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1. USER'S ACKNOWLEDGMENT AND ACCEPTANCE OF TERMS

The Game Software is offered subject to your compliance with all of the terms and conditions contained herein and all other operating rules, policies and procedures. In addition, some applications offered through or in connection with the Game Software may be subject to additional terms and conditions promulgated by Kinuu from time to time.

This Agreement represents a binding contract between you and Kinuu, and by creating an account or otherwise accessing Kinuu, you expressly agree to be bound by them, **INCLUDING THE AGREEMENT TO ARBITRATE AND WAIVER OF CLASS ACTION CLAIMS CLAUSE CONTAINED IN SECTION 15.** The Agreement incorporates the provisions of Kinuu’s [Privacy Policy](#), so please review them carefully as well. If you are not eighteen (18) years of age, have your parents review this Agreement.

The Game Software includes all software included with the video game, the associated media, any updates and upgrades that replace or supplement the software that are not distributed with a separate license, the associated media, any software associated with the online mode of the video game, any printed materials, any online or electronic documentation, and any and all copies of such software and materials. The agreement, as amended from time to time and published at www.kinuu.com incorporates the Kinuu privacy policy (published at www.kinuu.com). By opening the Game Software, installing, and/or using the Game Software and any other materials included with the Game Software, and any updates and upgrades thereto, you hereby accept the terms of this agreement with Kinuu. The agreement applies to all users of the Game Software, including users who are also contributors of content, information, and other materials or software. If you do not agree to the terms of this agreement, you are not permitted to install, copy or otherwise use the Game Software. Your remedy for dissatisfaction with the Game Software or any products, content, or other information made available by or through Kinuu, is to stop using the Game Software. Your agreement with Kinuu regarding compliance with the agreement becomes effective immediately upon commencement of your use of the Game Software. If you do not agree to the terms set forth in this agreement, do not download or use the Game Software, and Kinuu shall not grant to you the license to install and use the Game Software.

Any material modifications to the Agreement will be brought to your attention by posting on www.kinuu.com or in Game Software disclosures. Such material modifications will be effective immediately, and will apply to disputes arising under the Agreement from the date of posting forward. Your continued use of the Game Software after a modification has been made to the Agreement constitutes your acceptance of such modification.

2. LIMITED USE LICENSE

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3. LICENSE RESTRICTIONS

You agree to only use the Game Software, or any part of it, in a manner that is consistent with this Agreement, and you SHALL NOT:

- (a) exploit the Game Software or any of its parts commercially, including, but not limited to, at a cyber (Internet) café, computer gaming center or any other location-based site;
- (b) use the Game Software or permit the use of the Game Software, on more than one computer, game console, mobile device, handheld device or PDA at the same time;
- (c) use the Game Software, or permit use of the Game Software, or make the Game Software available for use in a network, multi-user arrangement, remote access arrangement, including where it could be downloaded by multiple users;
- (d) sell, rent, lease, license, distribute or otherwise transfer this Game Software or any copies;
- (e) reverse engineer, derive source code, modify, decompile, disassemble, copy, or create derivative works of the Game Software, in whole or in part (except as the applicable law expressly permits, in which case all and any modifications, adaptations, copies, improvements, etc. shall belong to, vest in and be the exclusive property of Kinuu and/or its licensors on creation, in any event);
- (f) remove, disable or circumvent any security protections, proprietary notices or labels contained on or within the Game Software;
- (g) export or re-export the Game Software or any copy or adaptation in violation of any applicable laws or regulations;
- (h) create data or executable programs that mimic data or functionality in the Game Software unless provided for in Section 5(i) below; or
- (i) use the part of the Game Software that allows you to construct new variations ("Editor") to create new levels which;

- (i) can be used otherwise in connection with the Game Software;
- (ii) to modify any executable file;
- (iii) to produce any libelous, defamatory or other illegal material or material that is scandalous or invades the rights of privacy or publicity of a third party;
- iv) to use the trademarks, copyright or intellectual property rights of any third party;
- (v) are then commercially exploited by you (through pay-per-play or timesharing services or otherwise). For the avoidance of doubt, you are solely liable and responsible for any claims by a third party resulting from your use of the Editor.

