

TERMS OF SERVICE

Updated April 26, 2023

THIS AGREEMENT IS A LEGALLY BINDING CONTRACT; PLEASE READ IT CAREFULLY.

WB Games Inc. ("WB Games") is proud to provide you with access to the online service (a "Game Server") for use with an authorized, unmodified copy of game software (the "Game") installed onto a Nintendo Switch™ console (a "System") (together with any updates, the "Game Client"). Together, a Game Server and the Game Client make up the Game. These Terms of Service (the "TOS" or "Agreement") govern your use of the Game Server, while the End User License Agreement (the "EULA"), incorporated herein by this reference, governs your use of the Game Client. By connecting to or using a Game Server, you agree to be bound by the terms of this Agreement and the EULA.

1. Grant of a Limited License to use a Game Server

Subject to your agreement to and continuing compliance with this Agreement and your continuing compliance with all agreements and guidelines required by Nintendo or other WB Games approved third party service providers for the use of your Nintendo account or WB Games approved third party account (the "Account"), you may use a Game Server solely for your own non-commercial entertainment purposes by accessing it with an authorized, unmodified Game Client. You may not use or access a Game Server for any other purpose or in connection with any other software, and any access or use outside the express scope of this license shall constitute a violation of WB Games' copyrights. The license granted herein confers no title or ownership in the Game (including without limitation the Game Server) and should not be construed as a sale of any rights to the Game. The license granted is non-transferable and any attempted transfer in violation of this provision shall be null and void. All rights, titles and interests in and to the Game and any and all copies thereof (including without limitation any and all titles, computer code, technology, themes, objects, characters, character names, stories, dialog, catch phrases, locations, concepts, artwork, music, etc.) are owned by WB Games or its licensors.

2. Changes to Agreement and Game

WB Games may update this Agreement at its sole discretion, and you may be asked to review and agree to the revised version of the TOS once it becomes effective. If you do not agree to a revised TOS, you will not be permitted to continue playing the Game through the Game Server. If at any time you are no longer able to comply with the terms of the then-current TOS, you must terminate this Agreement and immediately stop accessing the Game Server in any fashion. WB Games may change, modify, suspend, or discontinue any aspect of the Game at any time. WB Games may also impose limits on certain features or restrict your access to parts or all of the Game without notice or liability.

3. Ownership

You understand and agree that the Game is owned by WB Games and/or WB Games affiliates and/or licensors. Furthermore, you understand and agree that you have no interest, monetary or

otherwise, in any feature or content contained in the Game, which may include without limitation any in-game items or in-game currency. You may not purchase, sell or trade any in-game items or in-game currency (if any) for anything of value in the real world without WB Games' express written permission, and any attempt to do so without WB Games' prior written consent shall be null and void. Any in-game transaction or purchase of content and/or items is purchased from the Nintendo eShop or other WB Games approved third party services, and not from WB Games.

4. Account Suspension/Deletion

WB GAMES MAY SUSPEND, TERMINATE, MODIFY, OR DELETE YOUR ACCESS TO THE GAME SERVER AT ANY TIME FOR ANY REASON OR NO REASON, WITH OR WITHOUT NOTICE TO YOU.

5. Financial Transactions

You acknowledge and agree that all transactions will be handled through the party hosting your System, and will be conducted pursuant to all Terms of Use/Terms of Service, Policies and Guidelines of that entity. You acknowledge that all transactions will be facilitated by the Nintendo eShop or other WB Games approved third party service providers and not from WB Games. You agree that WB Games may share your information as described in the Privacy Policy Section, which may include without limitation information about your financial accounts, with third parties as necessary for this purpose.

Code of Conduct

You agree that you will abide by the WB Games Code of Conduct, incorporated herein by this reference, and all applicable laws in connection with your use of the Game and Game Server.

6. Privacy Policy and Information Disclosure

WB Games is owned by Warner Bros. Entertainment Group ("Warner Bros.") and shares in its privacy practices. In the event you choose to provide any personally identifiable information, you acknowledge that you have read and understand the Warner Bros. Privacy Policy (located at: <https://go.wbgames.com/privacy-center>) ("Privacy Policy"), which forms part of this Agreement, and consent that your information may be collected, used and disclosed as described in the Privacy Policy. You understand that WB Games may, with or without notice to you, disclose your Internet Protocol (IP) address(es), personal information, chat logs, payment information and other information about you and your activities in response to a request by law enforcement, a court order or other legal process, or if WB Games believes that doing so may protect your safety or the safety of others. If you are a user outside the United States, you also understand that your data will be transferred to the United States where data protection may not be as comprehensive as in other countries, such as those in the European Union.

