

Pick Factor, Inc.

Software Application License

Welcome to Pick Factor!

Pick Factor is a technology service provider, and has developed a proprietary app that enables people and organizations to participate in interactive games that provide financial and other support to charitable causes (the “**App**”).

Pick Factor desires to make the App available to qualifying tax-exempt organizations (each one, a “**Client**”), in order to generate charitable contributions through participation in the “Pick’Em Charity Challenge,” in support of its philanthropic objectives (a “**Campaign**”).

Pick Factor and its partners may provide services to you subject to the terms and conditions set forth below. By accessing and registering on the Pick Factor website (the “**Site**”), you acknowledge that you have read, understood and agree to be bound by the terms set forth below, and to comply with all applicable laws and regulations, so please read them carefully. If you do not agree to these terms, please do not use the Site or register for a Campaign.

The Site may contain other proprietary notices and copyright information, the terms of which must be observed and followed.

1. **Grant of License.**

- **In General.** Pick Factor hereby grants to the Client a limited, non-exclusive, non-transferable license to use the App solely for the promotion of the Campaign (the “**License**”).
- **Campaign Branding.** The Campaign shall be accessible to the public through an app available for download through the Apple App Store and the Google Play Store.
- **Restrictions.** Client shall not (i) decompile or reverse engineer the App or otherwise attempt to obtain the source code for the App; (ii) use the name or proprietary logo(s) of Pick Factor without Pick Factor’s prior written consent; (iii) use the App for any purpose other than promotion of the Campaign; or (iv) use the App in a manner that interferes with the use of the App by Pick Factor or its users.

2. **Services.** Pick Factor shall provide the following services in connection with the creation and operation of the Campaign (the “**Services**”):

- **Integration with Other Services.** Pick Factor may integrate the Campaign with third-party services, such as escrow agents, financial partners or other organizations that facilitate the operation and effectiveness of the Campaign.
- **Hosting Services.** Pick Factor shall provide hosting for the Campaign, and shall notify Client of any substantial change in its technical specifications.

- **Technical Support.** Pick Factor shall provide ongoing support and maintenance services to ensure that the App performs as intended.
 - **Other Services.** Pick Factor shall perform such additional services as Pick Factor performs generally for its other customers without additional charge.
3. **Functionality of App.** Pick Factor has demonstrated the App to Client, which may include delivery to Client of an electronic version of such demonstration and/or a list of sample screen shots (the “**Demonstration Version**”). At the time of launching the Campaign for the Client, the App will have substantially the same “look and feel,” features and functionality of the Demonstration Version.
4. **Nonprofit Compliance.**
- **Charitable Status of Campaign Beneficiary.** Client hereby agrees to comply with all applicable federal and state solicitation and/or fundraising laws, and represents that the designated beneficiary of its Campaign: (i) has and will maintain tax-exempt status under Section 501(c)(3) of the Internal Revenue Code; and (ii) has authorized Client to solicit charitable donations on its behalf.
 - **Use of Charitable Funds.** By raising funds through the App, Client hereby represents and warrants that: (i) funds are being raised for the benefit of a cause or activity that is legal under all applicable federal, state, provincial, territorial and local laws and regulations; and (ii) all donated funds will be used solely for the purpose as described in the Campaign, and under no circumstances will the funds be used for any other purpose.
 - **Promotions.** In the event that Client promotes the Campaign through any contest, competition giveaway, sweepstakes or similar activity (each, a “Promotion”), Client takes full responsibility for the Promotion, and hereby agrees that: (i) such Promotion shall comply with all applicable laws; (ii) Client is solely responsible for all facets of the Promotion, including fulfillment of any and all promises; (iii) such Promotion is not marketed to anyone under the older of the age of eighteen (18), or the age of majority for the jurisdiction in which such donor resides; and (iv) such Promotion may not endorse, sponsor or promote anything related to gambling, alcohol, illegal or prescription drugs, medical devices, national health products, firearms, pornography, or tobacco. For any Promotion that Client chooses to administer or publicize on the App, the Campaign will include provisions stating that: (i) Pick Factor does not sponsor, endorse or administer the Promotion; (ii) each participant or entrant in the Promotion releases Pick Factor from any and all liability; and (iii) all questions concerning the Promotion must be directed to Client and not to Pick Factor.
 - **Responsibility for Promotion of Campaign.** The Parties agree that Client, and not Pick Factor, is solely responsible for the promotion, marketing and messaging of the Campaign. The role of Pick Factor is only to provide the App and the Services. Pick Factor does not act as a business or legal advisor, or commercial co-venturer.

