

## TERMS OF SERVICE

**Welcome to Who's Your Daddy?! Please read these Terms of Service and our Privacy Policy carefully before using Evil Tortilla Games Inc. Services.**

By using our Services, whether as a guest, as a registered user, or otherwise, you agree that these Terms of Service will govern your relationship with Evil Tortilla Games Inc. If you do not completely agree to these Terms of Service then you must not use any of our Services.

We may amend these Terms at any time by posting a revised version on the Website and within the Website's settings. Each revised version will state its effective date, which will be effective on or after the date in which it is posted or sent. Your continued use of the Services after the effective date constitutes your acceptance of the revised Terms.

### 1. Definitions

**“Account”** means, a unique account created by you to access Company Services.

**“Dispute”** means, any controversy related to these Terms, including without limitation claims arising out of or relating to any aspect of the relationship between you and Company, claims that arose before these Terms, and claims that may arise after the termination of these Terms; however, this does not include claims related to or arising from the enforcement or protection of Intellectual Property Rights, and is subject to any applicable statutory consumer rights laws in your local jurisdiction.

**“Company”** means, Evil Tortilla Games Inc. References to “us,” “we,” or “our” means Evil Tortilla Games Inc., including any and all subsidiaries parent companies, joint ventures, and other corporate entities under common ownership and/or any of their agents, consultants, employees, officers, and directors. Company does not include Company Affiliates or third parties (analytics or ad tech companies, or similar organizations).

**“Company Affiliate”** (or **“Company Affiliates”**) means, Company's third-party content providers, distributors, licensees, or licensors.

**“Company Group”** means the Company's directors, officers, employees, agents, contractors, interns, suppliers, service providers, and/or licensors.

**“Content”** means content such as text, images, or other information that can be posted, uploaded, linked to or otherwise made available by you, regardless of the form of that content.

**“Game”** means the online game known as Who's Your Daddy?.

**“Intellectual Property Rights”** means, any and all right, title, and interest of every kind whatsoever, whether now known or unknown, registrable or otherwise, in and to patents, trade secret rights, copyrights, trademarks, service marks, trade dress and similar rights of any type under the laws of any governmental authority, including, without limitation, all applications and registrations relating to the foregoing.

**“Notice”** means, a delivered writing by e-mail or courier delivery to the other party at their respective address and will be effective upon receipt.

**“Privacy Policy”** means, Company’s policy regarding privacy, which also governs your use of the Services and is incorporated herein by reference. The current version is available on our website.

**“Merch”** (or **“Products”**) means the items, goods and services, available listings, descriptions and images of goods or services or related coupons or discounts, as well as references and links to such products or services found on the Company Website.

**“Service”** (or **“Services”**) means the services on any website provided by Company and Company Affiliates, including without limitation the following websites and all sub-pages thereof: [www.eviltortillagames.com](http://www.eviltortillagames.com), and the online game known as Who’s Your Daddy?.

**“Terms of Service”** (or **“Terms”**) means these terms of service and end user license agreement and any terms, conditions, covenants, representations, warranties, obligations, and licenses contained herein.

**“Transaction”** means your purchase or obtaining of Product(s) offered by the Company through the Website or any third-party service, if applicable.

**“Website”** (or **“Site”**) means [www.eviltortillagames.com](http://www.eviltortillagames.com).

## 2. Account

Your Account on our Website gives you access to the Company Services and functionality that we may establish and maintain from time to time and in our sole discretion.

You may never use another user’s Account without permission. When creating your Account, you must provide accurate and complete profile information, and you must keep this information up to date. You are solely responsible for the activity that occurs on your Account, and you must keep your Account password secure. We encourage you to use “strong” passwords (passwords that use a combination of upper and lowercase letters, numbers and symbols) with your Account. You must notify us immediately of any breach of security or unauthorized use of your account. We will not be liable for any losses caused by any unauthorized use of your Account.

By providing us with your email address you consent to our using the email address to send you service-related notices, including any notices required by law, in lieu of communication by postal mail. We may also use your email address to send you other promotional messages, such as changes to features of our Site and special offers. If you do not want to receive such email messages, you may opt out or change your preferences by contacting support at [support@eviltortillagames.com](mailto:support@eviltortillagames.com). Opting out may prevent you from receiving email messages regarding updates, improvements, or offers; however, opting out will not prevent you from receiving service-related notices.