7. In-Game Communications

You understand and agree that WB Games, its affiliates and its contractors may monitor, record, review, modify and/or disclose your in-game communications without notice to you. WB Games, its affiliates and its contractors are under no obligation to monitor in-game communications.

8. Remedies

You acknowledge that WB Games may suffer irreparable damage if you breach any of the provisions governing ownership, the license granted or license limitations. You therefore agree that if you breach any of these provisions, in addition to damages and reasonable attorneys' fees, WB Games shall be entitled to enjoin such breach and to obtain specific performance of such provisions in any court of competent jurisdiction.

9. DISCLAIMER OF WARRANTIES

THE GAME SERVERS ARE MADE AVAILABLE ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND AVAILABILITY.

10. LIMITATION OF LIABILITY

IN NO EVENT SHALL WB GAMES, ITS PARENT, SUBSIDIARIES, AFFILIATES, LICENSORS, OR CONTRACTORS BE LIABLE FOR ANY LOSS OR DAMAGE OF ANY KIND ARISING OUT OF OR RELATING TO THE GAME AND/OR THE GAME SERVER OR ANY USE THEREOF, INCLUDING WITHOUT LIMITATION ANY LOSS OF DATA OR GOODWILL, DISRUPTION OF SERVICE OR CLAIMS OF THIRD PARTIES. IN NO EVENT SHALL WB GAMES, ITS PARENT, SUBSIDIARIES, AFFILIATES, LICENSORS, OR CONTRACTORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, LIQUIDATED, OR OTHER CONSEQUENTIAL DAMAGES, WHETHER UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER THEORY OF LIABILITY, ARISING FROM YOUR USE OF THE GAME (INCLUDING WITHOUT LIMITATION THE GAME SERVER). THE FOREGOING LIMITATIONS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY LAW, EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. In no event shall WB Games' aggregate liability, whether arising in contract, tort, strict liability or otherwise, exceed the total fees paid by you for the Game.

Subject to Section 16, to the extent permitted by applicable law, any dispute, claim or controversy arising out of or relating in any way to the Game Server or your use of the Game and/or the Game Server, these Terms of Service, or the relationship between us, must be commenced within one year of the relevant events. A dispute is commenced if it is filed in an arbitration or, if the dispute is non-arbitrable, a court of competent jurisdiction, during the one-year period. If you or we provide notice of a dispute under Section 16, the one-year period is tolled for 60 days following receipt of the notice of dispute (although for the sake of clarity, it may be further extended if your dispute, claim or controversy is part of a mass filing as contemplated in Section 16.9).

11. Indemnification

You hereby agree to defend, indemnify and hold harmless WB Games, its parent, subsidiaries, affiliates, licensors, and contractors, from and against any claim, liability, injury, damage, loss or expense (including reasonable attorneys' fees) incurred as a result of, arising from, or relating to your use of the Game and/or the Game Server.

12. User Content

"User Content" means any communications, images, sounds, videos, and all the material and information that you or anyone using your Account contributes through the Game or any WB Games-affiliated website (if any), including without limitation feedback about the Game and/or streamed content you create in association with the Game, including without limitation rights to use your likeness and/or voice as provided by you through such stream. You hereby grant WB Games a perpetual, irrevocable, worldwide, paid-up, non-exclusive, license, including the right to sublicense to third parties, and right to reproduce, fix, adapt, modify, translate, reformat, create derivative works from, manufacture, introduce into circulation, publish, distribute, sell, license, sublicense, transfer, rent, lease, transmit, stream, publicly display, publicly perform, provide access to electronically, broadcast, communicate to the public by telecommunication, display, perform, enter into computer memory, and use and practice such User Content (if any) as well as all modified and derivative works thereof. You hereby represent and warrant that you have, and have the documentation to establish, all necessary rights to grant the license referenced in the preceding sentence. To the extent permitted by applicable laws, you hereby waive any moral rights, artist's rights, rental rights, likeness rights, or similar rights (if any) you may have in any User Content (if any).

