**Tribes: Ascend® End User License Agreement**

Last updated on September 4, 2015.

## 1. Terms of Agreement.

IMPORTANT LEGAL NOTICE!

PLEASE READ THE FOLLOWING AGREEMENT CAREFULLY BEFORE CLICKING THE "I ACCEPT" BUTTON. THIS END USER LICENSE AGREEMENT (THE "AGREEMENT") IS BETWEEN YOU AS THE END USER ("YOU" OR "YOUR") AND HI-REZ STUDIOS, INC. ("HI-REZ," "WE," "US," OR "OUR").

IF YOU DO NOT AGREE WITH ALL OF THE TERMS OF THIS END USER LICENSE AGREEMENT, YOU MUST CLICK THE "I REJECT" BUTTON.

BY CLICKING THE "I ACCEPT" BUTTON BELOW, OR BY INSTALLING, COPYING, OR OTHERWISE USING THE SOFTWARE PRODUCT (AS DEFINED BELOW), YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT, AND REPRESENT AND WARRANT TO HI-REZ THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND THAT YOU ARE AT LEAST EIGHTEEN YEARS OF AGE (EVEN IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF AN AUTHORIZED USER WHO IS AT LEAST THIRTEEN YEARS OF AGE).

IF YOU PURCHASED THIS GAME OR OTHER DIGITAL CONTENT FROM A THIRD PARTY RETAILER OR DISTRIBUTOR, REFUNDS FOR THE SOFTWARE PRODUCT ARE GOVERNED BY THAT RETAILER'S OR DISTRUBTOR'S REFUND POLICY. IF YOU PURCHASED THE SOFTWARE PRODUCT DIRECTLY FROM HI-REZ AND NOT FROM A RETAILER OR DISTRIBUTOR, AND YOU REJECT THE TERMS OF THIS AGREEMENT WITHIN THIRTY CALENDAR DAYS AFTER YOUR PURCHASE, YOU MAY BE ELIGIBLE FOR A REFUND IN ACCORDANCE WITH HI-REZ'S REFUND POLICY LOCATED AT <http://legal.hirezstudios.com>. PLEASE NOTE THAT ONCE YOU AGREE TO THE TERMS OF THIS AGREEMENT, CREATE AN ACCOUNT WITH HI-REZ, OR ACTIVATE THE SOFTWARE PRODUCT, YOU WILL NO LONGER BE ELIGIBLE FOR A REFUND.

THE TERMS OF THIS AGREEMENT MAY BE AMENDED, SUPPLEMENTED, OR MODIFIED AT ANY TIME BY HI-REZ IN ITS SOLE DISCRETION, INCLUDING, WITHOUT LIMITATION, WHEN HI-REZ UPDATES OR UPGRADES THE SOFTWARE PRODUCT, EFFECTIVE UPON PRIOR NOTICE AS FOLLOWS: Hi-Rez will post the revised version of this Agreement on the legal page of the official Hi-Rez website located at <http://legal.hirezstudios.com> and may provide such other notice as Hi-Rez may elect in its sole discretion. If any future changes to this Agreement are unacceptable to you or cause you to no longer be in compliance with this Agreement, you may terminate this Agreement in accordance with **Section 9** below. Your installation and use of any of Hi-Rez's updates, upgrades, or modifications to the Software Product or your continued use of the Software Product following notice of changes to this Agreement shall conclusively demonstrate your acceptance of such changes. Hi-Rez may change, modify, suspend, or discontinue any aspect of the Software Product at any time. Hi-Rez may also impose limits on certain features or restrict your access to parts or all of the Software Product without notice or liability. You have no interest, monetary or otherwise, in any feature or content contained in the Software Product.

