



LIVE GAMER, INC.

TERMS OF SERVICE

Date of Last Revision: December 9, 2008

**WELCOME TO LIVE GAMER!** PLEASE READ THIS AGREEMENT CAREFULLY. IT CONTAINS IMPORTANT TERMS THAT AFFECT YOU AND YOUR USE OF LIVE GAMER'S SITE, SERVICES, AND SOFTWARE. BY ACCESSING OR USING THE SITE, SERVICES, OR SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS DESCRIBED HEREIN, ANY SOFTWARE END USER LICENSE AGREEMENT APPLICABLE TO THE SOFTWARE, AND ALL RULES, POLICIES, AND GUIDELINES INCORPORATED HEREIN BY REFERENCE (COLLECTIVELY, THE "**TERMS OF SERVICE**"). THIS INCLUDES THE PROVISIONS PERMITTING LIVE GAMER TO SUSPEND OR TERMINATE YOUR USE OF AND ACCESS TO THE SITE, SERVICES, OR SOFTWARE AT ANY TIME AND FOR ANY REASON (SEE, FOR EXAMPLE, SECTION 27 ENTITLED "TERM AND TERMINATION"); THOSE REQUIRING ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THESE TERMS OF SERVICE OR YOUR USE OF THE SITE, SERVICES, OR SOFTWARE TO BE SETTLED BY MANDATORY BINDING ARBITRATION (SEE SECTION 26 ENTITLED "DISPUTE RESOLUTION AND BINDING ARBITRATION"); AND THOSE WAIVING LEGAL CLAIMS BASED ON THE LOSS OF OR DAMAGE TO THE VALUE OF ONE OR MORE VIRTUAL ITEMS (SEE SECTION 21 ENTITLED "RELEASE AND WAIVER OF LIABILITY"). IF YOU DO NOT AGREE TO ALL OF THESE TERMS AND CONDITIONS, DO NOT USE OR ACCESS THE SITE, SERVICES, OR SOFTWARE.

These Terms of Service constitute a binding legal agreement between you and Live Gamer. Please read them carefully before accessing or using the Site, Services, and Software. These Terms of Service do not alter in any way the terms or conditions of any other agreement you may have with Live Gamer for products, services, software, or otherwise.

**1. INTRODUCTION**

At Live Gamer, our goal is to enhance your and other individuals' entertainment experience in online games and virtual worlds by providing a safe, secure, and reliable marketplace in which to exchange virtual goods, currency, characters, and other in-game and in-world items ("**Virtual Items**"). In order to achieve that, we need a commitment from you to behave in a responsible manner that is consistent with these Terms of Service and the terms and conditions offered by the developers and publishers of the online games and virtual worlds in which our services and software are offered.

These Terms of Service apply to your access to, and use of, the Live Gamer web site at [www.livegamer.com](http://www.livegamer.com) and any related web sites or other access points made available by Live Gamer (collectively, the "**Site**"); together with any and all Live Gamer software related to, downloadable at, or otherwise accessible in connection with the Site, including widgets and mobile applications (the "**Software**"); and the Live Gamer virtual trading marketplace made available on or accessible via the Site or through use of any Live Gamer software, including, but not limited to, the Software (the "**Services**"). References in these Terms of Service to "**Live Gamer**," "**we**," "**us**," and "**our**" refer to Live Gamer, Inc., its subsidiaries, and its affiliates.

Regardless of any rights that you may claim in any Virtual Items, by operation of contract, by operation of law, or otherwise, you understand, acknowledge, and agree that your right to exchange such Virtual Items using the Site, Services, and Software is governed exclusively by these Terms of Service.

## 2. YOUR EXCHANGE OF VIRTUAL ITEMS

Live Gamer wants you to enjoy the exchange of Virtual Items in the online games and virtual worlds that we support, but we also want you to behave responsibly and not forget the limitations associated with your access to, use of, and ability to exchange Virtual Items.

Unless otherwise set forth in an agreement between you and the publisher of the applicable online game or virtual world (each, a “**Publisher Agreement**”), you do not own the Virtual Items that are exchanged using the Services and Software. Except as otherwise set forth in the applicable Publisher Agreement, all right, title, and interest in the Virtual Items you are exchanging using the Services and Software, including all copyrights, trademarks, and other intellectual property rights therein, is held by the publisher of the online game, virtual world, or other interactive media product or service in which such Virtual Items are used or such publisher’s licensors (collectively, the “**Publisher**”). You have been granted a limited license to use the Virtual Items in the Publishers’ online game or virtual world and the limited right to transfer and receive the licensed right to use Virtual Items, in return for real money, solely through Live Gamer’s Services and Software and solely in accordance with these Terms of Service and the applicable Publisher Agreement. **THUS, AS USED IN THESE TERMS OF SERVICE, THE SOFTWARE, AND ON THE SITE, TO “SELL” MEANS “TO TRANSFER TO ANOTHER PERSON THE LICENSED RIGHT TO USE VIRTUAL ITEMS IN ACCORDANCE WITH THE TERMS OF SERVICE AND THE PUBLISHER AGREEMENT;” TO “BUY” or “PURCHASE” MEANS “TO RECEIVE FROM ANOTHER PERSON THE LICENSED RIGHT TO USE VIRTUAL ITEMS IN ACCORDANCE WITH THE TERMS OF SERVICE AND THE PUBLISHER AGREEMENT.”** Accordingly, regardless of Live Gamer’s short-hand use of the words like “buy,” “purchase,” and “sell,” unless explicitly set forth in an applicable Publisher Agreement, neither the Publisher nor Live Gamer has granted, is not granting, and will not grant you ownership of any Virtual Items.

You acknowledge that your right to participate in online games and virtual worlds and your rights to acquire and use Virtual Items in such online games and virtual worlds is governed exclusively by the applicable Publisher Agreements. You acknowledge that you have read and understood such Publisher Agreements and are participating in the exchange of Virtual Items with full knowledge of the manner in which your rights to such Virtual Items may be limited by such Publisher Agreements and by applicable law. As described further in Sections 9 and 27, if Live Gamer has a reasonable belief that you have violated, or are violating, an applicable Publisher Agreement, Live Gamer can take any action that it believes is appropriate, including, but not limited to, (a) suspending or terminating your use of the Services or Software; (b) suspending or terminating your access to the Site; and/or (c) deleting any or all listings of Virtual Items associated with any of your Live Gamer accounts.

You understand that each Publisher retains the discretion to modify its online games and virtual worlds and the Virtual Items available for use therein, including, but not limited to, managing the virtual economies of such online games and virtual worlds in whatever way such Publishers see fit, suspending or cancelling such online games and virtual worlds, temporarily or permanently eliminating the ability of you or others to exchange certain Virtual Items, or limiting the amount of certain Virtual Items that may be exchanged during any given period. You also understand that each Publisher retains the discretion to modify the Publisher Agreement that governs your use of and access to the Publisher’s online games and virtual worlds. You should participate in the exchange of Virtual Items knowing that Publishers will be actively managing their virtual economies, modifying their Publisher Agreements, and modifying the features, functions, abilities, and other elements of their online games and virtual worlds, including, among other things, making certain Virtual Items more or less effective or functional, more or less common, or entirely unavailable.

Like Publishers, Live Gamer continually upgrades and updates its Services and Software to provide you with new or modified features and functions. Live Gamer may modify features, functions, or other elements of the Service or Software at any time and may revise or discontinue the Services or Software at any time, in each case without prior notice to you. You also acknowledge, as more fully described in Section 5, below, that certain exchanges of Virtual Items may be reversed by Live Gamer in order to protect the integrity of the marketplace and the participants in the marketplace, including yourself. Further, Live Gamer is not obligated to enable a market for any particular Virtual Item nor permit the exchange of any particular Virtual Item.