13. Claims of Infringement

If you believe that any content appearing in this Game infringes your copyright rights, we at WB Games want to hear from you. Please forward the following information in writing to the Copyright Agent at legal@wb.com:

1. your name, address, telephone number, and e-mail address;
2. a description of the copyrighted work that you claim has been infringed;
3. the exact URL or a description of each place where alleged infringing material is located;
4. a statement by you that you have a good faith belief that the disputed use has not been authorized by you, your agent, or the law;
5. your electronic or physical signature or the electronic or physical signature of the person authorized to act on your behalf; and
6. a statement by you made under penalty of perjury, that the information in your notice is accurate, that you are the copyright owner or authorized to act on the copyright owner's behalf.

14. Patches and Updates

WB Games may apply patches, updates and modifications (collectively, "Updates") to the Game at any time, and gameplay may change after the application of an Update.

15. Termination

This Agreement is effective until terminated. You may terminate this Agreement by uninstalling the Game. In the event that you terminate or breach this Agreement, you will forfeit your right to any and all purchases and other payments made in connection with the Game. You acknowledge and agree that you are not entitled to any refund for any amounts paid or pre-paid in connection with the Game prior to termination of this Agreement. WB Games may terminate this Agreement with or without notice by banning the Account. All Sections of this Agreement that by their nature should survive termination will survive, including without limitation the Ownership, Financial Transactions, Privacy Policy, In-Game Communications, Remedies,

Disclaimer of Warranties, Limitation of Liability, Indemnification, User Content, Termination, Dispute Resolution, and Miscellaneous Sections.

16. Dispute Resolution

We endeavor to resolve customer concerns as quickly as possible. Please contact WB Games at <https://support.wbgames.com/hc/en-us> for common customer questions or to contact customer support.

In the unlikely event that you're not satisfied with customer service's solution, and you and WB Games are unable to resolve a dispute through the Informal Dispute Resolution Procedures below, we each agree to resolve the dispute through binding arbitration or small claims court instead of in courts of general jurisdiction.

Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Unless expressly limited by this arbitration provision, arbitrators can award the same damages and relief that a court can award. **Any arbitration under this Agreement will take place on an individual basis; class arbitrations and class actions are not permitted.** In arbitration you may be entitled to recover attorneys' fees from us to the same extent as you would be in court.

ARBITRATION AGREEMENT

(1) **Claims Subject to Arbitration:** To the fullest extent permitted by applicable law, WB Games and you agree to arbitrate **all disputes and claims** between us, except for claims arising from bodily injury or that pertain to enforcing, protecting, or the validity of your or our intellectual property rights (or the intellectual property rights of any of our licensors, affiliates and partners). This Arbitration Agreement is intended to be broadly interpreted. It includes, but is not limited to:

- claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, fraud, misrepresentation or any other statutory or common-law legal theory;
- claims that arose before this or any prior Agreement (including, but not limited to, claims relating to advertising);
- claims for mental or emotional distress or injury not arising out of physical bodily injury;
- claims that are currently the subject of purported class action litigation in which you are not a member of a certified class; and
- claims that may arise after the termination of this Agreement.

References to "WB Games," "you," "we" and "us" in this Arbitration Agreement include our respective predecessors in interest, successors, and assigns, as well as our respective past, present, and future parents, subsidiaries and affiliates (including Warner Bros. Discovery, Inc. and its affiliates); those entities and our respective agents, employees, licensees, licensors, and providers of content as of the time your or our claim arises; and all authorized or unauthorized

users or beneficiaries of the Game Server under this or prior Agreements between us. Notwithstanding the foregoing, either party may elect to have claims heard in small claims court seeking only individualized relief, so long as the action is not removed or appealed to a court of general jurisdiction. This Arbitration Agreement does not preclude you from bringing issues to the attention of federal, state, or local agencies. **You agree that, by entering into this Agreement, you and we are each waiving the right to participate in a class action and to a trial by jury to the fullest extent permitted by applicable law.** This Agreement evidences a transaction in interstate commerce, and thus the Federal Arbitration Act (9 U.S.C. §§ 1-16) governs the interpretation and enforcement of this arbitration provision. This Arbitration Agreement shall survive termination of this Agreement.