## 2. Scope of Agreement.

This Agreement is a legal contract between you and Hi-Rez for the game accompanying this Agreement, which includes the interactive entertainment software product entitled "Tribes: Ascend" in object code format only, and the associated media, Documentation, and Updates, if any, provided by Hi-Rez to you and for which you are granted a license pursuant to this Agreement (collectively, the "Software Product"). As used in this Agreement, "Documentation" shall mean the **Online Terms of Service and Use Agreement**, **Online Privacy Policy**, and User Manual(s) that Hi-Rez makes generally available to licensees of Tribes: Ascend. As used in this Agreement, "Updates" shall mean any and all patches,

modifications, updates, and upgrades with respect to the Software Product that Hi-Rez makes generally available to licensees of Tribes: Ascend. The Software Product may only be played by obtaining from Hi-Rez access to the Tribes: Ascend game service (the "Service"), which can be done by visiting <http://www.tribesascend.com> (the "Site") or through an authorized distribution channel otherwise provided by a third party and approved by Hi-Rez (e.g., Microsoft Corporation, Valve Corporation), either of which is subject to a separate **Online Terms of Service and Use Agreement** (the "Terms of Use") and will require you to setup an account with Hi-Rez as well as Hi-Rez's third party payment provider(s). The Terms of Use are incorporated into this Agreement by reference. You may access the current version of the Terms of Use at <http://legal.hirezstudios.com>. The Terms of Use are subject to change by Hi-Rez with or without notice. The Software Product and any and all copies and derivative works of the Software Product are the proprietary and copyrighted work of Hi-Rez Studios, Inc. Any use, reproduction, modification, or distribution of the Software Product not expressly authorized by the terms of this Agreement is expressly prohibited. All rights in and to the Software Product not granted herein are hereby expressly reserved by Hi-Rez. Any permitted user-generated content based on or included in the Software Product, through the "Steam Workshop" or otherwise, constitutes a derivative work of the Software Product and Hi-Rez retains all right, title, and interest therein.

**3. Limited Use License**.

By clicking the "I ACCEPT" button and subject to the terms and conditions of this Agreement, you may install the applicable software comprising of the Software Product (the "Game Software") onto your computer or applicable hardware device, solely for purposes of playing the Software Product by registering for and accessing an account with the Service at the Site (the "Account"). Subject to your agreement to and full ongoing compliance with the terms and conditions of this Agreement, Hi-Rez hereby grants to you a limited, non-exclusive, non-transferable license to (a) install one copy of the Game Software on one or more computers and/or applicable hardware devices owned by you or under your legitimate control, and (b) use the Game Software in conjunction with the Service solely for your lawful and non-commercial entertainment purposes. You may install the Game Software on multiple computers and/or applicable hardware devices owned by you or under your legitimate control, but you may only play the Software Product on one computer or one applicable hardware device at any single point in time. All use of the Game Software is subject to the terms and conditions of this Agreement and the Terms of Use, both of which you must accept before you can use your Account to play the Software Product. You agree that Hi-Rez is not transferring title to the Software Product to you and that this license shall not be considered a "sale" of the Software Product.

**4. License Restrictions and Limitations**.

The limited, personal use license granted to you in **Section 3** is subject to the following restrictions and limitations, as well as all other terms and conditions of this Agreement (collectively, the "License Limitations"). You agree that you will not, under any circumstances:

a. sell, sublicense, assign, rent, lease, or otherwise transfer the Software Product, except as expressly permitted by this Agreement;

b. reverse engineer, decompile, disassemble, or otherwise derive source code from the Software Product or reduce the Software Product to a human-readable form, except to the extent that such actions are expressly permitted by applicable law;

c. copy, photocopy, or reproduce the Software Product, in whole or in part; provided, however, that you may make one (1) copy of the Game Software and the User Manual for archival purposes only;

d. modify, translate, or create derivative works based on or utilizing the Software Product, Service, or Software Product experience, or any portion thereof;

e. remove or tamper with any copyright, trademark, or other proprietary notices contained in or relating to the Software Product, Service, or Game experience, or any portion thereof;