You acknowledge that you do not own the Account you use to access our Site. Notwithstanding anything in these Terms to the contrary, you agree that we have the absolute right to manage, regulate, control, modify and/or eliminate any data stored by us or on our behalf on our (including by our third party hosting providers’) servers as we see fit in our sole discretion, in any general or specific case and that we have no liability to you based on our exercise of such right. All data on our servers are subject to deletion, alteration, or transfer. Notwithstanding any value attributed to such data by you or any third party, you understand and agree that any data, Account history and Account content residing on our servers, may be deleted, altered, moved or transferred at any time for any reason in our discretion, with or without notice and with no liability of any kind. We do not provide

or guarantee, and expressly disclaim, any value, cash or otherwise, attributed to any data residing on our servers.

By connecting to our Site with a third-party service, you give us permission to access and use your information from that service as permitted by that service, and to store your log-in credentials for that service.

### 3. Products

We may make available for purchase, certain Products, as well as references and links to Products, on the Company Website. Such Products may be made available by Company or by third-parties. The availability through Company of any listing, description or image of a third-party Product does not imply our endorsement of such Product or affiliation with the provider of such Product. We make no representations as to the completeness, accuracy or timeliness of such listings, descriptions or images (including any features, specifications and prices contained therein). Such information (including pricing) and the availability of any Product (including the validity of any coupon or discount) are subject to change at any time without notice. We shall not be liable to you or to any third-party for any modification, price change, suspension or discontinuance of the Product, Site, or Service. Certain measures and similar descriptions are approximate and are for convenience only, and Company makes no guarantee that the color and other descriptions provided will be precise attributes of any actual Product you receive due to the handmade, customized, limited and/or unique nature in many or all Product instances. We make reasonable efforts to accurately display the attributes of Products, including the applicable colors, however the actual colors you see will depend on your computer system, and we cannot guarantee that your computer will accurately display such colors. Company is not responsible for any variations except those that are material, and Company is not liable for the final color appearance of any Products. Any offer for any Product or Service made on this Site is void where prohibited.

### 4. Transaction

If you wish to make a Transaction for the purchase of Products available through or in connection with this Site, you are required to pay the applicable fees. Unless otherwise indicated, all fees and other charges are in U.S. dollars, and all payments shall be in U.S. currency.

- a) **Billing and Account Information.** You agree to provide current, complete, and accurate purchase and Account information for all Transactions. You may be asked to supply certain relevant information, such as your credit card number and its expiration date, your billing address and your shipping information. You represent and warrant that you have the right to use any credit card that you submit in connection with a transaction and that the associated information entered is accurate. By submitting such information, you grant to us the right to process Transactions, or to provide such information to third-parties for purposes of facilitating Transactions. Verification of information may be required prior to the acknowledgment or completion of any Transaction. You agree to pay all charges incurred by you or on your behalf through the Site, at the prices in effect when such charges are incurred, including all shipping and handling charges. In addition, you are responsible for any taxes applicable to your Transactions. While it is our practice to confirm orders by email, the receipt of an email order confirmation does not constitute our acceptance of an order or our confirmation of an offer to sell a product or service. Your right to use the Service is subject to any expenditure limits established by Company or by your credit card issuer. If payment cannot be charged to your credit card or

your charge is returned for any reason, including chargeback, Company reserves the right to either suspend or terminate your access and purchase, thereby terminating this Agreement and all obligations of Company hereunder. If a charge is declined or reversed by the credit card issuer or network, you agree to pay Company a service charge and to reimburse Company for all reasonable costs of collection. Your credit card issuer may also assess its customary charge for such transactions. By clicking "Submit," you are consenting to receive a one-time confirmation of this payment electronically to the email address you have provided to us.