5. **Client's Obligations.** Client shall: (i) cooperate with Pick Factor in the development and launch of the Campaign; and (ii) use reasonable efforts to promote the Campaign in accordance with all applicable laws and regulations, including but not limited to charitable and consumer protection laws.
6. **Warranties.**
 - **Limited Performance Warranty.** Pick Factor warrants that the App will perform substantially as demonstrated in the Demonstration Version and will be free of material errors or defects, and that all Services will be performed in a good and workmanlike manner. In the event Client believes that Pick Factor is in violation of this limited performance warranty, Client shall notify Pick Factor and Pick Factor shall use reasonable commercial efforts to correct any error or defect.
 - **Warranty of Non-Infringement.** Client warrants that Client's use of the App as anticipated by this Agreement will not infringe on the rights of any third party. If a claim is made that Client's use of the App infringes on the rights of a third party, then the Client will, at its sole expense and as Pick Factor's sole remedy, defend against such claim and pay any final judgment against Pick Factor. Pick Factor may, without the knowledge or consent of Client, agree to any resolution of the dispute that does not require on the part of Client a payment or an admission of wrongdoing. Without limiting the preceding sentence, Pick Factor may: (i) seek to obtain through negotiation the right of Client to continue using the App; (ii) rework the App so as to make it non-infringing; or (iii) replace the App, as long as the reworked or replacement App does not result in a material adverse change in the "look and feel" or operational characteristics of the App. If none of these alternatives is reasonably available in Pick Factor's sole discretion, Pick Factor may terminate this Agreement.
 - **Compliance with Laws.** Pick Factor shall use commercially reasonable efforts to conduct its business, host the Campaign, and develop the App, in compliance with all applicable laws, rules and regulations.
 - **No Other Warranties.** THE SERVICES ARE PROVIDED BY THE COMPANY "AS IS," WITHOUT WARRANTY OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR ANY WARRANTY THAT THE APP WILL BE ERROR-FREE OR OPERATE WITHOUT INTERRUPTION, OR THAT THE APP WILL MEET THE CUSTOMER'S REQUIREMENTS, AND ANY WARRANTIES IMPLIED BY LAW, BY THE COURSE OF DEALING BETWEEN THE PARTIES, OR OTHERWISE, ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.
7. **Confidentiality.**
 - **Included Information.** For purposes of this Agreement, the term "**Confidential Information**" means all confidential and proprietary information of a party, including but not limited to: (i) financial information; (ii) business and marketing plans; (iii) the names of employees and owners; (iv) the names and other personally-identifiable information of Campaign donors; (v) the names and other personally-identifiable information of App users; and (vi) all documentation provided by either party to the other party.

- **Excluded Information.** For purposes of this Agreement, confidential and proprietary information shall not include: (i) information already known or independently developed by the recipient without the use of any confidential and proprietary information; or (ii) information known to the public through no wrongful act of the recipient.
- **Confidentiality Obligations.** During the Term and at all times thereafter, neither party shall disclose to any third-party the Confidential Information of the other party, or use such Confidential Information for any purpose other than in furtherance of this Agreement. Without limiting the preceding sentence, each party shall use at least the same degree of care in safeguarding the other party's Confidential Information as it uses to safeguard its own Confidential Information. Notwithstanding the foregoing, a party may disclose Confidential Information: (i) if required to do by legal process (*e.*, by a subpoena), provided that such party shall notify the other party prior to such disclosure so that such other party may attempt to prevent such disclosure or seek a protective order; or (ii) to any applicable governmental authority as required in the operation of such party's business.
- **Injunctive Relief.** The Parties acknowledge that a breach of this Section 8 will cause the damaged party great and irreparable injury and damage, which cannot be reasonably or adequately compensated by money damages. Accordingly, each party acknowledges that the remedies of injunction and specific performance shall be available in the event of such a breach, in addition to money damages or other legal or equitable remedies.

8. Term.

- **In General.** The initial term of this Agreement shall comprise the period commencing on the Effective Date, and concluding on February 19, 2017 (the "Initial Term"), unless sooner terminated pursuant to this Section 9 or other provisions of this Agreement providing for termination.
- **Termination for Cause.** This Agreement may be terminated at any time if either party fails to perform any of its material obligations hereunder and such failure continues for thirty (30) days following written notice from the non-breaching party.
- **Termination for Cessation of Business.** Client may terminate this Agreement by giving at least fifteen (15) days' notice to Pick Factor if it discontinues its fundraising efforts in support of the philanthropic efforts promoted by the Campaign.
- **Termination by Client Without Cause.** Client may terminate this Agreement at any time by giving at least thirty (30) days' notice to Pick Factor.
- **Termination by Pick Factor Without Cause.** Pick Factor may not terminate this Agreement except as provided herein.
- **Effect of Termination.** Upon any termination of this Agreement, the License shall terminate and Client shall have no further rights in or to the App. Provided that Client has paid all amounts due and otherwise complied with all of its material obligations under this Agreement, Pick Factor shall provide Client, in a standard database format, with all of the data collected through the Campaign, including donor lists, at no additional charge.