f. use cheats, automation software (bots), hacks, mods, or any other unauthorized third-party software, tools, or content designed to or capable of modifying the Software Product, the Service, the Site, the Tribes: Ascend experience, or any portion thereof;

g. exploit the Software Product, the Service, the Tribes: Ascend experience, or any portion thereof for any commercial purpose, including, without limitation, (i) use at a cyber cafe, PC bang, computer gaming center, or any other location-based site without the express written consent of Hi-Rez; (ii) for gathering in-game currency, items, or resources for sale outside the Software Product or inside the Software Product but outside a virtual marketplace owned and maintained by Hi-Rez; or (iii) performing in-game services in exchange for payment outside the Software Product (e.g., power-leveling and similar activities);

h. use any unauthorized third-party software that intercepts, "mines," or otherwise collects information from, within, or through the Software Product or Service, including, without limitation, any software that reads areas of RAM used by the Software Product to store information about a character, in-game items, or the Software Product environment; provided, however, that Hi-Rez may, in its sole discretion, allow the use of specified third party user interfaces and/or permit certain "data-mining" activities on a case-by-case basis;

i. modify, or allow or cause to be modified, any files that are a part of the Game Software in any way not expressly authorized by Hi-Rez in writing in each instance;

j. host, provide, or develop matchmaking services for the Software Product or Service or intercept, emulate, or redirect the communication protocols used by Hi-Rez in any way, for any purpose, including, without limitation, unauthorized play over the Internet, network play, or as part of content aggregation networks;

k. facilitate, create, or maintain any unauthorized connection to the Software Product or Service, including, without limitation, (i) any connection to any unauthorized server that emulates, or attempts to emulate, the Service; or (ii) any connection using programs or tools not expressly approved by Hi-Rez in writing in each instance;

l. create any other software or content that incorporates the Software Product or Service, or any portion thereof; or

m. sell, grant a security interest in, or transfer reproductions of the Software Product to other parties in any way not expressly authorized herein, or rent, lease, or license the Software Product to others.

**5. <u>Terms of Use</u>.**

You must accept the Terms of Use and create an Account in order to access the Service and play the Software Product. The Terms of Use governs all aspects of gameplay. You may view the current Terms of Use here: <http://legal.hirezstudios.com>.

**6. <u>Intellectual Property Rights</u>.**

a. The Software Product is protected by copyright laws and international copyright treaties, conventions, and other applicable law. As between you and Hi-Rez, Hi-Rez shall exclusively retain all right, title, and interest in and to the Software Product, the Service, the Site, your Account, and any and all modifications and improvements thereto and copies and derivative works thereof, including, without limitation, any Software Product content, Updates, and Documentation provided to you. The Software Product may contain materials licensed by third parties, and the licensors of those materials

may enforce their rights in the event of any violation of this Agreement. You will not obtain any ownership rights whatsoever in your Account, the Software Product, the Service, the Site, your Account or game content, Updates, or Documentation.

b. Tribes: Ascend®, Tribes™, and certain related names and logos are the registered trademarks or trademarks, service marks, and/or trade names of Hi-Rez. These and all other trademarks, service marks, and trade names used by or in connection with the Software Product (the "Marks") are proprietary rights owned by Hi-Rez or its licensors.

c. As between you and Hi-Rez, you acknowledge Hi-Rez's exclusive rights in and to the Software Product and that the Software Product is unique and original to Hi-Rez and that Hi-Rez is the exclusive owner thereof. Unless otherwise permitted by law, you shall not, at any time during or after the effective term of this Agreement, dispute or contest, directly or indirectly, Hi-Rez's exclusive right, title, and interest in and to the Software Product or the validity thereof. You agree to promptly assign to Hi-Rez any and all rights that you may obtain in or to the Software Product arising under applicable law and you hereby appoint Hi-Rez as your attorney in fact for such purpose.

d. You may permanently transfer all of your rights and obligations under this Agreement to another person only by (i) where applicable, physically transferring the original media (e.g., the CD-ROM or DVD you purchased), all original packaging, and all User Manual(s) and Documentation distributed with the Software Product, or (ii) contacting Hi-Rez and obtaining written approval for the transfer; provided in both instances, however, that you permanently delete all copies and installations of the Software Product in your possession or control, and that the recipient agrees to and accepts the terms of this Agreement. However, your Account with Hi-Rez is not transferable. The transferor (i.e., you), and not Hi-Rez, agrees to be solely responsible for any taxes, fees, charges, duties, withholdings, assessments, and the like, together with any interest, penalties, and additions imposed in connection with such transfer.