Furthermore, you agree that you shall abide by the safety information, maintenance instructions or other relevant notices contained in the manual or other documentation accompanying the Game Software.

4. NECESSARY EQUIPMENT; INTERNET CONNECTION

Full use of the Game Software is dependent upon your use of a computer, game device or mobile device with adequate software and internet access. The maintenance and security of this equipment may influence the performance of the Game Software, and it is your responsibility to ensure the equipment's functionality. Please note that the Game Software continuously evolves over time, and the minimum specifications for the Game Software may change. As a result, you may be required to upgrade your computer and/or Internet equipment in order to continue playing the Game Software.

5. SALES POLICY

You must be at least 18 years old to make a purchase of the Game Software. If you are a minor, you must have your parent or guardian submit the payment information and authorize the transaction on your behalf. By submitting your payment information and making a purchase, you agree to pay all applicable transaction costs including sales taxes, credit card fees, mobile carrier fees, etc.

6. INTELLECTUAL PROPERTY

YOU ACKNOWLEDGE AND AGREE THAT YOU SHALL HAVE NO OWNERSHIP OR OTHER PROPERTY INTEREST IN THE GAME SOFTWARE, AND YOU FURTHER ACKNOWLEDGE AND AGREE THAT ALL SUCH RIGHTS ARE AND SHALL FOREVER BE OWNED BY AND INURE TO THE BENEFIT OF KINUU.

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7. DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY; INDEMNITY

IN NO EVENT, SHALL KINUU OR ITS AFFILIATES, OFFICERS AND/OR EMPLOYEES BE LIABLE WITH RESPECT TO KINUU FOR (I) IN THE AGGREGATE, ANY AMOUNT IN EXCESS OF THE FEES PAID BY YOU TO SUBSCRIBE TO KINUU; (II) LOST PROFITS, LOST DATA, OR FAILURE TO MEET ANY DUTY INCLUDING WITHOUT LIMITATION GOOD FAITH AND REASONABLE CARE ARISING OUT OF YOUR ACCESS TO OR USE OF KINUU; OR (III) ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER.

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You will indemnify and hold harmless Kinuu, its affiliates, officers and/or employees, including by paying costs and attorneys' fees, from any claim or demand made by any third party due to or arising out of your access to the Kinuu Site or services, Your Content, or the violation of the Agreement by you. You also agree to release and discharge Kinuu from any and all existing and future claims you have or may have, known or unknown, relating in any way to your use of or inability to use the Game Software.

8. NO MEDICAL ADVICE

We are not a health care provider. Kinuu does provide not medical advice and the Game Software is not intended to be used to diagnose, treat, cure or prevent any disease, health concern or condition. Rather, the software and other services provided by Kinuu are to be used for self-development purposes only. The Game Software does not establish any physician-patient relationship or supplant an in-person medical consultation or examination. Appropriate medical attention and advice should always be sought for any health issues or concerns that you may have, and you should not ignore medical advice or delay seeking medical advice because of any services offered through the Game Software. If you have any current medical conditions, you should consult your physician before using the Game Software. If you feel any ill effects when using the Game Software, immediately stop using the Game Software and seek medical advice.

9. EPILEPSY WARNING

Please note that certain people are susceptible to epileptic seizures or loss of consciousness when exposed to certain flashing lights or light patterns in everyday life. Such people may have a seizure while watching certain monitor images or playing certain video games. This may happen even if the person has no medical history of epilepsy or has never had any epileptic seizures. If you or anyone in your family has ever had symptoms related to epilepsy (seizures or loss of consciousness) when exposed to flashing lights, consult your doctor prior to playing the Game Software. We advise parents to monitor the use of video games by their children. If you or your child experience any of the following symptoms while playing a video game, immediately discontinue use of the video game and consult your doctor: dizziness, blurred vision, eye or muscle twitches, loss of consciousness, disorientation, any involuntary movement and/or convulsion.