- b) **Restrictions.** Company reserves the right, including without prior notice and on a case-by-case basis, to limit the available quantity of or discontinue making available any Product in general or to any per person, per household, or per order, per geographic region or jurisdiction (including orders placed by or under the same customer account, the same credit card, and/or orders that use the same billing and/or shipping address); to limit or prohibit orders that, in our sole judgment, appear to be placed by dealers, resellers or distributors; to impose conditions on the honoring of any coupon, discount or similar promotion; to bar any user from making any Transaction; and to refuse to provide any user with any Product. In the event that we make a change to or cancel an order, we may attempt to notify you by contacting the email and/or billing address/phone number provided at the time the order was made. By making a Transaction, you represent that the applicable Products will be used only in a lawful manner. You agree that you will not resell any Products or Services obtained through a Transaction, unless we have provided our express prior written consent for you to do so.
- c) **Transaction Processing.** Company may, in its sole discretion, choose to not process or to cancel your Transaction in certain circumstances. This may occur when the product or service you wish to purchase is out of stock or has been mispriced, we suspect the request is fraudulent, or in other circumstances Company deems appropriate in its sole discretion. Company also reserves the right, in its sole discretion, to take steps to verify your identity to process your order. Company will either not charge you or refund the charges for orders that we do not process or cancel.
- d) **Shipping and Tax.** Products prices are exclusive of all foreign, federal, state, municipal, and local excise, sales, use and similar taxes. Such taxes are the responsibility of you as a purchaser and may be in addition to the price stated on the Site. You are deemed to take possession of a Product you purchase when the Product leaves the Company's facility. You, as purchaser, shall pay all customs fees and duties on the Products as well as all insurance and shipping charges. You agree that all Products purchased in the Transaction are sold and purchased "AS IS." All implied warranties including fitness for a particular purpose and merchantability are expressly disclaimed by Company.
- e) **Limitation of Liability.** To the maximum extent permitted by law, including, without limitation, consumer protection law, you agree that in no event shall Company, Company Affiliates, and/or Company Group be liable for damages of any kind (including, but not limited to, special, incidental, or consequential damages, lost profits, or indirect damages for the damage, injury, or loss of life or property or revenue even if the damage, injury, or loss is caused by the negligence or other fault of the Company, Company Affiliates, or Company Group regardless of the foreseeability of those damages) arising out of or in connection with the delivery, non-delivery, sale or use of any of the Products or goods or Services delivered to you hereunder.
- f) **No Refunds.** Purchases made in a Transaction shall not be refundable under any circumstances, unless the Company in its sole discretion chooses not to process or to cancel the Transaction.

## 5. Content

- a) **Right to Post Content.** Our Service may allow you to post user-generated Content. Our Service allows you to post Content. You are responsible for the Content that you post to the Service, including its legality, reliability, and appropriateness. By posting Content to the Service, you grant us the right and license to use, modify, publicly perform, publicly display, reproduce, and distribute such Content on and through the Service. You retain any and all of your rights to any Content you submit, post or display on or through the Service and you are responsible for protecting those rights. You agree that this license includes the right for us to make your Content available to other users of the Service, who may also use your Content subject to these Terms. You represent and warrant that: (i) the Content is yours (you own it) or you have the right to use it and grant us the rights and license as provided in these Terms, and (ii) the posting of your Content on or through the Service does not violate the privacy rights, publicity rights, copyrights, contract rights or any other rights of any person.
- b) **Content Restrictions.** The Company is not responsible for the content of the Service's users. You expressly understand and agree that you are solely responsible for the Content and for all activity that occurs under your account, whether done so by you or any third person using your account. You may not transmit any Content that is unlawful, offensive, upsetting, intended to disgust, threatening, libelous, defamatory, obscene or otherwise objectionable. The Company reserves the right, but not the obligation, to, in its sole discretion, determine whether or not any Content is appropriate and in compliance with the Terms. The Company may, in its sole discretion, refuse or remove Content that the Company deems inappropriate. The Company further reserves the right to make formatting changes and edits to any Content. The Company can also limit or revoke the use of the Service if you post objectionable Content. As the Company cannot control all content posted by users and/or third parties on the Service, you agree to use the Service at your own risk. You understand that by using the Service you may be exposed to content that you may find offensive, indecent, incorrect or objectionable, and you agree that under no circumstances will the Company be liable in any way for any content, including any errors or omissions in any content, or any loss or damage of any kind incurred as a result of your use of any content.
- c) **DMCA Notice and DMCA Procedure for Copyright Infringement Claims.**
- i) You may submit a notification pursuant to the Digital Millennium Copyright Act (DMCA) by providing our copyright agent with the following information in writing (see 17 U.S.C 512(c)(3) for further detail):
1. An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright's interest.

2. A description of the copyrighted work that you claim has been infringed, including the URL (i.e., web page address) of the location where the copyrighted work exists or a copy of the copyrighted work.
3. Identification of the URL or other specific location on the Service where the material that you claim is infringing is located.
4. Your address, telephone number, and email address.
5. A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law.
6. A statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

You can contact our copyright agent via email at [support@eviltortillagames.com](mailto:support@eviltortillagames.com). Upon receipt of a notification, the Company will take whatever action, in its sole discretion, it deems appropriate, including removal of the challenged content from the Service.

iii) If your work is taken down as a result of a valid DMCA takedown notice, and you believe your work was taken down in error, you may submit a DMCA counter notification. Your counter notification should include details about the specific content claimed in your work, and clearly explain your right to use the copyrighted content in your own words. If you think the content was identified as a mistake, explain why in a clear and concise manner. Your DMCA counter notice should include the following:

1. A physical or electronic signature of the original uploader, or an agent authorized to act on their behalf.
2. Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled.
3. A statement under penalty of perjury that the original uploader has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.
4. The original uploader's name, address, and telephone number, and a statement that the original uploader consents to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if the subscriber's address is outside of the United States, for any judicial district in which the service provider may be found, and that the subscriber will accept service of process from the person who provided notification or an agent of such person.