**7. Pre-Loaded Software**.

The media on or method by which the Game Software is distributed may contain additional software and/or content for which you do not have a license (the "Locked Software"), and you agree that Hi-Rez may install the Locked Software onto your computer or applicable hardware device during the Game Software installation process. You also agree that you will not access, use, distribute, copy, or display the Locked Software, unless and until you receive from Hi-Rez (a) a license to use that Locked Software; and (b) if and where applicable, a valid alphanumeric key with which to unlock it. If you receive a license and/or a key from Hi-Rez, you may only unlock those portions of a single copy of the Locked Software for which you received a license, and the License Limitation set forth in **Section 4** shall apply. The terms of any End User License Agreement displayed after the Locked Software is unlocked will replace and supersede this Agreement, but only with regard to the Locked Software for which you receive a license. Notwithstanding anything to the contrary herein, you may make one (1) copy of the Locked Software for archival purposes only.

**8. Consent to Monitor**.

WHEN RUNNING, HI-REZ MAY MONITOR YOUR USE AND PLAY OF THE SOFTWARE PRODUCT AND COLLECT DATA REGARDING YOUR USE AND PLAY OF THE SOFTWARE PRODUCT IN ACCORDANCE WITH HI-REZ'S PRIVACY POLICY, A CURRENT COPY OF WHICH MAY BE ACCESSED AT <http://legal.hirezstudios.com>. IN ADDITION, THE SOFTWARE PRODUCT AND ANY RELATED HI-REZ SERVICES MAY MONITOR EACH OF YOUR HARDWARE DEVICE'S RANDOM ACCESS MEMORY (RAM) FOR UNAUTHORIZED THIRD PARTY PROGRAMS RUNNING CONCURRENTLY WITH THE SOFTWARE PRODUCT. AN "UNAUTHORIZED THIRD PARTY PROGRAM" AS USED HEREIN SHALL BE DEFINED AS ANY THIRD PARTY SOFTWARE PROHIBITED BY **SECTION 4**. IN THE EVENT THAT THE SOFTWARE PRODUCT AND/OR ANY RELATED HI-REZ SERVICES DETECTS AN UNAUTHORIZED THIRD PARTY PROGRAM, THE SOFTWARE PRODUCT OR APPLICABLE HI-REZ SERVICES MAY COMMUNICATE INFORMATION

BACK TO HI-REZ, INCLUDING, WITHOUT LIMITATION, YOUR ACCOUNT NAME, DETAILS ABOUT THE UNAUTHORIZED THIRD PARTY PROGRAM DETECTED, THE TIME AND DATE, AND ANY OTHER RELEVANT INFORMATION; AND HI-REZ MAY EXERCISE ANY OR ALL OF ITS RIGHTS UNDER THIS AGREEMENT, WITH OR WITHOUT PRIOR NOTICE TO YOU, INCLUDING, WITHOUT LIMITATION, TERMINATION OF THIS AGREEMENT AND YOUR RIGHT TO CONTINUE TO USE THE SOFTWARE PRODUCT.

**9. Termination**.

This Agreement is effective until terminated. You may terminate this Agreement at any time by (a) permanently destroying all copies of the Software Product in your possession or control; (b) removing the Game Software completely from each computer or applicable hardware device on which you have installed the Software Product; and (c) notifying Hi-Rez of your intention to terminate this Agreement. Hi-Rez may terminate this Agreement at any time for any reason or no reason, with or without notice. Upon termination for any reason, all licenses granted to you in this Agreement shall immediately terminate and you must immediately and permanently destroy all copies of the Software Product in your possession and control and remove the Game Software completely from each computer or applicable hardware device on which you have installed the Software Product.