SO, HAVE FUN, BUT PLEASE KEEP IN MIND THE LIMITATIONS ASSOCIATED WITH THE EXCHANGE OF VIRTUAL ITEMS! **THE EXCHANGE OF VIRTUAL ITEMS USING THE SITE, SERVICES, AND SOFTWARE IS FOR ENTERTAINMENT PURPOSES ONLY.** THE SITE, SERVICES, AND SOFTWARE ARE NOT TO BE USED AS AN INVESTMENT VEHICLE. YOU ACCEPT THE RISK OF LOSING ALL OR SOME OF THE “VALUE” IN THE VIRTUAL ITEMS THAT YOU EXCHANGE AS PART OF YOUR GAME PLAY. PLEASE PLAY RESPONSIBLY!

### **3. MODIFICATION OF THESE TERMS OF SERVICE**

Live Gamer reserves the right to change or modify any of the terms and conditions contained in these Terms of Service or any policy or guideline governing use of the Site, Services, or Software, at any time and in its sole discretion. Notice of any modification of these Terms of Service will be provided by posting the updated Terms of Service on the Site with the date of the last revision at the top, and any such modifications will be effective upon the posting of such notice. You hereby waive any right you may have to receive other notice of such changes, and your continued use of the Site, Services, or Software following the posting of changes or modifications will constitute your acceptance of such changes or modifications. Therefore, you should frequently review the Terms of Service and applicable policies in order to understand the terms and conditions that apply to your use of the Site, Services, and Software. If you do not agree to any changes in these Terms of Service as they may occur, you must terminate your registration with Live Gamer and immediately discontinue your use of the Site, Services, or Software.

If you have any question regarding the use of the Site, Services, or Software, please refer to <http://www.livegamer.com>. Questions or comments about the Site, Services, Software or any other content available on the Site should be directed to <http://www.livegamer.com/contact.php>.

### **4. ELIGIBILITY; REGISTERING WITH LIVE GAMER**

In order to register as a Live Gamer user, you must (a) be at least 18 years of age; (b) be a resident of the United States or another location or foreign jurisdiction in which Live Gamer expressly authorizes access to the Services and Software, (c) maintain accurate and complete information in your Live Gamer user account; and (d) comply with these Terms of Service. Live Gamer reserves the right to determine the locations and jurisdictions in which the Services and Software may be accessed. Further, Live Gamer reserves the right to determine the online games and virtual worlds in each location and jurisdiction in which the Services or Software may be accessed. Authorized locations and jurisdictions and authorized online games and virtual worlds are subject to change without prior notice.

Registering with Live Gamer is free. However, in order to list a Virtual Item or bid on a Virtual Item using the Services or Software, you must, in addition to the requirement in the preceding paragraph above, (a) register with a valid credit card, or other payment method that Live Gamer may, in its sole discretion, elect to authorize in the future; (b) have an active registered Live Gamer user account in good standing,

and (c) have an active registered user account in good standing in the applicable online game or virtual world.

When you complete Live Gamer's registration process, you create a Live Gamer user account and become a Live Gamer user. In registering, you agree to (a) provide accurate, current, and complete information about you as may be prompted by the registration process ("**Registration Data**"); (b) maintain the security of your account name, user ID, and password; (c) maintain and promptly update the Registration Data, and any other information you provide to Live Gamer, to keep it accurate, current, and complete; and (d) accept all risks of unauthorized access to the Registration Data and any other information you provide to Live Gamer. We reserve the right to deny registration and access to the Site, Service, or Software to any individual or entity.

To create an account you must enter an e-mail address, mobile phone number, and the other personal information prompted by the registration process. (The collection, use, and disclosure of your personal information is governed by these Terms of Service and our Privacy Policy, available at <http://www.livegamer.com/PrivacyPolicy.pdf>. See Section 8.) In addition, you must select a password and user ID. You may not select as your user ID the name of another living person (unless it is also your name), or a name that violates any third party's trademark rights, copyright, or other intellectual proprietary rights, or that we determine in our sole discretion to be offensive or inappropriate. Your password should be chosen carefully and not contain any personal or other information that may be easily guessed by anyone else.

You are responsible for your account name, password, and user ID, as applicable, and you acknowledge that it is solely your responsibility to maintain the confidentiality of your account name, password, and user ID and keep track of who is using your account. You are solely responsible for any activity related to your account. **KEEP YOUR ACCOUNT NAME, PASSWORD, AND USER ID PRIVATE AND NEVER SHARE THEM WITH ANYONE.** No employee of Live Gamer will ever ask you for your password in written correspondence or any other form of communication. Any distribution by you of such account name, password, or user ID may result in cancellation of the Services and termination of your access to the Site and Software without refund and the imposition of additional charges based on such unauthorized use. If you suspect any unauthorized use of your account, or if you believe your account name, password, or user ID have been compromised, please notify us immediately.

For further details regarding your eligibility and the registration process, please refer to the Frequently Asked Questions (or FAQs) page available on the Site.

## **5. PAYMENT OPTIONS AND AUTHORIZATION; PAYMENT TERMS; CANCELLATION AND REFUNDS; TAXES**

All purchases of Virtual Items require a valid credit card (*MasterCard*<sup>®</sup> or *Visa*<sup>®</sup>), *PayPal*<sup>®</sup> account, or other payment method that Live Gamer may, in its sole discretion, elect to accept in the future. All listings and sales of Virtual Items require a valid *PayPal* account, or other payment method that Live Gamer may, in its sole discretion, elect to accept in the future. Acceptable payment methods will be listed on the Site and may be updated from time-to-time.

For purchases of Virtual Items using the Services, you authorize Live Gamer, or its designated third-party payment processor, to charge the credit card, *PayPal* account, or other accepted payment method you designate during the registration process in the amount specified in connection with the transaction. If you desire to designate a different form of payment, or if there is a change in your payment information,

you must update your Live Gamer user account to reflect such change. You may experience temporary disruption of your access to the Service while Live Gamer is verifying new payment information. If you transmit to Live Gamer a purchase request, you warrant that your use of the particular credit card, *PayPal* account, or other accepted payment method is authorized and that all information that you submit to Live Gamer, or its designated third-party payment processor, is true and accurate (including, without limitation, your credit card number, expiration date, and other account information), and you agree to pay all fees you incur.

There are no refunds or cancellations of payments made to Live Gamer, except as otherwise required by law. Live Gamer reserves the right to refuse or cancel any purchases or attempted purchases at any time in its sole discretion. Further, in order to protect the integrity of the marketplace for Virtual Items and the participants in the marketplace, like yourself, Live Gamer may reverse certain transactions for the exchange of Virtual Items if there is a reasonable belief on the part of Live Gamer or the publisher, or publishers, of the affected online games and virtual worlds that, due to illicit and/or fraudulent conduct in the marketplace, the online games, or the virtual worlds (which could include such things as cheating, hacking, or other prohibited activity), the integrity of the market for Virtual Items in such online games or virtual worlds has been compromised. EXCEPT AS OTHERWISE STATED IN THESE TERMS OF SERVICE OR REQUIRED BY APPLICABLE LAW, ALL SALES AND PURCHASES ARE FINAL.

Unless otherwise stated, all fees are quoted and must be paid in U.S. Dollars. Purchases made in currency other than U.S. Dollars shall be made at the exchange rate designated in your agreement with your credit card or other acceptable payment method provider.

You are responsible for paying all fees and any applicable taxes associated with your purchases in a timely manner. Purchases may be subject to applicable sales tax. Sales tax applicability will be determined by the residence of the buyer. Live Gamer will not be responsible for any sales, use, income or other taxes associated with your acquisition, purchase, sale, or possession of Virtual Items.

## **6. LISTING OF VIRTUAL ITEMS; TRANSACTION FEES; FEE SCHEDULE**

When you list a Virtual Item for sale, you promise to sell the Virtual Item at the maximum bid received during the listing period, less Live Gamer's transaction fee and any applicable taxes. Further, when you list a Virtual Item for sale, you will be asked to specify a "Buy Now" price. If a buyer elects to pay the "Buy Now" price, you promise to sell the Virtual Item for that "Buy Now" price, less Live Gamer's transaction fee and any applicable taxes. You may also specify a "Reserve Price." If you specify a "Reserve Price," and the reserve is not met during the duration of the listing period, then the listing will expire and the Virtual Items will be returned to you and may be re-listed.

