Standard Agreement Between Fan and Creator

Last Updated: [08/29/2022]

This standard agreement between the Fan and the Creator sets out the terms that govern each transaction between a Fan and a Creator on Proof of Peach.

1. **Definitions.** In this agreement, the following definitions apply:

1.1 “**Content**” means any material uploaded to Proof of Peach by any User (whether a Creator or a Fan), including any photos, videos, audio (for example, music and other sounds), livestream material, data, text (such as comments and hashtags), metadata, images, interactive features, emojis, GIFs, memes, and any other material.

1.2 “**Creator**” means a User who has set up their Proof of Peach account as a Creator account to post Content on Proof of Peach to be viewed or purchased by other Users.

1.3 “**Fan**” means a User who subscribes to a Creator and can view the Creator’s Content or who purchases a Creator’s Content on a pay-per-media basis.

1.4 “**Fan/Creator Transaction**” means any transaction between a Fan and a Creator on Proof of Peach by which access is granted to the Creator’s Content, including in any of the following ways: (a) a Subscription; (b) payments made by a Fan to view a Creator’s pay-per-media Content; (c) payments made by a Fan to a Creator to create custom Content; (d) payments made by a Fan to use the fan interaction function on a Creator’s account; and (e) payments made by a Fan to a Creator for any other paid feature available now or in the future.

1.5 “**Fan Payment**” means (a) all payments made by a Fan for any Fan/Creator Transaction, and (b) all tips.

1.6 “**Proof of Peach**” means the website located at ProofofPeach.com.

1.7 “**Referring Creator**” means a Creator who participates in the Proof of Peach Referral Program.

1.8 “**Relevant Content**” has the meaning set out in section 5.

1.9 “**Service Fee**” means the fee charged by Proof of Peach LLC to Creators under the Creator Agreement.

1.10 “**Subscription**” means a Fan’s subscription to a Creator’s account.

1.11 “**Tax**” includes all forms of tax and statutory, governmental, state, federal, provincial, local government, or municipal charges, duties, imposts, contributions, levies, withholdings, or liabilities, including value-added tax, sales tax, and use tax, wherever chargeable.

1.12 “**User**” means any user of Proof of Peach, whether a Creator or a Fan or both (also
referred to as “you” or “your”).

2. **Applicability.** Each time a Fan/Creator Transaction is initiated on Proof of Peach, this agreement will apply to the exclusion of any other terms that the Fan or Creator may propose, and this agreement legally binds the Fan and Creator participating in the Fan/Creator Transaction.

3. **Parties.** The only parties to this agreement are the Fan and Creator participating in the Fan/Creator Transaction. Proof of Peach LLC is not a party to this agreement, and neither grants any rights for, nor participates in, any Fan/Creator Transaction, except for acting as a payment intermediary under the Creator’s and Fan’s instructions set out in section 4 of this agreement.

4. **Pricing and Payment.** By entering into a Fan/Creator Transaction, the Fan shall pay the Fan Payment applicable to the relevant Fan/Creator Transaction in accordance with the pricing published in the Creator’s account plus any applicable Tax. The Fan and Creator participating in the Fan/Creator Transaction hereby authorize Proof of Peach LLC or any of its subsidiaries to act as a payment intermediary and to collect, hold, and process the Fan Payment and any applicable Tax, to deduct the Service Fee, and to pay out the sums due to Creators and (if applicable) Referring Creators, as described in the Creator Agreement.

5. **Content License.** Once the Fan has made the Fan Payment for a Fan/Creator Transaction, the Creator hereby grants the Fan a limited license to access the applicable Content of that Creator to which the Fan/Creator Transaction relates (“Relevant Content”). This license is non-transferable, non-sublicensable, and non-exclusive, and allows the Fan to access, view, and download (where enabled) the Relevant Content on the Fan’s personal device and through a normal web browser (and to make a temporary copy of that Content only to the extent that this is an incidental and technical process forming part of the Fan’s accessing the Content (i.e., caching)), in accordance with the Terms-of-Service Agreement.

6. **Content Ownership.** The Fan participating in the Fan/Creator Transaction acknowledges that the Relevant Content license provided in section 5 of this agreement does not result in the Fan acquiring any rights in or to the Relevant Content, which rights will be retained by the Creator of the Relevant Content.

