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## **Abstract**

This thesis is intended to be one of the first thorough analysis of the extent of how EULAs grant digital distribution platforms the freedom to govern the consumers of their products. The power and extent of the EULA in itself is a highly under-theorized subject. Therefore, the main purpose of this thesis is to provide an informed descriptive account of the main characteristics of the transformations within the traditional producer/consumer relationship through the analysis of three current EULAs used by digital distribution platforms and how they formulate these changes into a written agreement between service and consumer while exerting control over the consumer. In the first chapter, the regulatory nature of the EULA, its development into an active social program and its active digital enforcement within the legal structure of protecting intellectual property on digital distribution platforms will be introduced. The second chapter then further elaborates on the normative nature of the EULA and analyzes examples of how EULAs have already shown signs of reconfiguring the consumer, the product and even the platform itself. The following chapters three to five discuss how the EULA results in the reconfiguration of the three main actors in this study: the consumer, the product and the platform itself. The conclusion then offers a summary of the findings, discusses them and provides several recommendations for the further study of EULAs.

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# 1 Introduction

While the future promises and business advantages of digital distribution are numerous, it has first and foremost caused new patterns of consumption to arise from technological innovations that remove any need for a physical carrier such as CD or DVD. In order to buy games digitally, consumers are now required to register for a user account at a digital distribution platform that offers several value added services. In order to gain access to the platform, consumers first have to agree to an end-user license agreement (EULA).

This thesis is intended to be one of the first thorough analysis of the extent of how EULAs grant digital distribution platforms the freedom to govern the consumers of their products. The main source of relevance of the study of EULAs in the area of digital distribution platforms of games is not only based on a growing public and scholarly concern surrounding EULA legalities, but also the recent efforts of the Entertainment Consumers Association (ECA), a non-profit membership organization that represents consumers of interactive entertainment in the US and Canada. Hal Halpin, president of the ECA, noted that the ECA has recently positioned itself critically towards the methods of digital distribution services and several other methods of the game industry to protect their intellectual property:

*"Over the past year we have witnessed a growing concern from gamers about the issues of increasingly invasive Digital Rights Management (DRM) and End User Licensing Agreements (EULAs). While we respect the careful balance that must exist between the content community and the customer, and agree that piracy is an ever-present challenge for the trade, it is also becoming evident that consumer rights are being diminished in the process [...] The law, in the area of EULAs in particular, is not as clear as it once was. And the software industry's potential side-stepping of the First Sale Doctrine's protections – by terming their products as "licensed" rather than "sold" - leaves us concerned about the future of interactive entertainment."*

(in: Gamepolitics, 2009: n.p.)

Currently, the ECA is one of the few public institutions that are addressing this changing relationship of producer and consumer with the rise of digital distribution services. Building an understanding about these changes at the heart of the EULA is one example of how we could make more sense of new types of media ownership in this non-essentialist, screen-dominated, and pervasively visual digital era (Sherwin et al., 2006). The first-sale doctrine Halpin mentioned in his statement is but one consumer right that digital distribution platforms have restricted through their software design, but first of and foremost by assuring the consumer's formal approval through the EULA<sup>1</sup>.

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<sup>1</sup> Under the Copyright Act of 1976, the first-sale doctrine allows the consumer to share, sell or give away a particular lawfully produced copy of the copyrighted work without permission once it has been obtained. This means that the copyright holder loses the right to control the change of ownership of a particular copy once that copy is sold to the consumer, as long as no additional copies are made. See: <http://www.copyright.gov/title17/92chap1.html#109>

## 1.1 Methodological concerns

The area of research of this thesis is closely related to, but in no way connected to recent new media related studies concerning the rising concepts of user participation (Jenkins, 2002; Schaefer, 2009) or the exploitation of consumer labor by corporations (Andrejevic, 2004). Most of this work sadly offers few or no substantial explanations of the processes of implementing such consumer practices back into the associated commercial technologies or products.

The power and extent of the EULA in itself is a highly under-theorized subject. Therefore, this thesis offers a descriptive study that focuses on the EULA as a driving force that enables the implementation of certain governmental and social protocols into the software and technology of digital distribution platforms, with a main emphasis on how these practices transform the relationship between producer and consumer.

In order to build a better understanding of how the consumer is confronted with this new infrastructure of governance in the technologies they are using, this thesis builds forth on Jonathan Zittrain's work on what he conceptualizes as 'tethered appliances' in his book *The Future of the Internet And How to Stop It* (2008). As one of very few scholars in the area of new media and technology, Zittrain addresses the issue of how frustrated consumers tend to retreat and give up control to centers of authority, whether registering for digital distribution platforms or buying tethered appliances that were built from the ground up to be closed, such as the Xbox 360 or the PlayStation 3 game console:

*"The ongoing communication between this new generation of [devices and services] and their vendors assures users that functionality and security improvements can be made as new problems are found. To further facilitate glitch-free operation, devices are built to allow no one but the vendor to change them.[...] They are tethered because it is easy for their vendors to change them from afar, long after the devices have left warehouses and showrooms"*

(Zittrain, 2008: 101)

The main reason for Zittrain to oppose against the dominant rise of such 'tethered' appliances and services is his claim that what he calls the 'generative' nature or the Internet's ability to serve as an open platform for innovation is increasingly undermined by a new wave of closed devices and services that can not be modified by anyone except their vendors or selected partners. In other words, even the consumer's use of such services has itself become commodified in order to provide the consumer with more incentives to remain an active user. Mostly touching the surface of this issue, trying to explain and empower his concepts and examples, this study aims to focus on the real starting point of Zittrain's concern: the EULA; the agreement the consumer has to sign in order to be granted access to any of these closed-down technologies.

For the analysis of an EULA, Bruno Latour's (1991) approach on the transformative nature of the digital medium has been very useful for this study, since it offers the necessary theoretical approaches that place technology and the digital form in the role of agents in knowledge production. While EULAs were impossible to regulate at a distance in the early era of software distribution, Web 2.0 applications and digital distribution platforms have made it possible to incorporate the detection of these violations into their own software design, reconfiguring the role of the EULA into a more active social program for the consumer to follow. Therefore, Latour's analysis of translations of social protocols into technological design in his article 'Technology is Society Made Durable' (1991) serves as a valuable inspiration and a signpost for this thesis:

*“Innovations show us that we never work in a world filled with actors to which fixed contours may be granted [...] These transformations undergone by actors are of crucial importance to us when we follow innovations, because they reveal that the unified actor [...] is itself an association made up of elements which can be redistributed.”*

(Latour, 1991: 109).

Latour's approach to the translation of social protocols in technology will therefore also be tested within this descriptive study of EULAs. After all, these kind of normative discourses surrounding the relationship between objects and people have proven to be a fundamental dimension of all social action, including consumption (Sassatelli, 2007). But in this case, the reconfiguration of the relationship between producer and consumer occurs not only in the software design of digital information platforms, but is first and foremost cemented within the legal actor of the EULA.

Therefore, this study considers the EULA of digital distribution platforms such as Steam, Xbox Live and PSN to be a social program that does not only reconfigure the consumer's position towards their purchase of digital information goods, but also completely reconfigures both the product and the service it is offered on. This study's focus on the regulation and restrictions imposed through such social programs as EULAs offers a starting point to study the broader future of market-driven developments in our networked society.

In order to determine the current development of EULAs, this study analyzes three examples of digital distribution platforms, results from their active enforcement and how they have partially already been designed for creating an audience and community of consumers. These three platforms are Steam for personal computers, Microsoft's Xbox Live service for the Xbox 360 game console and Sony's PlayStation Network for the Playstation 3 game console. These three platforms were chosen for their different approaches towards digital distribution and their use of specific hardware and devices. What sets them apart are their integrated digital rights management (DRM) mechanics, community features and social network, the automated game update process, and the use of different in-game functionalities. The platforms will be analyzed in an explorative and descriptive case study design where the predominant properties of these platforms are analyzed with a focus on how the consumer, product and the platform itself are positioned within the EULA. While similarities between these three services portray the normative standards of digital distribution platforms, the differences between the three services

leave room for discussion about which approach is most appropriate with regard to consumer rights and topics of restriction, regulation, surveillance and EULA enforcement.

Based on these topics of study, the main purpose of this thesis is to provide an informed descriptive account of the main characteristics of the transformations within the traditional producer/consumer relationship through the analysis of three current EULAs used in digital distribution, how they formulate these changes into a written agreement between service and consumer while exerting control over the consumer. As such, this study does not only attempt to answer how digital distribution works, but also whom it best works for. In order to answer these matters, the following research question and subquestions will be answered.

**Main research question:**

- How do EULAs provide a symbolic superstructure beyond the already existing material infrastructure of control that transforms the relationship between product and consumer and the act of purchasing digital goods itself?

**Subquestions:**

- In what way is the consumer's position transformed after agreeing to the EULA and becoming registered to a digital distribution platform?
- How does the product itself, in this case game content, change through the process of digital distribution and the new software design of the service?
- What kind of changes can or could occur through the active enforcement of EULAs to the traditional legal balance and structure between consumer, product and service?

In order to answer both the subquestions and finally the main research question, this paper's structure is planned to be divided into three separate segments, offering an answer to each of the subquestions in this study. In the first chapter, the regulatory nature of the EULA, its development into an active social program and its active digital enforcement within the legal structure of protecting intellectual property on digital distribution platforms will be introduced. The second chapter then further elaborates on the normative nature of the EULA and analyzes examples of how EULAs have already shown signs of reconfiguring the consumer, the product and even the platform itself. The following chapters three to five discuss how the EULA results in the reconfiguration of the three main actors in this study: the consumer, the product and the platform itself. The conclusion then offers a summary of the findings, offers a discussion on the matter and provides several recommendations for the further study of EULAs.

## **2 The EULA as a social program of control**

The end-user license agreement (EULA) is best known as a contract between the 'licensor' and the consumer of the right to use software. Like any contract, the EULA must satisfy the



prerequisites of contraction formation which consists of an offer, acceptance and consideration (Reuveni, 2007). Through these prerequisites, the EULA defines the ways under which a product may be used, in addition to other rights or restrictions included in the agreement. According to Miller (2003), “the main incentives driving the proliferation of software licensing agreements remain contested [...] EULAs are generally written by corporate attorneys to protect the corporate interests in corporate products; any alleged benefit to consumers is merely secondary to the protection of corporate concerns” (2003: n.p.).

With the intent to protect these corporate interests, the EULA is also a non-negotiable agreement which the user can either accept in its entirety or not accept by not using the product or the service at all.

It is no surprise that the consumer must agree to the EULA before granted permission to the intellectual property involved. Yet while it is generally considered to educate the consumer about his rights and responsibilities for using a particular service or product, it is also a popular belief that most consumers skim through or never read its contents (Lemley, 2006; Zittrain, 2008)<sup>2</sup>.

In the traditional sense of the EULA in the case of software purchases in a retail store, the consumer purchases software on a physical carrier and is later confronted with a so called ‘click-wrap’ EULA. The click-wrap EULA appears during the installation of the software on their computer and is often a one-time occurrence, in which a consumer clicks ‘I agree’. This click-wrap method of presenting the consumer with the EULA has been considered enforceable repeatedly in the court of law (Lemley, 2006). With a growing corporate concern for protecting their intellectual property beyond the existing copyright laws and legislations, the importance of EULAs in the corporate world has only grown. Back in 1996, Gomulkiewicz and Williamson were two attorneys in a group of many that offered many advantages from a corporate perspective in their research, arguing how EULAs are a proven method for software companies that is far from disappearing:

*“EULAs are a valuable contracting tool because they provide vital information and rights to software users, and because they permit the contracting flexibility that is essential for today’s software products. The importance of EULAs will only increase over time as information products proliferate and more people join the “on-line” world. Rather than abandon EULAs, software lawyers should apply their creativity and use technology to improve EULAs to suit the information age.”*

(Gomulkiewicz and Williamson, 1996: 19)

Fourteen years later, it appears Gomulkiewicz and Williamson were right. EULAs that serve the purpose of a digital distribution platform have indeed been improved to suit the information age

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<sup>2</sup> An extreme example that demonstrates how infrequently EULAs are read was conducted by website PC Pitstop. The website included a clause in one of its own EULAs that promised a reward to the user if they sent a note to an email address listed in the EULA. More than 3000 people are stated to have downloaded the software before one person finally set a note and won \$1000 dollars doing so.

where they are no longer one-time agreements a consumer rapidly clicks through. The EULAs of the digital distribution platforms discussed in this thesis no longer only declare the company's claims regarding ownership and intellectual property rights over both game content and activity by the end-users, but they also allow control over the consumer's behavior in a more intricate fashion (Ruch, 2009; Günther, 2010). In his own research on the obsolescence of technology and the profitability of the digital distribution business model, Moore addresses this changing relationship between producer and consumer as following:

*“Clearly concerns exist about Steam’s user privacy policy, but this also invites us to think about the economic relationship between gamers and games companies as it is reconfigured through the private contractual relationship established by the EULA which accompanies the digital platform model”*

(Moore, 2009: n.p.)

Scholars from different disciplines including the aforementioned Founds (1999), Lemley (2006), Kunze (2008) and many others have focused on this active transformation of EULAs and its impact on consumers. According to Founds' (1999) research on EULAs, these types of agreements possess two key properties that repeatedly receive the most scholarly attention and are considered typical to any mass-market software licensing agreement. Firstly, there is the notion that the public is powerless to negotiate and secondly, that EULAs are often perceived as exceedingly broad and restrictive (Founds, 1999: 100). This chapter will continue to shed light on some newfound powers built on top of these basic attributes EULA that transform it into a social program of control and explain how this transformation occurs because of the growing popularity of what Zittrain (2008) describes as 'tethered' appliances and services.

## **2.1 Evolving EULAs**

While agreeing to an EULA has always been considered to be no more than a mere passive agreement which took a quick moment of the consumer's time, the EULAs of digital distribution platforms serve a different, more long-term purpose on digital distribution platforms such as Steam, Xbox Live and PSN. Once initiated by copyright owners in the music and film industry, digital distribution platforms for games now also use EULAs to govern and regulate the platform's registered users beyond basic intellectual property and copyright related law. Doing so, EULAs can also circumvent many limitations the applicable copyright law places on their copyrights, such as certain terms of fair use, the reproduction, trading, displaying or other possible acts by the consumer (Kunze, 2008; Zittrain, 2008).

The structure of these new types of EULAs is designed for what Zittrain calls “a completely locked down” service or platform. EULAs have proven to contain corporate efforts to gain control over certain consumer rights upon which general copyright law precludes control, such as the aforementioned first sale doctrine. As mentioned above, this level of control allows the vendor to retain the rights over their platform in case they wish to adapt it, discontinue any part of it or do not approve of certain consumer activities or data they find. This kind of flexibility to

govern their platform after it is already in the consumer's household can be found in many EULAs, such as the following examples:

***Steam Subscriber Agreement***

*"You understand that for reasons that include, without limitation, system security, stability, and multiplayer interoperability, Steam may need to automatically update, pre-load, create new versions or otherwise enhance the Steam Software and accordingly, the system requirements to use the Steam Software may change over time."*

(Valve Corporation, 2010: n.p.)

***Xbox Live and Games for Windows Live Terms of Use***

*"Microsoft reserves complete and sole discretion with respect to the operation of the Service. Microsoft may, among other things: (a) restrict or limit access to the Service; (b) retrieve information from the original Xbox, Xbox 360 console, personal computer, and any connected peripheral device used to log onto the Service as necessary to operate and protect the security of the Service, and to enforce this contract; and (c) upgrade, modify, withdraw, suspend, or discontinue any functionality or feature of the Service, any game or other content available or accessible through the Service, or any hardware or software associated with the Service or with an original Xbox or Xbox 360 console, or personal computer, from time to time without notice, which may involve the automatic download of related software directly to your original Xbox, Xbox 360 console, or personal computer, including software that prevents you from accessing the Service, playing pirated games, or using unauthorized hardware peripheral devices."*

(Microsoft, 2008: n.p.)

***PlayStation®Network TERMS OF SERVICE AND USER AGREEMENT***

*"From time to time, it may become necessary for SCEA to provide certain content or services to you to ensure that PSN, content or services offered through PSN, your PlayStation®3 computer entertainment system, the PSP® (PlayStation®Portable) system or other SCEA-authorized hardware is functioning properly in accordance with SCEA guidelines. Some content or services may be provided automatically without notice when you sign into PSN. Such content or service may include automatic updates or upgrades which may change your current operating system, cause a loss of data or content or cause a loss of functionalities or utilities. [...] You authorize SCEA to provide such content and services and agree that SCEA shall not be liable for any damages arising from provision of such content or services or maintenance services. It is recommended that you regularly back up any data located on the hard disk that is of a type that can be backed up"*

(Sony, 2008: n.p.)

In these examples from all three EULAs, the consumer approves of letting the platforms be changed in any way the manufacturer deems fitting. The Xbox Live and PSN EULAs appear to be the most direct in that aspect, reminding the reader that both are entitled to "withdraw,

suspend, or discontinue any functionality or feature [...] without notice” (2008: n.p.) or can “change your current operating system, cause a loss of data or content or cause a loss of functionalities or utilities” (2008: n.p). Yet what these EULAs also make the consumer agree to, is their own adaptability and the continuing cycle of new regulations based on how the software’s design is modified. As a result, we have reached a stage in our consumption of digital information goods in which the service and software lend themselves to not remain that which the consumer has first agreed upon during his or her purchase, let alone having to deal with the original agreement that is consequently also subject to change.

This ongoing cycle between the EULA and the platform’s own software that the consumer has to agree to is a prime example of how EULAs become more and more entangled with the software design of the service they are built to protect. In other words, a new active layer of constant evolution has indeed been added to the EULA’s functionality. The following chapter will offer a more extensive collection of examples of how digital distribution platforms and services have proven to repeatedly change and subsequently take advantage of user activities and restrict them through graphical user interfaces and software design. The fact that the platform’s software now has measures of control embedded into their own software design to detect EULA violations, is what makes upholding EULAs with consumers an increasingly automated task. The concept of such automated enforced is what Zittrain (2008) claims to be one of the most harmful developments for consumers, as it risks removing their interpretative flexibility of laws:

*“The law as we have known it has had flexible borders. This flexibility derives from prosecutorial and police discretion and from the artifice of the outlaw. When code is law execution is exquisite, and law can be self-enforcing. The flexibility recedes.”*

(Zittrain, 2008: 107)

In the case of digital distribution platforms, the evolution of EULA enforcement is by no means surprising. From a commercial standpoint, the entire nature of the transaction between product and consumer changes with the possibility to actively govern the consumer’s post-acquisition activities and instantly punish them for any violation even after the initial purchase of a product. And so, with every new purchase the consumer adds to their user account on a digital distribution platform, the risk of violation becomes a greater risk most consumers will not likely be willing to take.

The EULA’s displacement already begins with this first requirement to obtain any products through digital distribution platforms in the form of online registration. In order to gain access to the products a digital distribution platform provides, the user must register for an account at the service in order to access the platform’s content and services. As expected, this process involves the user to fill out their personal information and agree to the service’s click-wrap EULA before being granted access to the service itself. Once the user account has been made, the consumer becomes a registered user of the service and is free to purchase any product within the service. At the same time, the use of any product becomes tied to the EULA the user had previously agreed upon.

In the case of Xbox Live and PSN, the user is even required to possess the necessary game console before creating their user account. This does not only provide an extra layer protection to the intellectual property through a locked down device, but also further determines the limitation of the distribution service to one specific hardware platform. Steam functions differently, connecting the account a specific individual and not dependent of a specific computer. Instead, users can download the Steam client and access their account from any computer they wish. In later chapters, the different levels of access between these platforms will be discussed in more depth.

During this primary act of registration, digital distributors have also started to embed the requirement for the consumer to scroll down the entire text of the EULA before being able to continue with the installation or access to their game. The act of scrolling is not only programmed into the software, but therefore also serves as a direct representation of ‘reading’ the EULA. If the user would later indeed violate the EULA, it is impossible for them to deny that they have read and accepted the EULA in the first place. Because the user has ‘signed’ the EULA by scrolling through it and having clicked ‘I agree’, any court could hold the clickwrap EULA enforceable (Lemley, 2006). As later chapters will show, this is but one example that serves as a software design solution to controlling the activities of the user.

The displacement of the EULA caused by its susceptibility to constant change turns it into a more active and long-term force that reaches far beyond the EULA or the platform itself. As Latour (1991) suggests in his own work, a displacement of such scale could alter the entire nature and structure of the actor network involved. The consumer is no longer confronted by it in a one-time, click-wrap kind of way. As this chapter has explained, there is a strong case to be made that EULAs are technically never really finished, but instead legally permit themselves to evolve accordingly.

Today’s digital distribution platforms are exemplary of how an EULA’s restrictions and regulations are embedded deeply into multiple parts of the software design and interface of the platform, changing both consumer, product and service alike. This also proves that the EULA in itself is not an ultimate force, but an important starting point that permits the platform’s manufacturer to broaden the opportunities to make its enforcement embedded in the technology and its enforcement cheaper, easier and swifter than before.

### **3 EULA Enforcement in interface and software design**

The rise of importance in examining the EULA as a social program for the reconfiguration of the relationship between producer and consumer also reaches beyond the simple concerns of copyright and ownership rights into the deeper, more significant territory of governance and enforcement. As Latour (1991) suggests in his own work on translations of social protocols into technological design, it is not only the grammatical agreement made between producer and consumer, but also the technological innovation itself that can often structure society in a new kind of way. Moving beyond the private contractual relationship between producer and consumer

by being enforced through the platform's software, the EULA has become an active social program of control that is bound to the consumers as long as they choose to actively use and purchase items through the platform. In the case of such tethered appliances such as digital distribution platforms, Zittrain (2008) offers three insightful concepts in which consumer behaviour can be controlled: pre-emption, specific injunction, and surveillance. But as this chapter will demonstrate, the effects of his concepts go far beyond their original descriptions and their impact can easily be traced back to the design of their accompanying EULAs.

### **3.1 Pre-emption**

In the context of this study, pre-emption means the digital distribution platform always anticipates and designs against any undesirable conduct before it actually occurs. There are already enough services and technologies that apply this sort of consumer control, limiting the consumer in some sort of way in order to prevent any sort of damage that might otherwise occur. The EULA is a prime example of pre-emption and of how certain parts of the pre-emption strategy are already agreed upon before the consumer even agrees to touch the software itself. Lacking solid examples in his own work, the definition of pre-emption that Zittrain (2008) offers is rather broad and open for interpretation:

*“Pre-emption does not require constant updates so long as the device cannot easily be modified once it is in the user's possession; the idea is to design the product with broadly defined limits that do not require further intervention to serve the regulator's or designer's purposes.”*

(Zittrain, 2008: 108)

While pre-emption forms a preventive role, it also pre-emptively delays any attempt for consumers to devise any modifications, hacks or other anti-programs against the platform for an extended amount of time. Yet, as the game industry has repeatedly discovered, any technology will eventually be hacked by a small group of dedicated and skilled consumers. Early game consoles such as the Xbox have already demonstrated the extent to which software-based products are open to modifications and their basic affordances could suggest different uses (Schaefer, 2009).

In the case of both the Xbox 360 and PlayStation 3 game consoles, this kind of pre-emption against modifications can first of all be found in basic agreements with the consumer. Any kind of tinkering with the game consoles risks breaking a warranty seal attached to it. Since both consoles have been reported to some times malfunction, breaching the warranty is a costly risk few consumers would want to take.

With Steam being only a software client, its EULA therefore only states that the consumer is not entitled to “emulate or redirect the communication protocols used by Valve in any network feature of the Steam Software, through protocol emulation, tunneling, modifying or adding components to the Steam Software” (2008, n.p.). Since the Steam platform can only be accessed

online through its own authentication protocols, the client has been designed to detect any modifications to its code when connecting with the main server in order to counter any violations.

