

FLUX POINT STUDIOS TERMS OF SERVICE

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PLEASE READ THESE TERMS OF SERVICE CAREFULLY AS THEY CONTAIN IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES AND OBLIGATIONS. IF YOU RESIDE IN THE UNITED STATES, PLEASE NOTE: SECTION 21 CONTAINS AN ARBITRATION CLAUSE AND CLASS ACTION WAIVER WHICH AFFECTS HOW DISPUTES WITH US ARE RESOLVED. BY ACCEPTING THESE TERMS OF SERVICE, YOU AGREE TO BE BOUND BY THIS ARBITRATION PROVISION. PLEASE READ IT CAREFULLY. IF YOU DO NOT WISH TO BE SUBJECT TO ARBITRATION, YOU MAY OPT OUT OF THE ARBITRATION PROVISION BY FOLLOWING THE INSTRUCTIONS.

1. Acceptance of Terms

Welcome to FPS! The web and web application at fluxpointstudios.com and mobile applications are owned and operated by Flux Point Studios, Inc., a Delaware corporation (“FPS”). FPS operates internet- and blockchain-integrated games, applications, or smart contracts, including all related software, tools, features or data (collectively, the “Services”). The Services may also allow Users to purchase digital assets, such as tokens, NFTs, game or player attributes, characteristics, or features, or similar items, whether or not transferable or tradeable, and the li (“Digital Assets”) which can be visualized via the Services and other third-party services.

By using any Service, you agree to comply with and be legally bound by the terms, conditions, and restrictions of these Terms of Service (“Terms”). These Terms constitute a binding legal agreement between you and FPS. In these Terms, “you”, “your” and “User” refer to users of the Services. If you access the Services or accept these Terms on behalf of a company or other legal entity, you represent and warrant that you have the authority to bind that legal entity and, in such event, “you” and “your” will refer to that legal entity. “We”, “us”, or “our” refer to FPS. Unless the context requires otherwise, in these Terms words in one gender include all genders and words in the singular include the plural and vice-versa.

Please read carefully these Terms and our Privacy Policy, which may be found at www.fluxpointstudios.com/privacy, and which is incorporated by reference into these Terms.

YOU ACKNOWLEDGE AND AGREE THAT, BY ACCESSING OR USING THE SERVICES, YOU ARE INDICATING THAT YOU HAVE READ, AND THAT YOU UNDERSTAND AND AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS, THEN YOU HAVE NO RIGHT TO ACCESS OR USE THE SERVICES.

2. Modification

FPS reserves the right, at its sole discretion, to modify or discontinue, temporarily or permanently, the Services or to modify these Terms at any time and without prior notice. If we modify these Terms, we will post notice of the modification and its effective date on our website or via our application.

Modifications to these Terms will automatically take effect upon posting; provided, however, that material changes to the Terms will be effective as to an existing User thirty (30) days after posting. By continuing to access or use the Services after we have posted a modification, you are indicating that you agree to be bound by the modified Terms. If the modified Terms are not acceptable to you, your only recourse is to stop accessing or using the Services.

3. Services

The Services include features through which Users can view, offer to purchase and purchase Digital Assets or other Items that can be used and deployed in one or more games made available through the Services. In order to access certain Services, including to purchase any Digital Assets, a user must connect a compatible digital wallet to the Services. By minting a Digital Asset as an NFT, you agree to comply with any terms, including licenses or payment rights that are embedded within or otherwise included with any such Digital Asset. We do not guarantee that Digital Assets will be transferable to or have any utility in connection within any other platform.

Transacting in Digital Assets. All transactions regarding Digital Assets are managed and confirmed on the blockchain. You understand that your blockchain public address may be made publicly visible whenever you engage in a transaction.

Game Rules. You may be able to use the Services to take certain actions in connection with one or more Digital Assets that results in a swap, trade, or other exchange of that Digital Asset for a modified, new, or otherwise different Digital Asset (each, a "**Play**"). A Digital Asset that you receive in connection with or as a result of a Play may have different traits than the Digital Asset that you used in such Play. We do not represent that any Digital Asset that you receive will have similar or equivalent attributes or value to the Digital Asset that you originally used or owned.