(2) Mandatory Pre-Arbitration Notice and Informal Dispute Resolution Procedures: You and we agree that good-faith, informal efforts to resolve disputes often can result in a prompt, cost-effective and mutually beneficial outcome. Therefore, a party who intends to initiate arbitration or file a claim in small claims court must first send to the other a written Notice of Dispute ("**Notice**"). A Notice from you to WB Games must be emailed to notice@wbd.com ("**Notice Address**"). Any Notice must include (i) the claimant's name, address, and email address; (ii) a description of the nature and basis of the claim or dispute; (iii) if you are submitting the Notice, any relevant facts regarding your use of the Game Server, including whether you have created an account with or receive any newsletters associated with the Game and/or the Game Server; (iv) a description of the nature and basis of the specific relief sought, including the damages sought, if any, and a detailed calculation for them; and (v) a personally signed statement from the claimant (and not their counsel) verifying the accuracy of the contents of the Notice. The Notice must be individualized, meaning it can concern only your dispute and no other person's dispute.

After receipt of a completed Notice, the parties shall engage in a good faith effort to resolve the dispute for a period of 60 days (which can be extended by agreement). You and we agree that, after receipt of the completed Notice, the recipient may request an individualized telephone or video settlement conference (which can be held after the 60-day period) and both parties will personally attend (with counsel, if represented). You and we agree that the parties (and counsel, if represented) shall work cooperatively to schedule the conference at the earliest mutually-convenient time and to seek to reach a resolution. If we and you do not reach an agreement to resolve the issues identified in the Notice within 60 days after the completed Notice is received (or a longer time if agreed to by the parties), you or we may commence an arbitration proceeding or a small claims court proceeding (if permitted by small claims court rules).

Compliance with this Mandatory Pre-Arbitration Notice and Informal Dispute Resolution Procedures section is a condition precedent to initiating arbitration. Any applicable limitations period (including statute of limitations) and any filing fee deadlines shall be tolled while the parties engage in the informal dispute resolution procedures set forth in this Subsection 16.2. All of the Mandatory Pre-Arbitration Notice and Informal Dispute Resolution Procedures are essential so that you and WB Games have a meaningful opportunity to resolve disputes informally. If any aspect of these requirements has not been met, a court of competent jurisdiction may enjoin the filing or prosecution of an arbitration. In addition, unless prohibited by law, the arbitration administrator may not accept, administer, assess, or demand fees in connection with an arbitration that has been initiated without completion of the Mandatory Pre-Arbitration Notice and Informal Dispute Resolution Procedures. If the arbitration is already

pending, it shall be administratively closed. Nothing in this paragraph limits the right of a party to seek damages for non-compliance with these Procedures in arbitration.

(3) **Arbitration Procedure:** The arbitration will be governed by applicable rules of National Arbitration & Mediation (“NAM”) (including [the Comprehensive Dispute Resolution Rules and Procedures](#) and/or the [Supplemental Rules for Mass Arbitration Filings](#), as applicable) (“NAM Rules”), as modified by this Arbitration Agreement, and will be administered by NAM. (If NAM is unavailable or unwilling to do so, another arbitration provider shall be selected by the parties that will do so, or if the parties are unable to agree on an alternative administrator, by the court pursuant to 9 U.S.C. §5.) The NAM Rules are available online at <https://www.namadr.com/>, by calling NAM at 1-800-358-2550, or by requesting them in writing at the Notice Address. You may obtain a form to initiate arbitration at: <https://www.namadr.com/content/uploads/2020/09/Comprehensive-Demand-for-Arb-revised-9.18.19.pdf> or by contacting NAM.

You and we agree that the party initiating arbitration must submit a certification that they have complied with and completed the Mandatory Pre-Arbitration Notice and Informal Dispute Resolution Procedures requirements referenced in Section 16.2 and that they are a party to the Arbitration Agreement enclosed with or attached to the demand for arbitration. The demand for arbitration and certification must be personally signed by the party initiating arbitration (and their counsel, if represented).

All issues are for the arbitrator to decide, except as otherwise expressly provided herein and except as to issues relating to the scope and enforceability of the Arbitration Agreement or whether a dispute can or must be brought in arbitration (including whether a dispute is subject to this Arbitration Agreement or a previous arbitration provision between you and WB Games), which are for a court of competent jurisdiction to decide. The arbitrator may consider but shall not be bound by rulings in other arbitrations involving different customers.

Unless we and you agree otherwise, or the applicable NAM Rules dictate otherwise, any arbitration hearings will take place in the county (or parish) of your billing address and you and a WB Games representative will be required to attend in person. For residents outside the United States, arbitration shall be initiated in New York, New York. At the conclusion of the arbitration proceeding, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. The arbitrator’s decision is binding only between you and WB Games and will not have any preclusive effect in another arbitration or proceeding that involves a different party. An arbitrator’s award that has been fully satisfied shall not be entered in any court.