Once you list a Virtual Item, the Virtual Item that you list will be unavailable for your use during the duration of the listing period. You may not cancel the listing of a Virtual Item once a potential buyer has placed a bid on the Virtual Item.

Live Gamer does not charge a fee for listing Virtual Items using the Service or Software. However, we do currently charge transaction fees, once the Virtual Item is purchased. Upon the close of a successful listing and upon Live Gamer's or its designated third-party payment processor's collection of the sale amount from the buyer, Live Gamer will deduct its transaction fees and applicable taxes on the transaction fees, and remit the remainder to your *PayPal* account or other payment method that Live Gamer may, in its sole discretion, elect to accept in the future.

LIVE GAMER'S TRANSACTION FEES WILL BE DETERMINED ACCORDING TO THE FEE SCHEDULE, OR FEE SCHEDULES, THAT ARE SPECIFIC TO THE ONLINE GAMES AND VIRTUAL WORLDS IN WHICH YOU ARE LISTING VIRTUAL ITEMS FOR SALE. The Fee Schedules applicable to the online games and virtual worlds in which you are listing virtual items is posted in the Knowledgebase of the Live Gamer Customer Support Center available on the Site.

Live Gamer reserves the right to update its Fee Schedules at any time and/or modify the methods by which it collects fees from users. Notice of any updates to Live Gamer's Fee Schedules or the methods by which fees are collected by Live Gamer will be provided by posting the updated Fee Schedules on the Site, and any such modifications will be effective upon the posting of such notice on the Site. We may choose to temporarily change the fees for our Services for promotional events or new Services, and such changes are effective when we post the temporary promotional event or new Services on the Site. Before you list or bid on a Virtual Item, you will have the opportunity to review the transaction fees that will be charged.

You may choose to list Virtual Items for various durations. Live Gamer reserves the right to change the listing duration options from time-to-time. If the Service is down or unavailable when any listing period is scheduled to end, the listing period will be extended an appropriate amount of time. To minimize "sniping," bids placed on a Virtual Item in the moments near the end of the listing period for that Virtual Item may extend the listing period.

Live Gamer may, in its discretion, limit the number of concurrent active listings for any Live Gamer account, establish a maximum selling price for any listing, or establish a maximum daily transaction amount for each user. Live Gamer may, in its discretion, update such limits at any time.

Live Gamer may, in its discretion, offer to users of certain online games and virtual worlds alternative means of settling transactions for the exchange of Virtual Items, including, but not limited to, settlement of transactions using forms of in-game or in-world currency, points, or credits, in which case Live Gamer may determine alternative means of collecting a transaction fee for successful listings. In such cases, Live Gamer will notify eligible users and provide further information on the amount of the transaction fees and how they will be collected. By continuing to use the Service or Software to exchange Virtual Items in such online games and virtual worlds, you agree to comply with such fees and payment methods.

For further details on the process for listing Virtual Items, please refer to the Frequently Asked Questions (or FAQs) page available on the Site.

## **7. BIDDING ON VIRTUAL ITEMS**

When you place a bid on any Virtual Items using the Service, you promise that you have a bona fide intention to pay the amount of your bid for the Virtual Items on which you have bid and that you will pay for any Virtual Items on which you have agreed to a "Buy Now" price or are the high bidder at close of the listing period. Accordingly, when you complete a "Buy Now" transaction, you authorize Live Gamer or its third-party payment processor to charge your credit card, *PayPal* account, or other accepted payment method for the full transaction amount, plus Live Gamer's transaction fee and applicable taxes. Likewise, if you are the high bidder at the close of the listing period, you authorize Live Gamer or its third-party payment processor to charge your credit card, *PayPal* account, or other accepted payment method for the full transaction amount, plus Live Gamer's transaction fee and applicable taxes.

There may be multiple listings for Virtual Items in which you are interested. You agree that you will not place bids in multiple simultaneous exchanges for the same Virtual Items, unless you intend to complete transactions for all on which you have bid.

Once made, bids cannot be revoked except in exceptional circumstances, and then only by Live Gamer and not by you. You will have an opportunity to confirm your order, prior to any charges being incurred. Once you confirm your order, YOU PROMISE NOT TO DENY OR DECLINE ANY CHARGES.

For further details on the process for bidding on Virtual Items, please refer to the Frequently Asked Questions (or FAQs) page available on the Site.

## **8. PRIVACY POLICY**

Please refer to our Privacy Policy, available at <http://www.livegamer.com/PrivacyPolicy.pdf>, for additional information on how Live Gamer collects, uses, and discloses personally identifiable information collected from or submitted by users of the Site, Services, and Software.

You acknowledge and agree that Live Gamer may access and preserve any information and may also disclose any information, including, without limitation, user profile information (i.e. name, e-mail address, etc.), internet protocol addressing and traffic information, usage history, and posted User Content, if required to do so in order to cooperate with legitimate governmental requests, subpoenas, or court orders or if we have a good-faith belief that such access, preservation, or disclosure is reasonably necessary or appropriate in order to: (a) comply with legal process; (b) enforce these Terms of Service, including your compliance with the terms and conditions of any Publisher Agreement; (c) respond to claims that any User Content violates the rights of third parties, including the legal rights of Live Gamer Partners or Publishers; (d) protect the rights, property, or personal safety of Live Gamer, Live Gamer's employees, Live Gamer's business, Live Gamer's users, Publishers, or the public; or (e) prevent and protect Live Gamer and our users from fraudulent, abusive, unlawful, or unauthorized use of the Site, Services, or Software. In connection with the foregoing, Live Gamer may disclose relevant information to law enforcement or other appropriate authorities and/or partners of Live Gamer, including Publishers, as determined by Live Gamer to be reasonable necessary to fulfill the objectives described herein. LIVE GAMER'S RIGHT TO ACCESS, PRESERVE, OR DISCLOSE ANY SUCH INFORMATION SHALL GOVERN OVER ANY TERMS OF LIVE GAMER'S PRIVACY POLICY.

## **9. PROHIBITED ACTIVITY**

In connection with your use of the Site, Services, and Software, you agree that you will not engage in any act, or series of acts, either alone or concert with others, that constitutes Prohibited Activity.

***“Prohibited Activity”*** means the following:

a. Breach of any term, condition, or obligation set forth in these Terms of Service; other agreement between you and Live Gamer; or any Live Gamer rule, policy, or guideline.

b. Breach of any term, condition, or obligation in any agreement between you and a partner of Live Gamer (each, a ***“Live Gamer Partner”***) or any Live Gamer Partner's rules, policies, or guidelines. Live Gamer Partners include, but are not limited to, Publishers and other developers and distributors of online games, virtual worlds, and other interactive media products or services in connection with which the Services and Software are offered.

c. Violation of the intellectual property rights, privacy rights, or other rights of Live Gamer or any third party, including, but not limited to, such rights of any Live Gamer Partner.

d. Commission of any crime or violation of any applicable local, state, national, or international law, regulation, ordinance, or treaty including, but not limited to, any fraud, misrepresentation, money laundering, or illegal gambling.

e. Using, or attempting to use, any invalid or unauthorized credit card or other payment method in connection with the Site, Services, or Software or any online games, virtual worlds, or other interactive media products or services offered by a Live Gamer Partner.

f. Engaging in any commercial activities using the Site, Services, or Software or using the Site, Services, or Software for the purpose of profiting or for the purpose of preparing for profiting, including, without limitation, any activities related in any way to the practice commonly known as “gold farming,” except as otherwise expressly authorized in writing by the applicable Live Gamer Partners and then only for the limited purpose expressly authorized thereby.