Pricing and Payment. Pricing and payment terms, including specific details relating to the offering of any Items, will be set forth at the point of sale. Acceptable forms of payment for these Items may be changed at any time in our sole discretion, and we reserve the right to decline orders and refuse payment at any time and for any reason. We may use a third-party payment processor related to any purchase; you understand and agree that by using any third party service that you have read, understood and agree to any and all of the third-party's terms and conditions. ALL CHARGES INCURRED IN CONNECTION WITH ANY PURCHASE AND ALL FUNDS PLACED IN YOUR ACCOUNT BALANCE, AS APPLICABLE, ARE PAYABLE IN ADVANCE AND ARE NOT REFUNDABLE IN WHOLE OR IN PART, REGARDLESS OF THE PAYMENT METHOD, EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS OR AS REQUIRED BY APPLICABLE LAW.

We may, in our sole discretion, limit the listing and sale of certain Items only, and the availability of such any Digital Asset or other item is not guaranteed.

4. Ownership; License

The Services and all content and other materials contained therein, including, without limitation, all game characters (including but not limited to character names, catch phrases, and character likeness), dialog, story lines and lore, designs (including but not limited to structural or landscape designs), text, graphics (whether still or moving), animations, pictures, information, data, software, sound files (including but not limited to musical compositions and recordings), audiovisual effects, other files, and the selection and arrangement thereof (collectively, the "**Content**"), are the proprietary property of FPS or our affiliates, licensors or Users, as applicable. The FPS logo and any FPS product, service name, logo, slogan, trademark and service mark contained therein (the "**Marks**") are owned, controlled by us or licensed to us, and are protected by copyright and trademark laws and various other intellectual property rights and unfair competition laws. Except as expressly provided in these Terms [or in the sale](#)

[terms of any Digital Asset](#), no part of the Services and no Content or Marks may be copied, reproduced, aggregated, republished, uploaded, posted, publicly displayed, encoded, translated, transmitted, distributed, sold, licensed, or otherwise exploited for any commercial purpose whatsoever, without our express prior written permission.

Subject to your compliance with these Terms, FPS grants you a limited, non-exclusive, revocable, non-transferable right to access and view any Services made available to you solely for your personal use or personal commercial use as expressly provided in these Terms. You have no right to sublicense the rights granted in this section. No licenses or rights are granted to you by implication or otherwise under any intellectual property rights owned or controlled by FPS or its licensors, except for the licenses and rights expressly granted in these Terms. No license or rights are granted to use data mining, robots, spiders or similar data gathering and extraction tools without our prior written permission; provided, however, that a limited exception from the foregoing exclusion is provided to general purpose internet search engines and non-commercial public archives that use tools to gather information for the sole purpose of displaying hyperlinks to the Services, provided that they each do so from a stable IP address or range of IP addresses using an easily identifiable agent and comply with our robots.txt file. Use of the Services by a competitor company, a non-consumer third party, or for any purpose not expressly intended by FPS is prohibited.

5. Eligibility; Digital Signature

The Services are intended solely for persons who are (i) 18 or older, or (ii) 13 and older if either (a) an emancipated minor, or (b) he/she possess legal parental or guardian consent. By accessing or using the Services you represent and warrant that you are (a) either 18 or older or have the necessary parent or guardian consent, and (b) not legally prohibited from receiving or using the Services under the laws of the country in which you access or use the Service.

By clicking to accept these Terms, you are deemed to have executed these Terms electronically, effective on the date you register your Account, pursuant to the U.S. Electronic Signatures in Global and National Commerce Act of 2000 (the E-Sign Act) (15 U.S.C. § 7001, et seq.). Your use of the Services constitutes an acknowledgement that you are able to electronically receive, download, and print these Terms, and any amendments, and that you accept that your electronic signature is your valid and binding signature as to any document between you and FPS or any associated entity.

6. Registration

To use the Services, a User must register an account (a “User Account”).

Direct Registration: You may create a User Account by following the prompts in the application. You agree to provide accurate, current and complete information and to update such information to keep it accurate, current and complete. You agree that you will safeguard your password and any blockchain wallet, and that you are solely responsible for any activities or actions under your User Account whether or not you have authorized such activities or actions. You will immediately notify us of any unauthorized use of your User Account. You acknowledge and agree that you are solely responsible for your User Account and all User Account information. You represent and warrant that any User Account information will comply with all applicable laws, tax requirements, licenses, rules and regulations that may apply to you.

Registration via Third Party Service: You may also create a User Account via certain third party services (such as Google, Apple, or Meta) by following the prompts on the Site. You represent that you are entitled to disclose your third-party account login information to us and to grant us access to your account (including, but not limited to, for use for the purposes described herein), without breach by you of any of the terms and conditions that govern your use of the applicable account and without obligating us to pay any fees or making us subject to any usage limitations imposed by such TPS providers.

