



## PLANTTAGG® SPONSOR AGREEMENT

This PlantTAGG® Sponsor Agreement (the “**Agreement**”) by and between PlantTAGG, Inc. a Delaware corporation having a principal place of business at 507 Aqua Dr., Dallas, Texas 75218 (the “**Company**”) and you (“**Sponsor**”) as is further defined separately (individually a “**Party**” or collectively the “**Parties**”), shall define the terms and conditions about which the Parties desire to do business together.

1. The Company owns and delivers their proprietary digital, location-based plant content, data, care, landscaping, Thrive Scorecard™, and community platform called “**PlantTAGG**” with functionality designed to help improve gardening success for those who participate in the selection/purchase, planting and caring for plants (“**Users**”). Users may be residential or commercial in nature. The Company’s technology, content, image and data delivery components include but are not limited to native mobile app, responsive mobile web-app, desktop, internet/web, email, QR and SMS/text which are owned, operated, and/or provided by the Company (the “**System**”). Sponsor has indicated that they desire to be presented to Users of the System as a business affiliate of Company including presentation of Sponsor’s branding and links to Sponsor’s website and other features further described herein (the “**Sponsor Services**”). Sponsor’s access to, and use of the System and the Sponsor Services is conditioned upon acceptance, without modification, of the following terms, conditions, and notices (these “**Sponsor Terms**”).
2. **SPONSOR SERVICES.** The Sponsor Services described herein and in Company promotional materials, which may be amended or superseded from time to time, include the delivery of electronic content, which may include but is not limited to text, hyperlinks, graphics, videos, pictures, coupons/offers, audio, and banners, that are approved by Sponsor (collectively “**Sponsor Content**”), to Users of the System who are matched with the Sponsors through a location-based geo-fencing or direct association process (the “**Matching Process**”). Each Sponsor will subscribe to a specific geography, defined by distance from a physical geo-location or address directly associated with Sponsor (the “**Sponsored Geo-Fence**”). The Sponsored Geo-Fence is most commonly one or more Sponsor ‘brick-and-mortar’ retail locations. The System will use best efforts to resolve the accurate location of a User via their mobile device but makes no guarantee that a User’s mobile device location services or their yard address will be accurate or even attainable. Company reserves the right to modify the description of the Sponsor Services (including the Matching Process) from time to time in Company’s discretion.
3. **SPONSOR CONTENT.** If Sponsor submits, approves, or forwards any Sponsor Content as part of the Sponsor Services, Sponsor agrees that such Sponsor Content may be used in any and all ways as contemplated by the Sponsor Services. Sponsor waives any claim against Company with respect to any and all Sponsor Content. Company makes no promises or guarantees with respect to store traffic, sales or digital impressions and engagement relating to, or arising or resulting from, the System or the Sponsor Services.
4. **RESPONSIBILITIES OF THE PARTIES.**
  - 4.1 **COMPANY RESPONSIBILITIES.** The following are responsibilities of the Company and constitutes the scope of features and functionality which will be delivered as part of the Sponsor Services.
    - a. Setup, activate and enforce Sponsor’s geo-fence(s) as listed herein and present a hyperlinked Sponsor logo to Sponsor website within the System for Users.
    - b. Setup, activate and maintain unique Sponsor QR activation method.
    - c. Setup and route all ‘Ask-An-Expert’ questions to Sponsor-assigned contact.
    - d. Provide plant data for all plants for which Sponsor sells at all locations. Not having all plants offered for sale by Sponsor shall not constitute a breach of contract.
    - e. Hold one in-person training session on the System.
    - f. Promote Sponsor on the Company website and outbound email, social media and other marketing materials.
    - g. Drive System adoption by Users in Sponsor geo-fences using social media, strategic partners, and other promotion techniques.
    - h. Provide secure access to the PlantTAGG Partner Portal.
  - 4.2 **SPONSOR RESPONSIBILITIES.** The following are responsibilities required of Sponsor in order for Company to successfully deliver the Sponsor Services.
    - a. Promote and encourage customers to activate PlantTAGG via QR code while in-store and via marketing outreach.
    - b. Post about PlantTAGG in Sponsor social media communities periodically.
    - c. Mention PlantTAGG in email and newsletter outreach.
    - d. Deliver and periodically refresh a list of all plants for sale (botanical + common names). It is Sponsor’s responsibility to notify Company of any new plants offered for sale.
    - e. Identify and train an Expert at each store location.
    - f. Respond to routed “Ask-an-Expert” questions within 24 hours of receipt and maintain an expert rating of at least 3.5+ stars (if available and applicable).
    - g. Encourage every store employee to setup their own Yard and use the System.
    - h. Setup, maintain and distribute in-store awareness materials.
5. **TERM AND TERMINATION.**
  - 5.1 The term of this Agreement (the “**Term**”) shall be for a period of one (1) year as of the Effective Date as defined herein and thereafter shall automatically renew for successive periods of one (1) year unless earlier terminated by either Party upon thirty (30) days written notice prior to renewal.
  - 5.2 In the event that either Party breaches any material term of this Agreement and fails to cure the breach within thirty (30) days from the date of delivery of notice of the breach, the non-breaching Party may thereafter terminate this Agreement immediately without further notice. Any termination of this Agreement for breach and failure to cure does not relieve the breaching Party of its obligations under this Agreement, including but not limited to payment or continuing service obligations.
  - 5.3 Sponsor can terminate this agreement with 30 days prior notice without penalty within the first year.
6. **FEES AND PAYMENT.** Sponsor agrees to pay Company for the Sponsor Services in advance of the month for which the fees apply (pre-payment) for each location as defined herein or in a separate schedule of locations (a “**Locations Schedule**”). Company does not provide price protection or refunds in the event of a price drop or promotional offering. Company reserves the right to suspend or terminate any or all use of the System for non-payment. All printed material including signs, banners, counter cards and plant tags will be the responsibility of Sponsor. Company will provide artwork as requested.
7. **INFORMATION RESTRICTIONS.**
  - 7.1 **CONFIDENTIALITY.**
    - a. “**Confidential Information**” means all information disclosed by Sponsor or Company (the “**Discloser**”) to the other (the “**Recipient**”) in connection with the System and the Sponsor Services, whether tangible or intangible or disclosed verbally, in writing, electronically, or otherwise. Confidential Information includes information relating to (i) pricing, (ii) revenue, (iii) business rules (including sponsorship rules and logic), and (iv) the System (including the look, feel, and functionality of the System). Sponsor Content that is approved by Sponsor for dissemination and/or presentation through the System to Users shall never constitute Sponsor Confidential Information.
    - b. Except for the System (including the look, feel, and functionality of the System) and for information that is required by law to remain confidential, Confidential Information of the Discloser does not include information that (i) Recipient can establish in writing is (1) publicly available without violation of these Sponsor Terms or any other obligation of confidentiality or (2) subsequently