As in court, you and WB Games agree that any counsel representing a party in arbitration certifies when initiating and proceeding in arbitration that they are complying with the requirements of Federal Rule of Civil Procedure 11(b), including certification that the claim or relief sought is neither frivolous nor brought for an improper purpose. The arbitrator is authorized to impose any sanctions under the NAM Rules, Federal Rule of Civil Procedure 11, or applicable federal or state law, against all appropriate represented parties and counsel.

Except as expressly provided in the Arbitration Agreement, the arbitrator may grant any remedy, relief, or outcome that the parties could have received in court, including awards of attorneys’ fees and costs, in accordance with applicable law. Unless otherwise provided by applicable law, the parties shall bear their own attorneys’ fees and costs in arbitration unless the arbitrator

awards sanctions or finds that either the substance of the claim, the defense, or the relief sought is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)).

(4) **Arbitration Fees:** The payment of arbitration fees (the fees imposed by the arbitration administrator including filing, arbitrator, and hearing fees) will be governed by the applicable NAM Rules, unless you qualify for a fee waiver under applicable law. If after exhausting any potentially available fee waivers, the arbitrator finds that the arbitration fees will be prohibitive for you as compared to litigation, we will pay as much of your filing, arbitrator, and hearing fees in the arbitration as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive, regardless of the outcome of the arbitration, unless the arbitrator determines that your claim(s) were frivolous or brought for an improper purpose or asserted in bad faith. You and we agree that arbitration should be cost-effective for all parties and that any party may engage with NAM to address the reduction or deferral of fees.

(5) **Confidentiality:** Upon either party's request, the arbitrator will issue an order requiring that confidential information of either party disclosed during the arbitration (whether in documents or orally) may not be used or disclosed except in connection with the arbitration or a proceeding to enforce the arbitration award and that any permitted court filing of confidential information must be done under seal to the furthest extent permitted by law.

(6) **Offer of Settlement:** In any arbitration between you and WB Games, the defending party may, but is not obligated to, make a written settlement offer at any time before the evidentiary hearing or, if a dispositive motion is permitted, prior to the dispositive motion being granted. The amount or terms of any settlement offer may not be disclosed to the arbitrator until after the arbitrator issues an award on the claim. If the award is issued in the other party's favor and is less than the defending party's settlement offer or if the award is in the defending party's favor, the other party must pay the defending party's costs incurred after the offer was made, including any attorney's fees. If any applicable statute or case law prohibits the shifting of costs incurred in the arbitration, then the offer in this provision shall serve to cease the accumulation of any costs to which the party bringing the claim may be entitled for the cause of action under which it is suing.

(7) **Requirement of Individualized Relief:** The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU AND WE AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR OUR INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, REPRESENTATIVE, OR PRIVATE ATTORNEY GENERAL PROCEEDING.** Further, unless both you and we agree otherwise, the arbitrator may not consolidate more than one person's claims and may not otherwise preside over any form of a representative, class, or private attorney general proceeding. If, after exhaustion of all appeals, any of these prohibitions on non-individualized declaratory or injunctive relief; class, representative, and private attorney general claims; and consolidation are found to be unenforceable with respect to a particular claim or with respect to a particular request for relief (such as a request for injunctive relief sought with respect to a particular claim), then the parties agree such a claim or request for relief shall be decided by a court of competent jurisdiction, after all other arbitrable claims and requests for relief are arbitrated. You agree that any arbitrations between you and WB Games will be subject to this Section 16 and not to any prior arbitration agreement you had with WB Games, and,

notwithstanding any provision in this Agreement to the contrary, you agree that this Section 16 amends any prior arbitration agreement you had with WB Games, including with respect to claims that arose before this or any prior arbitration agreement.

(8) Opt Out of Future Changes: Notwithstanding any provision to the contrary, if WB Games makes any future change to this Arbitration Agreement (other than a change to the Notice Address), you may reject any such change by sending WB Games an email to notice@wbd.com within 30 days of the posting of the amended arbitration agreement that provides: (i) your full legal name, (ii) your complete mailing address, (iii) your phone number, (iv) if applicable, the username or email address associated with any potential account or newsletter; and (v) the approximate date of your initial use of the relevant Game Server. Such an opt-out email must be sent by you personally, and not by your agent, attorney, or anyone else purporting to act on your behalf. It must include a statement, personally signed by you, that you wish to reject the change to the Arbitration Agreement. This is not an opt out of arbitration altogether.