## **j) Ownership and Limited License**

- a) **Ownership.** The Services are owned or licensed by Company and are protected by Intellectual Property Rights and other proprietary rights laws. Company reserves all right, title, and interest in and to the Services, including without limitation all Intellectual Property Rights and other proprietary rights, that are not explicitly granted to you in these Terms. Your permitted use of the Services is limited by the Intellectual Property Rights of Company.

- b) **License.** Subject to your agreement and continuing compliance with these Terms of Service and any other relevant Company policies, Company grants you a non-commercial, non-exclusive, non-transferable, revocable, limited license, subject to the limitations in these Terms, to access and use the Services for your browsing, non-commercial entertainment, purchase and informational purposes. You agree that you will not use the Services for any other purpose.
- c) **License Limitations.** Any use of the Services in violation of the law, these Terms of Service, or these License Limitations is strictly prohibited, and may result in the immediate revocation of your limited license at Company's sole judgment or may subject you to liability for violations of law.

You acknowledge you will not directly or indirectly:

- i) Partake in any activity or action that Company deems to be against the spirit or intent of the Services;
- ii) Copy, modify, edit, create derivative works of, publicly display, publicly perform, republish, transmit, or distribute the Services or any other material obtained through the Services;
- iii) Lease, sell, rent, or otherwise exploit for commercial purposes any part of the Services, including without limitation access to or use of the Services;
- iv) Delete, alter, or obscure any Intellectual Property Rights or other proprietary rights notices from copies of materials from the Services;
- v) Attempt to harass, threaten, bully, embarrass, abuse, or harm, or advocate or incite harassment, abuse, or harm of another person, group, Company itself or Company Affiliates;
- vi) Organize or participate, in conjunction with your use of the Services, in any activity or group that is hateful, harmful, or offensive towards a race, sexual orientation or preferences, religion, heritage or nationality, disability or other health class, gender, age, or similar classes determined by Company;
- vii) Initiate, assist, or become involved in any form of attack or disruption to the Services, including without limitation distribution of a virus, worm, spyware, time bombs, corrupted data, denial of service attacks upon the Services, or other attempts to disrupt the Services or other person's use or enjoyment of the Services;
- viii) Use robots, spiders, crawlers, man-in-the-middle software, or any other automated process to access, use, reverse engineer, or manipulate the Services, or Company;
- ix) Use of access services to obtain, generate, or infer any business information about Company or Company Affiliates, including without limitation information about sales or revenue, staff, technical stack, or statistics about users;
- x) Promote, encourage, or participate in any activity involving hacking, phishing, distribution of counterfeit Services, or taking advantage of or creating exploits, cheats, bugs, or errors, except for the sole purpose of privately and directly notifying Company;

- xi) Make available through the Services any material or information that infringes any intellectual property right, right of privacy, right of publicity, or other right of any person or entity or impersonates any other person, including without limitation celebrities and Company employees;
- xii) Attempt to gain unauthorized access to Services; and
- xiii) Use the Services where it is prohibited by law.

**k) Term**

- a) Unless modified or amended by Company, these Terms and its provisions shall remain in full force and effect. Termination of any license granted by Company under these Terms does not affect any other provisions of these Terms.

**l) Access and Permissible Assignment**

- a) By using the Services, you warrant and represent that you: 1) are at least 18 years of age and otherwise legally competent to read, understand and accept the provisions of these Terms; or 2) are a minor who has been authorized under the provisions of Section 4(b) below.
- b) If you are the legal guardian of a minor, you can choose to allow use of the Services by that minor instead of yourself subject to the following provisions:
  - i) You acknowledge, and further agree that the aforementioned minor is entering into an agreement with your consent;
  - ii) You acknowledge, and further agree you are entirely responsible for all the provisions in these Terms of Service;
  - iii) You acknowledge, and further agree, you are legally responsible for all actions of that minor, including but not limited to any payments, damages and/or liabilities related to the actions of that minor;
  - iv) In consideration of Company allowing access to the Service by a minor, and in addition to the provisions of Section 8 below, the foregoing adult hereby guarantees and agrees to pay for any and all liabilities of any nature whatsoever incurred under these Terms and to defend, indemnify and hold harmless Company with respect thereto.
- c) If you have been previously banned from using any Company Services then you may not use our Services.
- d) Notwithstanding the above provisions of Section 4, if you are located in a country that requires parental consent for Services to collect or use your data at a higher age than 13 (e.g., certain countries following the General Data Protection Regulation) AND you are under that country's specified age, you must not use any part of the Services or submit any personal information to Company through the Services or otherwise unless a) consent was given or authorized by the holder of parental responsibility of that child and b) you receive a Notice that consent was confirmed from Company.