What Xbox Live, PSN and Steam have all introduced to their software structure, is that the power of pre-emptive mechanics of digital platforms does not lie in the physical capabilities of their associated devices or hardware, but in their software design. Though their code can be modified or rewritten, similarly to the Steam client software on a PC computer, pre-emption will only delay this from eventually happening. As the next chapter will explain, the required connectivity of all three platform to their main server and their integrated DRM software are the primary weapons in discouraging their hardware and software modification for a majority of the consumers. The platform's client software always checks with the main server when logging in, in order to control both the platform's integrity and check for any possible updates. The result of such a type of coded pre-emption through connecting with the main server links the concept of pre-emption to the second concept of real time connected supervision through the platforms.

### **3.2 Specific injunction**

Specific injunction is described by Zittrain as a corporate strategy that takes advantage of any kind of communication that routinely occurs between the platform's client software and the platform's main servers. It is not only intended for regular software updates but also functions as a preventive mechanic against the tampering of consumers. Firmware updates and changes as demonstrated by new functionalities and interfaces on both the PlayStation 3 and Xbox 360 consoles and their digital distribution platforms belong to this category, as it mandates modification of the devices after they have already been designed and distributed while also controlling if the associated devices have not been tampered with (Zittrain, 2008). Some examples of this kind of specific injunction in EULAs were already offered in the previous chapter, with platforms being entitled to use their routine communication with their own software clients to withdraw, suspend, or discontinue any functionality without notice or even cause a loss of data, content or functionalities.

Specific injunction also suggests specific alternations to the devices or platform which could indeed be content specific, user-specific, or even time-specific. Steam is a perfect example of the latter, unlocking certain games for short period of time for certain regions, allowing its users to try out games that they had not bought yet and inciting the owners of the same product to play by offering special tokens such as double experience in games that let the user level up a game character.

On the other hand, both the PS3 and Xbox 360 have built in software detection for any outside modification to the hardware of those devices. The PlayStation 3 places frequent firmware updates as a requirement for the consumer to still be able to access to the PSN distribution platform. In the case of the Xbox 360, the game console's operating system can even detect fluctuations in the voltage of the device, automatically and irrevocably banning the specific game console from Xbox Live service. At the end of 2009, this type of direct enforcement of the EULA made the number of banned Xbox 360 consoles rise to more than 1 million (Teriman, 2009).

Addressing this move to enforce, judge and instantly penalize consumers for violating their EULA, Microsoft issued the following statement:

*"[Microsoft has a] commitment to combat piracy and support safer and more secure gameplay for the more than 20 million members of the Xbox Live community remains a top priority. All consumers should know that piracy is illegal and modifying their Xbox 360 console violates the Xbox Live terms of use, will void their warranty and result in a ban from Xbox Live. We can assure you that if an Xbox Live member follows the Xbox Live terms of use, purchased a retail copy of [the game] Modern Warfare 2 and played the game on an unmodified Xbox 360, no action will be taken"*

(in: Terdiman, 2009: n.p.)

While the banned Xbox 360 would still be functional to run pirated games, access to the Xbox Live platform is permanently removed from the specific game console. Browsing on various online auction sites many consumers can still be found offering these kinds of permanently banned consoles up for auction (Mann, 2009). The recent Xbox Live bannings demonstrates that specific injunction is one of the more powerful enforcements that the consumer agrees to be susceptible to within the platform's EULA.

Specific injunction therefore adds the power of connectivity to the limitations of pre-emption, leaving strings attached to the platform that go beyond Zittrain's concept of specific injunction. Additionally, the idea that the platform is in constant contact with its main servers also introduces the power of policing the consumer's every move on a real time basis. After all, as many scholars that have studied participatory culture and consumer behavior would agree to Gabriel and Lang's (2008) claim that the consumer has become a nearly unmanageable entity if not for this kind of active enforcement:

*"Consumers have proven that in spite of the best efforts to constrain, control and manipulate them, they can act in ways that are unpredictable, inconsistent and contrary."*

(Gabriel and Lang, 2008: 334)

Specific injunction is one way to turn a small unpredictable group of consumers that have agreed to the EULA into a manageable heterogeneous group. In case of Xbox Live or PSN, the game console as well as the platform itself remain constantly monitored by Microsoft through their online connectivity, but also for the final major purpose that digital distribution platforms serve their manufacturers. Being able to monitor and detect any activity or EULA violation by the consumer becomes a valuable asset to gather valuable information about this mass of unmanageable consumers, but it also adds another layer of governance and consumer policing.

### **3.3 User supervision**

Similarly to Zittrain's concept of surveillance for tethered appliances, digital distribution platforms have a high capacity to relay user information back to the manufacturer. But with the



rise of the Web 2.0 platforms and applications the thought of companies gaining access to our private information has slowly become a usual matter. Tracking, collecting and monitoring consumer information has never been as fast, flexible and cheap as today, making it instrumental in the ongoing development of market intelligence (Zwick and Denegri Knott 2010; Nutt, 2010).

Digital distribution platform clients take the knowledge they gain from supervising the consumer as far as imaginably possible, recording a consumer's activity within the service, which games they've bought, which they've played, with whom and when. This information is then routinely sent back to the main server, transforming the statistical data into consumer profiles that offer important insights into consumer behaviour, activities and sales figures. It also delivers bad news to the platform, including unpopular sales or dwindling activity in certain games, exploits, cheats or any other problems consumers have encountered.

While the platforms often promise not to release this kind of surveillance information on a personal identifiable form, the EULA are often employed to temper the service's option with the promise of improving the service by sharing the information with partners or game companies that produce games and content for the service itself, or as the PSN EULA formulates it:

*“Third parties, including publishers may administer some services, including delivery, gameplay or customer service. To enable third parties to provide such services to you, we must provide them with your personal information. If you do not consent to allow us to share your personal information with third parties for the purpose of providing you with PSN services, you will not be able to participate in PSN.”*

(PlayStation@Network, 2008: n.p.)

The EULA might be designed to offer the consumer the choice of not having any personal information shared with third parties, but only if the consumer refuses access to the platform. Steam on the other hand, presents their surveillance differently. By performing regular Steam Hardware Surveys to measure the quality and power of the hardware of their users, Steam constantly determines the average system requirements of their users and adapts their Steam client accordingly to facilitate the broadest range of consumers. Through its SteamWorks partnership program, Steam has offered this kind of information to all of its content partners as a means to “to make informed decisions about marketing and retail conditions” (SteamWorks Brochure, 2010: 4).

The number of users on Steam are also constantly published on the platform's website, together with the hardware profiles from their regular Steam Hardware Surveys. In his research on the Steam platform, Moore (2009) suggests that sharing this type of surveillance publicly has another effect on the consumer, namely that of causing obsolescence:

*“Valve's hardware survey itself conceptualizes obsolescence in two ways. First, it uses the results to define the 'cutting edge' of PC technologies and publishing the standards of its own high end production hardware on the companies blog. Second, the effect of the*

*Survey is to subsequently define obsolescent hardware: for example, in the Survey results for April 2009, we can see that the slight majority of users maintain computers with two central processing units while a significant proportion (almost one third) of users still maintained much older PCs with a single CPU”*

(Moore, 2009: n.p.)

Doing so, the hardware independent platform still lays out an optimal system range for the consumer, slowly pushing owners below their averages to the need to upgrade in order to retain access to the platform. Valve itself argues that the survey helps them make better engineering and gameplay decisions (Valve, 2009). Though these examples from the PlayStation Network and Steam are far from truly demonstrating the EULAs capacity to authorize such supervision over the consumer, Zittrain argues that tethering technologies such as digital distribution platforms could potentially rise to more worrisome levels of control and surveillance. To support this statement in his own book, he offers the example of government officials having the option to order cell-phone providers to enable the tapping of every mobile phone on the planet by simply reprogramming it at a distance:

*“Tethering makes these approaches practicable and inexpensive for regulators. A government need only regulate certain critical private intermediaries – those who control the tethered appliances – to change the way individuals experience the world. When a doctrine’s scope has been limited by prudential enforcement costs, its reach can be increased as the costs diminish [...] Even when it comes to waving the regulator’s wand for the purpose of eradicating online evils like harassment, invasion of privacy, and copyright infringement, there are important reasons to hesitate.”*

(Zittrain, 2008: 110)

If EULAs make it easier for the digital distribution platform to enforce their protection over their intellectual property rights, the consumer must also be disposed to the increased enforcement of substantive laws within digital distribution platforms in exchange for the promised increase in security and stability of the service. What both the ECA, Zittrain and this study have found, is that the consumer does not yet realize the potential risk they are undergoing when the platforms attain the power to directly enforce any violation of the EULA. It is also one of the main reasons why Zittrain’s own conclusions on the possible objections towards this kind of ‘perfect’ law enforcement are based on a much broader spectrum than this study. His own argumentation is based on how the corporate control over tethered appliances has already flown over to how governments like China and Saudi Arabia implement a tighter censorship and control through technologies linked to the Internet:

*“Because it is often less obvious to users and the wider world, the ability to enforce quietly using qualities of the technology itself is worrisome. Technologies that lend themselves to an easy and tightly coupled expression of governmental power simply will be portable from one society to the next.”*

(Zittrain, 2008: 113)

As this chapter has shown, the importance of the EULA as a social program does not only depend on how the level of the consumer's understanding of what is going on, or about the fact that it has become standard procedure for companies to implement surveillance methods inside their software. Instead, the culmination of translating more and more social protocols into technology and software is leading to the massive reconfiguration of the entire relationship between consumer, product and platform. This is not only done through the EULA, but also the technological innovation of actively connection the consumer and the platform that can structure their relationship in a new kind of way.

#### **4 The perpetual connection between platform and consumer**

The three concepts of control that have been discussed in the previous chapter have each been applied in digital distribution platforms in different ways, but all point to the same direction of innovation: a direct and constant connection between the platform's software and consumer. Through their online features, the three platforms in this study all link the consumer directly to the platform aiming not only at the supervision, administration and consumption of goods, but also at improving the regulation and enforcement of consumer discipline (Zwick and Dengri Knott, 2009). Therefore, both commercial and governmental elements become intertwined in both the software and subsequently the EULA, which grants the platform the right to both commodify and regulate the consumer at the same time.

The enforcement of the EULA is therefore turning into real time process, as most of the possible violations by a consumer can or will be instantly detected by the platform's software and reported back to the main sever in an instant. By agreeing to the EULA, the consumer is sure to be free from any risk to be denied access to the platform or warranty to their game console, but the consequences go far beyond the work of different scholars such as Latour (1991) or Zittrain (2008), who both address the translations of social protocols into technological design in different manners.

In recent months, a couple of game publishers such as Electronic Arts (EA), UbiSoft and THQ have begun using digital rights management (DRM) that requires players to have an active internet connection at all times in order to play their games (Yin-Poole, 2010). If the consumer's Internet connection would stammer or disconnect, the game would entirely cease working. This new DRM mechanic has been met with much criticism by consumers, but has also been a major risk of substantial revenue. After all, a large proportion of our society might not yet have reached the level of technological sophistication or still live in areas where is impossible to possess a stable Internet connection.

The increasing adoption of such measures in the retail market prove that the consideration to protect one's intellectual property remains a flawed ideal unless there is a constant reassurance that it can be actively enforced. Perpetually connected, the consumer no longer has any breathing space to explore or cross the borders of the EULA's restrictions. No space, time or person

remains between the possible violation of the platform's EULA and its direct enforcement of the required penalty. While EULAs provide ample of room for change and regulatory reaction from the service, the consumer is turned into an actively governed individual with no room for interpreting the rules in his or her own way.

The issue of instantaneous enforcement and policing of the consumer transforms the entire paradigm of consumption into an almost governmental activity. It is the increased possibility to instantly enforce the EULA that allows the platform's software to swiftly attain the role of police, judge, jury and executioner. If we would indeed reach such heights in the governance of digital distribution platforms, it would not only be a perfect example of how social protocols are translated into technology, software and code, but also how the agreement to an EULA reconfigures the consumer into a governed individual.

#### **4.1 Reconfiguring the consumer**

The strength of the platforms software's level of control partially depends on its design, but also on what the consumer does with the service itself. In her own work on consumer culture Sassatelli (2007) suggests that the changes described in the former chapter should always require critical scholarly attention:

*“We can and indeed should scrutinize very closely the ways in which commodities are considered superior or inferior, consumer's actions are deemed appropriate and legitimate or inappropriate and deviant, consumers themselves are portrayed as moral beings or as depraved souls”*

(Sassatelli, 2007: 195).

Therefore, it is important to consider that the popularity of digital distribution platform is not simply growing because of technological progress, but perhaps because of a certain amount of trend and a growing public demand for facility and comfort.

The creation and proliferation of digital distribution platforms appear to be part of a public movement and desire for more centrally controlled tethered information appliances and services (Zittrain, 2008). Digital distribution platforms offer access to a wide range of products that the consumer can directly tap into and purchase without any difficulty or security risk. While each consumer will eventually use this kind of service in their own unique way, the EULA serves to equalize each individual by letting them all agree to the exact same requirements, ensuring a larger amount of predictability on the consumer's behalf. In other words, the EULA and the software are designed in such a way that lots of different consumers will all eventually behave heterogeneously in the same orderly manner that best suits the platform.

Under such a blanket of governance, the consumer becomes a different entity without even understanding why. Now that the consumer is fortunate enough to have a broad access to a large collection of interactive entertainment, it no longer has to matter to them that they are now

actually subdued and forced to act out what he or she has agreed upon. According to Latour's conceptualization of an agreement between producer and consumer, this causes the nature of a statement like the EULA to no longer be the same agreement once it has been agreed upon:

*“If [the customers] conform to the manager's wishes, it is not because they read the sign, nor because they are particularly well-mannered. It is because they cannot do otherwise.”*

(Latour, 1991: 106)

In other words, the social program 'do not violate the EULA' changes into 'do not violate the EULA or else...' once the consumer has accepted it. Suddenly, consumers no longer wish to create anti-programs, disobey the platform's manufacturer at the risk of losing their valued purchases. It would not be the first time that studies have pointed out to the ways in which new modes of consumption require the consumer to adapt to new business models and distribution channels (Green, 2001). The non-negotiable nature of the EULA and the promise to remove certain security and usability concerns from consumers have, to use Latour's description, "nibbled [customers] away at little by little [as] they finally abandoned their anti-program and 'surrendered' to the program" (1991: 107). What remains are the consumers that agree to be governed based on the program of the EULA. That is how they become main protagonists of this part of the study, since they have personally agreed become bound to a legal agreement that legally allows them to become governed by the platform.

There are certain specific properties to both the EULA and the platform's software design that cause this kind of transformation. One example can also be found in scholarly research on EULAs of virtual worlds such as that of Kunze (2008) where he argues that "the virtual world marketplace is not fully competitive, as lock-in and network effects conspire to limit the mobility of players, and barriers to entry prevent new market entrants from providing a more optimal solution" (2008: 104). The money, time and effort a consumer invests in a virtual world is non-transferable, either through the virtual world's software design or by restrictions posed in the EULA. Similarly, the content purchased on a digital distribution platform is indivertibly tied to the user account it was purchased on. Therefore, the consumer experiences what Kunze calls the 'lock-in' effect of having no mobility with their investment under the platform and EULA it becomes tied to. When the consumer invests more and more into new game licenses on their user account, it would commonly prevent the consumer from switching to a competitive platform and result in a 'lock-in effect'. During this study, my personal Steam account also reached a total value of over €100 euros worth of games on it, a sum which mostly likely would keep any random consumer locked-in and unwilling to abandon their user account. Though that would only cover the monetary aspect of a lock-in effect, the time and effort spent also become valuable additions. A result from the time spent on the platform also results in Kunze's second effect, one that reconfigures the consumer is the 'network effect' of building up time, resources and a social network on the platform. In a presentation given to the online website BigThink.com, Zittrain proposes the following explanation to the issue of effects mentioned by Kunze:

*“[These are] winner-take-all network effects, that say that after a particular appliance or platform is dominating the [consumer’s] environment there are reasons why it would be awfully hard to leave. I can’t necessarily leave Facebook with all the stuff I’ve contributed, all the mouse droppings that comprise my newsfeed, all the other people can’t simultaneously leave with me.”*

(Zittrain, 2009: n.p).

Some popular games such as *Call of Duty: Modern Warfare 2* (Infinity Ward, 2009) on the PC platform are also built around the creation of a character, achievements and social networks that a consumer will not easily abandon. Even though these games are purchased in retail stores, they still require authentication through the Steam network to be played. In other words, the entire social network of *Call of Duty: Modern Warfare 2* players that purchased the game either online or in retail stores and wish to access the game’s multiplayer functionalities, are now automatically required to register for a Steam account to activate the game. If they already have a Steam account, they will most likely feel the need to add it to their already existing game collection and social network because of the above mentioned lock-in effect. In his own research on the value and effects of user participation, Schaefer argues that these kind of partnerships between the producers and the platforms are specifically designed to cause such network effects to create commercial value:

*“Policies intending to achieve implementation attempt to control user activities through software design and graphical user interface, stimulating users to perform activities on corporate platforms and participate implicitly in generating commercial value”*

(Schaefer, 2009: 273).

The causes of network effects from such a perspective appear to mostly benefit the producer and platform, the one not having to worry about their service infrastructure and the other receiving a substantial revenue share for offering their platform’s capabilities. In the end, the consumer does not seem to have an acceptable choice: either continue to live with the EULA’s regulations and restrictions or give up their game collection and access to the platform. As a result, the consumer typically accepts the EULA that could possibly hinder the consumer in the future, while accepting that the platform’s right to undertake whatever measure is necessary for the platform to remain profitable. A substantial amount of consumer freedom can be said to be taken away by the effects of attachment and investment into such platforms. Latour claims that the newfound powers in a legal statement such as the EULA also indeed show us that consumers never deal with products actors to which fixed contours may be granted:

*“Very specific objects which we must now distinguish and isolate just as carefully as we did with [its] clients. It is not merely that their degree of attachment to a statement varies; their competence, and even their definition, can be transformed”*

(Latour, 1991: 109)

The biggest reconfiguration the consumer faces with digital distribution platforms therefore does not only become a more actively enforced EULA or a lack of rights over their purchases, but receiving access and having to deal with a service that is perpetually susceptible to change or alternations. There is nothing solid left in the act of consumption through digital distribution platforms. Everything the consumer is now confronted with in the act of consumption becomes susceptible to change, including the social program of the EULA. As such, the only thing that remains certain is the uncertainty of the platform itself and content purchased on it.

## **5 A very different digital bookshelf**

If we were to consider the main difference between the digital distribution purchase and a retail purchase of a game, the latter would eventually find its way to a bookshelf in the consumer's living room. Though the bookshelf might encompass an entire game collection, it still allows any individual game to be moved, shared or transferred to another owner. Placed on their original physical carriers each individual game has its own EULA and terms of service, while the consumer retains certain rights over it such as the first sale doctrine.

The initial thought of digitalizing this collection would resemble a digital counterpart of the collection provided by a digital platform, with no major changes to the properties of the actor except a lack of physicality. But suddenly the digital equivalent of the bookshelf itself requires an EULA and restricts users from the former liberties they've experienced with physical carriers. On the other hand, the digital bookshelf automatically updates the collection, directly offers access to online functionalities and even incorporates the user's social gaming network. The digital bookshelf is no longer a piece of property, but a user account that provides access to the entire game collection.

Binding games to a specific user has first and foremost been a part of the service's own software design, linking the acquired game license directly to the consumer's own user account. While the consumer's games are now certainly protected from a possible house fire, the platform's owner is now in charge of what will eventually happen to the consumer's entire game license collection.

By agreeing to the EULA of a digital distribution platform, the biggest transformation in purchasing games is that such a purchase does no longer guarantee any level of control over the product from the consumer's side. Making the leap from the traditional retail market to using smarter services that can only be updated by their makers is fundamentally changing the way in which we experience the products themselves. Indeed, such a software license purchase becomes contingent as it offers access instead of ownership. Even when a consumer has paid up front for the game licenses, both the platform and the products remain subject to instant revision. This becomes quite worrisome if it reaches the heights that Zittrain warns for in his own work on tethered appliances when the consumer agrees to the platform having the right to determine when and where to remove certain game features, add new methods of supervision or even stricter regulations without the consumer's consent.

Because the cost of switching or leaving a platform are considerably high because of the aforementioned lock-in and network effects the consumer might experience, competition between platforms is very limited and stifled. In the case of Xbox Live and PSN, switching becomes an even more difficult decision. Considering that most successful games have become available on both services, it is highly unlikely for a consumer to buy the same game on both Xbox Live and PSN. Owning both game consoles might prove the cheapest way to solve such a problem, but then again the consumer is faced with having to choose which game is bought on what platform. Therefore, as Kunze (2008) suggested in his legal research on virtual worlds, the restriction and lack of any easy process to transfer digital assets between different competitors also let digital distribution platforms operate “with a conscious parallelism of an oligopoly, instead of a truly competitive market” (2008: 111).

Because of this strong structural resemblance of an oligopoly, digital distribution platforms have strategically avoided the implications of the first sale doctrine by selling their products not as a copy of software, but as a limited software license that unlocks access to a game for a specific user account, making it a legal detour that does not violate any copyright law. In its turn, the user account is legally bound to the consumer who created the account, who is then fully responsible for their own conduct on the service and is prohibited from sharing, transferring or selling their account to anyone else. Sharing one’s account full of games with someone else with the threat of losing hundreds of dollars worth of game licenses suddenly becomes an unwanted risk.

But on the other hand, the general thought of making digital licenses or accounts transferable to other digital distribution platforms is neither the focus of this study or a truly feasible endeavor. It would require the platforms to also involve themselves in the complicated industry of finance regulations and market management (Kunze, 2008). But even though the software’s design and EULA obstruct the consumer from certain sharing practices, the consumer still has a limited amount of freedom to decide how they use their own user accounts. Each service offers different possibilities, each of them still being a thorn in the eye of some game developers that argue these few consumer benefits are harming their sales figures.

### **5.1 The flexibility of sharing**

The most popular platform to have unwanted traffic of accounts has been the Steam platform. When a consumer buys a Steam product, they choose to bind it to their existing Steam account or create a new empty Steam account only for that specific game. If the consumer later loses interest in this game, they can then either share the account information with a friend or simply sell the account to someone else. The EULA firmly states that any other person accessing the user account and the person who created it, is in direct violation and risks to lose their account:

*“You are solely responsible for all activity on your Account and for the security of your computer system. You may not reveal, share or otherwise allow others to use your password or Account. [...] You may not sell or charge others for the right to use your Account, or otherwise transfer your Account.”*



(Steam, 2010: n.p.)

Though these practices are in violation with the Steam EULA, it is commonly known that sharing Steam accounts is not a very hard thing to do. For the sake of this study, I managed to purchase a Steam account with the game *Half-Life 2* (Valve, 2004) from its former owner. While the exact measure, technology and methods of how Steam deals with EULA violations are not clear, the support page of the Steam platform clearly states the contents of their zero-tolerance policy towards any violations:

*“We have a zero-tolerance policy for any violations of the Steam Subscriber Agreement and Online Code of Conduct - we will permanently disable all accounts in a user's possession for any of the following activities:*

- 1. Piracy or hacking: This includes using an unauthorized ("hacked") Steam client to access Steam, attempting to register fake CD Keys, or attempting to register a CD Key which has been published on the internet.*
- 2. Credit card fraud: Any fraudulent credit card use or credit card chargebacks (regardless of when the transaction occurred).*
- 3. Hijacking, sharing, or trading accounts: Do not use Steam accounts which you did not create.*
- 4. Account "phishing" and deliberately deceptive activity: This includes contacting other users outside of Steam or over the Friends network under a misleading screen name or e-mail address (i.e. "Steam Admin" or "John@Steampowered.com") and requesting password or account information.*
- 5. Buying, selling, or trading accounts: The use and security of your Steam account is primarily your responsibility - accounts which have been bought, sold, or traded will be permanently disabled.*
- 6. Any other violation of the Steam Subscriber Agreement or the Rules of Online Conduct - Please see the Steam Subscriber Agreement and the Online Code of Conduct if you have any questions about the policies which govern Steam account use and account termination.”*

(Steam Support Wiki, 2010: n.p.)