(9) Mass Filing:

If, at any time, 25 or more claimants (including you) submit Notices or seek to file demands for arbitration raising similar claims against the other party or related parties by the same or coordinated counsel or entities, consistent with the definition and criteria of Mass Filings (“Mass Filing”) set forth in NAM’s Mass Filing Supplemental Dispute Resolution Rules and Procedures (“NAM’s Mass Filing Rules,” available at <https://www.namadr.com/resources/rules-fees-forms/>), you and we agree that the additional procedures set forth below shall apply. The parties agree that throughout this process, their counsel shall meet and confer to discuss modifications to these procedures based on the particular needs of the Mass Filing. The parties acknowledge and agree that by electing to participate in a Mass Filing, the adjudication of their dispute might be delayed. Any applicable limitations period (including statute of limitations) and any filing fee deadlines shall be tolled beginning when the Mandatory Pre-Arbitration Notice and Informal Dispute Resolution Procedures are initiated, so long as the pre-arbitration Notice complies with the requirements in Section 16.2, until your claim is selected to proceed as part of a staged process or is settled, withdrawn, otherwise resolved, or opted out of arbitration.

Stage One: Counsel for the claimants and counsel for WB Games shall each select 25 claims per side (50 claims total) to be filed and to proceed in individual arbitrations as part of a staged process. Each of these individual arbitrations shall be assigned to a different, single arbitrator unless the parties agree otherwise in writing. Any remaining claims shall not be filed or be deemed filed in arbitration, nor shall any arbitration fees be assessed in connection with those claims unless and until they are selected to be filed in individual arbitration proceedings as part of a staged process. After this initial set of staged proceedings is completed, the parties shall promptly engage in a global mediation session of all remaining claims with a retired federal or state court judge and WB Games shall pay the mediator’s fee.

Stage Two: If the remaining claims are not resolved at this time, counsel for the claimants and counsel for WB Games shall each select 50 claims per side (100 claims total) to be filed and to proceed in individual arbitrations as part of a second staged process, subject to any procedural changes the parties agreed to in writing. Each of these individual arbitrations shall be assigned to a different, single arbitrator unless the parties agree otherwise in writing. Any remaining claims shall not be filed or be deemed filed in arbitration, nor shall any arbitration fees be assessed in connection with those claims unless and until they are selected to be filed in individual arbitration proceedings as part of a staged process. After this second set of staged

proceedings is completed, the parties shall promptly engage in a global mediation session of all remaining claims with a retired federal or state court judge and WB Games shall pay the mediator's fee.

Stage Three: If the remaining claims are not resolved at this time, counsel for the claimants and counsel for WB Games shall each select 100 claims per side (200 claims total) to be filed and to proceed in individual arbitrations as part of a third staged process, subject to any procedural changes the parties agreed to in writing. Any remaining claims shall not be filed or be deemed filed in arbitration, nor shall any arbitration fees be assessed in connection with those claims unless and until they are selected to be filed in individual arbitration proceedings as part of a staged process. Following this third set of staged proceedings, counsel for claimants may elect to have the parties participate in a global mediation session of all remaining claims with a retired federal or state court judge.

If your claim is not resolved as part of the staged process identified above, either:

Option One: You and WB Games may separately or by agreement, opt out of arbitration and elect to have your claim heard in court consistent with the Agreement. You may opt out of arbitration by providing your individual, personally signed notice of your intention to opt out by sending WB Games an email to notice@wbd.com. Such an opt-out email must be sent by you personally, and not by your agent, attorney, or anyone else purporting to act on your behalf. It must include a statement, personally signed by you, that you wish to opt out of arbitration within 30 days after the conclusion of Stage 3 or the elective mediation associated with Stage 3. WB Games may opt your claim out of arbitration by sending an individual, personally signed notice of its intention to opt out to your counsel within 14 days after the expiration of your 30 day opt out period. Counsel for the parties may agree to adjust these deadlines.