**10. Export Controls**.

The Software Product may not be re-exported, downloaded, or otherwise exported into (or to a national or resident of) any country to which the United States has embargoed goods, or to anyone on the United States Treasury Department's list of Specially Designated Nationals or the United States Commerce Department's Table of Denial Orders. You represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list.

**11. Patches and Updates**.

Hi-Rez, or its third party vendors, may deploy or provide patches, updates, and modifications to the Software Product that must be installed for you to continue to play the Software Product. Hi-Rez, or its third party vendors, may update the Software Product remotely, including, without limitation, the Game Software residing on the user's machine, without the knowledge of the user, and you hereby grant to Hi-Rez your consent to deploy and apply such patches, updates, and modifications.

**12. Duration of the "Online" Component of the Game**.

The Software Product is an "online" game that must be played over the Internet through the Service as provided by Hi-Rez. You understand and agree that the Service is provided by Hi-Rez at its discretion and may be terminated or otherwise discontinued by Hi-Rez pursuant to the Terms of Use.

**13. Limited Warranty**.

THE SERVICE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF CONDITION, UNINTERRUPTED USE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. The entire risk arising out of use or performance of the Software Product and Service (including, without limitation, the Game Software, the Manual(s), and Documentation) remains with the user. However, Hi-Rez warrants that the media containing the Software Product, if applicable, will be free of defects in material and workmanship for a period of thirty (30) calendar days from the date of your purchase of the software product. In the event that such media proves to be defective during such thirty (30) calendar day period, and upon presentation to Hi-Rez, or the retailer from whom you purchased the software product, of proof of your purchase, Hi-Rez, or the retailer will, at its sole option, (a) correct the defect in material and workmanship in the media containing the Software Product, (b) provide you with a similar product of similar value, or (c) refund the money you paid for the Software Product. THE FOREGOING IS YOUR SOLE AND EXCLUSIVE REMEDY FOR THE EXPRESS WARRANTY SET

FORTH ABOVE. EXCEPT FOR THE FOREGOING WARRANTY WITH RESPECT TO DEFECTIVE MEDIA, THE SOFTWARE PRODUCT (INCLUDING, WITHOUT LIMITATION, THE GAME SOFTWARE, THE MANUAL, AND ALL DOCUMENTATION AND CONTENT) IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF CONDITION, UNINTERRUPTED USE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT. Some states do not allow the exclusion or limitation of implied warranties, so the above limitations may not apply to you.