While the only way for a Steam user to share their games is by sharing their own user account with other and risking that this transaction will be detected by the platform itself, products purchased on Xbox Live and PSN both have quite different mechanics that also lean on the pre-emptive design of their associated devices.

Xbox Live allows a user account to access downloadable game content (DLC) from multiple Xbox 360 consoles. But when the consumer buys certain games from his or her own console, the DLC becomes bound to the console instead of the account and is therefore free to be used by anyone on that specific console without having to log in as the consumer that purchased it. The consumer can then log into Xbox Live from another game console, download the DLC through their user account again and remain logged in on the second console in order to use the DLC on 2 consoles simultaneously. Though this has not been a trick that Microsoft has been actively promoting, it does show a certain space of free movement on behalf of consumers who prefer to play DLC with family members or who own multiple Xbox 360 game consoles.

PSN goes even further in the aspect of game sharing. The platform allows the sharing of digital information goods from their service over 5 different PlayStation 3 consoles at once. The consumer can later choose to deactivate the digital information goods on one of the consoles, but if the console breaks before this happens, the consumer loses 1 of 5 occasions to do so. This has caused what has become known as ‘game sharing’, a function that has become increasingly criticized by game companies that offer their games and content through the PSN service, arguing a substantial loss of revenue due to this ‘function’ the service provides (Reilly, 2010). The game sharing policy has unexpectedly caused people to massively share games with each other, resulting in a massive group of consumers actively exploiting the option (Holmes, 2007). The PSN sharing has also forced several game developers to restrict their products beyond PSN’s own EULA, since by sharing a PSN game the developer of the game potentially loses four sales.

One recent example of how game developers have fought this kind of game sharing is the DRM implemented in the new release of the classic game *Final Fight* (Capcom, 2010) on PSN. Some PSN partners such as game publisher Capcom recently decided to add another layer of special DRM code to their line of PSN games to circumvent Sony’s game sharing policy. What made the example of *Final Fight* a perfect example of an anti-program of the PSN EULA, is that the consumers who purchased the game were not properly informed about this additional restrictive layer that the developer had added on top of PSN’s game sharing policy (Ivan, 2010). Foust & Lowrey (2010) present an accurate description of what could happen in such a case within their legal analysis of DLC content. It would not be the first case of a service’s EULA not aligning with the developer’s own intentions, which could indeed cause consumer confusion:

*“When relying on independent third-parties to conduct DLC transactions, the risk of conflict between the third party's terms of sale and the game developer/publisher's EULA increases [...] Third-party providers often require users to acknowledge that they, the providers, take no position on the ownership, transferability, or use of items purchased or sold through their services. These disclaimers, however, may lack language that reaffirms a publisher's ownership rights, or they may fail to instruct users to refer to their game EULAs for specifics on content ownership. Thus, third-party disclaimers may leave publishers without the best protection, as the absences of clarifying terms may foster ambiguity and confuse users as to the exact nature of the rights they have acquired to the DLC they have purchased.”*

(Foust & Lowrey, 2010: n.p.)

The case of *Final Fight* highlights this extent of how a platform's own methods for pre-emption can be easily circumvented by other third parties and partners of the platform or vice versa. The platform's EULA, as it might seem in this example, is but the outer rim of restriction and is also not free from being adapted by the owners of the intellectual property it is designed to protect.

Sharing accounts over Valve or licenses over PSN has already caused the inevitable rise of unofficial exchange markets, already adding complexity to the issue. Services such as Valve already make a constant effort to spot and erase traded accounts, while the aforementioned PSN has presumably left the issues to be dealt with by their own partners. The proper borders of users sharing their purchases through digital distribution appear to not have been perfected yet.

The cases presented are but a few examples of the possible intricate transformations that occur when a commercial product is turned into a permission for the consumer. From a commercial perspective, this transformation is highly rational as it allows a higher degree of IP protection, facilitates distribution and allows the product to be improved or updated.

On the consumer's side, there are still many legal uncertainties when it comes to purchasing a mere 'permission', since the EULA allows the platform to eventually deny the consumer any access after a violation, perform significant changes that the consumer might not approve of or even discontinue any permission. Authorizing this, the EULA has proven to go far beyond the concept commercial ease, into the under explored territory of the governance of the consumer.

## **5.2 The main concern with perpetual products**

While digital distribution is growing in popularity and the limits on sharing games is still vague across platforms, the retail industry is facing a completely different challenge of consumers sharing games. Consumers that still buy physical copies have turned to a completely different kind of platform: the second hand market. Interestingly enough, while digital distribution platforms were being lauded to eventually replace the retail market entirely, the second hand business had only been flourishing. Its value has been estimated to have grown in the billions the past five years. GameStop, one of many chain stores that offer second hand or 'pre-owned' sales has made an estimated 795 million dollar profit in that market segment last fiscal year, proving that a rather large sum of consumers are not yet considering giving up their first doctrine rights to any digital platform just yet (Matthews, 2010). The entire second hand market exists because games on physical carriers are more durable than is good for the game industry itself.

At the same time, big game publishers such as Electronic Arts have not given up the struggle against second hand trading and have adapted the online functionalities of their games to be linked to an online access code. The code can only be accessed once when a game is first purchased. This strategy allows them to control their game licenses through EULAs in a similar fashion to digital platforms and simultaneously restrain the second hard market, while still

reaching a large market of people that have not yet been accustomed to digital distribution. Any consumer who purchases the game through the second hand market is offered the access code for an additional fee, making this a highly profitable scheme to directly tap into the revenue streams caused by second hand sales themselves (Brightman, 2010).

The EA Sports Online Pass is designed to compel consumers to buy their games new. Each new copy of an EA Sports title will come with an additional code that will give the consumer access to various online functionalities, content and play modes. If the game has already been used and then resold, the code can not be transferred and the new buyer will have to purchase a new key through EA for \$10 dollars. This new business model promises to enhance the game publisher's revenue with a growing promise that other game developers and publishers will do the same. The main area of criticism for this model is that the consumer is caught in the middle of the game industry's frustration with the second hand market. On behalf of EA, Senior Vice President Andrew Wilson offered the following on the EA Sports Online Pass website:

***“Is this intended to combat second sale?”***

*We actually view the second sale market as an opportunity to develop a direct relationship with our consumers, and with Online Pass everyone has access to the same premium online services and content regardless of how and where you buy the game. In order to continue to enhance the online experiences that are attracting nearly five million connected game sessions a day, again, we think it's fair to get paid for the services we provide and to reserve these online services for people who pay EA to access them. In return, we'll continue to invest in creating great games and offer industry-leading online services to extend the game experience to everyone. I don't think even the harshest cynic can argue with that and instead I think fans will see the value we're committing to deliver when they see all the services, features and bonus content that is extending the life of their products.”*

(Wilson, 2010: n.p.)

Wilson's statement rests strongly on the idea that consumers are required to pay for the online capabilities they receive with the purchase of a retail version of the game. Interestingly enough, this example proves how the game publishers requirement to combat the second hand market has not only changed the basic structure and content of both the consumer experience of purchasing this game and has created a hybrid game product in the process, but has transformed their EULAs with their consumers to resemble that of a game license, including the requirement of a user account registration to their own online platform.

It appears that the affordances of digital distribution platforms to control both consumer and product in a more active and real-time way is now slowly encroaching upon the traditional retail market. EA's online service for its games, one that used to be provided free of charge to each consumer that purchased an EA title, has now been commodified in the process. This new business model shows how the consumer is faced with a full circle starting at a business decision translated in a new kind of service and software, then translated into the EULA, which then alters

not only the state of the consumer, the product, but also fundamentally alters the basic foundations of one of many services that consumers of games have been using for many years.

Kline et al.'s (2004) analysis of the game industry is especially useful when analyzing digital distribution, because they were persuaded in their work that information capitalism represents a fundamental intensification and acceleration of processes of commodity exchange. Based on the ideas of Martyn Lee (2000) on the ideal commodity as “an artefact within which converge a series of the most important production techniques, marketing strategies, and cultural practices of an era” (2004:24), Kline et al. characterize the production of games as the ideal commodity in the post-Fordist society, also known as post industrial capitalism or information capitalism.

This new business model of digital distribution platforms can be considered to be an important example of information capitalism and the subsequent increasing focus towards the production of fleeting and ephemeral. As can be deduced from the countless limitations of game licenses within the EULAs of the aforementioned three platforms, digital distribution resembles a familiar movement of our current post-industrial tendency towards perpetual innovation, a shift from material to experiential commodities through their digitization (Kline et. al, 2004). The act of bringing the final digitized product to the consumer, brings us to the final important actor that is actively reconfigured by the EULA that has dictated its software design for the most part: the platform itself.

## 6 The all-powerful platform

The advantages of digital distribution platforms can be traced back to different companies in the entertainment industry that have massively tried out new business models and IP protection to facilitate, leverage and spread consumer interest in the digital consumption of media products such as movies, e-books, music and most importantly video games. While these advantages are many, Jöckel et al.'s (2008) have identified the four most essential functions of the digital distribution business model in their research on digital distribution:

*“They can be seen as a pure shop element, cutting out the wholesale and retail stages of the classical value chain. They can furthermore be used as a social tool, providing the users the infrastructure to share information on a game and communicate about new games or modifications [...] Online platforms can then be used as a digital rights management (DRM) tool. Part of the Internet service stage is to provide the digital product with a mechanism to protect it against illegal copying. DRM tools can be seen as useful tools to safeguard games against illegal copies. These tools can easily be integrated in online platforms, for example, in the form of online registration. Finally, online platforms can be used as marketing tools by promoting new games or game features, often benefiting from the function of online platforms as social tools.”*

(Jöckel et al., 2008: 105)

From a business standpoint, it is clear that this distribution business model has turned platforms such as Steam, Xbox Live and PSN into central gatekeepers that guard their intellectual property. The previously mentioned example of EA's Online Pass program only demonstrates how a growing group of companies are acknowledging the advantages of such an increased amount of control that a company can obtain by creating an active regulatory platform that the consumer must abide to in order to access it. Promoting these developments as advantages to the consumer has become a continuous trend. While Steam uses the improvement of their service as a prime argument, it also slowly increases the required hardware specifications for its service with no prior notice to the registered users. This is but one of many other examples of how EULAs contain a clause allowing the platforms to perform changes, tweaks and other balancing at any time throughout its use.

In his own work on this type of post acquisition improvements, Zittrain offers the case between digital video recorder (DVR) producer TiVo and satellite TV distributor EchoStar as an example. The latter was sued for infringing TiVo's own patents by building DVR functionalities into their own dish systems. The court found EchoStar guilty of infringement, which resulted in TiVo being rewarded \$90 million dollars, but EchoStar was also ordered to kill the DVR functionality on almost 200.000 of their products that were already owned by consumers and resided in their households:

*“Imagine sitting down to watch television on an EchoStar box, and instead finding that all your recorded shows had been zapped, along with the DVR functionality itself – killed by remote signal traceable to the stroke of a judge’s quill in Marshall, Texas. [...] TiVo saw a new opportunity in its patent case, recognizing that EchoStar’s dish system is one of an increasing number of modern tethered appliances. The system periodically phones home to EchoStar, asking for updated programming for its internal software. This tethered functionality also means EchoStar can remotely destroy the units. To do so requires EchoStar only to load its central server with an update that kills EchoStar DVRs when they check in for new features.”*

(Zittrain, 2008: 104)

Though the case of the EchoStar DVRs demonstrate the potential loss consumers could experience if the manufacturer is legally forced to remove a function from the device or platform, the Xbox Live EULA primarily allows the platform do so whenever it wishes:

*“We may change the Service or delete or discontinue features, games, or other content at any time and for any reason (or no reason). We may cancel or suspend your Service at any time. Our cancellation or suspension may be without cause and without notice. Upon Service cancellation, your right to use the Service stops right away.”*

(2008: n.p.)

This continuing connection to a producer paves the way for easier post acquisition improvements which Zittrain refers to as “the modern equivalent of third slots for old toasters” (2008: 108). As a

side-effect, users with the lowest grade hardware might slowly find themselves dealing with higher system requirements and are forced to upgrade or be left behind in the continuous consumer struggle against Moore's law.

Another popular consumer concern against Steam has always been the unbalanced pricing of content between certain countries and regions (Simms, 2008). In 2007, media reported that consumers had purchased Valve's Orange Box game pack from vendors located outside of their home country, which were later deactivated by Valve's Steam software because of a territory violation. Having mainly been an attempt to save on cheaper products, the consumers were not aware of their violation of the EULA and were met with "incorrect territory" warnings and unplayable games. Valve later responded to this incident stating that this was a normal aspect of Steam operation, and that Valve will continue to enforce regional restrictions:

*"Valve uses Steam for territory control to make sure products authorized for use in certain territories are not being distributed and used outside of those territories [...] In this case, a Thai website was selling retail box product keys for Thailand to people outside of Thailand. Since those keys are only for use in Thailand, people who purchased product keys from the Thai website are not able to use those product keys in other territories."*

(Valve representative in: Chalk, 2007: n.p.)

Having noticed that this would occur once their platform was growing, both the Steam software design and the platform's EULA had already been adapted to restrict consumers from purchasing games outside their own territory. The consumers involved in the above mentioned situation have most likely not read or ignored these regulations in the EULA, finding themselves restricted of access after purchasing access codes from another territory. Consumers were apparently better informed about the opportunity of purchasing cheaper game licenses for Steam than they knew about Steam's regulations on the matter.

Users of both Xbox Live and PSN are warned multiple times that they require to fill in their correct region of residence while registering their accounts, since both platforms also restrict the purchase of games to the user's own region.

In the case of digital distribution platforms Zittrain cites manufacturers such as Microsoft and Sony as the main actors of another newfound power of both their platforms and devices. Both companies are known to keep control of their game consoles and send them automated updates. While updates can force Steam users to upgrade their system requirements in order to maintain optimal access to the platform, sometimes these updates can even deliberately disable previously available features. The installation of the 3.21 firmware update from April 31<sup>st</sup> 2010 on the PlayStation 3 permanently removed the Other OS option from the PlayStation 3 console, which allowed users to install a Linux operation system and use the console as a Linux computer. An official statement by Sony provided the following explanation:

*“We have made the decision to protect the integrity of the console and whilst mindful of the impact on Linux or other operating system users we nevertheless felt it would be in the best interests of the majority of users to pursue this course of action. [...] Furthermore our terms and conditions clearly state that we have the right to revise the PS3's settings and features in order to prevent access to unauthorised or pirated content.”*

(Sony representative in: Meagher, 2010: n.p.)

Not only does the spokesman argue that the decision was based on ‘the best interest of the majority of users’, but this is done so by referring to the EULA the consumer has agreed upon. In other words, every PlayStation 3 owner has literally agreed to let Sony fully control the future of their devices, having features of their product removed similarly to what Zittrain described in the case of the EchoStar DVR Box. Though there is no measurable result on how the removal of this feature had any major consequences on the average consumer, there has been one major party reported to have suffered severe collateral damage because of Sony’s decision: a US Air Force Research Laboratory in Rome, New York (Anderson, 2010). The research facility had recently decided to use a cluster of more than 1.700 PS3 systems running the Linux operation system to create a 53 teraFLOP processing cluster for cheap High Performace Computing (HPC). Normally, the low FLOPS/WATTS per dollar proportions that resulted from the PlayStation 3 cluster would have required a substantially higher amount of US tax dollars with the purchase of conventional supercomputers. Instead, the research facility had installed PS3 consoles and accepted the same EULA as any other PS3 owner. A couple of months after installing the cluser, the research laboratory suffered the same consequences from the EULA as any consumer, only 1.699 times more. Disappointed with Sony’s decision to remove the Other OS feature, the Air Force Research Laboratory addressed the true problems they are now facing with keeping their HPC processing cluster operational:

*“We will have to continue to use the systems we already have in hand [...] this will make it difficult to replace systems that break or fail. The refurbished PS3s also have the problem that when they come back from Sony, they have the [newly updated] firmware (gameOS) and it will not allow Other OS [to function], which seems wrong. [...]The HPC environment is rapidly changing; leveraging technology that is subsidized by large consumer markets will always have large cost advantages. This gives us the experience (lesson learned) to develop HPC with low-cost hardware, benefitting the tax payer, Air Force, Air Force Research Lab while utilizing limited [Department of Defense] budgets.”*

(in: Anderson, 2010: n.p.)

The main concern with this project, as with any consumer that decides not to update their firmware, is that these projects will last as long as the specific machines survive or used machines with the right firmware are still available. But because of the firmware update new hardware can no longer be added and any refurbished machines become useless in the future. While the PlayStation 3 consoles used by the Air Force were also no longer connected to the PlayStation



Network platform, a consumer who would choose not to upgrade their PlayStation 3 firmware also faces the loss of other features that Sony announced will no longer be available:

*Ability to sign in to PlayStation Network and use network features that require signing in to PlayStation Network, such as online features of PS3 games and chat*

*Playback of PS3 software titles or Blu-ray Disc videos that require PS3 system software version 3.21 or later*

*Playback of copyright-protected videos that are stored on a media server (when DTCP-IP is enabled under Settings)*

*Use of new features and improvements that are available on PS3 system software 3.21 or later*

(in: Seybold, 2010: n.p.)

The removal of the ‘Other OS’ option and penalty of not updating your PlayStation 3 firmware are both examples of Zittrain’s concept of specific injunction with a rather deep impact on the consumer. While the user is offered a choice, there is but one reasonable choice that does not restrain the consumer from using the device for the features it was sold for. The case of the Other OS feature and how it influenced the Air Force Research Laboratory proves that accepting the PlayStation Network’s EULA can have far more unexpected and long-lasting consequences than any consumer would expect, but it also demonstrates a weakness that platforms fixed to specific hardware systems are facing.

From the perspective of constant improvements and firmware updates, the biggest business challenge facing both Xbox Live and PSN platforms is how these platforms are bound to a specific generation of gaming consoles. Microsoft and Sony have both promoted their game consoles as the next generation of full fledged, ready to use interactive experiences for the consumer that are not hindered by any third party or process once the console is installed and a user account for the service is made. Both consoles included media center capabilities and the full integration of their digital distribution platforms for that exact reason. The challenge of introducing new hardware or functionalities will require both of them to consider how to maintain their existing consumers and product base from becoming obsolete in the near future. Sadly, the EULA does not provide any incentive that both these companies have made any considerations about the future of their own services and the investment made by the consumer in their digital information goods in order for them to still interface with older technology.

Therefore, the structure of the three EULAs analyzed in this study indicate an increased focus on institutionalizing the platform and governing the consumer. The term ‘institution’ can be applied in this context because the platforms prove to regulate certain aspects of human behavior as third parties, i.e. without being subject to cultural negotiation (Lianos, 2003). The combined effects of increased connectivity, active EULA enforcement and a consumer that is prepared to undergo

governance generate a new stage how social protocols are not only translated into technology, but actively enforced through the platform as an institute.

In his own analysis of the development of tethered appliances Zittrain claims this type of active enforcement can cause a long-term detriment of the consumer's choice to only reside in closed services such as digital distribution platforms. The issue that requires most attention, as has already been mentioned in this study, remains the issue of the balance between government and individual rights in the act of consumption. Having their entire database of consumers agree upon an EULA that dignifies acts of control, active regulation and surveillance, digital distribution platforms appear to slowly transform into closed governmental entities that actively enforce the contents of their EULAs over their user far beyond the prime directive of protecting their intellectual property.

This shift beyond protection and into governance can not be considered to be advantageous at all. As Zittrain argues, "it invites regulatory intervention that disrupts a wise equilibrium that depends upon regulators acting with a light touch, as they traditionally have done within liberal societies" (2008: 103). The EULA has been at the forefront of this development, paving the legal foundation for companies to combine the social protocols of the police, judge, jury and executioner into their software and interface designs.

## 7 Conclusion

EULAs are no longer a solid entity, but in itself exist of an intricate design of agreements that are constantly adjusted to preserve the profitable socio-technical state of a producer's relationship to its consumer. If such is the case, we can agree with Latour that even an EULA is an association that does not only change itself, but can be a driving force behind the reconfiguration of other associated actors. In this information age, the development of EULAs into these driving forces has sadly been under-theorized within various related fields of academic research. Further research into this changing relationship between producer and consumer could be put to use to reveal that in our technologically saturated culture consumers can (unwillingly) change commodities through consumption, and can likewise be changed in the process (Sassatelli, 2007).

The main concerns explained in this thesis are intended to address the broader changes in the existing relationship between the producer and consumer. First of all, the EULA in itself is not an ultimate force, but an important starting point that permits a digital distribution platform's manufacturer to broaden the opportunities to make its enforcement embedded in the technology and make it cheaper, easier and swifter than before. This then results in the concern of how the enforcement is acted out through the software's own design and how the culmination of translating more and more social protocols into technology and software is leading to the massive reconfiguration of the entire relationship between consumer, product and platform. This then points to broader fundamental shifts occurring in our consumption culture. The main examples covered in this thesis are the removal of material exchange, turning objects into services and most importantly, the increased governance of the consumer.

Though very little work has concentrated on the possible future of the EULA, a small amount of research available on the importance of EULAs and the larger complex relationship between producer and consumer have addressed the importance of how certain social protocols are increasingly being translated into new software and technologies. As a result, the consumer is no longer confronted by it in a one-time, traditional click-wrap kind of way, but the EULA's restrictions and regulations are deeply embedded into multiple parts of the digital distribution platform, reconfiguring attributes of both consumer, product and service alike.

While they appear as restrictive at first glance, EULAs are considered a necessary tool to not only protect both the service's and game developer's intellectual property rights, but also to protect the integrity and the balance of the entire digital distribution platform. Yet what this exploratory study has tried to address mostly, are the growing amount of signs that a consumer's basic understanding of the EULA no longer reflects its actual enforcement by commercial entities. Both the EULAs as well as the platforms are designed and justified for protection, but now appear to go beyond the process of mere protection and into the realm of regulation, enforcement and governance.

Within the limited space of this paper these forms of regulation, enforcement and governance were described by examining the EULAs of three different digital distribution platforms, results from their enforcement and how they have partially already been designed for creating an audience and community of consumers. Interestingly enough, the services promote themselves in a fashion of commodity, promising a full package of extra benefits and guaranteeing a worry-free and secure consumer experience. As one can expect, the consumer market has had a very positive response to such promotion and the market for these platforms is growing rapidly.

Only a handful of examples were offered in this study that indicate a strong move of these platforms to become increasingly commercial bodies of governance. The main purpose was to address the pressing need for further study and concern over the growing power EULAs grant digital distribution platforms over their consumers and the products they have legitimately purchased.

In case of the average consumer, the appeal of worryless access appears to surpass the interest in how their position towards the digital distribution platform has removed them from certain rights and has allowed the digital distribution platform to actively supervise and punish the consumer for any violations by instantly revoking access to their purchased digital information goods. As such, the consumer accepting an EULA allows themselves to become a new kind of governed consumer under the constant supervision of the platform's manufacturer.

In the case of the product, the game license has become a finite and inseparable asset to the platform. The possibility to play them are now directly linked to the state of the platform. In case of an error or malfunction in the platform, all consumers are faced with the same problem, making them dependant of the platform in a very heightened level. Products no longer are what

they appear, leaving the consumer undereducated and misinformed about these changes. Even the consumers who prefer to still buy their games on a physical carrier are faced with having to understand new types of digital access passes and business models that game publishers such as EA are currently experimenting with.

In the case of the platform, their software seems to have been built on the same foundations as their EULAs: flexibility, not durability. Open to constant change, both have been shaped in such a way that any malfunction, change or removal of any function or agreement is allowed. Every update, change or modification under the pretense of improvement within the EULA is translated in removing, discontinuing or severely altering the platform in a way that could prove disagreeable to either a portion of or all consumers who use it. Therefore, the platform becomes both socially and technically programmed to act out the combined role of police, judge, jury and executioner if the consumer were to violate the EULA or misinterpret it in any serious way.