g. Using, or attempting to use, any cheat codes, devices, tools, or processes, including, but not limited to, any third-party code sets or utilities, or distributing, publishing, or otherwise making available or publicizing in any way any such cheat codes, devices, tools, or processes, whether in relation to the Site, Services, or Software or any online games, virtual worlds, or other interactive media products or services offered by a Live Gamer Partner. Use of the Site, Services, or Software to buy, purchase, sell, trade, acquire, or exchange Virtual Items generated, directly or indirectly, through use of any such cheat codes, devices, tools, or processes is strictly prohibited.

h. Providing any false, misleading, or inaccurate information to Live Gamer or a Live Gamer Partner, or otherwise concealing any relevant information, in connection with your registration for use of the Site, Services, or Software or any online games, virtual worlds, or other interactive media products or services offered by a Live Gamer Partner.

i. Interfering with, in any way, any listing, transfer, exchange, purchase, or sale of any Virtual Item, or Virtual Items, including by any means of fraud, misrepresentation, deception, or manipulation. Any use of the Site, Services, or Software for any fraudulent or deceptive act or practice is strictly prohibited.

j. If you are under the age of 18 or otherwise unable to form legally binding contracts in the jurisdiction in which you reside, using the Site, Services, or Software without the express consent of your parent or legal guardian in each instance.

k. Listing, or attempting to list, any Virtual Item, or Virtual Items, to which you do not have rights.

l. Failing to deliver payment for any Virtual Item, or Virtual Items, purchased by you within the required time.

m. Harassing, tormenting, intimidating, pestering, obstructing, or taking advantage of, or in any way harming Live Gamer, Live Gamer’s employees, a Live Gamer Partner, other users, or any other third party.

n. Using any Interactive Area (as defined in Section 19) to post, upload, transmit, distribute, store, create, or otherwise publish to, through, or on the Site any User Content (as defined in Section 19) prohibited by Section 19 below.

o. Discriminating against, insulting, or defaming Live Gamer, Live Gamer's employees, a Live Gamer Partner, another user, or any other third party or otherwise causing harm to Live Gamer's credibility, reputation, or relationship with any third party.

p. Accessing, or attempting to access, facilities, networks, equipment, or systems of Live Gamer, a Live Gamer Partner, another user, or any other third party without authorization.

q. Harvesting or collecting personal information, or engaging in activity designed to harvest or collect personal information, of any third party by any fraudulent, deceptive, manipulative, unlawful, or other unauthorized means.

r. Obstructing or interfering with, or creating the possibility of obstruction or interference with, the operation of the Site, Service, or Software.

s. Altering or deleting, or attempting to alter or delete, information of Live Gamer or any third party without authorization.

t. Impersonating any person or entity in order to use or gain access to the Site, Services, or Software, including, without limitation, use of any Live Gamer account or Publisher account that is not your own.

u. Impersonating a manager, employee, agent, or other representative of Live Gamer or a Live Gamer Partner, past or present.

v. Transferring, or offering to transfer, your Live Gamer account information, user ID, or password to any other party without Live Gamer's authorization.

w. Modifying, reverse engineering, decompiling, or analyzing the Site, Services, Software, or other products, software, or equipment belonging to Live Gamer, a Live Gamer Partner, or any third party, including any web site, forum, or message board; or creating, distributing, publishing, or otherwise making available any tools, code sets, or utilities for the performance of any of the foregoing.

x. Using, or attempting to use, any automated method of accessing, searching, or bidding on Virtual Items; taking any action that imposes, or may impose, an unreasonable load on the Site, Services, Software, or any infrastructure associated with an applicable online game or virtual world; taking any action that interferes, or attempts to interfere, in any manner whatsoever with the operation of the Site, Services, or Software; or bypassing, or attempting to bypass, methods Live Gamer may use to prevent or restrict access to the Site, Services, or Software.

y. Using, or attempting to use, the Site, Services, or Software, or any element thereof, for the purpose of exchanging, transferring, or distributing any pirated or other illegal software or other intellectual property of third parties without authorization.

z. Failing to comply with the instructions of any authorized personnel of Live Gamer during your use of the Site, Services, or Software, including any customer support personnel of Live Gamer or a Live Gamer Partner.

aa. Using, or attempting to use, the Site, Services, or Software despite the fact that Live Gamer has previously suspended or revoked your privileges to use the Site, Services, or Software.

bb. Engaging in any other conduct determined by Live Gamer, in its sole discretion, to be inappropriate or harmful, including, but not limited to, any other false, misleading, manipulative, unfair, or deceptive act or practice. Engaging in any deceptive or manipulative bidding practices of any kind is strictly prohibited.

Any use of the Site, Services, or Software in violation of the foregoing violates these Terms of Service and may result in, among other things, suspension or termination of your rights to use the Site, Services, and Software in accordance with Section 27 below at Live Gamer's sole discretion. You agree that Live Gamer has the right to take any action it deems advisable, including, but not limited to, the issuance of warnings; the suspension or termination of a listing or registration or the use of Site, Services, or Software; the removal of listings, bids, or other materials from the Site, Services, and Software; and the reporting of any activity Live Gamer suspects violates any law, rule, or regulation to law enforcement or other appropriate authorities, as further described in Section 8.

Further, you understand that engaging in Prohibited Activity may constitute a breach of one or more applicable Publisher Agreements and that, as a result, the applicable Publishers may have the right to exercise certain remedies, including, but not limited to, elimination of duplicated Virtual Items, even if such duplicated Virtual Items have been subsequently purchased or sold; the unfettered right to ban or sweep player accounts of Virtual Items that were created or generated in a manner or by a means that violate any Publisher Agreement, as determined by such Publisher in its discretion; or termination or suspension of your rights to access or use the applicable online games or virtual worlds or all or some of the Virtual Items in such online games or virtual worlds. The right of each Publisher to take the steps that such Publisher deems necessary or advisable to enforce the terms of any applicable Publisher Agreements between you and the Publisher shall not be limited in any way by these Terms of Service.

## **10. INTEGRITY OF COMPUTER PROGRAMS AND PROCESSES**

You expressly consent to Live Gamer scanning your computer's memory during upgrades and updates to the Services or Software or during any period in which you are on the Site or using the Services or Software solely for purposes of comparison with Live Gamer's then-current list of active background processes and/or any other running programs or routines that are in violation of these Terms of Service. LIVE GAMER'S RIGHT TO ACCESS AND USE SUCH INFORMATION FOR THE PURPOSES STATED HEREIN SHALL GOVERN OVER ANY TERMS OF LIVE GAMER'S PRIVACY POLICY.

## **11. COPYRIGHT AND LIMITED LICENSE**

Unless otherwise indicated on the Site, the Site and all information, content, and other materials on the Site, including, without limitation, the Live Gamer logo, trade names, trademarks, and service marks, and all designs, text, graphics, pictures, information, data, software, code, audio files, video files, other files and the selection and arrangement thereof (collectively, the "**Site Materials**") are owned by Live Gamer or its licensors or users and are protected by United States and international copyright laws.

You are granted a limited, personal, non-exclusive, non-transferable, non-sublicenseable, non-assignable license to access and use the Site and electronically copy (except where prohibited without a license) and print to hard copy portions of the Site Materials for your informational, non-commercial, and personal use only. Such license is subject to these Terms of Service and does not include: (a) any resale or commercial use of the Site or the Site Materials therein; (b) the collection and use of any Virtual Item listings, pictures, or descriptions; (c) the distribution, public performance, or public display of any Site Materials; (d) the modification, creation of derivative works, or other making of any derivative uses of the Site or the Site Materials, or any portion thereof; (e) the use of any data mining, robots, spiders, scripts, or similar data gathering or extraction methods (including, without limitation, scraping or other activities with the purpose of obtaining lists of users or extracting other information from the Site); (f) the download (other than the page caching) of any portion of the Site, the Site Materials, or any information contained therein, except as expressly permitted on the Site; or (g) any use of the Site or the Site Materials other than for its intended purpose. Any use of the Site or the Site Materials other than as specifically authorized herein, without the prior written permission of Live Gamer, is strictly prohibited and may result in termination of the license granted herein. Such unauthorized use may also violate applicable laws, including, without limitation, copyright and trademark laws and applicable communications regulations and statutes. Unless explicitly stated herein, nothing in these Terms of Service shall be construed as conferring any license to intellectual property rights, whether by estoppel, implication, or otherwise. This limited license may be revoked at any time in Live Gamer's sole discretion and without any further obligation.