OR

Option Two: If neither you nor WB Games elect to have your claim heard in court consistent with Option One, then you agree that your claim will be resolved as part of continuing, staged individual arbitration proceedings as set forth below. Assuming the number of remaining claims exceeds 200, then 200 claims shall be randomly selected (or selected through a process agreed to by counsel for the parties) to be filed and to proceed in individual arbitrations as part of a staged process. If the number of remaining claims is fewer than 200, then all of those claims shall be filed and proceed in individual arbitrations. Any remaining claims shall not be filed or be deemed filed in arbitration, nor shall any arbitration fees be assessed in connection with those claims unless and until they are selected to be filed in individual arbitration proceedings as part of a staged process. After each set of 200 claims are adjudicated, settled, withdrawn, or otherwise resolved, this process shall repeat consistent with these parameters. Counsel for the parties are encouraged to meet and confer, participate in mediation, and engage with each other and with NAM (including through a Procedural Arbitrator) to explore ways to streamline the adjudication of claims, increase the number of claims to proceed at any given time, promote efficiencies, conserve resources, and resolve the remaining claims.

A court of competent jurisdiction shall have the authority to enforce these Mass Filing provisions and, if necessary, to enjoin the mass filing, prosecution, or administration of arbitrations and the assessment of arbitration fees. If these additional procedures apply to your claim, and a court of competent jurisdiction determines that they are not enforceable as to your claim, then your claim shall proceed in a court of competent jurisdiction consistent with this Agreement.

You and WB Games agree that we each value the integrity and efficiency of arbitration and wish to employ the process for the fair resolution of genuine and sincere disputes between us. You and WB Games acknowledge and agree to act in good faith to ensure the processes set forth herein are followed. The parties further agree that application of these Mass Filing procedures have been reasonably designed to result in an efficient and fair adjudication of such cases.

(10) **Severability:** If any portion of this Arbitration Agreement is found to be void, invalid, or otherwise unenforceable, then that portion shall be deemed to be severable and, if possible, superseded by a valid, enforceable provision, or portion thereof, that matches the intent of the original provision, or portion thereof, as closely as possible. The remainder of this Arbitration Agreement shall continue to be enforceable and valid according to the terms contained herein.

17. Class Action and Jury Trial Waiver

You and WB Games agree that, to the fullest extent permitted by law, each party may bring claims (whether in court or in arbitration) against the other only in an individual capacity, and not participate as a plaintiff, claimant, or class member in any class, collective, consolidated, private attorney general, or representative proceeding. This means that you and WB Games may not bring a claim on behalf of a class or group and may not bring a claim on behalf of any other person unless doing so as a parent, guardian, or ward of a minor or in another similar capacity for an individual who cannot otherwise bring their own individual claim. This also means that you and WB Games may not participate in any class, collective, consolidated, private attorney general, or representative proceeding brought by any third party. Notwithstanding the foregoing, you or WB Games may participate in a class-wide settlement.

To the fullest extent permitted by law, you and WB Games waive any right to a jury trial.

18. Governing Law and Venue

This Agreement shall be governed by the laws of the State of New York, without regard to conflict of law principles. Any dispute that is not subject to arbitration under Section 16 (Dispute Resolution) of the Agreement, or any issues involving arbitrability or enforcement of any provisions under Section 16 shall be brought in the appropriate state or federal court located in New York County, New York; and we and you each irrevocably consent to the exclusive jurisdiction and venue of the state or federal courts in New York County, New York for the adjudication of all non-arbitral claims.

19. Miscellaneous

The terms set forth in this Agreement, including the Disclaimer of Warranties, Limitation of Liability and Indemnification provisions are fundamental elements of the basis of the agreement between WB Games and you. WB Games would not be able to provide the Game (including without limitation the Game Servers) on an economic basis without such limitations. Such Disclaimer of Warranties, Limitation of Liability and Indemnification provisions inure to the benefit of WB Games' licensors, successors and assigns. You agree that you are not considered, and shall not represent yourself as, an agent, employee, joint venturer, or partner of WB Games. You may not assign this Agreement, in whole or in part, without WB Games' prior written consent and any attempted assignment in violation of this provision shall be null and void. WB Games may assign this Agreement or any of its rights and obligations under this