The level of control companies can exert on their production even after consumers purchased them is growing. Yet the importance of building a better understanding of this phenomenon does not lie in improving the rights of the consumer within these digital distribution platforms or to improve the existing structure of EULAs. Instead, it is important to analyze how a consumer's attributes are reconfigured by the EULA and is then brought together into small communities of consumers that inhabit and make use of these closed and governed digital spaces or platforms.

An important example to describe the research subject was Zittrain's work on tethered appliances in which he warns for the consequences of such a growth of corporate governance that could result from products and services such as digital distribution platforms that were built from the ground up to be closed and actively enforced:

*“The prospect of abuse of powerful, asymmetrical law enforcement tools reminds us that there is a balance to be struck rather than an unmitigated good in perfect enforcement. [...] Perfect enforcement collapses the public understanding of the law with its application, eliminating a useful interface between the law’s terms and its application. Part of what makes us human are the choices that we make every day about what counts as right and wrong, and whether to give in to temptations that we believe to be wrong. In a completely monitored and controlled environment, those choices vanish. One cannot tell whether one’s behavior is an expression of character or is merely compelled by immediate circumstance.”*

(Zittrain, 2008: 122)

The newfound governmental nature of digital distribution platforms in anticipating, reacting and swiftly dealing with the exploratory nature of consumers will prove to offer many possibilities of further study in how both sides struggle to find a balance. Such a constant struggle of balancing could cause the consumer to become reconfigured into a more obedient and governed individual that instantly risks real time penalties for any violation outside the EULA. Therefore, this study shares Zittrain's main concerns that we risk ending up “in a world where we won't even know

what we've lost [...] [and] I want to see breathing room for that uncertainty and I don't just want to leave it to the market" (Zittrain, 2009: n.p.). Based on the results presented in this study, this 'breathing room' in the case of digital distribution platform appears to slowly become narrower. The EULA is no longer a simple warning to the consumer. Instead, it becomes a series of constantly updated laws to abide to. Its enforcement is free of outside legal interference, allowing the platform's software to swiftly deal with any violations that could possibly occur.

The resulting reconfiguration that has been mentioned occurring to the consumer, the product and the service itself each offer a series of important implications that require further academic inquiry that could prosper from a multi-disciplinary approach that covers the specific properties of each actor involved. Future research into the changing socio-technical and legal relationship of producer and consumer should concentrate on how the enforcement of EULAs and the subsequent control over the consumer of digital distribution platforms transforms the entire nature of the producer/consumer relationship and subsequently disrupts the balance between governance and individual rights, affecting the consumer through their platform with the powers of police, judge, jury and executioner.

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## 9 Appendix

### 9.1 STEAM™ SUBSCRIBER AGREEMENT

This Steam Subscriber Agreement ("Agreement") is a legal document that explains your rights and obligations as a Subscriber. Please read it carefully.

#### 1. REGISTRATION AND ACTIVATION.

Steam is an online service ("Steam") offered by Valve Corporation ("Valve").

You become a subscriber of Steam ("Subscriber") by installing the Steam client software and completing the Steam registration. Additionally, as a Subscriber you may obtain access to certain services, software and content ("Subscriptions") available to Subscribers. Conclusion of this contract between Valve and you takes place as soon as you access the Steam service after accepting this Agreement.

Unless you are a Licensed Cybercafe Operator (as defined below), this Agreement does not allow you to exploit the Steam Software or any of its parts for any commercial purpose including, but not limited to, use at a Cybercafe, computer gaming center or any other location-based site. A "Cybercafe" is a physical establishment in which computer stations are made available for use by customers. A "Licensed Cybercafe Operator" is a Cybercafe that has agreed to the Subscription Terms for Licensed Cybercafe Operators posted at [http://store.steampowered.com/cybercafe\\_agreement/](http://store.steampowered.com/cybercafe_agreement/).

Each Subscription allows you access to certain services, software and other content under the terms of each such Subscription and this Agreement. Additional terms provided with each such Subscription ("Subscription Terms") may apply to the use of a given Subscription, and are incorporated into this Agreement. Further, additional terms (for example, fees and billing procedures) may be posted on <http://www.steampowered.com> or within the Steam service ("Rules of Use"), and are incorporated into this Agreement. As a Subscriber, you agree to all of the terms and conditions of the Valve Privacy Policy, which are also incorporated into this Agreement. A copy of the Valve Privacy Policy can be found at <http://www.valvesoftware.com/privacy.htm>.

When you complete Steam's registration process, you create a Steam account ("Account"). Your Account may also include billing information you provide to us for the purchase of Subscriptions. You are solely responsible for all activity on your Account and for the security of your computer system. You may not reveal, share or otherwise allow others to use your password or Account. You agree that you are personally responsible for the use of your password and Account and for

all of the communication and activity on Steam that results from use of your login name and password. You may not sell or charge others for the right to use your Account, or otherwise transfer your Account.

## 2. LICENSES

### A. License Terms.

Steam and your Subscription(s) require the automatic download and installation of software and other content and updates onto your computer ("Steam Software"). You may not use Steam Software for any purpose other than the permitted access to Steam and your Subscriptions. You understand that for reasons that include, without limitation, system security, stability, and multiplayer interoperability, Steam may need to automatically update, pre-load, create new versions or otherwise enhance the Steam Software and accordingly, the system requirements to use the Steam Software may change over time. You understand that neither this Agreement nor the terms associated with a particular Subscription entitles you to future updates, new versions or other enhancements of the Steam Software associated with a particular Subscription although Valve may choose to provide such updates, etc. in its sole discretion.

Valve hereby grants, and you accept, a limited, terminable, non-exclusive license and right to use the Steam Software for your personal use in accordance with this Agreement and the Subscription Terms. The Steam Software is licensed, not sold. Your license confers no title or ownership in the Steam Software.

Additionally, Valve hereby grants, and you accept, a limited, terminable, non-exclusive license (the Installer License) to reproduce and distribute an unlimited number of exact copies of the Steam client installation software ("Steam Installer") via online download; provided that the following conditions are met:

- (i) you must redistribute the Steam Installer in its entirety;
- (ii) you must not modify the Steam Installer in any way nor integrate or combine it with another software program;
- (iii) you must redistribute the Steam Installer on a non-commercial basis (i.e. you may not charge any fee or receive any compensation for your redistribution);
- (iv) you must include any Valve license agreement provided with the Steam Installer; and
- (v) you must preserve in all copies of the Steam Installer all copyright and legal notices that are attached to the copy of the Steam Installer received by you.

### B. Beta Software Terms

Valve may from time to time make software accessible to you via Steam prior to the general commercial release of such software ("Beta Software"). You are not required to use Beta Software, but if Valve offers it, you may elect to use it under the following terms. Beta Software will be deemed to be Steam Software, and each item of Beta Software provided will be deemed a Subscription for such Beta Software, with the following provisions specific to Beta Software:

- (i) your right to use the Beta Software license is effective until the earlier of: (a) Valve ceases to make the Beta Software accessible to you; (b) Valve issues a final release of the software that corresponds to the Beta Software; or (c) termination by Valve pursuant to Section 13 below;
- (ii) certain Beta Software may be made available to you subject to additional Subscription Terms to which you must agree as a condition of use of the Beta Software;
- (iii) Valve may request or require that you provide suggestions, feedback, or data regarding your use of the Beta Software, which will be deemed User Generated Information under Section 7 below; and
- (iv) in addition to the waivers and limitations of liability for all Steam Software under Section 9 below, you specifically acknowledge that Beta Software is not final and may create incompatibilities or damage to your computer, data, and/or software. If you decide to install and/or use Beta Software, it is entirely at your own risk.

#### C. Source SDK.

Your Subscription(s) may contain access to the Valve software development kit (the "SDK") for the computer game engine used in Half-Life 2 and other compatible Valve products (the "Source Engine"). You may use, reproduce and modify the SDK on a non-commercial basis solely to develop a modified game (a "Mod") for Half-Life 2 or other Valve products compatible with and using the Source Engine. You may reproduce and distribute the Mod in object code form, solely to licensed end users of Half-Life 2 or other compatible Valve products, provided that the Mod is made publicly available and distributed without charge on a non-commercial basis

If you would like to use the Source SDK or a Mod for a commercial purpose or activity, please contact Valve at [sourceengine@valvesoftware.com](mailto:sourceengine@valvesoftware.com).

#### D. Ownership.

All title, ownership rights and intellectual property rights in and to the Steam Software and any and all copies thereof are owned by Valve and/or its licensors. All rights reserved, except as expressly stated herein. The Steam Software is protected by the copyright laws of the United States, international copyright treaties and conventions and other laws. The Steam Software contains certain licensed materials and Valve's licensors may protect their rights in the event of any violation of this Agreement.

#### E. Restrictions.

Except as otherwise permitted under Section 2(C) with regard to the SDK, you may not, in whole or in part, copy, photocopy, reproduce, translate, reverse engineer, derive source code, modify, disassemble, decompile, create derivative works based on, or remove any proprietary notices or labels from the Steam Software or any software accessed via Steam without the prior consent, in writing, of Valve.

You are entitled to use the Steam Software for your own use, but you are not entitled to: (i) sell, grant a security interest in or transfer reproductions of the Steam Software to other parties in any way, nor to rent, lease or license the Steam Software to others without the prior written consent of Valve; (ii) host or provide matchmaking services for the Steam Software or emulate or redirect the communication protocols used by Valve in any network feature of the Steam Software, through protocol emulation, tunneling, modifying or adding components to the Steam Software, use of a utility program or any other techniques now known or hereafter developed, for any purpose including, but not limited to network play over the Internet, network play utilizing commercial or non-commercial gaming networks or as part of content aggregation networks, without the prior written consent of Valve; or (iii) exploit the Steam Software or any of its parts for any commercial purpose.

### 3. MERCHANDISE

#### A. General.

Valve may from time to time offer items other than software content and services for purchase via Steam (e.g., apparel, books, posters, etc.) ("Merchandise"). Valve may offer Merchandise together with or separate from Subscriptions, but such Merchandise is incidental to Subscriptions and the predominant purpose of Steam is and shall remain the provision of Subscriptions and services related thereto. All offers to purchase Merchandise via Steam are made and accepted subject to the terms and conditions of this Agreement. Your communications with Valve or submission of any purchase order or other similar forms containing provisions contrary to the terms of this Agreement or the terms presented by Valve during purchase of Merchandise via Steam are hereby rejected and are not binding on Valve.

#### B. Shipping & Risk of Loss

This is a shipment contract. All Merchandise will be shipped FOB Blaine, Washington, unless Valve designates otherwise on Steam in connection with a particular order. If you are an international customer, you acknowledge that Merchandise will be shipped from the United States and that you are responsible for any applicable import duties, customs fees, and taxes. Valve's liability as to

delivery ceases, and title and risk of loss for the Merchandise will pass upon Valve's delivery of the Merchandise to a transportation carrier at the designated shipping point. If you pick up the Merchandise from Valve's place of business, title to and risk of loss will pass to you when Merchandise is placed at your disposal.

#### C. Acceptance/Rejection/Returns

The terms of this Section 3.C do not apply to European Union consumers. You will have a period of thirty (30) days after the date of receipt of any Merchandise to examine the Merchandise to confirm that it conforms to this Agreement and the offer for such Merchandise presented to you at Steam. If the Merchandise does not conform to this Agreement and the offer for such Merchandise presented to you via Steam, you may reject the Merchandise by returning it to Valve (at your expense) along with a copy of the receipt or other proof of purchase. Additional policies and instructions for returning defective merchandise to Valve can be found at <http://storehelp.valvesoftware.com>. After Valve has received your valid return, Valve will, within a reasonable time and in Valve's sole discretion: repair the Merchandise, replace the Merchandise with an equivalent item, credit to the credit card used to pay for the product an amount equal to the value of the Merchandise (as determined by Valve in its reasonable discretion), or provide another remedy that Valve determines in good faith is appropriate in the circumstances. All claims whether based on contract, negligence, strict liability or otherwise are waived unless made in writing and received by Valve within thirty (30) days after your receipt of Merchandise.

### 4. BILLING, PAYMENT AND OTHER SUBSCRIPTIONS

Valve offers some Subscriptions for free, and some for a Subscription fee. All fees are stated in U.S. dollars unless otherwise specified.

#### A. Payment by Credit Card.

When you provide credit card information to Valve, you represent to Valve that you are the authorized user of the credit card that is used to pay for Merchandise or Subscription or other fees and authorize Valve to charge your credit card for any Merchandise or Subscription or other fees incurred by you. For recurring monthly Subscriptions, each month that you use such Subscription(s), you agree and reaffirm that Valve is authorized to charge your credit card for the Subscription fee. You agree to notify Valve promptly of any changes to your credit card account number, its expiration date and/or your billing address, and you agree to notify Valve promptly if your credit card expires or is canceled for any reason.

#### B. Charges to Your Credit Card.

ALL STEAM FEES ARE PAYABLE IN ADVANCE AND ARE NOT REFUNDABLE IN WHOLE OR IN PART. Valve reserves the right to change our fees or billing methods at any time and Valve will provide notice of any such change at least thirty (30) days advance. All changes will be posted as amendments to this Agreement or in the Rules of Use and you are responsible for reviewing the billing section of Steam to obtain timely notice of such changes. Your non-cancellation of your Account or an affected Subscription thirty (30) days after posting of the changes on Steam means that you accept such changes. If any change is unacceptable to you, you may cancel your Account or a particular Subscription at any time as described below, but Valve will not refund any fees that may have accrued to your Account before cancellation of your Account or Subscription, and Valve will not prorate fees for any cancellation. If your use of Steam is subject to any type of use or sales tax, then Valve may also charge you for any such taxes, in addition to the Subscription or other fees published in the Rules of Use. The European Union VAT (□VAT□) tax amounts collected by Valve reflect VAT due on the value of any Steam Software or Subscription as well as import VAT collected which is to be paid to the tax authorities for the importation of Merchandise.

As the Account holder, you are responsible for all charges incurred, including applicable taxes, and all purchases made by you or anyone that uses your Account, including your family or friends. Information on how to cancel your Account or a particular Subscription can be found at <http://www.steampowered.com/>. Valve reserves the right to collect fees, surcharges or costs incurred before you cancel your Account or a particular Subscription. In the event that your Account or a particular subscription is terminated or canceled, no refund, including any Subscription fees, will be granted. Any delinquent or unpaid Accounts must be settled before Valve will allow you to register again.

#### C. Retail Purchase.

Valve may offer or require a Subscription for purchasers of retail packaged product versions or OEM versions of Valve products. The "CD-Key" or "Product Key" accompanying such versions is used to activate your Subscription.

#### D. Steam Authorized Resellers.

You may purchase a Subscription through an authorized reseller of Valve. The "Product Key" accompanying such purchase will be used to activate your Subscription. If you purchase a Subscription from an authorized reseller of Valve, you agree to direct all questions regarding the Product Key to that reseller.

#### E. Free Subscriptions.

In some cases, Valve may offer a free Subscription to certain services, software and content. As with all Subscriptions, you are always responsible for any Internet service provider, telephone, and other connection fees that you may incur when using Steam, even when Valve offers a free Subscription.

#### F. Third Party Sites.

Steam may provide links to other third party sites. Some of these sites may charge separate fees, which are not included in and are in addition to any Subscription or other fees that you may pay to Valve. Steam may also provide access to third-party vendors, who provide content, goods and/or services on Steam or the Internet. Any separate charges or obligations you incur in your dealings with these third parties are your responsibility. Valve makes no representations or warranties, either express or implied, regarding any such third party site.

#### G. Pricing and Payment for Merchandise.

In addition to the above, the following terms apply to pricing of and payment for Merchandise. The prices for Merchandise displayed on Steam are subject to change at any time without notice. Charges for shipping, handling and tax may not be included in displayed prices for Merchandise but will be displayed during the purchase process, although such displayed prices may not include all taxes, duties, and other fees that you may be obligated to pay to applicable government authorities. Shipping and handling charges displayed on Steam may or may not reflect the actual charges paid by Valve. All war-risk, marine, or other insurance; harbor charges; tolls; wharfage; demurrage; wharf handling; duties, or warehousing charges are excluded from Merchandise prices displayed on Steam and are your responsibility. You may be obligated under applicable local law to pay additional import duties and fees.

You must pay all applicable sales and use taxes, value added taxes and other taxes levied on you by any taxing authority on any Merchandise purchase in any country where such transactions are otherwise subject to tax, regardless of the method of delivery. Any taxes owed by you (i) as a result of purchasing Merchandise or the payment of any fee, (ii) that are required or permitted to be collected from you by Valve under applicable law, and (iii) that are based upon the amounts payable under this Agreement, must be remitted by you to Valve. Failure on Valve's part to invoice you for any such taxes does not relieve you of the liability to pay such taxes. You will promptly reimburse Valve for all taxes or other charges imposed upon Valve by any national, state or municipal government upon the sale, use, production, or transportation of Merchandise.

### 5. ONLINE CONDUCT, CHEATING AND ILLEGAL BEHAVIOR

You agree that you will be personally responsible for the use of your Account and for all of the communication and activity on Steam that results from use of your Account. Your online conduct and interaction with other subscribers should be guided by common sense and basic etiquette. Specific requirements may also be found in the Steam Online Conduct rules at [http://steampowered.com/index.php?area=online\\_conduct](http://steampowered.com/index.php?area=online_conduct), other Rules of Use, the Subscription Terms, or in terms of use required by third parties who host particular games or other services.

Steam and the Steam Software may include functionality designed to identify software or hardware processes or functionality that may give a player an unfair competitive advantage when playing multiplayer versions of any Steam Software, other Valve products, or modifications thereof ("Cheats"). You agree that you will not create or assist third parties in any way to create Cheats. You agree that you will not directly or indirectly disable, circumvent, or otherwise interfere with the operation of software designed to prevent or report the use of Cheats. You acknowledge and agree that either Valve or any online multiplayer host may refuse to allow you to participate in certain online multiplayer games if you use Cheats in connection with Steam or the Steam Software. Further, you acknowledge and agree that an online multiplayer host may report your use of Cheats to Valve, and Valve may communicate your history of use of Cheats to other online multiplayer hosts for Valve products. Valve may terminate your Account or a particular Subscription for any conduct or activity that Valve believes is illegal, constitutes a Cheat, or which otherwise negatively affects the enjoyment of Steam by other Subscribers. You acknowledge that Valve is not required to provide you notice before terminating your Subscriptions(s) and/or Account, but it may choose to do so.

#### 6. THIRD PARTY CONTENT

"Third Party Content" means software and other content provided by third parties, other than Valve, that is designed to work in conjunction with the Steam Software (e.g. mods of Valve game products). In regard to all Third Party Content, Valve acts merely as an intermediary service provider. Valve does not screen Third Party Content available on Steam or through other sources. Valve does not assume any responsibility or liability for Third Party Content.

#### 7. USER GENERATED INFORMATION

"User Generated Information" means any information made available to other users through your use of multi-user features of Steam or to Valve through your use of the Steam Software. User Generated Information may include, but is not limited to, chat, forum posts, screen names, game selections, player performances, usage data, suggestions about Valve products or services, and error notifications. Subject to the Valve privacy policy referenced in Section 1 above, as applicable, you expressly grant Valve the complete and irrevocable right to use, reproduce, modify, create derivative works from, distribute, transmit, broadcast, and otherwise



communicate, and publicly display and perform the User Generated Information and derivative works thereof in any form, anywhere, with or without attribution to you, and without any notice or compensation to you of any kind.

#### 8. DEDICATED SERVER

Your Subscription(s) may contain access to the Valve Dedicated Server software. You may use the Valve Dedicated Server software on an unlimited number of computers for the purpose of hosting online multiplayer games of Valve products. If you wish to operate the Valve Dedicated Server software, you will be solely responsible for procuring any Internet access, bandwidth, or hardware for such activities and will bear all costs associated therewith.

#### 9. DISCLAIMERS; LIMITATION OF LIABILITY; NO GUARANTEES

##### A. DISCLAIMERS.

THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF STEAM, THE STEAM SOFTWARE, AND MERCHANDISE REMAINS WITH YOU, THE USER. VALVE EXPRESSLY DISCLAIMS (I) ANY WARRANTY FOR STEAM, THE STEAM SOFTWARE, AND THE MERCHANDISE, AND (II) ANY COMMON LAW DUTIES WITH REGARD TO STEAM, THE STEAM SOFTWARE, AND THE MERCHANDISE, INCLUDING DUTIES OF LACK OF NEGLIGENCE AND LACK OF WORKMANLIKE EFFORT. STEAM, THE STEAM SOFTWARE, THE MERCHANDISE, AND ANY INFORMATION AVAILABLE IN CONNECTION THEREWITH ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, "WITH ALL FAULTS" AND WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. ANY WARRANTY AGAINST INFRINGEMENT THAT MAY BE PROVIDED IN SECTION 2-312(3) OF THE UNIFORM COMMERCIAL CODE AND/OR IN ANY OTHER COMPARABLE STATE STATUTE IS EXPRESSLY DISCLAIMED. ALSO, THERE IS NO WARRANTY OF TITLE, INTERFERENCE WITH YOUR ENJOYMENT, OR AUTHORITY IN CONNECTION WITH STEAM, THE STEAM SOFTWARE, MERCHANDISE OR INFORMATION AVAILABLE IN CONNECTION THEREWITH. THIS SECTION WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

##### B. LIMITATION OF LIABILITY.

NEITHER VALVE, ITS LICENSORS, NOR THEIR AFFILIATES SHALL BE LIABLE IN ANY WAY FOR LOSS OR DAMAGE OF ANY KIND RESULTING FROM THE USE OR INABILITY TO USE STEAM, YOUR ACCOUNT, YOUR SUBSCRIPTIONS AND THE STEAM SOFTWARE INCLUDING, BUT NOT LIMITED TO, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES. IN NO EVENT WILL VALVE BE LIABLE FOR

ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY DAMAGES, OR ANY OTHER DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH STEAM, STEAM SOFTWARE, MERCHANDISE THAT YOU ACQUIRE VIA STEAM, ANY INFORMATION AVAILABLE IN CONNECTION THEREWITH, OR THE DELAY OR INABILITY TO USE MERCHANDISE OR ANY INFORMATION, EVEN IN THE EVENT OF FAULT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF CONTRACT, OR BREACH OF VALVE'S WARRANTY AND EVEN IF VALVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS AND EXCLUSIONS REGARDING DAMAGES APPLY EVEN IF ANY REMEDY FAILS.

IF YOU ARE A RESIDENT OF A EUROPEAN UNION COUNTRY, THE ABOVE PARAGRAPH MAY NOT APPLY TO YOU.

C. NO GUARANTEES.

VALVE DOES NOT GUARANTEE CONTINUOUS, ERROR-FREE, VIRUS-FREE OR SECURE OPERATION AND ACCESS TO STEAM, THE STEAM SOFTWARE, YOUR ACCOUNT AND/OR YOUR SUBSCRIPTIONS(S).

10. EXCLUSIVE REMEDIES

A. EXCLUSIVE REMEDY -- STEAM AND STEAM SOFTWARE.

YOU ACKNOWLEDGE AND AGREE THAT YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH VALVE WITH REGARD TO STEAM OR THE STEAM SOFTWARE IS TO DISCONTINUE USE OF STEAM AND CANCEL YOUR ACCOUNT. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES OR JURISDICTIONS, VALVE, ITS LICENSORS, AND THEIR AFFILIATES LIABILITY SHALL BE LIMITED TO THE FULL EXTENT PERMITTED BY LAW.

B. EXCLUSIVE REMEDY--MERCHANDISE.

YOU ACKNOWLEDGE AND AGREE THAT WITH REGARD TO ANY MERCHANDISE YOU PURCHASE VIA STEAM AS YOUR EXCLUSIVE REMEDY, IN ADDITION TO THE REMEDIES EXPRESSLY SET FORTH IN SECTION 3(C), VALVE MAY INCLUDE IN ITS OPTION THE RIGHT TO PAY TO YOU THE AMOUNT OF DIRECT DAMAGES ACTUALLY INCURRED BY YOU IN REASONABLE RELIANCE ON SUCH MERCHANDISE, AS LONG AS THAT AMOUNT DOES NOT EXCEED THE AMOUNT YOU PAID VALVE FOR THE MERCHANDISE GIVING RISE TO THOSE DAMAGES.