## **12. TRADEMARKS**

LIVE GAMER™, the Live Gamer logo, LIVE GAMER EXCHANGE™, LGX™, A LEGITIMATE MARKET FOR VIRTUAL TRADING™, THE TRUSTED SOURCE FOR VIRTUAL TRADING™, and any other product name or service name or slogan contained in the Site are registered or unregistered trademarks of Live Gamer and its suppliers or licensors, and may not be copied, imitated, or used, in whole or in part, without the express prior written permission of Live Gamer or the applicable trademark holder. You may not use any metatags or any other "hidden text" utilizing "Live Gamer" or any other name, trademark, or product name or service name of Live Gamer without our prior written permission. In addition, the look and feel of the Site, including all page headers, custom graphics, button icons, and scripts, is the service mark, trademark, and/or trade dress of Live Gamer and may not be copied, imitated, or used, in whole or in part, without our prior written permission. All other trademarks, registered trademarks, product names, service names, and company names, or logos mentioned in the Site that are not the property of Live Gamer are the property of their respective owners, who may or may not be affiliated with, connected to, or sponsored by Live Gamer. Reference to any products, services, processes, or other information by trade name, trademark, service mark, product name, manufacturer, supplier, or otherwise does not constitute or imply endorsement, sponsorship, or recommendation thereof by us.

## **13. CLAIMS OF COPYRIGHT INFRINGEMENT**

Live Gamer respects intellectual property rights, requires our users to do the same, and has a mechanism in place to respond to the concerns of copyright holders. If you believe that your works have been copied and are accessible on the Site or in connection with the Services in a way that constitutes copyright infringement, you may file a notification of such infringement with our Designated Agent (see below).

If we receive a claim of copyright infringement, we reserve the right to refuse or delete any User Content (as defined below) posted, or to be posted, on the Site and to terminate a user's account. We may give notice of a claim of copyright infringement to our users by means of a general notice on the Site, electronic mail to a user's e-mail address in our records, or by written communication sent by first-class mail to a user's address in our records.

Our Designated Agent to receive notification of claimed infringement under the Digital Millennium Copyright Act of 1998 ("**DMCA**") is Neal Black, Vice President of Legal & Corporate Affairs, General Counsel. The address of our Designated Agent is Live Gamer, Inc., 678 Broadway, Fifth Floor, New York, New York 10012. The e-mail address of our Designated Agent is [DMCAagent@livegamer.com](mailto:DMCAagent@livegamer.com).

#### **14. REPEAT INFRINGER POLICY**

In accordance with the DMCA and other applicable laws, Live Gamer has adopted a policy of terminating, in appropriate circumstances and at Live Gamer's sole discretion, users, subscribers, or account holders who are deemed to be repeat infringers. Live Gamer may also, at its sole discretion, limit access to the Site and/or terminate the accounts of any users, subscribers, or account holders who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

#### **15. HYPERLINKS TO SITE**

You are granted a limited, personal, non-exclusive, non-transferable, non-sublicenseable, non-assignable license to create a text hyperlink to the Site for non-commercial purposes; provided that such link does not portray Live Gamer or any of its products and services in a false, misleading, derogatory, or otherwise defamatory manner; provided, further, that the linking site does not contain any adult or illegal material, any material related to gambling, or any material that is offensive, obscene, harassing, or otherwise objectionable. This limited license may be revoked at any time in Live Gamer's sole discretion and without any further obligation. You may not use a Live Gamer logo or other proprietary graphic of Live Gamer to link to this Site without the express prior written permission of Live Gamer. Further, you may not use, frame, or utilize framing techniques to enclose any Live Gamer trademark, service mark, trade name, logo, or other proprietary information, including the images found at the Site, the content of any text, or the layout/design of any page or form contained on a page on the Site without Live Gamer's express prior written consent. Except as noted above, you are not conveyed any right or license by implication, estoppel or otherwise in or under any patent, trademark, copyright, or other proprietary right of Live Gamer or any third party.

#### **16. THIRD PARTY LINKS AND CONTENT**

Live Gamer may provide third-party content on the Site and may provide links to web pages and content of third parties (collectively the "**Third-Party Content**") as a service to those interested in this information. Live Gamer does not monitor or have any control over any Third-Party Content or third-party web sites. Live Gamer makes no claim or representation regarding, and accepts no responsibility for, the quality, content, nature, accuracy, completeness or reliability of Third-Party Content or third-party web sites accessible by hyperlink from the Site, or web sites linking to the Site, including any review, changes, or updates to such sites. Live Gamer provides these links to you only as a convenience, and the inclusion of any link does not imply affiliation, endorsement, or adoption by Live Gamer of any third-party site or any Third-Party Content. When you leave the Site, you should be aware that our terms and policies no longer govern. You should review the applicable terms and policies, including

privacy and data gathering practices, of any site to which you navigate from the Site. Users use these links and Third-Party Content contained therein at their own risk.

## **17. ADVERTISEMENTS AND PROMOTIONS**

Live Gamer may run advertisements and promotions from third parties on the Site or may otherwise provide information about or links to third-party products and services on the Site. Your business dealings or correspondence with, or participation in promotions of such third parties, and any terms, conditions, warranties, or representations associated with such dealings, are solely between you and such third party. Live Gamer is not responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of such non-Live Gamer products, service, advertising or promotions on the Site.

## **18. SUBMISSIONS**

You acknowledge and agree that any materials, including but not limited to questions, comments, suggestions, ideas, plans, notes, drawings, original or creative materials, or other information, provided by you in the form of e-mail or other submissions to Live Gamer, including but not limited to any feedback or suggestions regarding the Site, Software, Services, or any of Live Gamer's other products or services, or any postings on the Site, are non-confidential and shall become the sole and exclusive property of Live Gamer. Live Gamer shall own exclusive rights, including all intellectual property rights, and shall be entitled to the unrestricted use and dissemination of these materials for any purpose, commercial, or otherwise, without acknowledgment or compensation to you.

## **19. USER CONTENT AND INTERACTIVE SERVICES OR AREAS**

The Site, Services, and Software may include discussion forums, user-generated content, or other interactive areas or services ("**Interactive Areas**"), including chat rooms or message boards, online hosting or storage services, or other areas or services in which you or other users, subscribers, or account holders may create, post, or store content, messages, opinions, advice, statements, reviews, comments, materials, media, data, information, text, music, sound, photos, video, graphics, software, code, or other items, materials, or information on the Site ("**User Content**"). User Content may be accessible by visitors to and registered users of the Site, or it may be accessible only by you and other registered users specifically designated by you. You are solely responsible for your use of such Interactive Areas and use them at your own risk. All User Content, whether publicly posted on or privately transmitted via the Site, Services, and Software, is the sole and exclusive responsibility of the person from whom the User Content originated and not of Live Gamer or its directors, officers, employees, or agents.