**14. Limitation of Liability; Indemnity**.

NEITHER HI-REZ NOR ITS PARENT, SUBSIDIARIES, AFFILIATES, PARTNERS, OR VENDORS SHALL BE LIABLE IN ANY WAY FOR ANY LOSS OR DAMAGE OF ANY KIND ARISING OUT OF THE SOFTWARE PRODUCT OR ANY USE OF THE SOFTWARE PRODUCT OR SERVICE, INCLUDING, WITHOUT LIMITATION, LOSS OF DATA, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, APPLICABLE HARDWARE DEVICE FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER DAMAGES OR LOSSES. FURTHER, NEITHER HI-REZ NOR ITS PARENT, SUBSIDIARIES, AFFILIATES, PARTNERS, OR VENDORS SHALL BE LIABLE IN ANY WAY FOR ANY LOSS OR DAMAGE TO PLAYER CHARACTERS, VIRTUAL GOODS (E.G., EQUIPMENT, WEAPONS, SKINS, AUDIO PACKS, AESTHETIC FLAIR, ETC.), OR CURRENCY, ACCOUNTS, STATISTICS, OR USER STANDINGS, RANKS, OR PROFILE INFORMATION STORED BY THE SOFTWARE PRODUCT OR THE SERVICE. HI-REZ SHALL NOT BE RESPONSIBLE FOR ANY INTERRUPTIONS OF SERVICE, INCLUDING, WITHOUT LIMITATION, ISP DISRUPTIONS, SOFTWARE OR HARDWARE FAILURES, OR ANY OTHER EVENT WHICH MAY RESULT IN A LOSS OF DATA OR DISRUPTION OF SERVICE. IN NO EVENT WILL HI-REZ BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR PUNITIVE DAMAGES. IN NO EVENT SHALL HI-REZ'S LIABILITY, OR THE LIABILITY OF ITS PARENT, SUBSIDIARIES, AFFILIATES, PARTNERS, OR VENDORS, WHETHER ARISING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EXCEED IN THE AGGREGATE THE TOTAL FEES PAID BY YOU TO HI-REZ DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRIOR TO THE TIME SUCH CLAIM AROSE. You hereby agree to defend, indemnify, and hold Hi-Rez and its parent, subsidiaries, affiliates, and vendors harmless from and against any claim, liability, loss, injury, damage, cost, or expense (including reasonable attorneys' fees) incurred by Hi-Rez arising out of or related to your use of the Software Product or Service. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations may not apply to you.

**15. Equitable Remedies**.

You hereby agree that Hi-Rez would be irreparably damaged if the terms of this Agreement were not specifically enforced, and therefore you agree that Hi-Rez shall be entitled, without bond or other security or proof of damages, to appropriate equitable remedies in any court of competent jurisdiction with respect to any breach of this Agreement, which equitable remedies shall be in addition to such other remedies as Hi-Rez may otherwise have available under applicable law. In the event any litigation is brought by either party in connection with this Agreement, the prevailing party in such litigation shall be entitled to recover from the other party all the costs, attorneys' fees, and other expenses incurred by such prevailing party in the litigation.

**16. Governing Law; Dispute Resolution**.

a. To expedite resolution and control the cost of any dispute, controversy, or claim related to this Agreement ("Dispute"), you and Hi-Rez agree to first attempt to negotiate any Dispute (except those Disputes expressly provided below) informally for at least thirty (30) calendar days before initiating any arbitration or court proceeding. Such informal negotiations commence upon written notice from one party to the other. Hi-Rez will send its notice to your billing address and email you a copy to the email address you have provided to Hi-Rez. You will send your notice to Hi-Rez Studios, Inc., 3750 Brookside Parkway, Suite 200, Alpharetta, Georgia 30022, Attention: Legal Department, or to such other address or person as Hi-Rez may hereafter direct.

b. If you and Hi-Rez are unable to resolve a Dispute through informal negotiations, either you or Hi-Rez may elect to have the Dispute (except those Disputes expressly excluded below) finally and exclusively resolved by binding arbitration. Any election to arbitrate by one party shall be final and binding on the other. YOU UNDERSTAND THAT ABSENT THIS PROVISION, YOU WOULD HAVE THE RIGHT TO SUE IN COURT AND HAVE A JURY TRIAL. The arbitration shall be commenced and conducted under the Commercial Arbitration Rules of the American Arbitration Association ("AAA') and, where appropriate, the AAA's Supplementary Procedures for Consumer Related Disputes ("AAA Consumer Rules"), both of which are available at the AAA website <www.adr.org>. The determination of whether a Dispute is subject to arbitration shall be governed by the Federal Arbitration Act and determined by a court rather than an arbitrator. Your arbitration fees and your share of arbitrator compensation shall be governed by the AAA Rules and, where appropriate, limited by the AAA Consumer Rules. The arbitration may be conducted in person, through the submission of documents, by phone, or online. The arbitrator will make a decision in writing, but need not provide a statement of reasons unless requested by a party. The arbitrator must follow applicable law, and any award may be challenged if the arbitrator fails to do so. Except as otherwise provided in this Agreement, you and Hi-Rez may litigate in court to compel arbitration, stay proceeding pending arbitration, or to confirm, modify, vacate, or enter judgment on the award entered by the arbitrator.