**m) Service Availability and Termination**

a) You acknowledge that:

- i) Company may in its sole and absolute discretion provide subsequent amendments, versions, enhancements, modifications, upgrades or patches related to any part of the Services;
- ii) Company has absolute and sole discretion to immediately terminate or restrict access to the Services, or any portion of the Services at any time, for any reason, without Notice and without liability to you;
- iii) Access to the Services may be interrupted for reasons within or beyond the control of Company, and that Company cannot and does not guarantee you will be able to use the Services whenever you wish to do so;
- iv) Company may not offer the Services in all countries or geographic locations;
- v) You are solely responsible for any internet connection and/or mobile fees that you may incur as a result of using our Services.

**n) Intellectual Property**

- a) All content included as part of the Services, including but not limited to, text, graphics, logos, images, as well as the compilation thereof, the look and feel of the Services, including, without limitation, the text, graphics, code, and other materials contained hereon is property of the Company or its third party suppliers, or is rightfully used subject to a license agreement and is protected by copyright, trademark, and other laws that protect intellectual property and proprietary rights. You agree to observe and abide by all copyright, trademark, and other proprietary notices, legends, or other restrictions contained in any such content and will not make any changes thereto.
- b) You will not modify, publish, transmit, reverse engineer, participate in the transfer or sale, create derivative works of, or in any way exploit any of the content, in whole or in part, provided on, transmitted through, or found within the Services. Your use of the Services does not entitle you to make any unauthorized use of any such content, and in particular you shall not delete or alter any proprietary rights or attribution notices in such content. You shall use the content provided through, transmitted through, and found on the Services solely for your personal use, as outlined in these Terms, and will make no other use of the Content without the express written permission of the Company and/or related third party owners of such content. You acknowledge and agree that you do not acquire any ownership rights in the content provided through the Services. Except as provided herein, these Terms do not grant any licenses, express or implied, to such content or any other intellectual property of the Company, its licensors, or any third party owner.

**o) Links to Third Party Sites and Services**

The Services may contain links to third party websites (“Linked Sites”). The Linked Sites are not under the control of Company or any part of the Services. Company is not responsible for the contents of any Linked Site, including without limitation any link contained in a Linked Site, or any changes or updates to a Linked Site. Company is providing these links to you only as a convenience, and the inclusion of any link does not imply endorsement by Company of the website or any association with its operators.

**p) Prohibited Conduct**

You are granted a non-exclusive, non-transferable, revocable license to access and use the Services, strictly in accordance with these Terms. As a condition of your use of the Services, you represent and warrant to Company that you will not use the Services for any purpose that is unlawful or prohibited by these Terms. Further, you agree that you will comply with these Terms and will not:

- a) Use the Services in any manner which could damage, disable, overburden, or impair the Website, or Website servers, or otherwise interfere with any other party's use and enjoyment of the Services;
- b) Obtain or attempt to obtain any materials or information through any means not intentionally made available or provided for through the Services;
- c) Impersonate any person or entity, falsely claim an affiliation with any person or entity, or access the Services accounts of others without permission, forge another person's digital signature, misrepresent the source, identity, or content of information transmitted via the Services, or perform any other similar fraudulent activity;
- d) Defame, harass, abuse, threaten or defraud users of the Services, or collect, or attempt to collect, personal information about users or third parties without their consent; and
- e) Attempt to indicate in any manner that you have a relationship with Company or that Company has endorsed you or any products or services for any purpose.

Company also reserves all available legal rights and remedies to prevent the unauthorized use of the Services, including, but not limited to, technological barriers, IP mapping, and contacting your internet service provider.

**q) Disclaimer, Warranty, and Liability**

YOU ACKNOWLEDGE THAT COMPANY AND COMPANY AFFILIATES ARE NOT LIABLE

(1) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING FOR LOSS OF PROFITS, GOODWILL OR DATA, IN ANY WAY WHATSOEVER ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE SERVICES; OR

(2) FOR THE CONDUCT OF THIRD PARTIES, INCLUDING OTHER USERS OF THE SERVICE AND OPERATORS OF EXTERNAL SITES.