disclosed to Recipient by a third party without restriction and the disclosure by the third party does not violate any obligation of confidentiality.

- c. Recipient shall never:
  - i. Disclose, license, transfer, sell, or make available to anyone any Confidential Information of Discloser, except Recipient may disclose and make available Discloser's Confidential Information (1) to Recipient's employees (and, in the case of Company, to Company contractors and agents) who have a need to know such Confidential Information (but only to the extent thereof) and who are bound in writing to restrictions at least as protective as those restrictions contained in these Sponsor Terms or (2) as required by operation of law, provided that Recipient has promptly notified Discloser in writing of any legal process requiring production of such Confidential Information prior to compliance with such process and has taken all reasonable precautions, including seeking a protective order if so requested by (and at the sole cost and expense of) Discloser, to ensure confidential treatment of any Confidential Information so disclosed and such production is limited to the minimum extent necessary to comply with such legal process; or
  - ii. Use, copy, or reproduce any Confidential Information of Discloser except as necessary in connection with the purpose for which such Confidential Information is disclosed to Recipient and in accordance with these Sponsor Terms.
- d. For clarity (and without limiting Section 7.1.c., Sponsor shall never (i) disclose or make available the System (or the look, feel, or functionality of the System) to any competitor, or potential competitor, of Company or (ii) use the System for any purpose that is competitive to Company.
- e. Recipient shall treat Discloser's Confidential Information with the same degree of care as Recipient accords to Recipient's own Confidential Information, but in no case less than reasonable care, including taking all reasonable measures to protect the secrecy of Discloser's Confidential Information and protect against unauthorized acts with respect to Discloser's Confidential Information. Recipient shall promptly advise Discloser if Recipient learns of any unauthorized act with respect to Discloser's Confidential Information.
- f. Discloser shall continue to own all of Discloser's Confidential Information. Recipient shall promptly return or certify destruction to Discloser of all Confidential Information of Discloser (including all compilations, manuals, documents, electronic media, and other tangible items containing, regarding, referencing, or relating to Discloser's Confidential Information) upon the earlier to occur of (i) a written request by Discloser or (ii) termination of this Agreement.
- g. Nothing in these Sponsor Terms will prevent Company or Company's affiliates from complying with any applicable law (including any applicable privacy law).
- h. A breach or threatened breach of this Section 7.1 by Recipient may cause irreparable harm and injury to Discloser for which money damages are inadequate. In the event of such breach or threatened breach, Discloser shall be entitled to seek injunctive relief, without the requirement of posting a bond or any other security, in addition to all other available remedies.