7. Payments

All pricing and payment terms for Digital Assets are as indicated at point of sale or otherwise on the Services, and any payment obligations you incur are binding at the time of purchase. You may not substitute any other currency, whether cryptocurrency or fiat currency, for the currency in which you have contracted to pay at the time of purchase. For clarity, no fluctuation in the value of any currency, whether cryptocurrency or otherwise, shall impact or excuse your obligations with respect to any purchase. Whether a particular cryptocurrency is accepted as a payment method is subject to change at any time in our sole discretion.

When you purchase a Digital Asset, you agree that you have read, understand, and agree to be bound by any Digital Asset terms applicable to the sale of that Digital Asset. You further agree that you will bind any subsequent purchaser of the Digital Asset or Item to such Digital Asset and Item Terms.

Payment processing and related services (e.g., digital wallet management, card acceptance, merchant settlement) for the Services will be performed by third-party service providers, including third-party dApp or wallet providers (each, a "Third-Party Service Provider" or "TPS"). Your use of the Services and the payment processing and related services provided by a TPS is subject to your agreement(s) with such TPS for such Services and payment processing and related services, as may be modified by the TPS from time to time (collectively, "TPS Agreement"). As a condition of using the TPS's payment processing and related services, you must provide accurate and complete information, and you authorize us to share this information with the TPS and to charge your payment method for all amounts that may become due under this Agreement. Your use of the TPS's payment processing and related services is conditioned upon your compliance with the TPS Agreement, and if the TPS Agreement is terminated by the TPS, you may not be able to use the Services, or you may have your use of the Services suspended or terminated. We may change or add other payment processing services at any time upon notice to you, which may be subject to additional terms or conditions. We will have no control over the TPS's payment processing and related services and cannot reverse or refund any transactions.

Each Blockchain may require the payment of a transaction fee (a "TX Fee") for every transaction that occurs on such Blockchain, such TX Fee to be based on the structure and composition of such Blockchain. This means that you may need to pay a TX Fee for each transaction that occurs via the Services. TX Fees may vary based on market conditions on the applicable Blockchain, and we shall have no liability to you in connection with the same.

If we determine that we may have a legal obligation to collect any Sales Tax (including, without limitation, any taxes that may become payable as the result of your purchase or sale of any of your Digital Assets) from you in connection with these Terms, we will collect such Sales Tax. If any services or products, or payments for any services or products, under this Agreement are subject to any Sales Tax in any jurisdiction and you have not remitted the applicable Sales Tax to us, you will be responsible for the

payment of such Sales Tax and any related penalties or interest to the relevant tax authority, and you will indemnify us for any liability or expense we may incur in connection with such Sales Taxes. For purposes of this section, "Sales Tax" means any sales or use tax and any other tax measured by sales proceeds that is the functional equivalent of a sales tax where the applicable taxing jurisdiction does not otherwise impose a sales or use tax.

8. User Affirmations, Conduct and Use

By using the Service, you represent, warrant and agree to the following:

- You agree to comply with any and all laws, rules, regulations, and tax obligations that may apply to your use of the Services.
- Nothing that you upload, publish, represent, warrant or transmit using the Services, will infringe, misappropriate or violate a third party's patent, copyright, trademark, trade secret, moral rights or other proprietary or intellectual property rights, or rights of publicity or privacy, or be harassing, threatening, or profane.
- You will not use manual or automated software, devices, scripts, robots, other means or processes to access, "scrape", "crawl" or "spider" any web pages or other services contained in the Services.
- You will not use the Services for any commercial or other purposes that are not expressly permitted by these Terms.
- You will not copy, store or otherwise access any information contained on the Services for purposes not expressly permitted by these Terms.
- You will not interfere with or damage the Services, including, without limitation, through the use of viruses, cancel bots, Trojan horses, harmful code, flood pings, denial-of-service attacks, packet or IP spoofing, forged routing or electronic mail address information or similar methods or technology;
- All information you submit will be complete and accurate, and you will not impersonate any person or entity, or falsify or otherwise misrepresent yourself or your affiliation with any person or entity.
- You will not use, display, mirror or frame the Services, FPS 's name, any FPS trademark, logo or other proprietary information, or the layout and design of any page or form contained on a page, without FPS 's express written consent.
- You will not access, tamper with, or use non-public areas of any website or application, FPS 's computer systems, or the technical delivery systems of the Services or any third-party provider system.
- You will not attempt to probe, scan, or test the vulnerability of any FPS system or network or breach any security or authentication measures.
- You will not attempt to avoid, bypass, remove, deactivate, impair, descramble, or otherwise circumvent any technological measure implemented by FPS or any of FPS 's providers or any other third party to protect the Services.
- You will not advocate, encourage, or assist any third party in doing any of the foregoing.