THIS SECTION WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

11. INDEMNIFICATION

You agree to defend, indemnify and hold harmless Valve, its licensors and their affiliates from all liabilities, claims and expenses, including attorneys' fees, that arise from or in connection with breach of this Agreement, use of Steam or any Subscription, or any User Generated Information or Third Party Content, including, but not limited to, the creation, distribution, promotion and use of any Mods, by you or any person(s) using your Account. Valve reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you. In that event, you shall have no further obligation to provide indemnification to Valve in that matter. This Section regarding Indemnification shall survive termination of this Agreement.

## 12. AMENDMENTS TO THIS AGREEMENT

Valve may amend this Agreement at any time in its sole discretion. As a Subscriber, you agree that Valve may amend the terms of this Agreement. If Valve amends the Agreement, such amendment shall be effective thirty (30) days after your receiving notice of the amended Agreement, either via e-mail or as a notification within the Steam Software. You can view the Agreement at any time at <http://www.steampowered.com/>. Your failure to cancel your Account thirty (30) days after receiving notification of an amended Agreement will mean that you accept all such amendments. If you don't agree to the amendments or to any of the terms in this Agreement, your only remedy is to cancel your Account or a particular Subscription.

## 13. TERM AND TERMINATION

Either you or Valve has the right to terminate or cancel your Account or a particular Subscription at any time. You understand and agree that the cancellation of your Account or a particular Subscription is your sole right and remedy with respect to any dispute with Valve.

### A. Term.

The term of this Agreement (the "Term") will be effective as of the date that you click "I Agree" below, and will continue in effect until otherwise terminated in accordance with this Agreement.

### B. Termination by You.

Information on how to cancel your Account or a particular Subscription can be found at <http://www.steampowered.com/>. Valve reserves the right to collect fees, surcharges or costs incurred prior to the cancellation of your Account or a particular Subscription. In addition, you are responsible for any charges incurred to third-party vendors or content providers before your cancellation. In the event that your Account or a particular subscription is terminated or canceled by you, no refund, including any Subscription fees, will be granted. In the event that your Account

or a particular Subscription is terminated or cancelled by Valve for a violation of this Agreement or improper or illegal activity, no refund, including any Subscription fees, will be granted.

#### C. Termination by Valve.

1. In the case of a recurring payment Subscription (e.g., a monthly subscription), in the event that Valve terminates or cancels your Account or a particular Subscription for convenience, Valve may, but is not obligated to, provide a prorated refund of any prepaid Subscription fees paid to Valve.

2. In the case of a one-time purchase of a product license (e.g., purchase of a single game) from Valve, Valve may choose to terminate or cancel your Subscription in its entirety or may terminate or cancel only a portion of the Subscription (e.g., access to the software via Steam) and Valve may, but is not obligated to, provide access (for a limited period of time) to the download of a stand-alone version of the software and content associated with such one-time purchase.

3. In the case of a free Subscription, Valve may choose to terminate or amend the terms of the Subscription as provided in the "Amendments to this Agreement" section above.

#### D. Survival of Terms.

Sections 2(D), 2(E), 7, 9, 10, 11, 13(D), 14, and 15 will survive any expiration or termination of this Agreement.

#### 14. APPLICABLE LAW/JURISDICTION

The terms of this section may not apply to European Union consumers

You agree that this Agreement shall be deemed to have been made and executed in the State of Washington, and any dispute arising hereunder shall be resolved in accordance with the law of Washington. You agree that any claim asserted in any legal proceeding by you against Valve shall be commenced and maintained exclusively in any state or federal court located in King County, Washington, having subject matter jurisdiction with respect to the dispute between the parties and you hereby consent to the exclusive jurisdiction of such courts. In any dispute arising under this Agreement, the prevailing party will be entitled to attorneys' fees and expenses.

#### 15. MISCELLANEOUS

In the event that any provision of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision will be enforced to the maximum extent permissible and the remaining portions of this Agreement shall remain in full force and effect. This Agreement constitutes and contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior oral or written agreements. You

agree that this Agreement is not intended to confer and does not confer any rights or remedies upon any person other than the parties to this Agreement.

Valve's obligations are subject to existing laws and legal process and Valve may comply with law enforcement or regulatory requests or requirements notwithstanding any contrary term.

You agree to comply with all applicable import/export laws and regulations of the United States and its governmental and regulatory agencies (including, without limitation, the Bureau of Export Administration and the U.S. Department of Commerce). You agree not to export the Steam Software or allow use of your Account by individuals of any terrorist supporting countries to which encryption exports are at the time of exportation restricted by the Bureau of Export Administration. You represent and warrant that you are not located in, under the control of, or a national or resident of any such prohibited country.

I hereby agree to be bound by the Agreement. I also acknowledge and agree that this Agreement (including the Subscription Terms, Steam Online Conduct rules and other Rules of Use, and Privacy Policy) is the complete and exclusive statement of the agreement between Valve and me, and that the Agreement supersedes any prior or contemporaneous agreement, or other communications, whether oral or written, between Valve and myself.

## 9.2 Playstation Network Terms of Service

<http://us.playstation.com/support/termsofuse/>

Welcome to the PlayStation® family of web sites ("Sites" or "our Sites"). These Terms of Service apply to us.playstation.com, all official game sites for games published by Sony Computer Entertainment America Inc., naughtydog.com and any other sites operated by SCEA or its subsidiaries ("SCEA") or that link to these Terms of Service.

Don't forget that you are legally obligated to the Terms of Service noted below as well as to any other agreements, terms and rules that we tell you apply to your use of our Sites.

Please don't use our Sites if you don't agree to these Terms of Service because once you are on our Sites, you have to follow the rules. SCEA and its subsidiaries, representatives and agents that assist in operating our Sites reserve the right to temporarily or permanently disable access to the Sites for anyone who violates these Terms of Service. Because of the importance of these Terms of Service, we will disable access to the Sites at our discretion and may do so without notice.

Because we reserve the right to change the Terms of Service at any time, we recommend visiting this page periodically to make sure that the rules have not changed since your last visit. By using these Sites, you agree to be bound by all of the current terms of service.

Here are the Terms of Service we expect you to follow:

### 9.2.1.1 1. ABILITY TO ACCEPT TERMS OF SERVICE

These Terms of Service form a legally binding contract between you and us. By using our Sites, you affirm that you are at least 18 years of age, an emancipated minor or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, obligations, representations and responsibilities set forth in these Terms of Service, and to abide and comply with these Terms of Service.

### 9.2.1.2 2. ACCOUNT AND NON-ACCOUNT USERS

You do not need to create a PlayStation®Network ("PSN") account with us in order to view the Sites. However, if you already have a PSN account or if you create one, you will have access to more of the features on our Sites, as well as access to the PSN online community – which allows you to play games online and buy content and services, like new levels for your favorite games, movies, television shows or original programs. If you do not already have a PSN account, you can create one here: <http://www.us.playstation.com/psn/signup/>. Note that if you do choose to create a PSN account, you will need to agree to a separate Terms of Service and User Agreement ("ToSUA") and Privacy Policy that govern PSN. When you login to your PSN account while on one of our Sites, the PSN ToSUA and Privacy Policy also apply to your activities on that Site to the extent they do not conflict with these Terms of Service. Except for any internet fees that you are responsible for, creating a PSN account is free, so we encourage you to do so.

### 9.2.1.3 3. USE OF YOUR INFORMATION

We respect your information and privacy and will not publicly disclose your personal information to non-affiliated third parties other than as stated in our [Privacy Policy](#). By using our Sites, you acknowledge that we are not responsible for any personal information that you publicly disclose (intentionally or unintentionally) using the Sites' services such as through discussion forums or message boards. You should avoid saying anything personally identifying in these areas of our Sites.

If you use our Sites you also agree that through your use of the Sites, you may be provided with information about SCEA's or a third party's products or services, including promotions, advertisements, product placements or marketing materials within the Sites. You acknowledge that SCEA does not endorse any of the products or services advertised, promoted or marketed by third parties.

### 9.2.1.4 4. OWNERSHIP OF CONTENT ON SITES

Everything on or used in connection with our Sites, including text, images, graphics, logos, audio and video content and software (collectively, "Content") – with the exception of User Generated Content as defined below – is owned by us or our affiliates, subsidiaries, licensors or suppliers. You may not modify, publish, transmit, participate in the transfer or sale, create derivative works or in any way exploit any of the Content (including Content that the Sites enable you to download or save) without our express permission.

Here's what permission we do give you to use the Content. First, we give you permission to use the Content to surf and view our Sites, which means displaying or loading the Content on your computer in connection with typical web browsing activity. Second, we give you permission to use the Content for your personal, non-commercial uses. This means, however, that you do not have our permission to distribute the Content, to publicly display the content, charge any fee for it, use the Content to create your own website, construct a database with the Content or replicate our Sites or any parts of it elsewhere. (We intend these only as examples and are not an exhaustive list of things you can't do with our Content).

Regardless of the permissions we give you to use the Content, we remain the sole owner of all the Content, and you do not acquire any ownership rights in the Content by assembling, creating files, downloading or saving any of it. If we have included an author attribution, a trademark or copyright notice or other legal notices on the Content, you should not remove or alter any of these.

### 9.2.1.5 5. USER GENERATED CONTENT

Some of the Sites have tools that allow you to communicate with other users and to create, post, upload, share and distribute various forms of content for and in connection with the Sites, including pictures, photographs, videos and other information or materials (collectively, "User Generated Content"). Keep in mind that User Generated Content does not include your blog and message board postings. If you post your insights, ideas, opinions and comments on our blog site or message boards, you cannot prevent SCEA or other members of the community from using them, and you give your consent to SCEA and anyone else to use your posts in any manner.

#### A. YOUR USE OF USER GENERATED CONTENT

It's great that users on our Sites can upload or share content with each other, but we do not authorize you to upload or share on our Sites certain items and content. Do not create, transfer, share, send, submit, post or upload any User Generated Content that:

1. Is protected by copyright, trademark, patent or trade secret or subject to third-party proprietary rights, including rights of privacy and publicity - unless you are or have permission from the rightful owner;
2. Contains fraudulent statements or misrepresentations that could damage us or any third party;
3. Contains any statements or materials that disparage, ridicule or scorn us or any third party;
4. Is obscene, defamatory, threatening, harassing, predatory, pornographic, hateful, racially or ethnically offensive, or encourages conduct that would violate any law or is otherwise inappropriate;
5. Is an advertisement, solicitation of business or engages in any commercial activity on the Sites;
6. Is an impersonation of another person;
7. Produces SPAM on or throughout the Sites publicizing a product or event; or
8. Violates any of the rules of Code of Conduct (described below), these Terms of Service, the PSN ToSUA, Privacy Policy or other agreements that we incorporate into these Terms of Service by reference.

## **B. LICENSE FOR USER GENERATED CONTENT**

If you post, upload or make available any User Generated Content on our Sites, you will still own the User Generated Content (assuming you have rights to own it) but you are giving us the right to use your User Generated Content. If you create, transfer, share, send, submit, post or upload any User Generated Content to our Sites, you grant us certain rights to use it (described below) without getting your further permission or having to pay you for it.

In legal terms, by transferring, sharing, sending, submitting, posting, uploading or making available User Generated Content on these Sites, you grant SCEA a worldwide, royalty-free, perpetual, irrevocable, non-exclusive right and fully sub-licensable license to use, copy, reproduce, distribute, publish, publicly perform, publicly display, modify, adapt, translate, archive, store, and create derivative works from your User Generated Content, in any form, format or medium of any kind now known or later developed, both on these Sites and other online locations, and in other forms or media off the Internet. You waive any moral rights you might have with respect to any User Generated Content you provide to us.

In addition, by transferring, sharing, sending, submitting, posting, uploading or making available User Generated Content on these Sites, you acknowledge that other users of the Sites may use your User Generated Content. **SCEA is not responsible for enforcing any rights you may have with respect to your User Generated Content against other users. If you have a dispute with another user of the Sites, you are responsible for contacting the other user directly; do not contact SCEA.**

## **C. SCREENING AND REMOVAL OF USER GENERATED CONTENT**



SCEA may or may not pre-screen User Generated Content. SCEA has the right (but not the obligation) to move, remove, block, edit, or refuse to post any User Generated Content for any reason, including that User Generated Content violates these Terms of Service or other applicable terms, rules or agreements between you and us.

#### **D. RISK FROM USER GENERATED CONTENT**

We cannot and do not monitor or manage all User Generated Content. We therefore do not make any promises about the accuracy, integrity or quality of User Generated Content and do not endorse it in any manner. In other words, enjoy what other members post or share, but do it at your own risk.

All User Generated Content made available on the Sites is the sole responsibility of the person who provided it. **This means that you are entirely responsible for all User Generated Content that you provide.**

##### **9.2.1.6 6. YOUR COPYRIGHTED WORK**

Just as Sony Computer Entertainment America, Inc. ("SCEA") requires users of our Sites to respect our copyrights and those of our affiliates, licensors and business partners, we respect the copyrights of others. To that end, we have adopted this Copyright Policy in accordance with the Digital Millennium Copyright Act ("Copyright Act") (17 U.S.C. 512 et seq.).

Once SCEA's representative who has been designated to receive notification of claimed copyright infringement ("Designated Agent") – whose name and contact information is noted below – receives proper notice of the alleged infringement, or if SCEA otherwise comes to believe in good faith that any specific content, including user generated content, on the Sites contain material that infringes copyright ("Disputed Content"), SCEA may (1) promptly remove or block access to the Disputed Content or (2) deny access to the Sites to users that repeatedly violate copyright or other intellectual property rights. SCEA will take reasonable steps to notify a user who has uploaded Disputed Content if that Disputed Content is subsequently removed or disabled.

##### Procedure for Reporting Copyright Infringement:

If you believe in good faith that your copyrighted work has been reproduced on the Site without authorization in a way that constitutes copyright infringement, you or a person authorized to act on your behalf may notify our Designated Agent:

Riley Russell  
Legal & Business Affairs Department  
Sony Computer Entertainment America Inc.  
919 East Hillside Blvd., 2nd Floor  
Foster City, CA 94404  
By phone: 650-655-8000  
By email: [infringement@playstation.sony.com](mailto:infringement@playstation.sony.com)

Pursuant to federal law, your notice must include the following information:

1. A physical or electronic signature of a person authorized to act on behalf of the owner of the copyright that you alleged is being infringed;

2. Identification of the copyrighted work you claim has been infringed, or, if multiple copyrighted works on the Site are included in a single notification, a representative list of all those works on the Site;
3. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material;
4. Your contact information, including address, telephone number, and, if available, email address;
5. A statement that you consent to the jurisdiction of the United States District Court for the judicial district pertaining to your address, or if your address is outside of the United States, for any judicial district in which SCEA is located, and that you will accept service of process from the person who provided notification or an agent of such person. A statement made under penalty of perjury that the information in the notification is accurate and that you are authorized to act on behalf of the owner of an exclusive right under the Copyright Act that is allegedly infringed.

#### Supplying a Counter-Notice Regarding Alleged Copyright Infringement

If you are the provider of the Disputed Content and believe a copyright infringement notice has been wrongly submitted against you as a result of mistake or a misidentification of the claimed copyrighted material, you may send a counter-notification to our Designated Agent (whose address is included in Paragraph 1 above). The counter notification must provide the following information:

1. Physical or electronic signature of the subscriber;
2. Identification of the Disputed Content that has been removed or to which access has been disabled, and the location where the Disputed Content appeared before it was removed or access to it was disabled;
3. A statement under penalty of perjury that you believe in good faith that the Disputed Content was removed or disabled as a result of mistake or misidentification;
4. Your name, address, telephone number and, if available, email address; and
5. A statement that you consent to the jurisdiction of the United States District Court for the judicial district pertaining to your address, or if your address is outside of the United States, for any judicial district in which SCEA is located, and that you will accept service of process from the person who provided notification or an agent of such person.

If our Designated Agent receives a counter-notice from you, SCEA will send a copy of it to the original complaining party informing that person or entity that SCEA may replace the removed Disputed Content or cease disabling access to it. Please note that when we forward the counter-notice, it includes your personal information. By submitting a counter-notice, you consent to having your information revealed in this way. We will not forward the counter-notice to any party other than the complaining party.

Unless the Designated Agent receives notice from the original complaining party that the original complaining party has filed an action seeking a court order to restrain the user who posted the Disputed Content from engaging in infringing activity relating to the Disputed Content on the Site, SCEA will replace or restore access to the Disputed Content on the Site or permit the user to re-post the Disputed Content.

#### 9.2.1.7 7. CODE OF CONDUCT

To allow the PlayStation community to develop and grow in a healthy and respectful fashion, we have some rules that everyone needs to follow. Unfortunately, anyone who can't follow these rules may be banned from using the Sites or even the PlayStation®Network. If you are logged into the PSN, please note that the [PSN ToSUA](#) as well as this Sites' [Privacy Policy](#) also apply.

You are not allowed to provide anyone with your real name or any other personally identifying information or the name, phone number, address, password or any other personally identifying information of any other person or business through any means on our Sites, including messaging, chat or any other forms of communication available through the Sites.

You are also prohibited from engaging in any of the following:

- a. Deceptive or misleading practices;
- b. Abusing, intimidating or harassing others and stalking behavior;
- c. Taking any action, uploading, posting, streaming or transmitting any content, language, images or sounds in any forum, communication, public profile or other publicly viewable areas that SCEA, in its sole discretion, finds offensive, hateful or vulgar. This includes any content or communication that SCEA in its sole discretion deems to be racially, ethnically, religiously, or sexually offensive, libelous, defaming, threatening, bullying or stalking;
- d. Organizing hate groups;
- e. Uploading, posting streaming or transmitting any content that contains any viruses, worms, spyware, time bombs or other computer programs that may damage, interfere with or disrupt the Sites or computers or other users;
- f. Causing disruption to the Sites or any system, hardware, software or network connected to the Sites;
- g. Attempting to hack or reverse engineer any code or equipment in connection with the Sites;
- h. Making a false report of user abuse to SCEA Consumer Services;
- i. Violating any local, state or national law;
- j. Taking any action that we consider to be disruptive to the normal flow of chat or other activities on the Sites, including uploading, posting, streaming or transmitting any unsolicited or unauthorized material, including junk mails, SPAM, excessive mails or chain letters;
- k. Distributing commercial content such as advertisements, solicitations, promotions and links to websites;

l. Uploading, posting, streaming, accessing or otherwise transmitting any content that you know or should have known infringes or violates any third-party rights, any law or regulation or contractual or fiduciary obligations;

m. Impersonating any person, including an employee of Sony Corporation, SCEA or any third-party;

n. Using, making or distributing unauthorized software or hardware in conjunction with the Sites, or taking or using any data from the Sites to design, develop or update unauthorized software or hardware.

#### **9.2.1.8 8. REPORTING ABUSE**

To report violations of these Terms of Service call SCEA Consumer Services at 1-800-345-7669 or use the moderation tools that may be available on the Site where the conduct is occurring.

#### **9.2.1.9 9. HOTSPOT AND INTERNET SERVICE PROVIDERS**

SCEA is not associated with any Internet service providers, including hotspot operators (collectively, "ISPs"). SCEA is not responsible for any damages or injury arising from or related to your use of ISP services. When you access the Internet, you are providing information directly to the ISP and not to SCEA. This information is collected by the ISP and is not shared with SCEA. Before accessing the Internet, you should carefully read the ISP's user agreement, terms and conditions and privacy policy carefully.

#### **9.2.1.10 10. LINKING POLICY**

If you link to these Sites from another web site: (i) the link must not damage, dilute or tarnish the goodwill associated with any SCEA name or entity; (2) the link must not create the false appearance that the other website is sponsored by, endorsed by, affiliated with or associated with SCEA; (3) the website may not "frame" or alter these Sites in any way; and (4) the linked website may not be unlawful, abusive, indecent or obscene, promote violence or illegal acts, be libelous, defamatory or otherwise deemed inappropriate, as determined by us in our sole discretion; and (iv) the linked website may not display our Content, including any of our logos, to create a link, without our prior written consent.

Our Sites may allow you to link to third-party websites. Just because third-party website links exists on our Sites does not mean that we have thoroughly evaluated the third-party websites. Those third-party websites do not belong to us, and we have no control over and assume no responsibility for the content, accuracy, usefulness, safety, privacy policies or practices of these websites. By using our Sites, you expressly relieve SCEA of any and all liability arising from your use of any third-party websites linked to our Sites. Enjoy the links, but do so at your own risk.

#### **9.2.1.11 11. SWEEPSTAKES, CONTESTS AND PROMOTIONS**

From time to time, these Sites may provide information about sweepstakes, contests or promotions that may be governed by a separate set of rules and may also have eligibility requirements. You must read those rules to determine whether or not your participation, registration or entry will be valid and to determine all other applicable requirements.

**9.2.1.12 12. WARRANTY DISCLAIMER**

We really hope you enjoy the Sites, and we also hope the Sites will function properly. Your use of the Sites, however, is at your sole risk. To the fullest extent permitted by law, SCEA, its officers, directors, shareholders, employees representatives, and agents disclaim all warranties, express or implied, including the implied warranties and conditions of merchantability, fitness for a particular purpose and non-infringement, in connection with the Sites and your use of them. SCEA makes no warranties or representations about the accuracy or completeness of the Sites, and assumes to the maximum extent permitted by law no liability or responsibility for any (a) errors, mistakes or inaccuracies on the Sites; (b) personal injury or property damage of any nature whatsoever resulting from your access to and use of the Sites; (c) unauthorized access to or use of our secure servers or any and all Personal Information that is not submitted using a secured transmission; (d) interruption or the cessation of transmission to or from our Sites; (e) bugs, viruses, trojan horses or the like that may be transmitted to or through our Sites by any third-party; or (f) errors or omissions on our Sites or for any loss or damage of any kind incurred as a result of your use of any content available via the Sites. SCEA does not warrant, endorse, guarantee, or assume responsibility for any product or service advertised or offered by a third-party through the SCEA or any hyperlinked website or feature in any banner or other advertising, and SCEA will not be a party to or in any way be responsible for monitoring any transaction between you and third-party providers of products or services. As with the purchase of a product or service through any medium or in any environment, you should use your best judgment and exercise caution where appropriate.

**9.2.1.13 13. LIMITATION OF LIABILITY**

We have to throw in some more legal language we need to protect us so that we can provide you the benefits of the Sites. In no event will SCEA, its officers, directors, employees, shareholders, representatives or agents be liable to you for any direct, indirect, incidental, special, punitive or consequential damages whatsoever resulting from any (a) mistakes or inaccuracies of content on the Sites, (b) personal injury or property damage of any nature whatsoever resulting from your access to and use of the Sites, (c) any unauthorized access to or use of our secure servers or any and all non-secured personal information (d) any interruption or the cessation of transmission to or from the Sites, (e) any bugs, viruses, trojan horses or the like that may be transmitted to or through the Sites; or (f) any errors or omissions in any content or for any loss or damage of any kind incurred as a result of your use of any content posted, emailed, transmitted or made available via the Sites, whether based on warranty, contract, tort or any other legal theory and whether or not the company is advised of the possibility of such damages. This limitation of liability applies to the fullest extent permitted by law in the applicable jurisdiction.

**9.2.1.14 14. INDEMNITY**

You agree to defend, indemnify and hold harmless SCEA, its affiliates, subsidiaries, officers and directors, shareholders, agents, employees and partners, and any other parties with whom SCEA may contract to provide the Sites, from and against any and all claims, actions, suits, costs, liabilities, judgments, obligations, losses, penalties, fines or forfeitures, expenses or damages (including reasonable legal fees and expenses) of whatsoever kind and nature imposed on, incurred by or asserted against SCEA arising out of (i) your User Generated Content; or (ii) your breach or alleged breach of any representation, warranty, covenant or obligation pursuant to these Terms of Service, the Privacy Policy or the PSN

ToSUA. We reserve the right to take over the exclusive defense of any claim for which we are entitled to indemnification from you. In such event, you shall provide us with cooperation reasonably requested by us.