**8. ADDITIONAL TERMS OF USE.** Additional terms of use located on the System or Company's website may apply to Sponsor's use of the Sponsor Services (collectively the "**Additional Terms**"). Sponsor agrees to comply with the Additional Terms. To the extent applicable, the Additional Terms are incorporated by reference into these Sponsor Terms. If there is a conflict or ambiguity between these Sponsor Terms and any Additional Terms that apply to a particular Service, then these Sponsor Terms will control.

## **9. INTELLECTUAL PROPERTY RIGHTS.**

**9.1** The Parties each own intellectual property rights, including patent, trademark, copyright, confidential information, designs, source code, data, image assets, content and trade secret rights, which (i) were developed or owned by or licensed to the owning Party prior to the Effective Date or prior to the Parties collaboration or (ii) are solely developed by the owning Party in connection with the

marketing, sales, offering or use of the System (collectively, the "**Intellectual Property**"). Nothing in this Agreement shall be construed as granting the non-owning Party a license, or similar right, including any implied rights or licenses, to any of the owning Party's Intellectual Property, unless expressly provided herein or unless otherwise mutually agreed in writing by the Parties. Each Party acknowledges that it hereby acquires no right, title, interest or claim of ownership in any of the other Party's Intellectual Property, and agrees not to contest, directly or indirectly, the owning Party's rights to their respective Intellectual Property. Neither Party shall, in any manner, represent that it has any ownership in any of the other Party's Intellectual Property.

**9.2** All data collected, managed and delivered in conjunction with the Sponsor Services, the System, the User experience and the general operation of the System are the exclusive property of the Company. Sponsor agrees that they do not have, nor will they receive any right, title or interest to any data collected by the System except for the Sponsor Content, if any. Sponsor does hereby grant Company a non-exclusive, royalty-free, revocable right to use and distribute the Sponsor Content.

**9.3** Each Party shall indemnify the other from any and all damages, costs, expenses or liabilities incurred as a result of any claims of infringement regarding the owning Party's Intellectual Property. Upon notice in writing of a claim, the indemnifying Party shall defend, or may settle, at its expense, any claim, suit, or proceedings against the indemnified Party and shall pay all adjustments, damages, and costs incurred by or awarded against the indemnified Party.

**10. REPRESENTATIONS AND WARRANTIES.** Company represents and warrants that (i) the System will conform to the specifications and functions mutually agreed to by the Parties and as set forth in all manuals, instructions and other documents and materials that Company provides or makes available to Sponsor in any form or medium which describe the functionality, components, features or requirements of the System, (ii) it is the rightful owner of all rights, title and interest and has and will have the full and sufficient rights to assign, convey, grant, authorize use of, license or sublicense the System and any third-party components for use with the System, and (iii) the System does not knowingly infringe any patents, copyrights, trademarks, trade secrets, or other intellectual property rights, privacy or similar rights of any person or entity, nor has any claim (whether embodied in a past or present action) of such infringement been threatened or asserted, nor is such a claim pending against Company.

**THE WARRANTIES PROVIDED ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE COMPANY DOES NOT WARRANT THAT THE DATA PRESENTED IN THE SYSTEM IS FREE FROM ERRORS, HOWEVER IT WILL MAKE BEST EFFORTS TO CORRECT ANY DATA ERRORS BROUGHT TO ITS ATTENTION IN A TIMELY MANNER.**

**11. GENERAL INDEMNIFICATION.** The Parties agree to defend, indemnify and hold harmless each other, and their respective parents, affiliates, subsidiaries, officers, directors, members, managers, employees and agents, from and against any and all demands, claims, causes of action, suits, judgments, liabilities, liens, losses, damages, expenses, fines, penalties and assessments, including reasonable attorney's fees and costs incurred or sustained on account of any personal injury, death or damage to or loss of property arising out of the System and the acts or omissions of, or to the extent proximately caused by or attributable to the indemnifying Party, its employees, agents, subcontractors or representatives.

**12. LIMITATION OF LIABILITY.** EXCEPT FOR INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS AND BREACH OF CONFIDENTIALITY OBLIGATIONS AS PROVIDED HEREIN, NEITHER PARTY WILL BE LIABLE FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, COVER, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT SYSTEM LIABILITY OR OTHERWISE, EVEN IF NOTICE HAS BEEN

PROVIDED OF THE POSSIBILITY OF SUCH DAMAGES AND IN NO EVENT WITH EITHER PARTY'S LIABILITY OF ANY KIND (INCLUDING LIABILITY FOR NEGLIGENCE) WITH RESPECT TO ANY SOFTWARE AND SERVICES COVERED BY THIS AGREEMENT SHALL NOT EXCEED THE TOTAL CONTRACT PRICE PAID TO COMPANY BY SPONSOR UNDER THIS AGREEMENT.