THE SERVICES ARE PROVIDED BY COMPANY TO YOU ON AN “AS IS” AND “AS AVAILABLE” BASIS. COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS OF

ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF THE SERVICES, UNLESS SUCH WARRANTIES OR OTHER STATUTORY CONSUMER RIGHTS ARE LEGALLY INCAPABLE OF EXCLUSION OR LIMITATION IN YOUR LOCAL JURISDICTION. THE RISK OF USING THE SERVICES RESTS ENTIRELY WITH YOU AS DOES THE RISK OF INJURY FROM THE SERVICES. TO THE FULLEST EXTENT PERMISSIBLE BY LAW, COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. COMPANY DOES NOT WARRANT THAT THE SERVICES ARE FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS.

TO THE FULLEST EXTENT ALLOWED BY ANY LAW THAT APPLIES, THE DISCLAIMERS OF LIABILITY IN THESE TERMS APPLY TO ALL DAMAGES OR INJURY CAUSED BY THE SERVICES, OR RELATED TO USE OF, OR INABILITY TO USE, THE SERVICES, UNDER ANY CAUSE OF ACTION IN ANY JURISDICTION, INCLUDING, WITHOUT LIMITATION, ACTIONS FOR BREACH OF WARRANTY, BREACH OF CONTRACT OR TORT (INCLUDING NEGLIGENCE).

TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAWS, THE AGGREGATE LIABILITY OF COMPANY AND/OR COMPANY AFFILIATES ARISING OUT OF OR IN CONNECTION WITH THESE TERMS SHALL NOT EXCEED THE TOTAL AMOUNTS YOU HAVE PAID (IF ANY) TO COMPANY AND/OR COMPANY AFFILIATES IN THE ONE HUNDRED AND EIGHTY DAYS (180) DAYS IMMEDIATELY PRECEDING THE DATE ON WHICH YOU FIRST ASSERT ANY SUCH CLAIM.

IF YOU HAVE NOT PAID COMPANY OR ANY COMPANY AFFILIATE ANY AMOUNT IN THE ONE HUNDRED AND EIGHTY DAYS (180) DAYS IMMEDIATELY PRECEDING THE DATE ON WHICH YOU FIRST ASSERT ANY SUCH CLAIM, YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH COMPANY AND/OR ANY COMPANY AFFILIATE IS TO CEASE USING THE SERVICES.

YOU REPRESENT AND WARRANT THAT YOU ARE NOT LOCATED IN A COUNTRY THAT IS SUBJECT TO A UNITED STATES GOVERNMENT EMBARGO, OR THAT HAS BEEN DESIGNATED BY THE UNITED STATES GOVERNMENT AS A "TERRORIST SUPPORTING" COUNTRY, AND YOU ARE NOT LISTED ON ANY UNITED STATES GOVERNMENT LIST OF PROHIBITED OR RESTRICTED PARTIES.

SOME STATES, COUNTRIES, OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, OR THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES. IN SUCH STATES, COUNTRIES, OR JURISDICTIONS, COMPANY AND COMPANY AFFILIATES SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAWS, SUBJECT TO ANY APPLICABLE STATUTORY CONSUMER RIGHTS LAWS IN YOUR LOCAL JURISDICTION.

r) **Indemnity**

- a) You agree to defend, indemnify and hold harmless Company, Company Affiliates, and any third-parties under agreement with Company, and any employee, contractor, vendor, agent, supplier, licensee, customer, distributor, shareholder, director or officer of any of the foregoing, as well as any person using the Services and any person or entity that becomes aware of your use of the Services at any time, with respect to any and all third-party claims, liabilities, judgments, awards,

injuries, damages, losses, costs, fees, or expenses (including but not limited to attorney's fees and costs) that arise under, from or in any way, directly or indirectly, relate to:

- i) Your failure to comply with any provision of these Terms of Service;
- ii) Your use of the Services, including but not limited to economic, physical, emotional, psychological or privacy related considerations; and
- iii) Your actions to knowingly affect the Services via any bloatware, malware, computer virus, worm, Trojan horse, spyware, adware, crimeware, scareware, rootkit or any other program installed in a way that executable code of any program is scheduled to utilize or utilizes processor cycles during periods of time when such program is not directly or indirectly being used.