FPS may investigate and prosecute violations of any of the above to the fullest extent of the law and share all information related to any violation with any law enforcement or governmental agency.

You acknowledge that FPS has no obligation to monitor your access to or use of the Services, but has the right to do so for the purpose of operating the Services, to ensure your compliance with these Terms, or to comply with applicable law or the order or requirement of a court, administrative agency or other governmental body.

9. Other Users

You are solely responsible for your interactions with other Users and any other parties with whom you interact; provided, however, that we reserve the right, but have no obligation, to intercede in any disputes between users. The Services may contain User content provided by other users; we are not responsible for and do not control User content. We have no obligation to review or monitor, and do not approve, endorse or make any representations or warranties with respect to, User content, including without limitation any User content embodied by or otherwise made available through the Services. You use all User content and interact with other users at your own risk. You agree that we will not be responsible for any liability incurred as the result of your interactions with other Users. When interacting with other Users you should exercise caution and common sense to protect your personal safety and property, just as you would when interacting offline with other persons whom you don't know. WE, OUR SUBSIDIARIES, AFFILIATES, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS AND LICENSORS ARE NOT RESPONSIBLE FOR THE CONDUCT, WHETHER ONLINE OR OFFLINE, OF ANY USER OF THE SERVICE. NONE OF THE FOREGOING WILL BE LIABLE FOR ANY CLAIM, INJURY OR DAMAGE ARISING IN CONNECTION WITH YOUR INTERACTIONS WITH OTHER USERS OF THE SERVICE OR YOUR USE OF OR YOUR USE OF OR INABILITY TO USE ANY DIGITAL ASSET PURCHASED.

10. Links

The Services may contain links to third-party websites or resources. You acknowledge and agree that FPS is not responsible or liable for: (i) the availability or accuracy of such websites or resources; or (ii) the content, products, or services on or available from such websites or resources. Links to such websites or resources do not imply any endorsement by FPS. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites, resources, content, products or services on or available from such websites or resources.

11. Advertisements

FPS may include advertisements on its own behalf or paid advertisements on behalf of interested companies and/or individuals on or through the Services. By clicking on the advertisements, you may be shifted to a website of the advertiser or receive other messages, information, or offers from the advertiser. You acknowledge and agree that FPS is not liable for the privacy practices of advertisers or the content of their Websites, information, messages or offers. Users are wholly liable for all communications with advertisers and for all transactions subsequently executed.

12. Proprietary Rights Notices

All trademarks, service marks, logos, trade names and any other proprietary designations of FPS used herein are trademarks or registered trademarks of FPS. Any other trademarks, service marks, logos, trade names and any other proprietary designations are the trademarks or registered trademarks of their respective parties.

13. Termination

We may, in our discretion and without liability to you, with or without cause, with or without prior notice, and at any time: (a) terminate these Terms or your access to our Services, and (b) deactivate or cancel any User's account.

14. Disclaimers

IF YOU CHOOSE TO USE THE SERVICES, YOU DO SO AT YOUR SOLE RISK. THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. WITHOUT LIMITING THE FOREGOING, FPS EXPLICITLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. FPS MAKES NO REPRESENTATION OR WARRANTY THAT: (i) THE OPERATION OF THE SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED; (ii) ANY DEFECTS WILL BE CORRECTED; (iii) THE SERVICES, COMMUNICATIONS FROM US, OR ANY SERVER THAT MAKES THE SERVICES AVAILABLE TO YOU ARE FREE OF VIRUSES OR OTHER HARMFUL CODE OR TOOLS; or (iv) THE CONTENT ON THE SERVICES WILL BE ACCURATE AS OF ANY PARTICULAR DATE. If you are in a jurisdiction that does not allow a disclaimer or implied warranties, the above disclaimer or a portion of it may not apply to you.