#### **9.2.1.15 15. MODIFICATION**

SCEA at its sole discretion may modify the provisions of these Terms of Service at any time. You are responsible for reviewing these Terms of Service each time you use these Sites. By using the Sites, you agree to be bound by all current Terms of Service. To print out a current copy of these Terms of Service using your computer, go to <http://www.us.playstation.com/termsfuse>.

#### **9.2.1.16 16. INDEPENDENT PARTIES**

You and SCEA are independent parties, and nothing in these Terms of Service constitutes a partnership between or joint venture of you and SCEA or to make either party the agent of the other. You are not allowed to hold yourself out contrary to the terms of this paragraph (so please don't), and SCEA is not liable for any representation, act or omission by you contrary to the provisions of these Terms of Service.

#### **9.2.1.17 17. TERMINATION**

SCEA has the right to terminate your access to use the Sites for any reason, including for violation of these Terms of Service. If we ever terminate your access to the Sites, sections 3-9, 12, 13, 15 – 19, 21 and 22 of these Terms of Service will still apply to you.

#### **9.2.1.18 18. STATUTE OF LIMITATIONS**

You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to your use of the Sites or these Terms of Service must be filed within one (1) year after the claim or cause of action arose or be forever barred.

#### **9.2.1.19 19. GOVERNING LAW AND JURISDICTION.**

These Terms of Service and all questions relating to the performance, interpretation, breach or enforcement of these Terms of Service, or the rights, obligations and liabilities of you and us under them are governed by the laws of the State of California. You agree that all disputes, claims or litigation arising from or related in any way to these Terms of Service and our relationship with you will be litigated only in a court of competent jurisdiction located in San Mateo County, State of California. You agree to be subject to personal jurisdiction and venue in that location.

THANKS FOR TAKING THE TIME TO READ ALL THAT LEGAL LANGUAGE. NOW GO ENJOY OUR SITES!

"PlayStation", the "PS" Family logo, and "PSP" are registered trademarks of Sony Computer Entertainment Inc. The Sony Computer Entertainment logo is a registered trademark of Sony Corporation. All other games and properties shown on this site are trademarked and copyrighted properties of their respective owners or licensors.

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**PlayStation®Network****TERMS OF SERVICE AND USER AGREEMENT**

Version 3.0 (July 15, 2008)

**PLEASE READ THIS ENTIRE AGREEMENT AND INDICATE WHETHER YOU AGREE TO ITS TERMS BY CLICKING THE "ACCEPT" OR "DO NOT ACCEPT" BUTTON AT THE END OF THE AGREEMENT. YOUR ACCESS TO SONY COMPUTER ENTERTAINMENT AMERICA'S PlayStation®Network ("PSN") IS EXPRESSLY CONDITIONED UPON YOUR ACCEPTANCE OF THE TERMS OF THIS AGREEMENT. IF YOU CLICK THE "DO NOT ACCEPT" BUTTON, YOU WILL NOT BE ABLE TO ACCESS PSN.**

This Agreement is a contract between you and Sony Computer Entertainment America Inc. ("SCEA") and can be accepted only by an adult 18 years or older. If you are under 18, you must ask your parent or legal guardian to consent to this Agreement and Privacy Policy. By clicking the "ACCEPT" button yourself, you affirm that you are 18 years or older and you accept this Agreement. You also affirm that you are accepting this Agreement on behalf of, and all legal and financial responsibility and liability for the actions of, your child, and for all subordinate accounts ("Sub Accounts") attached to your Master Account.

This Agreement applies to services, software and content provided through or in connection with PSN, including via the PlayStation®Store and virtual communities, whether delivered onto the PlayStation®3 computer entertainment system, the PSP® (PlayStation®Portable) system, a personal computer or otherwise. Such services, software, and content include subscriptions, data, system software, fixes, updates or newer releases and peripheral materials.

If you accept this Agreement, you are subject to its terms and all other agreements that you have entered into in connection with PSN. You agree that you will not directly or indirectly use PSN (i) in any way for any commercial purpose, (ii) in any way that violates the law or the community code of conduct, or (iii) in any way that harms or has the potential to harm SCEA, its parent company, or any affiliates, subsidiaries, licensors, providers, partners of SCEA or its parent company, and users. You agree that you will not use any unauthorized hardware or software to access or use PSN.

**1. PSN ACCOUNT REGISTRATION**

Through PSN, you can participate in SCEA's online community, play games online, and purchase content and services, such as new levels for your favorite games, movies, television shows or original programs such as Qore™. PSN may not be available, or may not be supported, in some countries and some languages. You must create a PSN account in order to access PSN's content and services. SCEA reserves the right to deny the creation of any account at its discretion and for any reason. Currently, there are no charges for creating a PSN account, but there may be charges associated with certain online content or services that are available through PSN. All information provided during PSN account registration must be truthful and accurate. There are two types of PSN accounts: Master Accounts and Sub Accounts. All PSN accounts have an associated PSN mailbox for receiving text mail.

If you are 18 years or older, you can create a Master Account for yourself. Each Master Account can create up to six (6) associated Sub Accounts. You are not permitted to create Sub Accounts for persons under the age of 18 who are not your children or for whom you are not the legal guardian.

A Master Account has access to and control over the following aspects of its Sub Accounts: (i) financial aspects; (ii) content availability and (iii) certain chat features. Text mail from SCEA that relates to a Sub Account's purchases on PSN will be sent to the mailbox of the associated Master Account. At its sole discretion, SCEA may send text mail to the Master Account relating to the Sub Account's other activities on PSN.

A child under 18 can only have a Sub Account associated with a Master Account of the child's parent or legal guardian. If you are creating a Sub Account for a child under the age of 13, you must provide (i) your consent for SCEA to disclose, pursuant to SCEA's privacy policy, your child's personally identifying information to third parties for the purpose of allowing your child to participate in PSN activities, such as video and voice chat and gameplay; and (ii) your credit card information. Your credit card will be used to verify parental consent under laws requiring such consent. You will not be charged a fee for creating the Sub Account. If you do not consent to the disclosure of this requested information, you will not be able to create a Sub Account for the child. If all requested information is provided, a separate email containing a code will be sent to the Master Account's email account with instructions to complete registration by entering the code into the Sub Account using a personal computer. You will need to create for your child an Online ID that will be associated with the child's PSN Sub Account. Please note that the Online ID is publicly available to and viewable by all PSN users and your child may receive text emails from any PSN users, including adults, in your child's PSN account mailbox. The parent's Master Account will not be notified of such text emails sent to a child's Sub Account mailbox. As the parent or legal guardian, it is your sole responsibility to monitor your child's access to or use of PSN, as well as any communications made or received by your child on or through PSN.

**Some content and services may be objectionable or inappropriate to some users, including children under a certain age. Please consider your child's age and check any product, content or service ratings and descriptions where available, before you access, download or purchase any items or permit your child to do so. In some cases, third parties provide ratings or descriptions for items, and SCEA therefore cannot guarantee the accuracy or completeness of such information. In addition, not all content and services are rated.**

**Some content that you download to your PlayStation®3 computer entertainment system or PSP® (PlayStation®Portable) system may be accessible by all users of that system. Please monitor all access to content, services, and communications that may be objectionable or age inappropriate. PSN parental controls will not apply to certain types of services or content such as content that is considered streamed material, user communication or certain categories of downloadable content. PSN parental controls may also not apply to some content that is not rated. Your child may not be able to access some content or services or play games rated for users older than his or her registered age. In some countries, parents and legal guardians with Master Accounts will be permitted to set their parental controls to override content restrictions on certain materials for associated Sub Accounts.** Please see the [Knowledge Base](#) located at the following website for more information: <http://playstation.custhelp.com/>.



A Master Account can also create Sub Accounts for people over the age of 18. Credit card information is not required to create a Sub Account for someone over 18. Adult Sub Account holders must accept this Terms of Service and User Agreement and the applicable Privacy Policy themselves. The Master Account holder is jointly and severally legally and financially responsible for the actions of his or her Sub Account holders on PSN, regardless of their age.

Both Master Account and Sub Account holders select their own Online ID, Sign-In ID and password to gain access to their accounts. All users should safeguard their account information to prevent use by any other user. Certain information, which may include the Online ID, "About Me" statement, avatar pictures, country/area of residence, preferred language and recently played game titles, will be provided to all PSN users, including children. SCEA shall have no liability for any unauthorized usage of a PSN account. Deletion or termination of a Master Account will result in the deletion and termination of all associated Sub Accounts.

## **2. PSN COMMUNITY**

Currently, no purchase is required to participate in general PSN community activities. If you have a PSN account, you can chat via voice and video with friends and enjoy single sign on benefits without purchase, as well as enjoy online entertainment for which there is no subscription or purchase requirement.

## **3. COMMUNITY CODE OF CONDUCT**

You must adhere to the following rules of conduct, and also follow a reasonable, common-sense code of conduct. Users are required to take into consideration community standards and refrain from abusive or deceptive conduct, cheating, hacking, or other misuse of PSN. Rights of other players should be respected.

The violations that are prohibited include but are not limited to the following:

- You may not engage in deceptive or misleading practices.
- You may not abuse or harass others, including but not limited to stalking behavior.
- You may not take any action, or upload, post, stream, or otherwise transmit any content, language, images or sounds in any forum, communication, public profile, or other publicly viewable areas or in the creation of any Online ID that SCEA, in its sole discretion, finds offensive, hateful, or vulgar. This includes but is not limited to, any content or communication that SCEA in its sole discretion deems racially, ethnically, religiously, or sexually offensive, libelous, defaming, threatening, bullying or stalking.
- You may not organize hate groups.
- You may not upload, post, stream, or otherwise transmit any content that contains any viruses, worms, spyware, time bombs, or other computer programs that may damage, interfere with, or disrupt PSN.
- You may not use, make, or distribute unauthorized software or hardware in conjunction with PSN, or take or use any data from PSN to design, develop or update unauthorized software or hardware, including but not limited to cheat code software or devices that circumvent any security features or limitations included on any software or devices.
- You may not modify or attempt to modify the online client, disc, save file, server, client-server communication, or other parts of any game title, or content.

- You may not cause disruption to any account, system, hardware, software, or network connected to PSN for any reason, including to gain an unfair advantage in a game.
- You may not attempt to hack or reverse engineer any code or equipment in connection with PSN.
- You may not provide anyone with your name or any other personally identifying information, or the name, password or personally identifying information of any other person or business through any means, including messaging, chat or any other form of PSN communication.
- You may not take any action that we consider to be disruptive to the normal flow of chat or gameplay, including without limitation uploading, posting, streaming, or otherwise transmitting any unsolicited or unauthorized material, including junk mails, spams, excessive mails, or chain letters.
- You may not introduce content that is commercial in nature such as advertisements, solicitations, promotions and links to web sites.
- You may not introduce content that could be harmful to SCEA, its licensor, or players such as any code or virus that may damage any property or interfere with the use of the property or PSN.
- You may not take any upload, post, stream, access, or otherwise transmit any content that you know or should have known to be infringing or that violates any third party rights, any law or regulation, or contractual or fiduciary obligations.
- You may not impersonate any person, including an SCEA or third party employee.
- You may not provide SCEA or any third party company with false or inaccurate information, including reporting false complaints to SCEA Consumer Services or providing false or inaccurate information during account registration.
- **You may not sell, buy, trade, or otherwise transfer your Online ID or any personal access to PSN through any means or method, including by use of web auction sites.**
- You may not conduct any activities that violate any local, state or federal laws, including but not limited to, copyright or trademark infringement, defamation, invasion of privacy, identity theft, hacking, stalking, fraud, and the distribution of counterfeit software.

Unless otherwise required by applicable law, there is no requirement or expectation that SCEA will monitor or record any online activity on PSN, including communications. However, SCEA reserves the right to monitor and record any online activity on PSN, and you give SCEA your express consent to monitor and record your activities. SCEA reserves the right to remove any content from anywhere on PSN at SCEA's sole discretion. SCEA has no liability for any violation of this Agreement by you or by any other player.

#### **4. CONTENT AND SERVICES ON PSN**

PSN provides you with the ability to buy a variety of content and services, including game-specific items, video content, as well as game and program subscriptions. All content and services are provided through PSN by SCEA, including content created or published by third parties. Third parties, including publishers may administer some services, including delivery, gameplay or customer service. To enable third parties to provide such services to you, we must provide them with your

personal information. If you do not consent to allow us to share your personal information with third parties for the purpose of providing you with PSN services, you will not be able to participate in PSN. In order to access certain content or services, you may be required to accept additional content or service-specific terms and conditions ("Usage Terms"). Notwithstanding any provision of any other agreement, in the event of any conflict between this Agreement and the Usage Terms, any other terms and conditions in connection with PSN or in connection with any disc-based product used with PSN, this Agreement shall control

In addition, you may be able to set your PlayStation®3 computer entertainment system or other authorized device to automatically download or receive new content from the PlayStation®Store without further notice to you when you sign into PSN. Such content will be subject to the terms of this Agreement.

## **5. WALLET**

All content and services may only be purchased from SCEA using funds from the PSN wallet. All purchases made by the Sub Account or the Master Account must be made through a PSN wallet that is automatically associated with a Master Account. A Sub Account does not have its own separate wallet. Master Accounts can set a maximum spending amount for each Sub Account, effective at the beginning of the following month. A Master Account holder can fund the PSN wallet up to a maximum amount determined by SCEA ("Limit"), using either (i) a credit or debit card; (ii) a pre-paid card where available; or (iii) other payment methods as approved by SCEA from time to time. SCEA reserves the right to refuse purchase of any wallet funds for any reason. Except as otherwise permitted by applicable law or as expressly provided in this Agreement, funds added to the wallet are non-refundable and non-transferable. Wallet funds have no value outside PSN and can only be used to purchase content or services from SCEA through PSN. Subject to applicable law, wallet funds that are deemed abandoned or unused by law will not be returned or restored.

## **6. PREPAID CARDS**

Each Master Account and its associated Sub Accounts will be subject to the Limit. If you acquire a prepaid card that has a value that, when added to the wallet's existing balance, exceeds the Limit, you will not be able to apply the value of the prepaid card to the wallet until sufficient funds have been spent from the wallet to allow the sum of the full value of the prepaid card and wallet to be equal to or less than the Limit. The Master Account will only accept pre-paid cards with currency value from the same country as the one designated for the Master Account. SCEA is not responsible for, or liable for any claims arising as a result of, any problems encountered using a prepaid card or for any defects in a prepaid card. Your use of the pre-paid card is subject to terms and conditions at <http://www.us.playstation.com/card>.

## **7. PURCHASES AND TRANSACTIONS**

All purchases and transactions on or through the PSN, including transactions made through the PlayStation®Store, are made solely between you and SCEA. By completing a transaction through your Master Account or allowing a transaction to take place through an associated Sub Account, you are (i) agreeing to pay for all purchases made by the Master Account and its associated Sub Accounts; (ii) authorizing SCEA to deduct from the wallet all applicable fees due and payable for all purchases made by the Master Account and its associated Sub Accounts; and (iii) agreeing to any applicable Usage Term and the terms and conditions associated with the particular content or service, subject to Section 4 above. All sales are final. Content or services are not refundable or transferable, and cannot be redeemed for cash, credit, or funds to your wallet. SCEA reserves the right to deduct from the wallet any amount resulting from a Master

Account holder's request to the Master Account holder's credit card company to reverse charges for a purchase on the PSN. SCEA also reserves the right to terminate the Master Account and all Sub Accounts associated with the Master Account. In lieu of termination of the Master Account in such circumstances, SCEA may elect to provide a mechanism by which a Master Account may fund the wallet to prevent the Master Account and its associated Sub Accounts from being terminated. All transactions are made in the currency of your country of residence. Features, specifications, prices, items offered for sale and services are subject to change or withdrawal at any time and SCEA does not provide any refunds in the event of a price drop or a subsequent promotional offering. Special product, service offerings, prices and promotions displayed on the PSN are no longer valid once they are changed or removed from PSN. Prices listed do not include sales tax. Applicable sales tax will be calculated and added at the time you purchase the item or service. All sales are subject to the laws of the State of California, County of San Mateo.

You can make purchases only from a designated Sony regional company which is determined by your country/area of residence. Your country/area of residence may be verified by your credit or debit card number and may be rejected if the information does not match. If you are a Master Account holder, you will receive an email summary for each purchase after it is made, if you have given us a valid, current, operational email address. You can view your purchase history in the PSN Account Management area.

Although SCEA will try to ensure that all prices, product descriptions, and its associated terms and conditions are accurate, errors may occur. If we discover an error in the price of items you have ordered, we will contact you promptly. You will have the option of either reconfirming your order at the correct price or canceling it. If we are unable to contact you, your order will be cancelled.

**Upon SCEA's confirmation, content or services will be made available to you through your PSN account . You are solely responsible for storing and the safekeeping of your content. SCEA is not responsible for providing you with replacement copies for any reason.**

From time to time, SCEA may issue promotional codes or "promo codes" which can be used to access promotional offers for PSN content or services. Each promo code will be subject to specific terms and conditions which will be communicated to you in connection with the promotion. Promo codes may not be available in all countries or to all users, and age restrictions may apply. Promo codes must be used before the specified expiration date, and in accordance with applicable terms and conditions. Unless otherwise stated, promo codes may be used once only by the recipient and may not be transferred or sold to any other person.

## **8. GENERAL LICENSE RESTRICTIONS AND TERMS**

Except as stated in this Agreement, all content and software provided through PSN are licensed non-exclusively and revocably to you, your children and children for whom you are a legal guardian (collectively for purposes of this section, "You" or "Your"), solely for Your personal, private, non-transferable, non-commercial, limited use on a limited number of activated PlayStation®3 computer entertainment systems, PSP® (PlayStation®Portable) systems, and any other hardware devices authorized by SCEA in the United States or Canada (where permitted). All intellectual property rights subsisting in the PSN, including but not limited to, all software, data, and content subsisting in or connection with the operation of PSN, the Online ID, the products and services offered on or through PSN and hardware used in connection with PSN (collectively defined as "Property"), belong to SCEA and its licensors. All use or access to such Property shall

be subject to the terms of this Agreement and all applicable copyright and other intellectual property rights laws. You may not sell, rent, sublicense, modify, adapt, translate, reverse engineer, decompile, or disassemble any portion of the Property. Except as stated in this Agreement or otherwise expressly permitted by SCEA in writing, you may not reproduce or transfer any portion of the Property. You may not create any derivative works, attempt to create the source code from the object code, or download or use any Property for any purpose other than as expressly permitted. You may not bypass, disable, or circumvent any encryption, security, digital rights management or authentication mechanism in connection with PSN or any of the content or services offered through PSN. You acknowledge that the PSN service, including some content or services provided through PSN, may contain security or technical features that will prevent use of such content or services in violation of this Agreement. Notwithstanding any terms, Property is not licensed for resale, public performance, display, distribution or broadcast. You know that some content providers and licensors are intended third party beneficiaries who have rights to enforce this Agreement against you and your permitted users. Except as expressly granted in this Agreement, SCEA and its licensors reserve all rights, interests, and remedies in connection with PSN and the Property.

Additional terms of service and use may apply to particular content or services. Use or license terms may be more restrictive depending on content or service. Please read carefully all specific terms of service and use for particular content or service before purchasing. The restrictions to which particular content or service is subject are in the sole discretion of SCEA or its licensors and are subject to change at any time. Use of the terms "purchase," "sale," "sold," "sell" or "buy" on PSN or in connection with PSN shall not mean or imply any transfer of ownership of any content, data or software or any intellectual property rights therein from SCEA or its licensors to any user or third party. All other company, product, and service names and logos referenced on the PSN are the marks, trade names, trademarks/ service marks, and registered trademarks/ service marks ("Marks") of their respective owners. You may not use or reproduce any Marks without the owner's expressed written consent. You may not remove any proprietary notices or labels from any content.

## **9. VIDEO CONTENT**

Subject to the terms of this Agreement and any additional terms and conditions for the particular content, SCEA licenses digitalized content of programs, including television shows and movies ("Video Content") to you for your personal, private, non-commercial viewing in the United States only on a limited number of activated PlayStation®3 computer entertainment systems and/or PSP® (PlayStation®Portable) system(s) ("Authorized Device") during the authorized viewing period ("Authorized Term"). Video Content is available to you as a rental or purchase. You may rent the content for a limited duration ("Rental Content"), or enjoy the content continuously subject to certain digital rights management rules and the terms and conditions of this Agreement ("Sold Content"). Except for rights explicitly granted to you, all rights in the Video Content are reserved by SCEA and/or its third party licensors.

Only one copy of a Rental Content may be viewable on an Authorized Device for up to 24 hours after the first playback or 14 days after payment for the Rental Content, whichever is sooner. After such time, you will not be able to view the Rental Content. Rental Content may not be reproduced. However, Rental Content in standard definition format that was originally downloaded onto a PlayStation®3 computer entertainment system may be transferred once by the PSN account that purchased the content to one activated PSP® (PlayStation®Portable) system during the Authorized Term. Thereafter, the Rental Content will not be available on the original PlayStation®3 computer entertainment system, and no subsequent

transfer to any other device including a PlayStation®3 computer entertainment system or a PSP® (PlayStation®Portable) system is currently permitted. Rental Content in standard definition format that was originally downloaded onto a PSP® (PlayStation®Portable) system may be viewable on only one (1) activated PSP® (PlayStation®Portable) system during the Authorized Term. Rental Content in high definition format may be viewed on only one (1) activated PlayStation®3 computer entertainment system.

You may view Sold Content for an unlimited number of times on an Authorized Device. Sold Content in standard definition format that was initially downloaded onto a PlayStation®3 computer entertainment system may be copied solely by the PSN account that purchased the Sold Content for use on up to three (3) activated PSP® (PlayStation®Portable) systems. Sold Content in standard definition format that was initially downloaded for a PSP® (PlayStation®Portable) system may be viewable on two (2) other activated PSP® (PlayStation®Portable) systems. Sold Content in high definition format may be viewed on only one (1) activated PlayStation®3 computer entertainment system.

Proper activation of the PlayStation®3 computer entertainment system or the PSP® (PlayStation®Portable) system by the PSN account that purchased the Video Content is required for all downloads, transfers, copies and viewings. Purchase of Video Content is connected to the purchasing PSN account and any one PSN account can activate no more than the maximum number of Authorized Devices stated in this Agreement or in any terms and conditions for the particular Video Content, regardless of the number of copies of Video Content purchased using the PSN account. Video Content may not be transferred from one PSN account to another. SCEA reserves the right to limit the number of times the PlayStation®3 computer entertainment system or the PSP® (PlayStation®Portable) system may be activated or deactivated.

Downloading will be not permitted outside the Authorized Term. In addition, once the Video Content has been downloaded from PSN, you will not be able to download it again for any reason without purchase of another copy.

Some content such as movie trailers may not be representative of the actual feature presentation. Digitalized versions of some content may not be identical with the original formatted content or previously released versions of the same titled content.

Video Content will play on displays ranging from standard definition to 1080p depending on the content. Video output in certain formats may require additional equipment, sold separately.

For more information on Video Content, please visit <http://playstation.custhelp.com/>.

For specific information on ratings for some Video Content, please visit [http://www.mpa.org/FilmRat\\_Ratings.asp](http://www.mpa.org/FilmRat_Ratings.asp) and <http://tvguidelines.org/>.