7. **License Termination.** Except for Relevant Content that the Fan has downloaded (where enabled), the license granted to a Fan for the Relevant Content will terminate automatically without notice in the following circumstances:

   7.1 if the Fan Payment related to the Fan/Creator Transaction was unsuccessful or reversed for any reason;

   7.2 as to Subscriptions, at the end of the subscription period, unless the Subscription is configured to automatically renew as described in the Terms-of-Service Agreement;

   7.3 if the Fan’s User account is suspended or terminated for any reason;

   7.4 if the Fan breaches the Terms-of-Service Agreement (whether as to the Relevant Content or at all);

   7.5 if the Content is removed from the Creator’s account; or
7.6 if the Fan closes their Proof of Peach User account.

8. **Cancellation and Refunds.** As to every Fan/Creator Transaction:

8.1 The Fan acknowledges that the Fan/Creator Transaction will result in a supply of the Relevant Content to the Fan before the end of the period of 14 days from the date when the Fan/Creator Transaction is entered into, and the Fan gives his or her express consent to this and confirms to the Creator that he or she is aware that any statutory right to cancel the Fan/Creator Transaction that the Fan has under law will therefore be lost.

8.2 This agreement does not affect any statutory right to receive a refund from the Creator that a Fan may have under law.

9. **Creator and Fan Obligations.** As to every Fan/Creator Transaction:

9.1 The Fan and the Creator participating in the Fan/Creator Transaction shall comply at all times with the Terms-of-Service Agreement for the Relevant Content, including when accessing, viewing, downloading (where enabled), and interacting with it.

9.2 The Fan participating in the Fan/Creator Transaction shall make the Fan Payment required to access, view, download (where enabled), or interact with the Relevant Content.

9.3 The Creator participating in the Fan/Creator Transaction shall make the Relevant Content available to the Fan once the Fan has made the Fan Payment applicable to the Relevant Content, including by producing any custom Content in accordance with the terms agreed to by the parties at checkout.

9.4 The Creator states that it possesses all necessary rights in and to the Relevant Content sufficient to license it to the Fan in the territory in which the Fan will be accessing, viewing, or downloading (where enabled) the Relevant Content and has obtained all permissions and consents needed to grant the license in section 5 of this agreement.

9.5 The Creator is solely responsible for creating and uploading the Relevant Content. The Creator provides no guarantees that it will continue to create and upload Relevant Content on an ongoing basis.

9.6 Unless there has been negligence or other breach of duty by the Creator, the Fan’s accessing or downloading (where enabled) of the Creator’s Content is entirely at the Fan’s own risk.

10. **No Guarantees.** The Fan participating in the Fan/Creator Transaction acknowledges that Creators may add and remove Content at any time from their Creator account, and that Creators have the discretion to decide what sort of Content to make available on their account. In addition, the Fan participating in the Fan/Creator Transaction acknowledges that there might be circumstances where it is not possible for the Fan to access Relevant Content to be provided under the Fan/Creator Transaction, including:

10.1 if the Creator’s account is suspended or deleted;
10.2 if the Fan’s account is suspended or deleted;

10.3 if the availability of all or any part of the Proof of Peach website is suspended or inaccessible; or

10.4 if the Creator is unable to create or upload Relevant Content in the future.

11. **Governing Law and Dispute Resolution**

11.1 Oregon law governs all adversarial proceedings arising out of the subject matter of this agreement. The Fan may also rely on mandatory rules of the law of the jurisdiction where the Fan resides.

11.2 As the exclusive means of initiating adversarial proceedings to resolve any dispute arising out of the subject matter of this agreement, a party may demand that the dispute be resolved by arbitration administered by Arbitration Resolution Services, Inc. (ARS) (or a similar online dispute resolution provider if ARS is not available) in accordance with its arbitration rules available at [www.arbresolutions.com](http://www.arbresolutions.com), and each party hereby consents to any such dispute being so resolved. Judgment on any award rendered in any such arbitration may be entered in any court having jurisdiction.

11.3 Any disputes not subject to arbitration must be brought in the courts of competent jurisdiction where the Fan resides.