9. Ownership of Intellectual Property.

- **Intellectual Property of Pick Factor.** Pick Factor is the exclusive owner of the App and all of the intellectual property rights associated with the App, including software and copyrights, even if Pick Factor incorporates into the App suggestions made by Client.
- **Intellectual Property of Client.** Client is the exclusive owner of its name, logo(s), trademarks, URLs, and other intellectual property and, together with users of the Campaign, all of the content displayed on the Campaign.
- **Users of Campaign.** Client owns all of the relationships with donors to the Campaign. Pick Factor may not share any personally-identifiable information of such users (g., names, addresses, social security numbers), without the advance written consent of Client, which may be withheld in the sole and absolute discretion of Client.
- **Data.** Pick Factor may collect, use, store, and sell data concerning the operation of the Campaign, provided that such data cannot be used to reveal the identity of Client or any donor to the Campaign.
- **Use of Client's Name.** Pick Factor may, but shall not be required, to advertise that Client uses the App.

10. Limitation of Claims and Damages.

- **Limitation of Claims.** PICK FACTOR SHALL NOT BE LIABLE TO THE CLIENT UNDER ANY CIRCUMSTANCES (EVEN IF THIS AGREEMENT IS TERMINATED) FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, REVENUE, BUSINESS OPPORTUNITY OR BUSINESS ADVANTAGE), WHETHER BASED UPON A CLAIM OR ACTION OF TORT CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, BREACH OF STATUTORY DUTY, CONTRIBUTION, INDEMNITY OR ANY OTHER LEGAL THEORY OR CAUSE OF ACTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- **Limitation of Damages.** PICK FACTOR'S TOTAL LIABILITY UNDER OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE CAUSE OR FORM OF ACTION, AND WHETHER BEFORE OR AFTER ITS TERMINATION, SHALL NOT EXCEED THE TOTAL OF ALL AMOUNTS PAID TO PICK FACTOR BY THE CLIENT.
- **Exceptions.** The limitations set forth in Sections 11.1 & 11.2 shall not apply to any claims arising: (i) under Section 7.2 (concerning Pick Factor's warranty of non-infringement); (ii) under Section 8 (concerning confidentiality); (iii) under Section 10.3 (concerning user data), or (iv) from the willful misconduct of Pick Factor.

11. Indemnification by Client.

- **Obligation to Indemnify.** Client will indemnify and hold harmless Pick Factor, its licensors, service providers, and their respective affiliates, managers, agents and employees, from and against all losses, costs, and expenses, including reasonable attorneys' fee, from third party claims arising from Client's promotion of the Campaign, except for claims arising from the wrongful acts or omissions of Pick Factor.

- **Notice and Defense of Claims.** Pick Factor will promptly notify Client of any claim for which it believes it is entitled to indemnification under the preceding paragraph. Client may, but shall not be required to, assume control of the defense and settlement of such claim provided that: (i) such defense and settlement shall be at the sole cost and expense of Client; (ii) Client shall be permitted to control the defense of the claim only if Client is financially capable of such defense and engages the services of a qualified attorney, each in the reasonable judgment of the Indemnified Party; (iii) Client shall not thereafter withdraw from control of such defense and settlement without giving reasonable advance notice to Pick Factor; (iv) Pick Factor shall be entitled to participate in, but not control, such defense and settlement at its own cost and expense; (v) before entering into any settlement of the claim, Client shall be required to obtain the prior written approval of Pick Factor, which shall be not unreasonably withheld, if pursuant to or as a result of such settlement, injunctive or other equitable relief would be imposed against Pick Factor; and (vi) Client will not enter into any settlement of any such claim without the prior written consent of Pick Factor unless Client agrees to be liable for any amounts to be paid to the third party pursuant to such settlement and is financially able to do so.

12. Miscellaneous.

- **Amendments; Waivers.** No amendment, modification, or waiver of any provision of this Agreement shall be binding unless in writing and signed by the party against whom the operation of such amendment, modification, or waiver is sought to be enforced. No delay in the exercise of any right shall be deemed a waiver thereof, nor shall the waiver of a right or remedy in a particular instance constitute a waiver of such right or remedy generally.
- **Notices.** Any notice or document required or permitted to be given under this Agreement may be given by a party or by its legal counsel and shall be deemed to be given by electronic mail with transmission acknowledgment to Legal@PickFactor.com (if to Pick Factor), to Client's email address as provided during the registration process, or to such other email address or addresses as a party may designate from time to time by satisfactory notice under this Section 13.
- **Governing Law.** This Agreement shall be governed by the internal laws of Delaware without giving effect to the principles of conflicts of laws. Each party hereby consents to the personal jurisdiction of the state of Delaware, and agrees that, subject to Section 13.4, all disputes arising from this Agreement shall be prosecuted in such courts. Each party hereby agrees that any such court shall have in personam jurisdiction over such party and consents to service of process by notice sent by regular mail to the address set forth above and/or by any means authorized by Delaware law.
- **Disputes.**
 - **In General.** The following procedure shall be followed in the event of a dispute arising from this Agreement:
 - The respective principals (chief executive officers) of Pick Factor and Client shall speak directly concerning the dispute.
 - If the principals are unable to resolve the dispute, then within five (5) business days they shall exchange written summaries of their