## **10. SUBSCRIPTIONS**

Subscriptions may not be shared among any PSN accounts, including the Master Account with its associated Sub Accounts. All subscriptions will be automatically renewed unless you cancel the subscription. For automatic renewal, your wallet must contain funds in an amount sufficient to cover the subscription's automatic renewal cost, or your subscription will be terminated. If you do not have sufficient funds in your wallet and you have previously entered your credit card billing information, your credit card will be automatically charged a minimum amount determined by SCEA in order to renew your subscription automatically, even if the amount charged exceeds the cost of the subscription. Any

difference between the amount charged and the sum of the cost of the subscription and existing balance will be credited to your wallet. Subscription charges may be increased at the end of each subscription period. If charges are increased, you will be asked to confirm whether to continue with the subscription. You may cancel subscriptions via PSN Account Management. Cancellation will take effect from the next renewal of that subscription. Except as otherwise stated in this Agreement, you will not receive a refund for any subscriptions paid in advance.

## **11. MAINTENANCE AND UPGRADES**

From time to time, it may become necessary for SCEA to provide certain content or services to you to ensure that PSN, content or services offered through PSN, your PlayStation®3 computer entertainment system, the PSP® (PlayStation®Portable) system or other SCEA-authorized hardware is functioning properly in accordance with SCEA guidelines. Some content or services may be provided automatically without notice when you sign into PSN. Such content or service may include automatic updates or upgrades which may change your current operating system, cause a loss of data or content or cause a loss of functionalities or utilities. Such upgrades or updates may be provided for system software for your PlayStation®3 computer entertainment system, the PSP® (PlayStation®Portable) system, or other SCEA-authorized hardware. Access or use to any system software is subject to terms and conditions of a separate end user license agreement found at <http://www.us.playstation.com/termsfuse>. You authorize SCEA to provide such content and services and agree that SCEA shall not be liable for any damages arising from provision of such content or services or maintenance services. It is recommended that you regularly back up any data located on the hard disk that is of a type that can be backed up.

## **12. INFORMATION**

SCEA may provide all users with information relating to your game play. You hereby authorize SCEA to use, distribute, copy, display, and publish information relating to your game play for gaming purposes including tournaments and ranking, without payment to you. In addition, you will have the option to post, stream or transmit pictures, photographs, game related materials, or other information through PSN to share with the PSN community ("User Material"), provided no rights of others are violated. You authorize and sublicense SCEA the right to authorize anyone to use, distribute, copy, modify, display, and publish your User Material in any manner on any medium without payment to you, and you hereby waive all claims, including any moral rights, against SCEA, its affiliates and subsidiaries for SCEA or any other third party's use of User Material and game play information, as applicable. By posting, streaming, or transmitting any User Material, you represent and warrant that you have the appropriate rights to use, post, distribute, and transmit the User Material and to grant SCEA the rights stated in the foregoing sentence. You further agree to cooperate with SCEA in resolving any dispute that may arise from your User Material. SCEA reserves the right to remove any User Material at its sole discretion.

Through your use of PSN, you may be provided with information about SCEA's or a third party's products or services. This information includes, but is not limited to, promotions, advertisements, product placements or marketing materials within PSN or a game, whether it is connected to or provided through PSN or not. You agree that SCEA and its partners and providers may collect information regarding your activities, access, or game play, and may use and distribute such information for their marketing purpose subject to the terms of SCEA's privacy policy or the policies of third parties where applicable. SCEA does not endorse any of the products or services advertised, promoted or marketed.

### 13. TERMINATION/ CANCELLATION

If SCEA determines in its sole discretion that you have violated any term of this Agreement, the Usage Terms, or any other terms and conditions connected with PSN or have otherwise injured or damaged the PSN community, SCEA may take all actions to protect its interests, including termination or suspension of your PSN account (both the Master Account and any associated Sub Accounts), automatic removal or blockage of the content, implementation of upgrades or devices intended to discontinue unauthorized use, or reliance on any other remedial efforts as necessary to remedy the violation. If your breach is in connection with content that you have downloaded, you must immediately cease use of such content and delete all copies from all of your devices. Upon termination for any reason, you will not receive a refund for items, value accumulated on in-game items or any unused balance in your wallet except as expressly provided in this Agreement. Any game ranking or scores, or information in connection with PSN will not be retained or accessible by you or your associated Sub Accounts. SCEA reserves the right to bring legal action and to participate in any government or private legal action or investigation relating to your conduct, which may require the disclosure of your information. Unless as otherwise stated in this Agreement, SCEA, at its sole discretion, may indefinitely suspend, or discontinue any and all online services and content at any time, including for maintenance service or upgrades, without prior notice or liability.

### 14. GENERAL LEGAL

SCEA, at its sole discretion, may modify the terms of this Agreement at any time, including imposing a fee for creating PSN accounts. By accepting this Agreement or by accessing PSN, you agree to be bound by all current terms of the Agreement. To access a printable, current copy of this Agreement, go to <http://www.us.playstation.com/termsfuse> on your personal computer. If material changes to this Agreement are made, you will be notified by a posting as you sign in to PSN. If necessary, you will be given additional choices regarding such change(s). Please check back from time to time to ensure that you are aware of these changes. Your continued use of PSN, including use of your associated Sub Account(s), will signify your acceptance of these changes. If you do not accept material changes to the Agreement, then you may contact us to terminate this Agreement and your account(s). If there are funds in your wallet as of the date SCEA terminates your account, those funds may be refunded to you and you will not be able to access PSN.

This Agreement shall be construed and interpreted in accordance with the laws of the State of California applying to contracts fully executed and performed within the State of California. Both parties submit to personal jurisdiction in California and further agree that any dispute arising from or relating to this Agreement shall be brought in a court within San Mateo County, California. In the event of litigation to enforce any part of this Agreement, all costs and fees, including attorney's fees, shall be paid by the non-prevailing party.

### 15. WARRANTY DISCLAIMER AND LIMITATION OF LIABILITY

**No warranty is given about the quality, functionality, availability or performance of PSN, or any content or services offered on or through PSN. In addition to the limitations of liability in Sections 1, 3 and 13 of this Agreement, SCEA expressly disclaims any implied warranty of merchantability, warranty of fitness for a particular purpose and warranty of non-infringement. SCEA assumes no liability for any inability to purchase or use any content, goods or services. YOUR SOLE AND EXCLUSIVE RECOURSE IN THE EVENT OF ANY DISSATISFACTION WITH OR DAMAGE ARISING FROM PSN OR IN CONNECTION WITH THIS AGREEMENT AND SCEA'S MAXIMUM LIABILITY UNDER THIS AGREEMENT OR WITH RESPECT TO YOUR USE OF OR ACCESS TO**



**PSN SHALL BE LIMITED TO YOUR DIRECT DAMAGES, NOT TO EXCEED THE UNUSED FUNDS IN YOUR WALLET AS OF THE DATE OF TERMINATION. EXCEPT AS STATED IN THE FOREGOING SENTENCE, SCEA EXCLUDES ALL LIABILITY FOR ANY LOSS OF DATA, DAMAGE CAUSED TO YOUR SOFTWARE OR HARDWARE, AND ANY OTHER LOSS OR DAMAGE SUFFERED BY YOU OR ANY THIRD PARTY, WHETHER DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL AND HOWEVER ARISING, AS A RESULT OF ACCESSING ANY SERVICE OR DOWNLOADING ANY CONTENT TO YOUR PlayStation®3 COMPUTER ENTERTAINMENT SYSTEM, THE PSP® (PlayStation®PORTABLE) SYSTEM, OR ANY HARDWARE DEVICE, OR USING OR ACCESSING THE PSN. UNLESS THIS PROVISION IS UNENFORCEABLE IN YOUR JURISDICTION, THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.** Internet Service Provider fees are the full responsibility of the user.

PLEASE CONTACT SONY COMPUTER ENTERTAINMENT AMERICA INC. CONSUMER SERVICES FOR FURTHER INFORMATION OR QUESTIONS VIA OUR WEBSITE <http://www.us.playstation.com/Corporate/ContactUs> OR BY PHONE AT 877-971-7669.

### **9.3 Xbox LIVE and Games for Windows LIVE Terms of Use**

Last updated: September 2008

#### **1 . This Is a Contract between You and Microsoft.**

This is a contract between you and Microsoft Corporation (located at One Microsoft Way, Redmond, WA 98052-6399 United States , U.S. phone: 1800-4MY-XBOX / International phone: (425 ) 635-7180 ) or, based on where you live, one of the Microsoft Corporation affiliates. We will refer to ourselves in this contract as "Microsoft", "we", "us", or our. A printable version of the most current form of this contract is posted online at [www.xbox.com/en-US/legal/legal-tou.htm](http://www.xbox.com/en-US/legal/legal-tou.htm) (or a successor web page).

This contract covers your use of the Xbox LIVE and Games for Windows LIVE interactive services, and governs any other related services for which you choose to sign up (for example, specific game subscriptions), content, and other media (for example, items downloaded from Xbox LIVE Marketplace or Games for Windows LIVE Marketplace and their successors)), software, machines, support, papers, updates, or upgrades. We refer to all of these as the "Service" and, except where context requires otherwise and even if not expressly referenced in the applicable section, "Service" includes any "Other Items" (defined in Section 8(a)) that you may have obtained access to through or in relation to other aspects of the Service. To avoid any confusion, when you register to use the Service, you are registering for both the Xbox LIVE service and the Games for Windows LIVE services.

The Service is offered to you conditioned on your acceptance of all terms in this contract. By selecting "ACCEPT" below, you are representing that you are 18 years old (and have reached the "age of majority" if that is not 18 years of age where you live) and you are attaching your electronic signature to and agreeing to all terms in this contract. In addition, if you were a party to a prior version of this contract, that version may have stated that the contract can only be updated on 30 days' notice. By selecting "ACCEPT" below, you are also agreeing to waive the applicability of this notice requirement. If you do not agree to this contract, in its entirety, or if you were a party to a prior version of this contract and do not agree to waive the notice requirement, you must select "DECLINE" and discontinue your registration, and you will have no right to use the Service.

You must have a Windows Live ID to register to use the Service. For additional information, see [Get your Windows Live ID](#). If you already have a Windows Live ID when you are registering for the Service, you can use this Windows Live ID; if you do not, a Windows Live ID will be automatically created for you. A Windows Live ID that is automatically created, however, will have functionality limited to use with the Service. If you wish to use an automatically-created Windows Live ID for purposes other than signing in to the Service, you must also agree to the applicable terms of use or terms of service for a general-purpose Windows Live ID.

**Please note that we do not provide warranties for the Service. The contract also limits our liability. These terms are in Sections 18 and 19 and we ask you to read them carefully.**

#### **2. Additional Terms.**

Certain games, content offerings, features, or events (for example, sweepstakes and tournaments) that are available via the Service may contain additional terms, codes of conduct, or guidelines that govern your use of those games or features, or your participation in those events (and we refer to all of these, collectively, as "Additional Terms"). If any terms in this contract conflict with any Additional Terms, then the terms in this contract will control as applied to the Service and your legal relationship with Microsoft. Nothing in any Additional Terms will increase our legal liability or change your relationship with us (unless we are the contracting party identified in the Additional Terms, and we state, in the Additional Terms, our intent to modify the terms of this contract). The Additional Terms may, however, form an additional contract between you and a third party (for example, a third party that is offering content to you or sponsoring a tournament that you want to play in). Any dealings between you and such a third party are solely between you and the third party, and your relationship with the third party may be governed by the Additional Terms. We do not endorse and will not be responsible or liable for any aspect of any such dealings.

Certain features of the Service may be made available to you through web sites, online services or applications operated by third parties. As above, your dealings with any of these third parties are solely between you and the applicable third party and may be governed by other terms or agreements that apply to those web sites and third party features and content. Your use of any part of the Service as accessed through a third party web site, however, is still governed by this contract – even if the terms or agreements applicable to such a third party web site state otherwise.

### **3. When You May Use the Service.**

You may start using the Service as soon as you have finished the sign-up process. No withdrawal right or other "cooling off" period applies to the service, and you waive any applicable "cooling off" period, except if the law requires a "cooling off" period despite your waiver and even when a Service starts right away.

### **4. How You May Use the Service.**

In using the Service, you will:

- obey the law;
- obey any codes of conduct or other notices we provide, including the Xbox LIVE Code of Conduct ([www.xbox.com/en-us/legal/codeofconduct.htm](http://www.xbox.com/en-us/legal/codeofconduct.htm) and its successors);
- obey the Microsoft Anti-spam Policy, which is available at [privacy.msn.com/anti-spam](http://privacy.msn.com/anti-spam);
- keep your Service account password secret; and
- promptly notify us if you learn of a security breach related to the Service.

### **5. How You May Not Use the Service.**

In using the Service, you may not:

- use the Service for commercial purposes (except as expressly permitted by us);
- engage in, facilitate, or further unlawful conduct;

- use the Service in a way that harms us or our advertisers, affiliates, resellers, distributors, or vendors , or any customer of ours or our advertisers, affiliates, resellers, distributors, or vendors;
- use any portion of the Service as a destination linked from any unsolicited bulk messages or unsolicited commercial messages ("spam"); or send, either directly or indirectly, any spam through the Service;
- use any automated process or service to access and/or use the Service (such as a BOT, a spider, periodic caching of information stored by Microsoft, or "meta-searching");
- use any unauthorized means to modify or reroute, or attempt to modify or reroute, the Service;
- damage, disable, overburden, or impair the Service (or the networks connected to the Service) or interfere with anyone else's ability to access or use the Service;
- resell or redistribute the Service, or any part of the Service;
- disrupt, or try to gain unauthorized access to : any account, computer, hardware, or network related to the Service;
- obtain (or try to obtain) any data from the Service or related hardware, except data that we intend to provide or make available to you;
- use the Service or related hardware to design, develop, or update unauthorized software;
- use or distribute unauthorized cheats, macros, or scripts; or
- exploit a bug, or make an unauthorized modification, to any software or data to gain unfair advantage in a game , contest, or promotion.

In addition, your use of the Service is subject to your compliance with the Code of Conduct ([www.xbox.com/en-us/legal/codeofconduct.htm](http://www.xbox.com/en-us/legal/codeofconduct.htm) and its successors). You agree that we may also discontinue your access to the Service if you do any of the following while connected to the Service:

- Defame, abuse, harass, stalk, threaten, or otherwise violate the legal rights (such as rights of privacy and publicity) of others;
- Publish, distribute, or disseminate any inappropriate, profane, defamatory, infringing, obscene, indecent, or unlawful content, topic, name, material, file, or information;
- Publish, distribute, or disseminate any content, topic, name, material, file, or information that incites, advocates, promotes, depicts, constitutes, or expresses child pornography, profanity, hatred, bigotry, racism, illegal drug use, gratuitous or graphic violence, or criminal or fraudulent activity;
- Create a Gamertag , avatar or use text in other profile fields that may offend other members. This includes comments that look, sound like, stand for, hint at, abbreviate, or insinuate or relate to any of the following: profane words/phrases, topics or content of a sexual nature, hate speech (including but not limited to racial, ethnic, or religious slurs), illegal drugs/controlled substances, or illegal activities;

- Use the Service or any material or information made available through the Service in any manner that infringes any copyright, trademark, patent, trade secret, or other proprietary right of us or any third party;
- Upload files that contain viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other similar software or programs that may damage the operation of the Service, another person's original Xbox , Xbox 360 console , or other property;
- Download or use any material sent or provided by another user of the Service that you know, or reasonably should know, cannot be legally shared or distributed in such manner (except as expressly permitted by us);
- Send, either directly or indirectly, any unsolicited bulk messages or unsolicited commercial communications;
- Participate in pyramid schemes or chain letters;
- Harvest or otherwise collect information about others, including e-mail addresses, without their consent;
- Create a false identity for the purpose of misleading others;
- Falsify or delete any author attributions, legal or other proper notices, or proprietary designations or labels of the origin or source of software or other material contained in a file that is transferred;
- Make false complaints or provide false feedback about other users of the Service;
- Use, download, or otherwise copy, or provide to a third party (whether or not for a fee) any: (i) directory of users of the Service, (ii) information about users of the Service, or (iii) Service usage information;
- View, intercept, or attempt to intercept private communications not intended for you;
- Violate any relevant law or posted guidelines or codes relating to the use of the Service; or
- Provide or offer to provide services for the provision of gambling or wagering.

#### **6. You Are Responsible for Your Service Account.**

Only you may use your Service account. For some parts of the Service, we may notify you that you may set up additional member accounts that are dependent on your account (an "associated account"). You are responsible for all activity that takes place with your Service account or an associated account. Except as otherwise stated in this Section 6, you may not authorize any third party to access and/or use the Service on your behalf ,except where we provide a mechanism for third parties to access the Service on your behalf. We may limit who may use your Service account or any associated accounts.

If you allow or enable a minor to use your Service account or an associated account, then:

- You represent that you are the parent or legal guardian of each such minor;
- You acknowledge that you are aware that some features of the Service, and some content available through the Service may contain or expose users to material that is unsuitable for minors,

and you agree to supervise usage by minors whom you permit to use the Service . The Service is not intended for use by children under 13 , except together with a parent or other adult supervision;

- You acknowledge that we offer "Family Settings" on the Service and the Xbox 360 console, and also offer "Parental Controls" for Windows Vista, that are intended to help you limit access to material that may be unsuitable for minors. By applying Family Settings to an associated account at sign-up, you may, among other things, help to prevent any user of an associated account from making additional purchases and from having access to voice and video chat, which is intended to diminish the ability of such user to communicate with other users. You may view or revise your Family Settings in the Xbox Dashboard in the System area, or by logging into your account on [xbox.com/myxbox](http://xbox.com/myxbox). Additional information about Family Settings is available at [www.xbox.com/support/familysettings/default.htm](http://www.xbox.com/support/familysettings/default.htm); and
- You are responsible for any material to which a user of your subscription either gains or is denied access (including as a result of your use or non-use of Family Settings or Parental Controls) . You acknowledge that use of Family Settings, Parental Controls, or both, is not a substitute for your personal supervision of your minor children or minors for whom you are the legal guardian.

#### **7. If You Are An Associated Account User.**

If you are the user of an associated account, then the holder of the Service account has full control over your associated account. This control includes the right to end the Service, close or alter your associated account at any time, and, in some cases, to request and receive machine and Service usage information related to your associated account. As an associated account user, this contract applies to your use of the Service, except for the following Sections: 6 (You are Responsible for Your Service Account); 8 (If You Pay Microsoft); and 26 (Notices We Send to You).

#### **8. If You Pay Microsoft.**

**a. Charges.** This Section 8 applies in all situations in which you directly pay us, whether that payment is for the Service (including renewals) or for any additional items and services (such as games, downloads, Service upgrades, or other premium features) that may be available for purchase through the Service (collectively, "Other Items"). If you pay a company other than us for the Service, then the charges and billing terms are as stated by the other company. Even if you do not pay for the Service itself, you may still incur charges incidental to using the Service; for example, charges for Internet access, mobile text messaging, or other data transmission.

**b. Payment.** When you create a billing account, you enter your payment method. You must be authorized to use the payment method. You authorize us to charge you for the Service **and for any paid feature of the Service for which you choose to sign-up or use while this contract is in force** using your payment method. You will pay all charges in advance. We may charge you a different amount than what you approved. If it is a greater amount, we will tell you the amount and the date of the charge at least 10 days before we make the charge. Also, we may charge you up to the amount you have approved, and notify you in advance of the difference. If your purchase is a subscription, we may bill you for more than one of your prior billing periods together, although we will not bill you more than once in any billing period for each such subscription. Other purchases (such as a one-time download) will be

billed when the purchase is made. If we informed you that the Service will be provided indefinitely or automatically renewed, we may automatically renew your Service and charge you for any renewal term at the prices specified in Section 8(e). In some cases relating to Service offers available on Xbox 360 consoles, you may have the option to create or renew a subscription with a prepaid card instead of your payment method. Your Service may be cancelled at the end of your subscription term if you do not have a billing account or have not elected to auto-renew your subscription with a charge to your payment method, or you have not entered a prepaid card for purposes of renewing your Service. If you sign up for an Xbox Live Gold Membership on an Xbox 360 console using a prepaid card, your subscription will continue but will downgrade to a free Xbox Live Silver Membership at the end of your pre-paid Gold membership period, regardless of whether you have a billing account. To maintain your Gold membership, you must set your account to automatically renew with a charge to your payment method, or you must enter a new prepaid card. If you modify your Service from an original Xbox console to an Xbox 360 console, your Service will automatically renew annually at the then-current annual subscription price following the end of your current Service term (regardless of whether that current Service term is an annual or monthly term).

**c. Updates to Your Billing Account.** You must keep all information in your billing account current, including your billing address and the expiration date of your credit card. You can access and make changes to your billing account via the "Account Management" section of the Xbox Dashboard, or if you access your Service via a personal computer, at <https://billing.microsoft.com>. You may change your Payment Method at any time. If you tell us to stop using your payment method, we may cancel your Service. **Your notice to us will not affect charges we submit to your billing account before we reasonably could act on your request.**

**d. Trial Period Offers.** You may have received access to the Service for a limited period of time free of charge. Unless we notify you otherwise, if you are participating in any trial period offer, you must cancel the applicable Service by the end of the trial period to avoid incurring charges. If you do not cancel the applicable Service, and we have informed you that the Service will automatically be converted into a paid subscription at the end of the trial period, then you authorize us to charge your payment method. If you do not have a billing account, then the applicable subscription will expire at the end of your trial period. If, however, you are participating in any Xbox Live Gold Membership trial period on an Xbox 360 console, your subscription will continue but will downgrade to a free Xbox Live Silver Membership at the end of your Gold membership trial period, regardless of whether you have a Billing Account. In this case, to maintain your Gold membership level, you must either set your Gold membership to automatically renew with a charge to your payment method, or you must enter a new prepaid card for the Service.

**e. Prices and Price Increases.** Prices for the Service exclude all taxes and telecommunication charges, unless expressly stated otherwise. You are responsible for any taxes that you are obligated to pay or that we may collect from you. You are responsible for all other charges (for example, telecommunications charges). Currency exchange settlements are based on your agreement with your payment method provider. We may change the price of the Service from time to time upon notice to you. In addition, the price we set for certain features or functions in the Service may vary depending on whether the features or functions are accessed from Xbox LIVE or from Games for Windows LIVE, and we reserve the right to

make various features or functions, in our sole discretion, available with or without charge from Xbox LIVE, Games for Windows LIVE, or both.

- If there is a specific time length and price for your Service offer, then that price will remain in force for that time. After the offer period ends, your use of the Service will be charged at the then current price.
- If your Service is provided on a period basis (for example, monthly), with no specific time period, then we will notify you upon a price change.

If you do not agree to these changes, then you must cancel and stop using the Service before the changes take place. If you cancel your Service, then (unless the terms of your subscription state otherwise) your Service subscription will end immediately.

**f. Refund Policies.** Unless otherwise provided by law or in connection with any particular Service offer, all charges are non-refundable and the costs of any returns will be at your expense. There are, however, certain circumstances under which you may be entitled to a refund for certain Services. Additional information about refunds is available

at <http://support.xbox.com/support/en/us/xbox360/xboxlive/myaccount/xboxliveaccountfaq/intro-accountfaq.aspx>.

**g. Billing Statement; Errors.** Charges on your Billing Account will be summarized for you via online statement or via e-mail receipt sent to the e-mail address you provided at initial Service sign-up. You agree that such online statement or e-mail receipts are the only statement of your Billing Account that we need to provide to you. **IT IS YOUR RESPONSIBILITY TO PRINT OR SAVE A COPY OF EACH ONLINE STATEMENT OR EMAIL RECEIPT AND TO RETAIN COPIES FOR YOUR RECORDS.** If you sign up to the Service via an Xbox 360 console or personal computer, or modify your Service from an original Xbox console to an Xbox 360 console, then we may provide you with an online billing statement. Go to <https://billing.microsoft.com> to view, print, or request a paper copy of this statement. If you request a paper copy of the online billing statement, we may charge you a retrieval fee. To request a paper copy of an e-mail receipt, call Xbox Customer Support. We will only provide paper copies for the prior 120 days. If we make an error on your bill, we will correct it promptly after you tell us and we investigate the charge. You must tell us within 120 days after an error first appears on your bill. **You release us from all liability and claims of loss resulting from any error that you do not report to us within 120 days after the error first appears on your email receipt or online statement.** If you do not tell us within this time, we will not be required to correct the error. We can, but are not obligated to, correct billing errors at any time.