15. Limitation of Liability

YOU ACKNOWLEDGE AND AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE ENTIRE RISK ARISING OUT OF YOUR ACCESS TO AND USE OF THE SERVICES REMAINS WITH YOU. NEITHER FPS NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING OR DELIVERING THE SERVICES WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR LOSS OF GOODWILL, SERVICES INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES, OR FOR ANY DAMAGES FOR PERSONAL OR BODILY INJURY OR EMOTIONAL DISTRESS ARISING OUT OF OR IN CONNECTION WITH THESE TERMS, FROM THE USE OF OR INABILITY TO USE THE SERVICES, FROM ANY COMMUNICATIONS, INTERACTIONS OR MEETINGS AS A RESULT OF YOUR USE OF THE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT FPS HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

IN NO EVENT WILL FPS'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS AND YOUR USE OF THE SERVICES, INCLUDING, BUT NOT LIMITED TO, FROM A GOOD OFFERED FOR SALE, OR FROM THE USE OF OR INABILITY TO USE THE SERVICES AND IN CONNECTION WITH ANY INTERACTIONS WITH ANY MERCHANT, EXCEED ONE HUNDRED DOLLARS (\$100). THE LIMITATION OF DAMAGES SET FORTH ABOVE IS A FUNDAMENTAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN FPS AND YOU. Some jurisdictions do not allow the exclusion of limitation of liability for consequential or incidental damages, so the above limitation may not apply to you.

16. Indemnification

You agree to release, defend, indemnify, and hold FPS and its affiliates and subsidiaries, and their officers, directors, employees and agents, harmless from and against any claims, liabilities, damages, losses, and expenses, including, without limitation, reasonable legal fees, arising out of or in any way

connected with (a) your access to or use of the Services, or your violation of these Terms; (b) your violation of any third party right, including without limitation any copyright, property, or privacy right; or (c) any claim that your use of the Services caused damage to a third party. FPS shall have the right to control all defense and settlement activities.

17. Assignment

You may not assign or transfer these Terms, by operation of law or otherwise, without FPS's prior written consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null and of no effect. FPS may assign or transfer these Terms, at its sole discretion, without restriction. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors and permitted assigns.

18. Notices

Unless otherwise specified herein, any notices or other communications permitted or required hereunder, including those regarding modifications to these Terms, will be in writing and given by FPS by posting to the website or via the application. For notices or communications by FPS made by e-mail, if any, the date of receipt will be deemed the date on which such notice is transmitted.

19. Controlling Law and Jurisdiction

You agree that (i) the Services shall be deemed solely based in Utah, and (ii) the Services shall be deemed a passive website that does not give rise to personal jurisdiction over FPS, either specific or general, in jurisdictions other than Utah (for the avoidance of doubt, this provision does not apply to any policy of insurance you may purchase). These Terms shall be governed by the internal substantive laws of the State of Utah, without respect to its conflict of laws principles. You and we agree to submit to the personal jurisdiction of a state court located in Salt Lake City, Utah for any actions for which the parties retain the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents, or other intellectual property rights, as set forth in the Dispute Resolution Provision below.

YOU AND FPS AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SERVICES MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED AND WAIVED.

20. Severability

These Terms are intended to govern the agreement between FPS and you to the extent permitted by all applicable laws, ordinances, rules, and regulations. If any provision of these Terms or the application thereof to any person or circumstances shall, for any reason or to any extent, be invalid or unenforceable, the remainder of these Terms and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

21. Dispute Resolution Provision

You and FPS agree that any dispute, claim or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation or validity thereof, or to the use of the Services (collectively, “**Disputes**”) will be settled by binding arbitration; except that each party retains the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party’s copyrights, trademarks, trade secrets, patents, or other intellectual property rights.

You acknowledge and agree that you and FPS are each waiving the right to a trial by jury or to participate as a plaintiff or class member in any purported class action or representative proceeding. Further, unless both you and FPS otherwise agree in writing, the arbitrator may not consolidate more than one person’s claims, and may not otherwise preside over any form of any class or representative proceeding. If this specific paragraph is held unenforceable, then the entirety of this Dispute Resolution section will be deemed void. Except as provided in the preceding sentence, this Dispute Resolution section will survive any termination of these Terms.

Arbitration Rules and Governing Law. The arbitration will be administered by the American Arbitration Association (“AAA”) in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the “AAA Rules”) then in effect, except as modified by this “Dispute Resolution” section. (The AAA Rules are available at www.adr.org or by calling the AAA at 1-800-778-7879.) The Federal Arbitration Act will govern the interpretation and enforcement of this section.

Arbitration Process. A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. (The AAA provides an online Demand for Arbitration link at <https://www.adr.org>.) The arbitrator will be either a retired judge or an attorney licensed to practice law and will be selected by the parties from the AAA’s roster of consumer dispute arbitrators. If the parties are unable to agree upon an arbitrator within seven (7) days of delivery of the Demand for Arbitration, then the AAA will appoint the arbitrator in accordance with the AAA Rules.