respective positions, containing such information and/or proposals as they may determine in their sole discretion, and thereafter meet or speak by telephone to attempt to resolve the dispute. Such summaries shall be deemed in the nature of settlement discussions and shall not be admissible in any further proceeding.

- If the principals are still unable to resolve the dispute, they may, but shall not be required to, participate in non-binding mediation conducted by a single neutral mediator chosen the parties.
- If the principals elect not to participate in mediation or are unable to resolve the dispute in mediation, they may file a lawsuit as described in Section 13.3.
- **Exceptions.** This Section 13.4 shall not apply to: (i) more than one (1) dispute during any six (6) month period; (ii) actual or alleged violations of Section 8; (iii) situations in which the failure to immediately file a lawsuit would materially prejudice the interests of either party; or (iv) any dispute following the inability of the parties to resolve a previous dispute by following such procedures.
- **Waiver of Jury Trial.** Each party waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement.
- **Assignment.** Neither Pick Factor nor Client may assign its rights or obligations under this Agreement without the prior written consent of the other. Notwithstanding the preceding sentence, a party may assign its interest in this Agreement to a person acquiring (by sale, merger, reorganization, or otherwise) substantially all of the transferor's assets or business, provided that: (i) the transferee agrees to assume and perform all obligations of the transferor for periods following the transfer, (ii) the transferor remains liable for all obligations prior to the transfer, and (iii) in the case of a transfer by Client the transferee shall not be engaged in the business of developing, marketing, or supporting an electronic App in competition with the App. The transferring party may charge a reasonable fee for the review and processing of the information regarding the transfer.
- **Payment of Fees.** In the event of a dispute arising under this Agreement, the prevailing party shall be entitled to recover reasonable attorneys fees and costs, provided that if a party prevails only in part the court shall award fees and costs in accordance with the relative success of each party.
- **Language Construction.** The language of this Agreement shall be construed in accordance with its fair meaning and not for or against any party. The Parties acknowledge that each party and its counsel have reviewed and had the opportunity to participate in the drafting of this Agreement and, accordingly, that the rule of construction that would resolve ambiguities in favor of non-drafting parties shall not apply to the interpretation of this Agreement.
- **Force Majeure.** Neither party shall be entitled to recover damages or terminate this Agreement by virtue of any delay or default in performance by the other party (other than a delay or default in the payment of money) if such delay or default is caused by Acts of God, government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or

any other cause beyond the reasonable control of the party whose performance is affected; provided that the party experiencing the difficulty shall give the other prompt written notice following the occurrence of the cause relied upon, explaining the cause and its effect in reasonable detail. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

- **Signature in Counterparts.** This Agreement may be signed in counterparts, and delivered by electronic means, each of which shall be deemed to be a fully-executed original.
- **No Third Party Beneficiaries.** This Agreement is made for the sole benefit of the Parties. No other persons shall have any rights or remedies by reason of this Agreement against any of the parties or shall be considered to be third party beneficiaries of this Agreement in any way.
- **Binding Effect.** This Agreement shall inure to the benefit of the respective heirs, legal representatives and permitted assigns of each party, and shall be binding upon the heirs, legal representatives, successors and assigns of each party.
- **Titles and Captions.** All article, section and paragraph titles and captions contained in this Agreement are for convenience only and are not deemed a part of the context hereof.
- **Pronouns and Plurals.** All pronouns and any variations thereof are deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require.
- **Days.** Any period of days mandated under this Agreement shall be determined by reference to calendar days, not business days, except that any payments, notices, or other performance falling due on a Saturday, Sunday, or federal government holiday shall be considered timely if paid, given, or performed on the next succeeding business day.
- **Entire Agreement.** This Agreement constitutes the entire agreement between Pick Factor and Client and supersedes all prior agreements and understandings.

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The “Pick’Em Charity Challenge” is operated by Pick Factor Inc., with all funds received and distributed by Players Philanthropy Fund (“PPF”), a Maryland charitable trust that has received federal tax-exempt status from the IRS under Section 501(c)(3) as a public charity (Federal Tax ID: 27-6601178). Entry fees for the “Pick’Em Charity Challenge” qualify as contributions to PPF, which are tax-deductible to the fullest extent of the law.