



Entertainment Merchants Association

16530 Ventura Boulevard, Suite 400, Encino, CA 91436 ph: 818.385.1500

www.entmerch.org

TERMS & CONDITIONS AGREEMENT

This Terms and Conditions Agreement (“Agreement”), by and between, (“Company”), and the Entertainment Merchants Association (“EMA”) is entered into the ____ day of 200_ (“Effective Date”).

In consideration of the EMA’s continued grant of authority and permission to Company to display the EMA’s Certification Mark (as defined on the [enmerch.org](http://www.entmerch.org) website, at http://www.entmerch.org/pc_game_box_logo_and_box_size.html) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Company and the EMA agree to the terms of this Agreement.

SIGNATURES

By signing below the parties have caused this Agreement to be executed by their duly authorized representatives and delivered as of the date above.

Company: _____

By: _____

Print Name: _____

Address: _____

Phone: _____

Facsimile: _____

Email Address: _____

EMA:

By: _____

Print Name: _____

Address: 16530 Ventura Blvd, Suite 400, Encino, CA 91436

Phone: (818) 385-1500

Fax: (818) 385-0567

mfisher@entmerch.org

1. Company agrees that it shall comply with all written requirements and procedures established by the EMA (including those requirements, procedures and enforcement policies set forth on the EMA web site at <http://www.entmerch.org>) relating to entertainment software product/service advertising and the display and use of the Certification Mark. Company acknowledges its receipt of and opportunity to review the requirements and procedures set forth on the EMA's website, all of which may be amended by the EMA from time to time. Failure to comply with EMA's terms of use may result in the imposition of sanctions by the EMA pursuant to its enforcement policies,

including, but not limited to, monetary fines, recall or relabeling of product, revocation of the right to use the logos, and commencement of litigation by the EMA.

2. (a) Company understands and agrees that the PC CD, PC CD-ROM, PC DVDROM, WIN MAC CD-ROM, and the WIN MAC DVD-ROM, icons and any other icons and identification marks that may be introduced by the EMA and any associated logos are marks owned by the EMA (each "Icon" and collectively "Icons") and may only be used with the permission and authority of the EMA. EMA's ownership includes copyright, trademark and all other applicable rights. Company is granted a worldwide, non-transferable, non-assignable, non-exclusive limited license, without the right to grant sublicenses, to use and display the assigned Certification Mark in connection with the advertising, promotion and sale of the Product (including third party Product licensees and third-party advertising, promotion, and sale of the Product) in accordance with this Agreement. Notwithstanding the foregoing, any use outside the United States, its possessions and territories shall be at Company's own risk with respect to any third-party claims.

(b) The EMA reserves and retains any and all rights not expressly granted by this Agreement. Company agrees that its use of the Certification Mark inures to the benefit of the EMA and that Company shall not acquire any other rights in the Mark. The EMA shall have the right to require that all materials and publications bearing the Certification Mark be marked with any copyright and/or trademark markings it deems appropriate or as required by law, such as ©_{cm}® or ™. Company reserves all intellectual property rights in its Product apart from the Certification Mark. Company shall not acquire any rights in the Mark and shall not attempt to register the Mark in any jurisdiction.

(c) Company agrees that it will not take any actions that would harm the goodwill and good reputation of the EMA and the Certification Mark. Company recognizes the value of and the goodwill associated with the Mark and agrees not to attack the EMA's rights in the Certification Mark or the validity of the license granted in this Agreement.

(d) THE EMA MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE CERTIFICATION MARK, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF EXCLUSIVE RIGHTS IN THE MARK OR ANY WARRANTY OF VALIDITY OF ANY REGISTRATION THEREFOR.

3. No more than fifteen (15) days after the date of shipping and/or distribution of the Product, Company agrees to provide to the EMA three (3) copies of the Product shipped, including the packaging that is intended for retail distribution. In the event three (3) copies are not provided by the Company within fifteen (15) days after the date of shipping, the EMA may purchase the required copies and bill Company for their cost. Company agrees to pay the EMA for the cost of purchasing the required copies within thirty (30) days of receiving a bill from the EMA. In the event that any payment required by this paragraph is not received by the EMA within thirty (30) days of the Company being billed, interest thereon shall accrue from such date until received by the EMA at a rate of 1.5% of the amount remaining unpaid per month.