Arbitration Location and Procedure. Unless you and FPS otherwise agree, the arbitration will be conducted in the county where you reside. If your claim does not exceed \$10,000, then the arbitration will be conducted solely on the basis of documents you and FPS submit to the arbitrator, unless you request a hearing or the arbitrator determines that a hearing is necessary. If your claim exceeds \$10,000, your right to a hearing will be determined by the AAA Rules. Subject to the AAA Rules, the arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration.

Arbitrator’s Decision. The arbitrator will render an award within the time frame specified in the AAA Rules. The arbitrator’s decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. The arbitrator’s award damages must be consistent with the terms of the “Limitation of Liability” section above as to the types and the amounts of damages for which a party may be held liable. The arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant’s individual claim. If you prevail in arbitration you will be entitled to an award of attorneys’ fees and expenses, to the extent provided under applicable law.

Fees. Your responsibility to pay any AAA filing, administrative and arbitrator fees will be solely as set forth in the AAA Rules. However, if your claim for damages does not exceed \$10,000, FPS will pay all such fees unless the arbitrator finds that either the substance of your claim or the relief sought in your Demand for Arbitration was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)).

No Class Action. **YOU AND FPS AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.** Further, unless both you and we agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

Changes. Notwithstanding the provisions of the "Modification" section above, if FPS amends this "Dispute Resolution" section after the date you first accepted these Terms (or accepted any subsequent changes to these Terms) you will be notified in accordance with these Terms. You may reject any such change by sending us written notice (including by email to support@fluxpointstudios.com) within 30 days of the date such change became effective, as indicated in the "Last Updated Date" above or in the date of FPS's email to you notifying you of such change. By rejecting any change, you are agreeing that you will arbitrate any Dispute between you and FPS in accordance with the provisions of this "Dispute Resolution" section as of the date you first accepted these Terms (or accepted any subsequent changes to these Terms).

Enforceability. If the "No Class Action" section of this Dispute Resolution Provision is found to be unenforceable, or if the entire Dispute Resolution Provision is found to be unenforceable, then the entirety of the Dispute Resolution Provision will be null and void and, in that case, the parties agree that the exclusive jurisdiction and venue described above will govern any action arising out of or related to these Terms.

Right to Opt Out of Arbitration and Class Action/Jury Trial Waiver: You may opt out of the foregoing arbitration and class action/jury trial waiver provision of this Agreement by notifying us in writing within 30 days of the date you first registered for the Services. To opt out, you must send a written notification to Flux Point Studios, Inc., Attn: Legal, 344 Thomas L Berkley Way, Oakland, CA 94612 that includes (a) your account username, (b) your name, (c) your address, (d) your telephone number, (e) your email address, and (f) a clear statement indicating that you do not wish to resolve claims through arbitration and demonstrating compliance with the 30-day time limit to opt out of the above arbitration and class action/jury trial waiver provisions. Alternatively or in addition, you may send this written notification to support@fluxpointstudios.com.

22. International Users

FPS makes no claim that the Services are appropriate or may be downloaded outside the United States. If you access the Services from a location outside the United States, you do so at your own risk and are responsible for compliance with all applicable laws, rules, regulations or decrees of your jurisdiction.

23. General

The failure of FPS to enforce any right or provision of these Terms will not constitute a waiver of future enforcement of that right or provision. The waiver of any such right or provision will be effective only if

in writing and signed by a duly authorized representative of FPS. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise. If for any reason an arbitrator or a court of competent jurisdiction finds any provision of these Terms invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect.

Certain Services features, or website and/or application areas (and your access to or use of certain aspects of the Services) may have different terms and conditions posted or may require you to agree with and accept additional terms and conditions. If there is a conflict between these Terms and terms and conditions posted for a specific area of the website, application, or Services, the latter terms and conditions will take precedence with respect to your use of or access to that area of the website, application, Services, or content.

24. Entire Agreement

These Terms constitute the entire and exclusive understanding and agreement between FPS and you regarding the Services, and these Terms supersede and replace any and all prior oral or written understandings or agreements between FPS and you regarding the same.

Disclaimer: The original, legally binding version of this document is written in English. If it is translated into other languages by non-native English-speakers or by software, there may be discrepancies between the English version and the translated version. If so, the English version supersedes the translated version.

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