Agreement without your consent at any time. No waiver of any default, condition or breach of this Agreement shall constitute a waiver of any other default, condition or breach of this Agreement, whether of a similar nature or otherwise. Except as specified in Section 16 (Dispute Resolution), if any provision or portion thereof of this Agreement shall be unlawful, void, invalid, or for any reason unenforceable, then that portion shall be deemed to be severable from this Agreement and, if possible, superseded by a valid, enforceable provision, or portion thereof, that matches the intent of the original provision, or portion thereof, as closely as possible. The remainder of this Agreement shall continue to be enforceable and valid according to the terms contained herein. This Agreement, incorporating all the applicable documents referenced herein, represents the entire agreement between you and WB Games with respect to the Game Servers and supersedes all prior agreements between you and WB Games pertaining to the Game Servers. You must supply all necessary facilities, utilities and equipment necessary to play the Game, including appropriate computer equipment and Internet connections, at your sole risk and expense. In no event shall WB Games be liable for any failure of performance resulting from causes beyond the reasonable control of WB Games, including without limitation: acts of God, war, terrorism, riots, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, or shortages of transportation facilities, fuel, energy, labor or materials. This Agreement may be amended only by a writing executed by both parties.

20. Code of Conduct

You agree that you will not use the Game to upload, post, or otherwise distribute any User Content that:

- constitutes or promotes illegal activity;
- defames, abuses, harasses, stalks, threatens or otherwise violates the legal rights (such as rights of privacy and publicity) of others;
- is harmful, abusive, vulgar, sexually explicit, defamatory, libelous, obscene, infringing, embarrassing, unwanted, invasive of another's right of privacy or publicity, hateful or racially, ethnically or, in a reasonable person's view, otherwise offensive or objectionable;
- promotes any commercial activity, including promoting goods or services or soliciting donations;
- is subject to confidentiality or non-disclosure obligations;
- includes material, images or photographs that infringes any copyright, trademark, patent, trade secret, or other right of any party (including rights of privacy or publicity);
- disguises its source or origin, or misrepresents its author, by modifying metadata or other identifiers;
- links to any third-party sites or services that would violate the standards contained in this list; or
- attempts to get a password, other account information, or other private information from a user of the Game.

In using the Game you also agree not to:

- attempt to interfere with the operation of the Game in any way;
- copy, reproduce, distribute, transfer, sell, license, publish, enter into a database, display, perform publicly, modify, create derivative works of, upload, edit, post, link to, frame, transmit, rent, lease, lend or sublicense, scrape, crawl, or in any way exploit any part of the Game;

- use any data mining tools, robots, virus, worms, bugs, or similar data-gathering and extraction tools on the Service, or frame any portion of the Service, or attempt to tamper, hack, corrupt, or impair the administration or security of the Service;
- use any tools designed to compromise security or digital rights management technology (including password guessing programs, cracking tools, or network probing tools) in connection with the Game;
- use the Game for any commercial purposes, including sending "spam" or any malicious or disruptive communications;
- decompile, reverse engineer, disassemble, or otherwise reduce the code used in the Game into a readable form in order to examine the construction of such software or to copy or create other products based (in whole or in part) on such software or any feature of the Game or piece of content available in the Game; or
- use or distribute unauthorized software programs or tools, such as "auto" software programs, "macro" software programs, "cheat utility" software program or applications, exploits, cheats, or any other game hacking, altering or cheating software or tool.
- use exploits or cheats to gain an unfair advantage.
- restrict or inhibit any other user from using and enjoying the Game. For example, being disruptive with vulgar language, abusiveness, inputting excessively large images so the screen goes by too fast to read, use of excessive SHOUTING (all caps) in an attempt to disturb other users, "spamming," or flooding (continuous posting repetitive text), all of which are prohibited conduct or send surveys, contests, pyramid schemes, chain letters, junk email, spam or any duplicative or unsolicited messages (commercial or otherwise).
- falsify, delete or disable any copyright management information, such as author attributions, legal or other proper notices or proprietary designations or labels of the origin or source of software or other content.
- violate any license agreement (including, without limitation, any end user license, code of conduct or other terms of use/service or guidelines) which may be applicable for any particular Service.
- harvest (in an automated manner or otherwise) or otherwise collect personal information about others, including e-mail addresses, or use such information to send unsolicited emails.
- violate any applicable laws or regulations, or promote or encourage any illegal activity including, without limitation, hacking, cracking or distribution of counterfeit software, or cheats or hacks for the Game.
- impersonate or create a false identity (such as a celebrity or WB Games representative) for the purpose of misleading others.
- use the Game for fraudulent transactions or other commercial transactions prohibited by these Terms of Service or applicable License Agreement, including, without limitation, fraudulent or unauthorized in-game virtual transactions.