13. **NOTICES.** All notices permitted or required to be delivered pursuant to this Agreement shall be deemed so delivered when delivered to a Party by trackable mail such as FedEx and addressed to the Party at its address set forth on the signature page hereto.
14. **ASSIGNMENT.** Neither Party may assign in whole or in part its rights or obligations under this Agreement, except to any other third party in connection with the merger or acquisition of the Party or the sale by the Party of all or substantially all of its assets used primarily in connection with this Agreement, without the prior written consent of the other Party.
15. **FORCE MAJEURE.** If either Party is delayed in or prevented from performing any obligation hereunder due to causes or events beyond its control, including, without limitation, any act of God, fire, riot or labor problems or failure of the Internet, such delay or nonperformance shall be excused and the time for performance shall be extended for the duration of such cause or event.
16. **RELATIONSHIP OF THE PARTIES.** Each Party is independent from the other, and neither Party or its officers, agents, affiliates or employees shall be legal representatives, employees or agents of the other. Neither Party has any power or authority to create any implied or express liability or obligation in the name or on behalf of the other, and neither Party shall enter into any contract with any third party that purports to bind the other in any sense whatsoever without prior written authority from the other, and any such contract entered into shall not be binding upon the other.
17. **DISPUTE RESOLUTION.** In the spirit of cooperation and with an eye toward resolving any dispute amicably and without the necessity of litigation, the Parties shall attempt to resolve and settle any dispute, claim or controversy between them through consultation and negotiation prior to the commencement of any legal action to interpret or enforce this Agreement. In the event such attempts are unsuccessful, the disputing Party shall notify the other Party in writing of the nature of the dispute and the Parties shall submit the dispute for non-binding mediation by mutually-acceptable third-party, neutral mediator to be chosen by the Parties within fourteen (14) days of receipt of notice. The mediation shall take place at a neutral site located in the State of Texas and shall be conducted in strict confidentiality pursuant to Section 154.001 et. seq. of the Texas Civil Practices & Remedies Code. Participation in mediation shall not prejudice or waive any rights of either Party to pursue all legal and equitable remedies (including damages and injunctive relief) in the event that the Parties are unable to resolve the dispute through mediation. The Parties agree to equally share the fees and expenses of the mediator and neither Party may unreasonably withhold consent to the selection of a mediator.
18. **GOVERNING LAW & JURISDICTION.** This Agreement shall be governed by the laws of the State of Texas. By Executing this Agreement, the Parties agree and submit to exclusive jurisdiction in

the State of Texas for the purpose of any lawsuit to enforce any term or condition of this Agreement and further agree that exclusive venue will lie in the state and federal courts located in Dallas County, Texas. EACH PARTY HEREBY ABSOLUTELY, IRREVOCABLY AND UNCONDITIONALLY WAIVES. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATING TO THIS AGREEMENT, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR PARTIES, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. EACH PARTY AGREES THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. EACH PARTY ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS AGREEMENT. EACH PARTY FURTHER ACKNOWLEDGES AND AGREES THAT IT HAS REVIEWED AND CONSIDERED THIS WAIVER AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

19. **BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective heirs, representatives, successors and assigns.
20. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall constitute an original, but both of which shall constitute one and the same agreement.
21. **EFFECT OF WAIVERS.** No waiver by a Party of any breach or a series of breaches of this Agreement by the other Party shall constitute a waiver of any subsequent breach or waiver of the performance of any of the other Party's obligations hereunder. A Party's acceptance of any payment from the other Party or the failure, refusal or neglect by any Party to exercise any right pursuant to this Agreement or to insist upon the full compliance with the other Party's obligations under this Agreement shall not constitute a waiver of any provisions of this Agreement.
22. **SEVERABILITY.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.
23. **SURVIVAL.** Notwithstanding any provision to the contrary herein, the provisions of Sections 6, 7, 8, 9, 10, 11, 16, and 17 shall expressly survive the expiration or termination of this Agreement for any reason.
24. **PUBLICITY.** So long as this Agreement is in full force and effect, the Parties both agree that each can use the other's name and logo in printed and digital marketing materials.

IN WITNESS WHEREOF, Sponsor agrees to the terms of this Agreement as of the date accepted as a part of setup and use of the System (the "**Effective Date**").