- b) Company and Company Affiliates reserve the right, but not the obligation, at their own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you.
- c) You acknowledge, and further agree that Company has no obligation to defend, indemnify or hold harmless you in any way related to these Terms, including but not limited to your use of the Services, use of the Services by any person, or any connection between the foregoing and any other person or entity that becomes aware of your use of the Services at any time.
- d) This Section shall survive the termination of these Terms.

s) **Dispute Resolution**

- a) **Informal Resolution.** With respect to any Dispute, you agree to attempt to negotiate the resolution of any Dispute informally for at least thirty (30) days before initiating any arbitration or other proceeding, including any legal proceeding in court or before an administrative agency. Such informal negotiations commence upon Company's receipt of Notice from you.
- b) **Mandatory Binding Arbitration.** If you are not able to satisfactorily resolve a Dispute informally within a total of thirty (30) days, or if Company, in its sole and absolute discretion, determines that it will not be possible to satisfactorily resolve that Dispute informally within a total of thirty (30) days, you agree that either you or Company may request resolution by final and fully binding arbitration conducted under the Commercial Arbitration Rules of the American Arbitration Association. The party requesting that a Dispute be resolved by arbitration under this Section shall be responsible for initiating such a proceeding.
  - i) The American Arbitration Association ("AAA") will run the arbitration between you and Company, and AAA's rules and procedures (including their Supplementary Procedures for Consumer-Related Disputes, if applicable) will be used. If something in these Terms is different than AAA's rules and procedures, then we will follow these Terms instead. You can look at AAA's rules and procedures on their website [www.adr.org](http://www.adr.org) or you can call them at 1-800-778-7879.
  - ii) YOU UNDERSTAND, AND FURTHER AGREE, THAT YOU HAVE THE RIGHT TO CONSULT WITH INDEPENDENT LEGAL COUNSEL OF YOUR OWN CHOOSING REGARDING THIS AND ANY OTHER PROVISION IN THESE TERMS AND THAT THIS BINDING ARBITRATION PROVISION WILL ELIMINATE YOUR LEGAL

RIGHT TO SUE IN COURT, TO HAVE A JURY TRIAL, AND/OR TO PARTICIPATE IN A CLASS ACTION WITH RESPECT TO ANY SUCH DISPUTE. You and Company both agree that neither shall attempt to have any other arbitration or class action related to any other party joined to any arbitration in which you are involved with Company. To the fullest extent permitted by law, no arbitration proceeding shall be decided on a class-action basis or utilizing class action procedures. You and Company further agree that each may bring claims against the other only in an individual capacity, and not as a plaintiff or a class member in any purported class or representative proceeding.

t) **Miscellaneous**

- a) **Reps and Warranties.** In addition to any other representations and warranties made herein, you hereby represent and warrant that i) you are not prohibited from receiving or using any aspect of the Services under applicable laws and ii) Company has not previously disabled your Account or your access to the Services for a violation of the law or these Terms or other applicable agreements, terms of use, or contracts.
- b) **Electronic Communication.** Each and every time you send an email or other electronic communication to Company, such communication will constitute an electronic communication. By using the Services, you consent to receive electronic communications and you agree that all agreements, Notices, disclosures and other communications that Company provides to you via electronic communication, individually and collectively, satisfy any legal requirement that such communications be in writing.
- c) **Release.** You hereby agree to release Company from all damages (whether direct, indirect, incidental, consequential or otherwise), losses, liabilities, costs and expenses of every kind and nature, known and unknown, arising out of a dispute between you and a third-party (including other Users) in connection with the Services and any content therein. In furtherance of the foregoing, you hereby waive any applicable law or statute, which says, in substance: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE RELEASING PARTY 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 RELEASED PARTY."
- d) **Changes.** It is your responsibility to read, understand, and accept these Terms in connection with your use of the Services. You acknowledge that Company may make changes to these Terms of Service at any time, and that Section headings in these Terms are for purposes of convenience only. Unless Company states otherwise, any changes to these Terms are effective when posted. If you continue to use the Services after any changes are posted then you agree that those changes will apply to your continued use of the Services and that such use constitutes your acceptance of the same. You should check this page regularly to stay informed about any changes.
- e) **Complete agreement.** These Terms: (1) is the final and complete agreement and understanding of the parties concerning the subject matter hereof, and supersedes and replaces any and all prior and contemporaneous agreements and understandings with respect thereto; (2) may not be changed, amended, or in any manner modified by you except as authorized in a writing signed by both parties' authorized agents; (3) is not assignable, except to a successor in interest to substantially all of a party's business or assets and any other attempt to assign or transfer these Terms or any interest herein is void; and (4) shall be binding upon, and inure to the benefit of,

the parties hereto, their respective heirs, executors, administrators, successors, personal representatives, licensees, and assigns.