4. (a) THE EMA'S LIABILITY FOR DIRECT DAMAGES RELATING TO CAUSES OF ACTION ARISING FROM THIS AGREEMENT BETWEEN THE PARTIES HERETO, SHALL NOT, IN ANY EVENT, EXCEED THE VALUE OF THE FEES PAID BY THE COMPANY UNDER THIS AGREEMENT OR \$500.00, WHICHEVER IS GREATER. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY CLAIM FOR PUNITIVE, EXEMPLARY, OR AGGRAVATED DAMAGES, DAMAGES FOR LOSS OF PROFITS OR REVENUE OR BUSINESS OPPORTUNITY OR INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES.

(b) Company understands and agrees to indemnify and hold the EMA, its affiliates, members, employees, officers, directors, attorneys, agents, successors, and assigns, harmless from any and all liability, damages, loss and expenses, including reasonable fees for attorneys and other professionals, arising from any claim, demand, suit, action, arbitration or proceeding initiated by any third party that is:

- (i) based upon any alleged breach of this Agreement by Company;
- (ii) the violation by Company of any regulation, statute, law, ordinance or governmental directive;
- (iii) based upon any claim that the Product submitted by Company is without the approval or authority of any third party claiming rights in the Product;
- (iv) concerning the content or effect of the Product;
- (v) concerning the distribution or marketing of the Product by Company or under Company's authority;
- (vi) concerning antitrust issues based on Company's activities;
- (vii) concerning any intellectual property rights in the Product other than the EMA's rights in its marks; or
- (viii) based on the use of EMA's intellectual property outside of the United States, its possessions and territories.

5. (a) Company acknowledges and agrees that any challenge by Company to the imposition of sanctions by the EMA (made pursuant to any requirements or policies set forth on the EMA or EMA web site) shall be submitted (no more than thirty (30) days after notice to Company of the decision to impose the sanction or fine) to final and binding arbitration pursuant to the Commercial Arbitration Rules of the America Arbitration Association in the State of California, before a single arbitrator and that such submission to arbitrate shall be the sole and exclusive remedy available to Company if Company seeks to challenge the imposition of any sanctions. Both parties agree that the arbitration shall take place at the offices of the EMA in Encino, California and that the party filing the arbitration shall bear the filing fees of the arbitration. The issue for submission shall be: "Was there a reasonable basis for the EMA's imposition of a sanction?" If the arbitrator's decision is "yes," the award shall so state and shall include a direction for Company to comply with the sanction, plus the reasonable expenses, including attorneys' fees, incurred by the EMA in the proceeding. The arbitrator shall not have discretion to alter the nature of any sanction imposed. The judgment on the award rendered by the arbitrator shall be binding upon the parties and may be entered in any court having jurisdiction thereof. Company may not seek judicial review of the imposition of any sanction imposed by the EMA nor may Company seek to hold the EMA liable in a cause of action in whole or in part based on the imposition of any sanction. Neither party may seek a judicial review of any decision of the arbitrator.

(b) Company acknowledges that its breach of this Agreement may cause irreparable harm to the EMA. In the event of a breach of a provision of this Agreement by Company, in addition to any other available remedies to which the EMA may be entitled, the EMA may obtain such equitable relief as may be appropriate, including injunctive remedies, and such right to equitable relief will not be affected by a demand for arbitration. Company agrees that no bond shall be required or, if required by operation of law, a nominal bond shall be sufficient to support injunctive release.

6. This Agreement shall be governed by and construed in accordance with the laws of the state of Delaware without reference to the principles of conflicts of laws.

7. This Agreement is binding upon, and shall inure to the benefit of, the parties and their respective heirs, executors, administrators, successors and assigns. Company may not assign this agreement without the prior written consent of the EMA. Any unauthorized assignment is null and void.

8. This Agreement constitutes the complete understanding between the parties concerning the Product and supersedes any and all agreements, understandings, and discussions, whether written or oral, between the parties. No other promises or agreements shall be binding unless in writing and signed after the Effective Date by the parties to be bound thereby.

9. If any provision of this Agreement is declared void or unenforceable by a court of competent

jurisdiction, all other provisions shall nonetheless remain in full force and effect.

10. The obligations under paragraphs 4,5, and 6 shall survive the termination of this Agreement.

11. The waiver by either party of a breach of any provision of this Agreement shall not be construed as a waiver of any subsequent breach. The failure of a party to insist upon strict adherence to any provision of this Agreement on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that provision or any other provision of this Agreement. Any waiver must be in writing.

12. All notices or other information required by this Agreement shall be forwarded by either facsimile, certified mail return receipt requested or by overnight mail, to the entities listed in the signature box on page one (1) of this Agreement. Either party may change its address or contact person by notice given pursuant to this paragraph.