By using any Interactive Areas, you agree not to post, upload, transmit, distribute, store, create, or otherwise publish to, through, or on the Site any of the following:

a. User Content that is unlawful, libelous, defamatory, obscene, pornographic, indecent, lewd, suggestive, harassing, threatening, invasive of privacy or publicity rights, abusive, inflammatory, fraudulent, or otherwise objectionable;

b. User Content that would constitute, encourage, or provide instructions for a criminal offense, violate the rights of any party, or that would otherwise intentionally or unintentionally create liability or violate any local, state, national, or international law, regulation, ordinance, or treaty,

including, without limitation, the regulations of the U.S. Securities and Exchange Commission or any rules of a securities exchange such as the New York Stock Exchange, the American Stock Exchange, or the NASDAQ;

c. User Content that may infringe any patent, trademark, trade secret, copyright, or other intellectual or proprietary right of any party. By posting any User Content, you represent and warrant that you have the lawful right to use, distribute, display, perform, and reproduce such User Content;

d. User Content in which you have deleted author attributions, legal notices, or proprietary designations or labels;

e. User Content that you do not have a right to transmit under any law or under contractual or fiduciary relationships (such as inside information or proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);

f. User Content that impersonates any person or entity or otherwise misrepresents your affiliation with a person or entity;

g. User Content that harms minors in any way, including any User Content accessible by the public that in any way refers to person(s) under 18 years of age;

h. Unsolicited promotions, political campaigning, evangelism, advertising, or solicitations, including but not limited to "junk mail," "spam," "chain letters," "pyramid schemes," "phishing schemes" or any other forms of unauthorized or unlawful solicitations or promotions;

i. User Content accessible to the public that contains private information of any third party, including, without limitation, addresses, phone numbers, e-mail addresses, Social Security numbers or other tax ID numbers, credit card numbers, internet protocol addresses, and URLs;

j. Any material that contains software viruses, corrupted data, or other harmful, disruptive, or destructive files, including but not limited to any software, code, files, or programs designed to interrupt, destroy, or limit the functionality of any software or hardware or telecommunications equipment;

k. Any material that interferes with or disrupts the Site, Services, Software, or servers or networks connected to the Site; and

l. User Content that, in the sole judgment of Live Gamer, is objectionable, unlawful, or that restricts or inhibits any other person from using or enjoying the Interactive Areas of the Site, or that may expose Live Gamer or its users to any harm, risk of harm, or liability of any type.

Live Gamer takes no responsibility and assumes no liability for any User Content posted, stored, or uploaded by you or any third party, or for any loss or damage thereto, nor is Live Gamer liable for any mistakes, defamation, slander, libel, omissions, falsehoods, obscenity, pornography, or profanity you may encounter. YOUR USE OF INTERACTIVE AREAS IS AT YOUR OWN RISK. As a provider of interactive services, Live Gamer is not liable for any statements, representations, or User Content provided by its users in any public forum, personal home page, or other Interactive Area. It is your responsibility to evaluate the User Content available through the Site, Services, and Software. Although Live Gamer has

no obligation to screen, edit, or monitor any of the User Content posted in any Interactive Area, Live Gamer reserves the right, and has absolute discretion, to remove, screen, or edit any User Content posted or stored on the Site at any time and for any reason without notice, and you are solely responsible for creating backup copies of and replacing any User Content you post or store on the Site at your sole cost and expense. Any use of the Interactive Areas or other portions of the Site in violation of the foregoing violates these Terms of Service and may result in, among other things, termination or suspension of your rights to use the Interactive Areas, Site, Services, or Software at Live Gamer's sole discretion.

If you post User Content to the Site, unless we indicate otherwise, you grant Live Gamer and its affiliates and sublicensees a non-exclusive, royalty-free, fully paid, perpetual, irrevocable, fully sublicensable, and fully assignable license to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, perform, and display such User Content throughout the world in any media. You grant Live Gamer and its affiliates and sublicensees the right to use the name that you submit in connection with such content, if they choose.

## **20. INDEMNIFICATION**

You agree to indemnify, defend, and hold harmless Live Gamer; its independent contractors, service providers, and consultants; the Publishers; other Live Gamer Partners; and each of their respective directors, officers, employees, and agents (collectively, "**Live Gamer Parties**"), from and against any claims, damages, costs, liabilities, and expenses (including, but not limited to, reasonable attorneys' fees) arising out of or related to (a) any User Content you post, store, or otherwise transmit on or through the Site, Services, and Software; (b) your conduct, acts, and omissions; (c) your violation of these Terms of Service; (d) your violation of an applicable Publisher Agreement, including any of the applicable Publisher's rules, policies, and guidelines; (e) your violation of any applicable laws, regulations, ordinances, or treaties, whether foreign or domestic; (f) your violation of the rights of any third party, including Publishers; or (g) your use of or inability to use the Site, Services, and Software, including in each case, without limitation, any actual or threatened suit, demand, or claim made against the Live Gamer Parties.

## **21. RELEASE AND WAIVER OF LIABILITY**

### **YOU'VE READ SECTION 2 OF THESE TERMS OF SERVICE, AND YOU UNDERSTAND THE LIMITATIONS ASSOCIATED WITH BUYING AND SELLING VIRTUAL ITEMS.**

YOU AGREE THAT YOU WILL NOT ASSERT OR BRING ANY CLAIM OR SUIT AGAINST ANY LIVE GAMER PARTY THAT IS RELATED, DIRECTLY OR INDIRECTLY, TO YOUR USE OF THE SITE, SOFTWARE, OR SERVICES, TO BUY, PURCHASE, SELL, TRADE, ACQUIRE, OR EXCHANGE VIRTUAL ITEMS AND THAT ARISES OUT OF OR IS BASED ON A CLAIM FOR THE LOSS OF OR DAMAGE TO THE VALUE OF ONE OR MORE VIRTUAL ITEMS, INCLUDING, BUT NOT LIMITED TO, ANY SUCH CLAIM OR SUIT ARISING OUT OF OR BASED ON (A) AN ACTION, OR ACTIONS, TAKEN BY LIVE GAMER OR A PUBLISHER THAT LIVE GAMER OR SUCH PUBLISHER ARE ENTITLED TO TAKE PURSUANT TO THESE TERMS OF SERVICES OR THE APPLICABLE PUBLISHER AGREEMENT, INCLUDING ANY SUCH ACTION TAKEN AGAINST A THIRD PARTY THAT IS NOT YOU (FOR EXAMPLE, THE TERMINATION OF THE RIGHTS OF ANOTHER USER THAT IS BIDDING ON VIRTUAL ITEMS LISTED FOR EXCHANGE BY YOU); (B) A TEMPORARY OR PERMANENT DISRUPTION, SUSPENSION, OR CANCELLATION OF A LISTING, OR LISTINGS, OF ONE OR MORE VIRTUAL ITEMS; (C) A TEMPORARY OR PERMANENT DISRUPTION, SUSPENSION, OR CANCELLATION OF YOUR USE OF OR

ACCESS TO THE SITE, SERVICES, OR SOFTWARE, THE APPLICABLE ONLINE GAME OR VIRTUAL WORLD, OR THE VIRTUAL ITEMS THEREIN, INCLUDING AS A RESULT OF ANY MALFUNCTIONS, ERRORS, AND/OR “BUGS” IN THE APPLICABLE ONLINE GAME OR VIRTUAL WORLD; OR (D) A PUBLISHER’S MANAGEMENT OF ITS VIRTUAL ECONOMIES, ANY MODIFICATION BY A PUBLISHER OF ITS PUBLISHER AGREEMENTS, OR ANY PUBLISHER’S MODIFICATION OF THE FEATURES, FUNCTIONALITY, ABILITIES, AND OTHER ELEMENTS OF ITS ONLINE GAMES OR VIRTUAL WORLDS.

In the event that you have a dispute, altercation, or other interaction with one or more users of the Site, Services, or Software, you release the Live Gamer Parties from claims, demands, and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such disputes, altercations, or other interactions.