- f) **Force Majeure.** No party shall be responsible for delays or failure of performance resulting from acts beyond the reasonable control of such party, including, war, terrorism, acts of public enemies, strikes or other labor disturbances, power failures, fires, floods, earthquakes, acts of God, and other natural disasters.
- g) **Waiver.** No act or failure to act by Company will be deemed a waiver of any right contained in these Terms, and any waiver by Company must be in writing and signed by an officer of Company. If Company does expressly waive any provision of these Terms, such waiver shall not be a waiver of any other provisions of these Terms, and the waived provision shall not be waived for all time in the future.
- h) **Severability.** If any provision or sub-provision of these Terms is found to be invalid or unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision or sub-provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the parties as expressed herein.
- i) **Remedies.** You acknowledge and agree that any violation or threatened violation of these Terms will cause irreparable injury to Company, entitling Company to seek injunctive relief without the necessity of proving actual damages, in addition to all other remedies at law or in equity. You specifically acknowledge that money damages alone would be an inadequate remedy for the injuries and damages that would be suffered and incurred by Company as a result of a breach of any of the provisions of these Terms.
- j) **Governing Law and Venue.** Any dispute or claim arising out of or related to these Terms shall be governed by and construed in accordance with the laws of the State of Pennsylvania without reference to any choice or conflict of laws principles. Accordingly, the parties hereby consent to the personal jurisdiction of the Courts in the State of Pennsylvania, and hereby waive any and all jurisdictional or venue defenses otherwise available to them.
- k) **Language.** To the fullest extent permitted by law, the controlling language for these Terms of Service is English.

#### u) **Electronic Communication**

Each and every time you send an email or other electronic communication to Company, such communication will constitute an electronic communication. By using the Services, you consent to receive electronic communications and you agree that all agreements, Notices, disclosures and other communications that Company provides to you via electronic communication, individually and collectively, satisfy any legal requirement that such communications be in writing.

#### v) **Apple Enabled Applications**

The Services operate in connection with products made commercially available by Apple, Inc. ("Apple"), in addition to other devices and operating systems. With respect to Services that are made available to you in connection with an Apple-branded product (such Services shall hereinafter be

known as "Apple-Enabled Services"), the following terms and conditions apply, in addition to the terms and conditions set forth in these Terms:

You and Company acknowledge that these Terms operate between you and Company only and not with Apple and that as between Company and Apple, Company, not Apple, is responsible for the Apple-Enabled Services and the content thereof;

You acknowledge that the Apple iOS App Store ("App Store") contains rules and conditions that govern the use of software made available therein (collectively "Usage Rules"). Such Usage Rules are contained within the App Store Terms of Service ("App Store Terms"). Regarding the Services, you may not use the Apple-Enabled Services in any manner that is in violation of or inconsistent with these Usage Rules or the App Store Terms;

Your license to use the Apple-Enabled Services is limited to a non-transferable license to use the Apple-Enabled Services on an iOS product that you own or control, as permitted by the Usage Rules set forth in the App Store Terms.

You acknowledge that Apple has no obligation whatsoever to provide any maintenance or support services with respect to the Apple-Enabled Services;

You acknowledge that Apple is not responsible for any product or software warranties, whether express or implied by law. In the event of any failure of Apple-Enabled Services to conform to any applicable warranty, you may notify Apple, via the methods described in the App Store, and Apple will refund the purchase price for the Apple Enabled Services to you, if any; and, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Apple-Enabled Services, or any other claims, losses, liabilities, damages, costs, or expenses attributable to any failure to conform to any warranty, to the extent that it cannot be disclaimed under applicable law. For a discussion of any warranties related to the Services, please see the section herein entitled "Disclaimer and Limitation of Liability;"

Company and you acknowledge that Company, not Apple, is responsible for addressing any claims of you or any third party relating to the Apple-Enabled Services or your possession and/or use of those Apple-Enabled Services, including but not limited to i) product liability claims; ii) any claim that the Apple-Enabled Services fail to conform to any applicable legal or regulatory requirement; and iii) claims arising under consumer protection or similar legislation;

In the event of any third party claim that the Apple-Enabled Services or the end-user's possession and use of those Apple-Enabled Services infringes that third party's intellectual property rights, as between Company and Apple, Company, not Apple, will be solely responsible for the investigation, defense, settlement, and discharge of any such intellectual property infringement claim;

You represent and warrant that i) you are not located in any country that is subject to a U.S. government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; ii) you are not listed on any U.S. Government list of prohibited or restricted parties; and iii) you are not located in any other country or jurisdiction from which you would be barred from using the Services by applicable law; and

If you have any complaints, questions, comments, or concerns with respect to the Apple-Enabled Services, you should direct them to: [support@eviltortillagames.com](mailto:support@eviltortillagames.com)

## w) **Contact Us**

If you have any questions or comments about these Terms or our Services, please contact us at: [support@eviltortillagames.com](mailto:support@eviltortillagames.com)