Information, in addition to any other rights and remedies that it may have. Nothing in this Agreement restricts either party's ability to independently develop, make, use, procure or market products or services that may be competitive with those offered by the other party.

## 7. Fees & Payment

1. **Fees.** Customer will pay, and authorizes Banzai to charge using Customer's selected payment method, for all applicable fees after any invoice or Order Form within the Payment Terms period identified in the table

above. If Customer uses the Services beyond what is purchased under an Order Form, Banzai will invoice Customer at its then-current rates. Customer is responsible for providing complete and accurate billing and contact information to Banzai. Any amount not paid when due will bear interest from the due date until paid at a rate equal to 1% per month (12.68% annually) or the maximum allowed by law, whichever is less. Customer will be liable for all legal and other expenses associated with collecting any overdue fees. Fees are non-refundable except as required by law or specified herein. Banzai may suspend or terminate the Services if fees are past due.

2. **Taxes.** Customer is responsible for all taxes. Banzai will charge tax when required to do so. If Customer is required by law to withhold any taxes, Customer must provide Banzai with an official tax receipt or other appropriate documentation.
3. **Purchase Orders.** If Customer requires the use of a purchase order or purchase order number, Customer (i) must provide the purchase order number at the time of purchase and (ii) agrees that any terms and conditions on a Customer purchase order will not apply to this Agreement and are null and void.

## 8. Term & Termination

1. **Term.** Each Service will be provided for the subscription term set forth in the Order Form, which shall default to 12 months if no term is specified. This Agreement will remain in effect until Customer's subscription to the Services under all Order Forms expires or terminates, or until the Agreement is terminated.
2. **Renewal.** The Sales Order will not auto-renewal. At least 45 days prior the subscription end date, Banzai will be in contact with Customer and both parties will negotiate an additional subscription term.
3. **Termination.** In addition to termination at the end of a subscription term, either Banzai or Customer may terminate this Agreement (including all Order Forms) if: (i) the other party is in material breach of the Agreement and fails to cure that breach within 30 days after receipt of written notice or (ii) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within 90 days. Banzai may also terminate this Agreement with immediate effect in its sole discretion at any time (with a pro-rata refund of prepaid fees for unused Services).
4. **Effects of Termination.** If this Agreement terminates: (i) the rights granted by Banzai to Customer will cease immediately (except as set forth in this section); (ii) Banzai may provide Customer access to its account at reasonable fees so that Customer may export its Customer Data; and (iii) after a commercially reasonable period of time, Banzai may delete any Customer Data relating to End Users' accounts. Those terms that by their nature should survive either expiration or termination of this Agreement will survive, including but not limited to the parties' obligations with respect to confidential information, ownership, indemnification and limitation of liability.

## 9. Indemnification

1. **By Customer.** Customer will indemnify, defend, and hold harmless Banzai from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of any claim by a third party against Banzai and its Affiliates regarding: (i) Customer Data; (ii) Customer's use of the Services in violation of this Agreement; or (iii) End Users' use of the Services in violation of this Agreement.
2. **By Banzai.** Banzai will indemnify, defend, and hold harmless Customer from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of any claim by a third party against Customer to the extent based on an allegation that Banzai's technology used to provide the Services to the Customer infringes or misappropriates any copyright, trade secret, U.S. patent, or trademark right of the third party. In no event will Banzai have any obligations or liability under this section arising from: (i) use of any Services in a modified form or in combination with materials not furnished by Banzai and (ii) any content, information, or data provided by Customer, End Users, or other third parties.
3. **Possible Infringement.** If Banzai believes the Services infringe or may be alleged to infringe a third party's Intellectual Property Rights, then Banzai may: (i) obtain the right for Customer, at Banzai's expense, to continue using the Services; (ii) provide a non-infringing functionally equivalent replacement; or (iii) modify the Services so that they no longer infringe. If Banzai does not believe the options described in this section are commercially reasonable then Banzai may suspend or terminate Customer's use of the affected Services (with a pro-rata refund of prepaid fees for unused Services).

4. **General.** The party seeking indemnification will promptly notify the other party of the claim and cooperate with the other party in defending the claim. The indemnifying party will have full control and authority over the defense, except that: (i) any settlement requiring the party seeking indemnification to admit liability requires prior written consent, not to be unreasonably withheld or delayed and (ii) the other party may join in the defense with its own counsel at its own expense. THE INDEMNITIES ABOVE ARE BANZAI AND CUSTOMER'S ONLY REMEDY UNDER THIS AGREEMENT FOR VIOLATION BY THE OTHER PARTY OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

## 10. Disclaimers

THE SERVICES ARE PROVIDED "AS IS." TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NEITHER CUSTOMER NOR BANZAI AND ITS AFFILIATES, SUPPLIERS, AND DISTRIBUTORS MAKE ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, OR NON-INFRINGEMENT. CUSTOMER IS RESPONSIBLE FOR MAINTAINING AND BACKING UP ANY STORED DATA.