**h. Canceling the Service.** You may cancel the Service at any time, with or without cause. Go to <http://www.xbox.com/en-US/support> to obtain information on cancelling your Service. Certain Service offers may require cancellation charges, and you will pay all cancellation charges as specified in the materials describing the offer. Cancellation of the Service by you will not alter your obligation to pay all charges made to your billing account.



**i. Late Payments.** Except to the extent prohibited by law, we may assess a late charge if you do not pay on time. You must pay these late charges when we bill you for them. The late charge will be the lesser of 1% of the unpaid amount each month or the maximum rate that is permitted by law. We may use a third party to collect past due amounts. You must pay all reasonable costs we incur to collect any past due amounts. These costs include reasonable attorneys' fees and other legal fees and costs. We may suspend or cancel your Service if you fail to pay any amounts due on time.

**j. Internet Access Service.** You are responsible for paying the fees charged by your internet access provider. Those fees are in addition to the fees you pay us for the Service.

## **9. Payments to You.**

Your right to any payment due you under a Service is conditioned upon you promptly providing us with all information we require to properly make the payment (for example, bank account information for receiving the payment). We will use reasonable efforts to tell you what information we require in advance of your use of the applicable Service. Even if we do not tell you in advance, you must provide us the information we request before your right to receive the payment accrues. You are responsible for the accuracy of the information you provide and any taxes you may incur as a result of receiving a payment. You must also comply with any other conditions we place on your right to any payment. If you receive a payment that was not due to you, we may reverse or seek return of the payment, and you agree to cooperate with us in our efforts to do this.

## **10. Your Materials.**

You may be able to submit materials for use in connection with the Service. The Service includes publicly accessible areas ("public areas of the Service") and areas to which you can control access by others ("shared and private areas of the service"). You understand that Microsoft does not control or endorse the content that you and others post or provide on the Service. Except for content that we license to you, we do not claim ownership of the materials you post or provide on the Service. However, with respect to content you post or provide, you grant to those members of the public to whom you have granted access (for content posted on shared and private areas of the service) or to the public (for content posted on public areas of the service), and, in either case, to us, free, unlimited, worldwide, nonexclusive, perpetual, and irrevocable permission to:

- use, modify, copy, distribute, and display the content in connection with the service and other Microsoft products and services;
- publish your name, Gamertag, or other information you supply in connection with the content;  
and
- grant these rights to others.

If the submission is a photograph or other digital image, you also expressly waive any and all rights of privacy and publicity with respect to the image. You understand that we may need to make copies, change the format, transcode, or otherwise process content posted on the Service, including on shared and private areas of the Service, to:

- store and retrieve the content;
- make the content available to you and those members of the public to whom you have granted access;
- conform to connecting networks' technical requirements; or
- conform to the limitations and terms of the Service.

This section only applies to legally permissible content and only to the extent that use and publishing of legally permissible content does not violate the law. You understand that sharing content that violates others' copyrights, privacy, publicity, or other intellectual property rights breaches this contract. You represent and warrant that you have all the rights necessary for you to grant the rights in this Section 10 and that the use and publication of the content does not violate any law. We will not pay you for your content. We may refuse to publish your content, and we may remove your content from the Service at any time.

#### **11. Privacy.**

In order to operate and provide the Service, we collect certain information about you. We use and protect that information as described in the Microsoft Online Privacy Notice (<http://go.microsoft.com/fwlink/?LinkId=81184>, and its successors). In particular, we may access or disclose information about you, including the content of your communications, in order to: (a) comply with the law or respond to lawful requests or legal process; (b) protect the rights or property of Microsoft or our customers, including the enforcement of our agreements or policies governing your use of the Service; or (c) act on a good faith belief that such access or disclosure is necessary to protect the personal safety of Microsoft employees, customers, or the public.

We may use technology or other means to protect the Service, protect our customers, or stop you from breaching this contract. These means may include, for example, filtering to stop spam or increase security. These means may hinder or break your use of the Service.

To provide you the Service, we may collect certain information about Service performance, your machine, and your Service use. We may automatically upload this information from your machine. Such data may include console hardware and operating performance data, and network performance and service quality data. Any software or hardware errors, which may occur while you are connected to Xbox Live or offline, may be uploaded and reported. All such data may be stored with the console's unique identifier, and may be associated with other personally identifiable information. You may read about this data collection in more detail in the Microsoft Online Privacy Notice at <http://go.microsoft.com/fwlink/?LinkId=81184>.

Additionally, to evaluate and enable the features and functions of the Service, such as leaderboards, live-hosted gameplay, achievements, tournaments, and gamer profile sharing, you grant Microsoft and each of our affiliates, resellers, distributors, service providers, partners, and/or suppliers (each, a "Microsoft party"), permission to use, track, store, copy, distribute, broadcast, transmit, publicly display and perform, and reproduce your game scores, your game play sessions, your presence on the Service, the time that you spend on or within particular portions of the Service, portions of the Service that are

displayed on your monitor or screen and the duration of that display, rankings, statistics, gamer profiles, avatars, content that you may submit, and other usage information with or without attribution to you, your gamertag, or avatar and without notice or compensation to you of any kind. To avoid any confusion, we have the right to make information pertaining to your use of, and gameplay on, Xbox LIVE available through Games for Windows LIVE, and vice versa .

You should not expect any level of privacy concerning your use of the live communication features (for example, voice chat, video and communications in live-hosted gameplay sessions) offered through the Service. These communications may be monitored; however, we cannot monitor the entire Service and make no attempt to do so. You understand that these communications can be recorded and used by others, and communications in live-hosted gameplay sessions may be broadcast to others. Some games may utilize game managers and hosts. Game managers and hosts are not authorized Microsoft spokespersons, and their views do not necessarily reflect those of Microsoft. We do not routinely monitor your use of the communication features of the Service. However, to the maximum extent permitted by law, we may monitor your communications and may disclose information about you as set forth in this Section 11.

## **12. Intellectual Property.**

If you receive from us software or content (e.g., text, images, video, graphics, music, sound, games) associated with the Service (for purposes of this Section 12, we refer to all of these, as applicable, as "software"), your use of that software is under the terms of the license (including any statement of specific authorized uses or restrictions, such as the Special Video Content described in Section 13 below) presented to you for acceptance with that software. If there is no license presented to you, or unless otherwise stated in this contract, then we grant you a limited, personal, non-exclusive, revocable license to use the software only for and during the authorized use of this Service and/or the game or other product to which the software relates. You may not copy, download, modify or create derivative works, publish, transmit, sell or attempt to sell or transfer, or otherwise use or exploit any software unless we or our suppliers have expressly allowed you to do so.

Copyright and other intellectual property laws and treaties protect the software and all other aspects of the Service. We, or our suppliers, own the title, copyright, and other intellectual property rights in the software and Service, and the software and Service are solely licensed and not sold. We and our suppliers reserve all other rights to the software and Service that are not expressly granted in this contract. You do not have ownership rights to any software made available or accessible on or in relation to the Service, or any other aspect of the Service (except you may own your own submissions), regardless of how the software and Service are used, accessed, downloaded, or otherwise made available to you.

We may automatically check your version of the software. We may automatically download upgrades to the software to your computer or console to update, enhance, and further develop the Service.

Unless we notify you otherwise, your license to use the software will end on the date your Service ends, and you must promptly uninstall and delete the software. We may disable the software after the date the Service terminates.

You will not disassemble, decompile, or reverse engineer any software included in the Service, except and only to the extent that the law expressly permits this activity.

The software is subject to United States export laws and regulations. You must comply with all domestic and international export laws and regulations that apply to the software. These laws include restrictions on destinations, end users, and end use. For additional information, see [www.microsoft.com/exporting](http://www.microsoft.com/exporting).

If you use the software to access content that has been protected with Microsoft Digital Rights Management ("DRM"), to let you play the content, the software may automatically request media usage rights from a rights server on the Internet and download and install available DRM updates. For more information, see [www.microsoft.com/Silverlight/resources/Privacy.aspx?v=2.0.30226](http://www.microsoft.com/Silverlight/resources/Privacy.aspx?v=2.0.30226) and its successor pages.

### **13. Special Video Content.**

**a. Special Video Content – General Terms.** We may offer certain video content ("Special Video Content") on the Service on: (i) a limited time-based video-on-demand basis ("VOD Content"), or (ii) an unlimited time, retained license basis ("Retained Rights Content") for your use only via Xbox 360 consoles. The price points and formats for all Special Video Content are as set forth on the applicable areas of the Service from which the Special Video Content will be made available (the "Special Video Content Pages"). Each license of Special Video Content obtained through the Service is subject to the additional terms and conditions of this Section 1 3 . To the extent that the terms contained in the other sections of this contract conflict with the terms of this Section 1 3 , the terms of this Section 1 3 control with respect to any license you obtain for the Special Video Content. Special Video Content may not be available in all territories in which the Service is available. We reserve the right not to offer VOD Content or Retained Rights Content, or both, in any such territory. Except as expressly stated in this Section 1 3 , you may not reproduce, distribute, perform, display, create derivative works from or otherwise use the Special Video Content. You may not modify, reverse engineer, reverse compile, decompile or otherwise attempt to derive the source code of any element of the Special Video Content. You may not attempt to circumvent any copyright protection technology or alter or remove any copyright management information contained in any Special Video Content. All rights to the Special Video Content not expressly granted in this Section 1 3 are specifically reserved to Microsoft and/or its licensors. Any license you obtain for Special Video Content shall be subject to termination upon the cancellation of the Service in the manner provided in Section 2 0 below.

**b. VOD Content.** Effective on payment of the required fees, we grant you a personal, non-exclusive, non-transferable, limited right and license, subject to the terms of this contract, to view and privately display in your residence, for non-commercial purposes, solely via an Xbox 360 console, any VOD Content you obtain via the Service. The initial license to each item of VOD Content is limited in its term and duration to fourteen (14) days from its original date and time of download or twenty-four (24) hours from the start of its initial display and viewing, whichever occurs first, unless otherwise specified as being limited to a shorter term at the time of purchase (the "VOD Viewing Time"). Once a license to an item of VOD Content is obtained, a copy of such VOD Content will be saved to your Xbox 360 console for the VOD Viewing Time. Upon the expiration of the VOD Viewing Time, you will no longer be able to view the VOD

Content without obtaining an additional license (which we may make available in our discretion at such time). You may not copy or move the VOD Content from its originally stored location.

**c. Retained Rights Content.** Effective on payment of the required fees, we grant you, a personal, non-exclusive, non-transferable, limited right and license, subject to the terms of this contract, to view and privately display in your residence, for non-commercial purposes, solely on an Xbox 360 console, any Retained Rights Content you obtain via the Service only for and during your authorized use of the Service. Once a license to an item of Retained Rights Content is obtained, a copy of such Retained Rights Content will be saved to your Xbox 360 console. You may not copy or move the Retained Rights Content from its originally stored location, but you may download any previously obtained Retained Rights Content from the Service to another Xbox 360 console (a "Roaming Xbox 360 console"), for no additional cost, by logging into the Service, confirming your valid license for the Retained Rights Content, and following any further instructions we may provide for downloading to a Roaming Xbox 360 console. You are only permitted to download and playback such Retained Rights Content for as long as you are logged into the Service via such Roaming Xbox 360 console. You may not copy or move the Retained Rights Content from any Roaming Xbox 360 Console to which it has been downloaded.

#### **14. Microsoft Authentication Network.**

We may provide you with credentials on our authentication network to use with the Service. You are solely responsible for any dealings with third parties (including advertisers) who use our authentication network, including the delivery of and payment for products and services. This contract applies to you whenever you access or use the credentials you obtained with the Service. When you use our authentication network to gain access to any web site or service, the terms and conditions for that site or service, if different from this contract, may also apply to you in your use of that site or service. Please refer to the terms of use for each web site that you visit or service that you access. We may cancel or suspend your access to our authentication network for inactivity, which we define as failing to sign in to our authentication network for an extended period, as determined by us. If we cancel your credentials, your right to use our authentication network immediately ceases.

#### **15. Microsoft Points.**

If you are using the Service viaan Xbox 360 console or personal computer, you can participate in the Microsoft Points service. Microsoft Points is a service by which you can acquire Points and redeem those Points for certain online services and digital products. You can see how many Points you have by checking your Points balance at <https://billing.microsoft.com>. You can obtain selected services or digital products that we elect to offer in exchange for Points. You can do this by redeeming your Points as indicated in the particular messaging you see for those offers.

You can acquire Points in a variety of ways. For example, you can purchase Points, or certain services may give you Points for using the service or specific features of the service (also known as "promotion Points"). You can earn promotion Points only for actions you actually complete. You are responsible for any tax consequences that may result from your participation in the Points service.

When you obtain Points, you have obtained a limited license to a digital product. Points have no monetary value. You may not obtain any cash or money in exchange for Points, regardless of how you acquired those Points. Points are not your personal property. Your only recourse for using Points is to obtain the specific online services or digital products that we offer for Points redemption. We may further restrict your Points redemption offers based on your country of residence. We encourage you to redeem your Points. The existence of a particular offer available for Points redemption is not a commitment by us to maintain or continue to make the offer in the future. The scope, variety, and type of online services and digital products that you may obtain by redeeming Points can change at any time. We have no obligation to continue making offers available for Points redemption.

Promotion Points may expire at any time, as set forth in the messaging related to that promotion. We may cancel, suspend, or otherwise limit your access to your Points balance if we suspect fraudulent, abusive, or unlawful activity with regard to your Points balance. Once we delete Points from a balance, we will not reinstate them, except at our discretion. When we cancel, suspend, or otherwise limit access to your Points balance, your right to use your Points balance immediately ceases. We will use reasonable efforts to investigate Points balances that are subject to access limitations and to reach a final decision on the limitations promptly. In addition, we may limit your use of the Points service, including applying limits to: the number of Points you may have credited to your Points balance at one time, the number of Points you may redeem within a given time period (for example, one day), and the number of promotion Points you may obtain in a single event.

If we post Points to your balance for an activity that is subsequently voided, canceled, or involves a returned item, then we will remove those Points from your balance. You must ensure that we properly post your Points to your Points balance. If you believe that you have validly acquired Points that we have not posted to your Points balance, we will not consider posting these Points unless you contact us within 12 months after the date you claimed to have acquired those Points. We may require reasonable documentation to support your claim.

#### **16. Service Operation and Equipment.**

The Service may only be accessed with an original Xbox, an Xbox 360 console, a personal computer, or other device authorized by us, or by logging into your account via [Xbox.com](http://Xbox.com). You agree that you are using only authorized software and hardware to access the Service, that your software and hardware have not been modified in any unauthorized way (e.g., through unauthorized repairs, unauthorized upgrades, or unauthorized downloads), and that we have the right to send data, applications or other content to any software or hardware that you are using to access the Service for the express purpose of detecting an unauthorized modification. Any attempt to disassemble, decompile, create derivative works of, reverse engineer, modify, further sublicense, distribute, or use for other purposes the Service, any game, application, or other content available or accessible through the Service, or any hardware or software associated with the Service or with an original Xbox or Xbox 360 console is strictly prohibited and may result in cancellation of your account and/or your ability to access the Service, and the pursuit of other legal remedies by Microsoft. Microsoft may take any legal action it deems appropriate against users who

violate Microsoft's systems or network security, this contract or any additional terms incorporated or referenced in this contract, and such users may also incur criminal or civil liability.

Microsoft reserves complete and sole discretion with respect to the operation of the Service. Microsoft may, among other things: (a) restrict or limit access to the Service; (b) retrieve information from the original Xbox, Xbox 360 console, personal computer, and any connected peripheral device used to log onto the Service as necessary to operate and protect the security of the Service, and to enforce this contract; and (c) upgrade, modify, withdraw, suspend, or discontinue any functionality or feature of the Service, any game or other content available or accessible through the Service, or any hardware or software associated with the Service or with an original Xbox or Xbox 360 console, or personal computer, from time to time without notice, which may involve the automatic download of related software directly to your original Xbox, Xbox 360 console, or personal computer, including software that prevents you from accessing the Service, playing pirated games, or using unauthorized hardware peripheral devices.

#### **17. How We May Change the Contract.**

If we change this contract, then we will require you to agree to a new contract that includes such changes if you want to continue to receive the Service. If you do not want to agree to the new contract, you may cancel the Service. Your continued use of the Service will be deemed acceptance of and agreement to the new contract.

#### **18. WE MAKE NO WARRANTY.**

**We provide the Service "as-is," "with all faults," and "as available." We do not guarantee the accuracy or timeliness of information available from the Service. The Microsoft parties give no express warranties, guarantees, or conditions under or in relation to the Service, this contract or its subject matter. You may have additional consumer rights under your local laws that this contract cannot change. We exclude any implied warranties, including those of merchantability, fitness for a particular purpose, workmanlike effort, and non-infringement.**

#### **19. LIABILITY LIMITATION.**

**You can recover from the Microsoft parties for all claims only direct damages up to a total, aggregate amount equal to your Service fee for one month. You cannot recover any other damages, including consequential, lost profits, special, indirect, incidental, or punitive damages.**

This limitation applies to anything related to:

- the Service;
- third party content (including code), third party programs, or third party conduct;
- viruses or other disabling features that affect your access to or use of the Service;
- incompatibility between the Service and other services, software, and hardware;
- delays or failures you may have in initiating, conducting, or completing any transmissions or transactions in connection with the Service in an accurate or timely manner; and

- claims for breach of contract; breach of warranty, guarantee, or condition; strict liability; negligence; or other tort.

It also applies even if:

- this remedy does not fully compensate you for any losses, or fails of its essential purpose; or
- Microsoft knew or should have known about the possibility of damages.

**Some states do not allow the exclusion or limitation of incidental ,consequential , or certain otherdamages, so the above limitation or exclusion may not apply to you. They also may not apply to you because your province or country may not allow the exclusion or limitation of incidental, consequential, or other damages.**

#### **20. Changes to the Service; If We Cancel the Service.**

**We may change the Service or delete or discontinue features, games, or other content at any time and for any reason (or no reason).** We may cancel or suspend your Service at any time. Our cancellation or suspension may be without cause and without notice. Upon Service cancellation, your right to use the Service stops right away. **Once the Service is cancelled or suspended, any data you have stored on the Service may not be retrieved later.** Our cancellation of the Service will not alter your obligation to pay all charges made to your billing account. If we cancel the Service in its entirety without cause, then we will refund to you on a pro-rata basis the amount of payment that you have made corresponding to the portion of your Service remaining at the time ofcancellation.

#### **21. Interpreting the Contract.**

**All parts of this contract apply to the maximum extent permitted by law.** A court may hold that we cannot enforce a part of this contract as written. If this happens, then we will replace that part with terms that most closely match the intent of the part that we cannot enforce. The rest of this contract will not change. This is the entire contract between you and us regarding your use of the Service. It supersedes any prior contract or statements regarding your use of the Service. If you have confidentiality obligations related to the Service, those obligations remain in force even after termination or cancellation of the Service (for example, you may have been a beta tester). The section titles in the contract do not limit the other terms of this contract.

#### **22. Assignment.**

We may assign this contract, in whole or in part, at any time with or without notice to you. You may not assign this contract, or any part of it, to any other person. Any attempt by you to do so is void. You may not transfer to anyone else, either temporarily or permanently, any rights to use the Service or any part of the Service.

#### **23. No Third Party Beneficiaries ; Microsoft Affiliates.**

This contract is solely for your and our benefit. It is not for the benefit of any other person, except for permitted successors and assigns under this contract. Certain sections of this contract are for the benefit of Microsoft'saffiliates. As a result, Microsoft and Microsoft's affiliates are entitled to enforce thiscontract.



Except for Microsoft's affiliates, this contract does not create any enforceable rights by anyone other than you and Microsoft.

**24. Claim Must Be Filed Within One Year.**

**Any claim related to this contract or the Service may not be brought unless brought within one year after the claim arises. If it is not filed in time, then that claim is permanently barred. This applies to you and your successors. It also applies to us and our successors and assigns.**

**25. Your Notices to Us.**

You may notify us as stated in the customer support or "help" area (if any) for the Service. If there is no such customer support or "help" area, you may notify us by postal mail (we do not accept email notices). Send postal mail notices as follows:

**Microsoft Corporation**

**Attention: Xbox Live Customer Service**

**One Microsoft Way**

**Redmond, Washington 98052-6399**

**USA**

**26. Notices We Send You; Consent Regarding Electronic Information.**

This contract is in electronic form. We have promised to send you certain information in connection with the Service and have the right to send you certain additional information. There may be other information regarding the Service that the law requires us to send you. We may send you this (and any other) information in electronic form. You have the right to withdraw this consent, but if you do, we may cancel your Service. **We may provide required information to you:**

- **by e-mail at the e-mail address you specified when you signed up for your Service;**
- **by access to a Microsoft web site that will be designated in an e-mail notice sent to you at the time the information is available; or**
- **by access to a Microsoft web site that will be generally designated in advance for this purpose.**

**Notices provided to you via e-mail will be deemed given and received on the transmission date of the e-mail.** As long as you access and use the Service, you agree that you will have, or have access to, the necessary software and hardware to receive such notices. If you do not consent to receive any notices electronically, you must stop using the Service.

**27. Choice of Law and Location for Resolving Disputes.**

If this contract is with Microsoft Corporation, then claims for breach of this contract will be subject to the laws of the State of Washington, without reference to conflict of laws principles. If this contract is with a Microsoft affiliate, claims for breach of this contract will be subject to the laws of the place of incorporation

for such Microsoft affiliate, without reference to conflict of laws principles. All other claims, including claims regarding consumer protection laws, unfair competition laws, and in tort, will be subject to the laws of your state of residence in the United States, or, if you reside outside the United States, under the laws of the country to which we direct your Service. If this contract is with Microsoft Corporation, you consent to the exclusive jurisdiction and venue of state or federal courts in King County, Washington, USA for all disputes relating to this contract or the Service. If this contract is with a Microsoft affiliate, you consent to the exclusive jurisdiction and venue of the courts located in the place of incorporation for such Microsoft affiliate for all disputes relating to this contract or the Service. You cannot revoke this consent.

## **28. NOTICES.**

### **Copyright and Trademark Notices**

All contents of the Service are Copyright © 2008 Microsoft Corporation and/or its suppliers, One Microsoft Way, Redmond, Washington 98052-6399 U.S.A. All rights reserved. Copyright and other intellectual property laws and treaties protect any software or content provided as part of the Service. Microsoft, Xbox, Xbox 360, Xbox Live, the Xbox logos and/or other Microsoft products and services referenced herein may also be either trademarks or registered trademarks of Microsoft in the United States and/or other countries. The names of actual companies and products mentioned in this contract may be the trademarks of their respective owners. Any rights not expressly granted in this contract are reserved. Certain software used in certain Microsoft web site servers may be based in part on the work of the Independent JPEG Group. Copyright © 1991-1996 Thomas G. Lane. All rights reserved. "gnuplot" software which may be used in certain Microsoft web site servers is copyright © 1986-1993 Thomas Williams, Colin Kelley. All rights reserved.

### **Notices and Procedure for Making Claims of Copyright Infringement**

Under Title 17, United States Code, Section 512(c)(2), notifications of claimed copyright infringement should be sent to service provider's designated agent. **ALL INQUIRIES NOT RELEVANT TO THE FOLLOWING PROCEDURE WILL RECEIVE NO RESPONSE. See Notice and Procedure for Making Claims of Copyright Infringement at [www.microsoft.com/info/cpyrtInfrg.htm](http://www.microsoft.com/info/cpyrtInfrg.htm).**

### **Respect Copyright**

Please respect the rights of artists and creators. Content such as music, photos, and video may be protected by copyright. People appearing in content may have a right to control use of their image. You may not share other people's content unless you own the rights or have permission from the owner.

### **Support**

Customer support is not offered for the Service, unless provided otherwise in this contract or the materials we publish in connection with a particular component of the Service specify that it includes customer support.