If you are a California resident, you waive California Civil Code § 1542, which says:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

## **22. DISCLAIMER**

EXCEPT AS EXPRESSLY PROVIDED TO THE CONTRARY IN A WRITING BY LIVE GAMER, THE SITE, SOFTWARE, SERVICES, SITE MATERIALS, USER CONTENT, AND ALL OTHER INFORMATION, CONTENT, AND MATERIALS ON OR ACCESSIBLE VIA THE SITE ARE PROVIDED ON AN “AS IS” BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER LIVE GAMER NOR ANY LIVE GAMER PARTNER ASSUMES ANY LIABILITY OR RESPONSIBILITY FOR ANY ERRORS, MISTAKES, INACCURACIES OR OMISSIONS IN PROVIDING THE SITE, SOFTWARE, SERVICES, SITE MATERIALS, OR USER CONTENT, ANY LOSSES OR DAMAGES ARISING FROM THE USE OF THE USER CONTENT, OR ANY CONDUCT BY USERS OF THE SITE, SERVICES, OR SOFTWARE. LIVE GAMER, ON BEHALF OF ITSELF AND EACH OF THE LIVE GAMER PARTNERS, EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT AS TO THE SITE, SOFTWARE, SERVICES, SITE MATERIALS, USER CONTENT, AND ANY OTHER INFORMATION, CONTENT, OR MATERIALS ON OR ACCESSIBLE VIA THE SITE.

NEITHER LIVE GAMER NOR ANY LIVE GAMER PARTY ASSUMES ANY LIABILITY OR RESPONSIBILITY FOR ANY (A) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF THE SITE, SOFTWARE, SERVICES, SITE MATERIALS, USER CONTENT, OR THE INFORMATION, CONTENT, OR OTHER MATERIALS ON OR ACCESSIBLE VIA THE SITE, (B) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL AND/OR FINANCIAL INFORMATION STORED THEREIN, (C) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SITE, (D) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE THAT MAY BE TRANSMITTED TO OR THROUGH THE SITE OR SOFTWARE BY ANY THIRD PARTY, AND/OR (E) ANY ERRORS OR OMISSIONS IN ANY USER CONTENT OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY USER CONTENT POSTED, E-MAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SITE, SERVICES, AND SOFTWARE.

LIVE GAMER DOES NOT WARRANT, ENDORSE, RECOMMEND, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SITE OR

ANY HYPERLINKED SITE OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND LIVE GAMER WILL NOT BE A PARTY TO OR IN ANY WAY RESPONSIBLE FOR MONITORING ANY TRANSACTION BETWEEN YOU A THIRD-PARTY PROVIDER OF PRODUCTS OR SERVICES, INCLUDING PUBLISHERS. 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.

NEITHER LIVE GAMER NOR ANY LIVE GAMER PARTY IS RESPONSIBLE FOR TYPOGRAPHICAL ERRORS OR OMISSIONS RELATING TO PRICING, TEXT, OR GRAPHICS. WHILE LIVE GAMER ATTEMPTS TO MAKE YOUR ACCESS AND USE OF THE SITE, SERVICES, AND SOFTWARE SAFE, NEITHER LIVE GAMER NOR ANY LIVE GAMER PARTY CAN OR DOES REPRESENT OR WARRANT THAT THE SITE, SOFTWARE, OR ITS SERVER(S) ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; THEREFORE, YOU SHOULD USE INDUSTRY RECOGNIZED SOFTWARE TO DETECT AND DISINFECT VIRUSES FROM ANY DOWNLOAD.

THE WARRANTIES AND REMEDIES SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHERS, ORAL OR WRITTEN, EXPRESS OR IMPLIED. NO EMPLOYEE, AGENT, OR REPRESENTATIVE OF LIVE GAMER OR OF ANY LIVE GAMER PARTNER IS AUTHORIZED TO MAKE ANY MODIFICATION OR ADDITION TO THIS WARRANTY.

LIVE GAMER RESERVES THE RIGHT TO CHANGE ANY AND ALL CONTENT CONTAINED IN THE SITE, SERVICES, AND SOFTWARE OFFERED THROUGH THE SITE, AT ANY TIME WITHOUT NOTICE.

### **23. SPECIAL NOTICE FOR PERSONS OUTSIDE THE UNITED STATES**

You acknowledge that Live Gamer operates in the United States and that the Site, Services, and Software are controlled and offered by Live Gamer from its facilities in the United States. Live Gamer makes no representations that the Site, Services, and Software are appropriate or available for use in other locations or jurisdictions. Those who access or use the Site, Services, or Software from other locations or jurisdictions do so at their own volition and are responsible for compliance with all applicable laws in such locations and jurisdictions.

### **24. LIMITATION OF LIABILITY**

IN NO EVENT SHALL ANY OF THE LIVE GAMER PARTIES BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF PROFITS, OR LOSS OF DATA, WHETHER IN AN ACTION IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE, WHETHER ACTIVE, PASSIVE, OR IMPUTED) OR OTHERWISE, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF OR INABILITY TO USE THE SITE, SOFTWARE, SERVICES, SITE MATERIALS, USER CONTENT, OR OTHER INFORMATION, CONTENT, OR MATERIALS CONTAINED ON OR ACCESSIBLE VIA THE SITE, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES CAUSED BY OR RESULTING FROM RELIANCE BY ANY USER ON ANY INFORMATION OBTAINED FROM LIVE GAMER, OR THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR E-MAIL, ERRORS, DEFECTS, VIRUSES, DELAYS IN OPERATION OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE, WHETHER OR NOT RESULTING FROM ACTS OF GOD, COMMUNICATIONS FAILURE, THEFT, DESTRUCTION, OR UNAUTHORIZED ACCESS TO LIVE GAMER'S RECORDS, PROGRAMS OR SERVICES. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF LIVE GAMER AND THE LIVE GAMER PARTIES, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE, WHETHER ACTIVE, PASSIVE, OR IMPUTED), PRODUCT LIABILITY, STRICT LIABILITY, OR OTHER THEORY, ARISING OUT OF OR RELATING TO THE USE OF THE SITE, SERVICES, AND SOFTWARE EXCEED ANY

COMPENSATION YOU PAY, IF ANY, TO LIVE GAMER FOR ACCESS TO OR USE OF THE SITE, SERVICES, OR SOFTWARE.

IN THE EVENT OF A MATERIAL BREACH OF LIVE GAMER'S OBLIGATIONS TO PROVIDE ACCESS TO AND USE OF YOUR ACCOUNT OR THE SITE, SOFTWARE, SERVICES, SITE MATERIALS, USER CONTENT, OR OTHER INFORMATION, CONTENT, OR MATERIALS CONTAINED ON OR ACCESSIBLE VIA THE SITE, INCLUDING ANY LISTING, OR LISTINGS, OF ONE OR MORE VIRTUAL ITEMS, YOUR SOLE AND EXCLUSIVE REMEDY SHALL BE A REFUND OF ANY FEES PAID BY YOU TO LIVE GAMER FOR SUCH ACCESS AND USE DURING THE PERIOD OF WRONGFUL DENIAL OF ACCESS AND USE, SUBJECT TO THE LIMITATIONS ON LIABILITY SET FORTH IN THE PRECEDING PARAGRAPH ABOVE.

YOU SPECIFICALLY ACKNOWLEDGE THAT THE LIVE GAMER PARTIES SHALL NOT BE LIABLE FOR USER CONTENT OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY AND THAT THE RISK OF HARM OR DAMAGE FROM THE FOREGOING RESTS ENTIRELY WITH YOU.

IN THE EVENT THAT ANY OF THE FOREGOING DISCLAIMERS OR LIMITATIONS ON LIABILITY ARE DECLARED TO BE VOID OR UNENFORCEABLE, THEN THE LIVE GAMER PARTIES' LIABILITY SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW.

## **25. GOVERNING LAW**

These Terms of Service and your use of the Site, Services, and Software shall be governed by and construed in accordance with the laws of the State of New York, applicable to agreements made and to be entirely performed within the State of New York, without resort to its conflict of law provisions.