## 11. Limitation of Liability

1. **Limitation on Indirect Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT FOR BANZAI OR CUSTOMER'S INDEMNIFICATION OBLIGATIONS, NEITHER CUSTOMER NOR BANZAI AND ITS AFFILIATES, SUPPLIERS, AND DISTRIBUTORS WILL BE LIABLE UNDER THIS AGREEMENT FOR (I) INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, OR (II) LOSS OF USE, DATA, BUSINESS, REVENUES, OR PROFITS (IN EACH CASE WHETHER DIRECT OR INDIRECT), EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
2. **Limitation on Amount of Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, BANZAI'S AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE LESSER OF \$5,000 OR THE AMOUNT PAID BY CUSTOMER TO BANZAI HEREUNDER DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

## 12. Disputes

1. **Informal Resolution.** Banzai wants to address your concerns without resorting to a formal legal case. Before filing a claim, each party agrees to try to resolve the dispute by contacting the other party through the notice procedures in section 11(d). If a dispute is not resolved within 30 days of notice, Customer or Banzai may bring a formal proceeding.
2. **Agreement to Arbitrate.** Customer and Banzai agree to resolve any claims relating to this Agreement or the Services through final and binding arbitration, except as set forth below. The American Arbitration Association (AAA) will administer the arbitration under its Commercial Arbitration Rules. The arbitration will be held in Seattle (WA), or any other location both parties agree to in writing.
3. **Exception to Agreement to Arbitrate.** Either party may bring a lawsuit in the federal or state courts of King County, Washington solely for injunctive relief to stop unauthorized use or abuse of the Services or infringement of Intellectual Property Rights without first engaging in the informal dispute notice process described above. Both Customer and Banzai consent to venue and personal jurisdiction there.

## 13. Miscellaneous

1. **Entire Agreement.** This Agreement, including any Customer invoices and Order Forms, and the Banzai Data Processing Agreement, constitutes the entire agreement between Customer and Banzai with respect to the subject matter of this Agreement and supersedes and replaces any prior or contemporaneous understandings and agreements, whether written or oral, with respect to the subject matter of this Agreement. If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: the Agreement, the Order Form, the invoice. The terms and conditions of this

Agreement will be considered the confidential information of Banzai and Customer will not disclose the information to any third parties.

2. **Governing Law.** THE AGREEMENT WILL BE GOVERNED BY WASHINGTON LAW EXCEPT FOR ITS CONFLICTS OF LAWS PRINCIPLES.
3. **Severability.** Unenforceable provisions will be modified to reflect the parties' intention and only to the extent necessary to make them enforceable, and the remaining provisions of the Agreement will remain in full effect.
4. **Notice.** Notices must be sent via first class, airmail, or overnight courier and are deemed given when received. Notices to Customer may also be sent to the applicable account email address and are deemed given when sent. Notices to Banzai must be sent to Banzai International Inc., 101 Yesler Way, Suite 600, Seattle WA, 98104, with a copy to the Legal Department.
5. **Waiver.** A waiver of any default is not a waiver of any subsequent default.
6. **Assignment.** Customer may not assign or transfer this Agreement or any rights or obligations under this Agreement without the written consent of Banzai. Banzai may not assign this Agreement without providing notice to Customer, except Banzai may assign this Agreement or any rights or obligations under this Agreement to an Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets without providing notice. Any other attempt to transfer or assign is void.
7. **No Agency.** Banzai and Customer are not legal partners or agents, but are independent contractors.
8. **Force Majeure.** Except for payment obligations, neither Banzai nor Customer will be liable for inadequate performance to the extent caused by a condition that was beyond the party's reasonable control (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, and Internet disturbance).
9. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement. Without limiting this section, a Customer's End Users are not third-party beneficiaries to Customer's rights under this Agreement.
10. **Export Restrictions.** The export and re-export of Customer Data via the Services may be controlled by the United States Export Administration Regulations or other applicable export restrictions or embargo. The Services may not be used in any country that is subject to an embargo by the United States and Customer must not use the Services in violation of any export restriction or embargo by the United States or any other applicable jurisdiction. In addition, Customer must ensure that the Services are not provided to persons on the United States Table of Denial Orders, the Entity List, or the List of Specially Designated Nationals.