c. You and Hi-Rez agree that any arbitration shall be limited to the Dispute between Hi-Rez and you individually. To the fullest extent permitted by law, (i) no arbitration shall be joined with any other; (ii) there is no right or authority for any Dispute to be arbitrated on a class-action basis or to utilize class action procedures; and (iii) there is no right or authority for any Dispute to be brought in a purported representative capacity on behalf of the general public or any other persons.

d. You and Hi-Rez agree that the following Disputes are not subject to the above provisions concerning informal negotiations and binding arbitration: (i) any Disputes seeking to enforce or protect, or concerning the validity of, any of your or Hi-Rez's intellectual property rights; (ii) any Dispute related to, or arising from, allegations of theft, piracy, invasion of privacy, or unauthorized use; and (iii) any claim for injunctive relief.

e. Any arbitration shall be initiated in the County of Fulton, State of Georgia, United States of America. Any Dispute not subject to arbitration (other than claims proceeding in any small claims court), or where no election to arbitrate has been made, shall be decided by a court of competent jurisdiction within the County of Fulton, State of Georgia, United States of America, and you and Hi-Rez agree to submit to the personal jurisdiction of that court.

f. Except as otherwise set forth herein, this Agreement shall be governed by, and will be construed under, the Laws of the United States of America and the laws of the State of Georgia, without regard to choice of law principles. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. For customers who purchased a license to the Software Product in, and are a resident of, Canada, Australia, Singapore, or New Zealand, other laws may apply if you choose not to agree to arbitrate as set forth above; provided, however, that such laws shall affect this Agreement only to the extent required by such jurisdiction. In such a case, this Agreement shall be interpreted to give maximum effect to the terms and conditions hereof. If you purchased your license to the Software Product in New Zealand, and are a resident of New Zealand, The New Zealand Consumer Guarantees Act of 1993 ("New Zealand Act") may apply to the Software Product and/or the Service as supplied by Hi-Rez to you. If the New Zealand Act applies, then notwithstanding any other provision in this Agreement, you may have rights or remedies as set out in the New Zealand Act which may apply in addition to, or, to the extent that they are inconsistent, instead of, the rights or remedies set out in this Agreement. Those who choose to access the Service from locations outside of the United States, Canada, Australia, Singapore, or New Zealand do so on their own initiative and are responsible for compliance with local laws if and to the extent local laws are applicable.

g. You and Hi-Rez agree that if any portion of this **Section 16** is found illegal or unenforceable (except any portion of **Section 16(d)**) that portion shall be severed and the remainder of

the applicable section(s) shall be given full force and effect. If **Section 16(d)** is found to be illegal or unenforceable then neither you nor Hi-Rez will elect to arbitrate any Dispute falling within that portion of **Section 16(d)** found to be illegal or unenforceable and such Dispute shall be decided by a court of competent jurisdiction within the County of Fulton, State of Georgia, United States of America, and you and Hi-Rez agree to submit to the personal jurisdiction of that court.

**17. Miscellaneous**.

This Agreement constitutes and contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior oral or written agreements; provided, however, that this Agreement shall coexist with, and shall not supersede, the Terms of Use. To the extent that the provisions of this Agreement conflict with the provisions of the Terms of Use, the conflicting provisions in the Terms of Use shall govern. The provisions of **Sections 4**, **6**, **8**, **10** and **13-17** shall survive the termination of this Agreement for any reason. Subject to **Section 16(g)**, if any provision of this Agreement is found to be unenforceable, that provision shall be severed and the remainder of the Agreement shall be given full force and effect.

I hereby acknowledge that I have read and understand the foregoing End User License Agreement and agree that by clicking "I ACCEPT" or installing the Software Product, I am acknowledging my agreement to be bound by the terms and conditions of this Agreement.