## **26. DISPUTE RESOLUTION AND BINDING ARBITRATION**

In order to expedite and control the cost of disputes, you and Live Gamer agree that any controversy or claim between you and Live Gamer arising out of or related to these Terms of Service or the breach thereof or your authorized or unauthorized use of the Site, Services, or Software (referred to as a "*Claim*") will be resolved, first, by informal negotiation. Accordingly, you and Live Gamer agree that neither of us may start a formal proceeding (except for a Claim involving a request for injunctive relief) for at least 45 days after one of us notifies the other of a Claim in writing. Live Gamer will send its notice to your billing address, with a copy via e-mail to your e-mail address. You will send your notice to Live Gamer, Inc., 678 Broadway, Fifth Floor, New York, New York 10012, Attention: Legal Department.

IF YOU AND LIVE GAMER ARE UNABLE TO RESOLVE A DISPUTE THROUGH INFORMAL NEGOTIATION, AS PROVIDED ABOVE, YOU AND LIVE GAMER AGREE THAT ANY CONTROVERSY OR CLAIM BETWEEN YOU AND LIVE GAMER ARISING OUT OF OR RELATING TO THESE TERMS OF SERVICE OR THE BREACH THEREOF OR YOUR AUTHORIZED OR UNAUTHORIZED USE OF THE SITE, SERVICES, OR SOFTWARE WILL BE SETTLED BY MANDATORY BINDING ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION IN ACCORDANCE WITH ITS COMMERCIAL ARBITRATION RULES (OR, IF YOU ARE NOT A RESIDENT OF THE UNITED STATES, IN ACCORDANCE WITH ITS INTERNATIONAL ARBITRATION RULES) AND ITS SUPPLEMENTARY PROCEDURES FOR ONLINE ARBITRATION. ANY SUCH CONTROVERSY OR CLAIM WILL BE ARBITRATED ON AN INDIVIDUAL BASIS, AND WILL NOT BE CONSOLIDATED IN ANY ARBITRATION WITH ANY CLAIM OR CONTROVERSY OF ANY OTHER PARTY. THE ARBITRATION WILL BE CONDUCTED IN THE ENGLISH LANGUAGE, AND THE SEAT, OR LEGAL PLACE, OF THE ARBITRATION WILL BE IN THE CITY OF NEW YORK, NEW YORK, U.S.A. IN ACCORDANCE WITH THE U.S. ARBITRATION ACT. JUDGMENT ON THE ARBITRATION AWARD MAY BE ENTERED INTO ANY COURT HAVING JURISDICTION

THEREOF. THERE SHALL BE ONE ARBITRATOR, NAMED IN ACCORDANCE WITH SUCH RULES. THE AWARD OF THE ARBITRATOR WILL BE FINAL AND BINDING UPON THE PARTIES WITHOUT APPEAL OR REVIEW EXCEPT AS PERMITTED BY LAWS OF THE STATE OF NEW YORK. THE AWARD OF THE ARBITRATOR SHALL BE ACCOMPANIED BY A STATEMENT OF THE REASONS UPON WHICH THE AWARD IS BASED. NOTWITHSTANDING THE FOREGOING, EITHER PARTY MAY SEEK ANY INTERIM OR PRELIMINARY INJUNCTIVE RELIEF FROM ANY COURT OF COMPETENT JURISDICTION, AS NECESSARY TO PROTECT THE PARTY'S RIGHTS OR PROPERTY PENDING THE COMPLETION OF ARBITRATION. BY AGREEING TO ARBITRATE, AS SET FORTH HEREIN, YOU UNDERSTAND THAT YOU AND LIVE GAMER ARE BOTH WAIVING OUR RIGHT TO SUE IN COURT AND HAVE A JURY TRIAL. FOR THE AVOIDANCE OF DOUBT, YOU AND LIVE GAMER AGREE THAT THE TYPE OF ARBITRATION WE INTEND TO PARTICIPATE IN IS BETWEEN LIVE GAMER AND YOU AS AN INDIVIDUAL. YOU AND LIVE GAMER ARE AGREEING THAT NEITHER OF US WILL UTILIZE OR ATTEMPT TO UTILIZE CLASS ACTION ARBITRATION PROCEDURES IN ANY ARBITRATION. FOR MORE INFORMATION REGARDING THE AMERICAN ARBITRATION ASSOCIATION AND ITS ARBITRATION RULES AND PROCEDURES, GO TO <http://www.adr.org>.

FURTHER, BY USING THE SITE, SERVICES, OR SOFTWARE, YOU IRREVOCABLY AND UNCONDITIONALLY CONSENT AND SUBMIT TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE STATE AND FEDERAL COURTS LOCATED IN THE CITY OF NEW YORK, NEW YORK, U.S.A.

## **27. TERM AND TERMINATION**

These Terms of Service will remain in full force and effect while you use the Site, Services, and Software, unless otherwise terminated as set forth in this section. You agree that Live Gamer, in its sole discretion, may suspend or terminate your account, or any part thereof, and your use of or access to the Site, Services, and Software, or any part thereof, and temporarily or permanently remove and discard any User Content within the Site or Services, at any time and for any reason, including, without limitation, for lack of use or if Live Gamer has a reasonable belief that you have violated or acted inconsistently with the letter or spirit of these Terms of Service. For the avoidance of doubt, the right set forth in the previous sentence, includes the right to suspend or cancel any listing of a Virtual Item or delete any bid on a Virtual Item. Also, Live Gamer, in its sole discretion and at any time, may modify or discontinue providing the Site, Services, and Software, or any part thereof, with or without notice. You agree that any modification or termination of your use of or access to the Site, Services, and Software may be effected without prior notice, and you acknowledge and agree that Live Gamer may immediately deactivate or delete your account and all related information and User Content in your account and bar any further access to such information or to the Site, Software, and Services. Live Gamer will not return any User Content or other information to you, and you agree that neither Live Gamer nor the Live Gamer Parties shall be liable to you or any third party for any modification or termination of your use of or access to the Site, Services, and Software, for your inability to recover any User Content or other information, or for your inability to use the Site, Services, and Software to list, transfer, exchange, sell, or purchase, or complete any listing, transfer, exchange, sale, or purchase, of any Virtual Item, or Virtual Items.

YOU SPECIFICALLY ACKNOWLEDGE THAT, IF YOUR ACCOUNT OR YOUR USE OF OR ACCESS TO THE SITE, SERVICES, AND SOFTWARE IS TERMINATED OR SUSPENDED FOR ANY OF THE REASONS SET FORTH HEREIN, INCLUDING, BUT NOT LIMITED TO, A DETERMINATION BY LIVE GAMER THAT YOU HAVE ENGAGED IN PROHIBITED ACTIVITY, YOU WILL BE UNABLE TO LIST, TRANSFER, EXCHANGE, SELL, OR PURCHASE, OR COMPLETE THE LISTING, TRANSFER, EXCHANGE, SALE, OR PURCHASE, OF ITEMS USING THE SITE, SERVICES, AND SOFTWARE. THE LIVE GAMER PARTIES WILL NOT HAVE ANY LIABILITY TO YOU

IN CONNECTION WITH SUCH TERMINATION OR SUSPENSION. THIS ACKNOWLEDGEMENT IS AN EXPRESS CONDITION OF YOUR USE AND ACCESS TO THE SITE, SERVICES, AND SOFTWARE.

**28. SEVERABILITY**

If any provision of these Terms of Service shall be deemed unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from these Terms of Service and shall not affect the validity and enforceability of any remaining provisions.

**29. GENERAL**

Live Gamer's failure to act in a particular circumstance does not waive its ability to act with respect to that circumstance or similar circumstances. By using the Site, Services, and Software, you consent to receiving electronic communications from Live Gamer. These communications will include notices about your account and information concerning or related to the Site, Services, and Software. You agree that any notice, agreements, disclosure, or other communications that we send to you electronically will satisfy any legal communication requirements, including that such communications be in writing. Live Gamer and the Live Gamer Parties are excused for any failure to perform to the extent that their performance is prevented by any reason outside of their control.

###