10. HIPAA Disclaimer

See Kinuu [Privacy Policy](#)

11. E-MAIL, MESSAGING, BLOGGING AND CHAT

Kinuu may make email, messaging, blogging, or chat (collectively, "Communication Software") available through the Game Software, either directly or through a third-party provider. Kinuu is not responsible for communications made by other users via the Communication Software. We are not responsible for communications made by you via the Communication Software. You acknowledge and agree that your communications made via the Communication Software are public and not private communications and that you have no expectation of privacy concerning your use of the Communication Software. You acknowledge and agree that personal information that you communicate via the Communication Software may be seen and used by others and may result in widespread distribution of such information. We strongly encourage you not to disclose any personal information in your public communications via the Communication Software unless you wish such information to be made permanently available to the public.

12. INTERNATIONAL USE

Although the Game Software may be accessible worldwide, we make no representation that the Game Software or related materials are appropriate or available for use in locations outside the United States, and accessing them from territories where the content is illegal is prohibited. Those who choose to access the Game Software from other locations do so on their own initiative and are responsible for compliance with local laws, if and to the extent local laws are applicable. Any offer and/or information made in connection with the Game Software is void where prohibited. Without limiting the foregoing, the Game Software may not be exported or re-exported (a) into (or to a national resident of) any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By accessing and using the Game Software, you represent and warrant that you are not located in, under control of, or a national resident of any such country or on any such list.

13. TERMINATION AND SURVIVABILITY OF TERMS

The Agreement set forth herein continue to remain in full force and effect until such time as terminated by either party. You agree and acknowledge that you are not entitled to any refund for any amounts which were paid to Kinuu prior to any termination. You retain full discretion to end or terminate your account, if applicable, and discontinue use of the Game Software at any time, pursuant to the terms of this Agreement. Without prejudice to any other rights of Kinuu, this Agreement shall terminate automatically if you fail to comply with its terms and conditions. Upon termination, you must destroy all copies of the Game Software. The provisions of Sections 6 and 7 shall survive any termination of this Agreement.

14. CALIFORNIA COMPLAINT ASSISTANCE

Under California Civil Code Section 1789.3, California users are entitled to the following consumer rights notice. If you have a question or complaint regarding the Game Software, please feel free to contact us by writing to us at HopeAtKinuu@Kinuu.com. California residents may reach the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by mail at

1625 North Market Blvd., Suite N-112, Sacramento, California 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

15. DISPUTE RESOLUTION

You agree that any dispute between you and Kinuu arising out of or relating to this End User License Agreement, the Game Software, or any other Kinuu products or services (collectively, "Disputes") will be governed by the arbitration procedure outlined below.

The Terms of Use and the resolution of any Disputes shall be governed by and construed in accordance with the laws of the State of Minnesota and the United States without regard to its conflict of laws principles.

We want to address your concerns without needing a formal legal case. Before filing a claim against Kinuu, you agree to try to resolve the Dispute informally by contacting us at HopeAtKinuu@Kinuu.com. We'll try to resolve the Dispute informally by contacting you through email. If a dispute is not resolved within 15 days after submission, you or Kinuu may bring a formal proceeding.

You and Kinuu agree to resolve any Disputes through final and binding arbitration, except as set forth under Exceptions to Agreement to Arbitrate below. You can decline this agreement to arbitrate by contacting us at HopeAtKinuu@Kinuu.com within 30 days of first accepting these Terms of Use and stating that you (include your first and last name) decline this arbitration agreement.

The American Arbitration Association (AAA) will administer the arbitration under its Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes. The arbitration will be held in Minneapolis, Minnesota, or any other location we agree to. The AAA rules will govern payment of all arbitration fees.

Either party may bring a lawsuit solely for injunctive relief to stop unauthorized use or abuse of the Game Software, or infringement of intellectual property rights (for example, trademark, trade secret, copyright or patent rights) without first engaging in arbitration or the informal dispute-resolution process described above.

You may only resolve disputes with Kinuu on an individual basis, and may not bring a claim as a plaintiff or a class member in a class, consolidated, or representative action. Class arbitrations, class actions, private attorney general actions, and consolidation with other arbitrations aren't allowed under our agreement.

In the event that the agreement to arbitrate is found not to apply to you or your claim, you and Kinuu agree that any judicial proceeding will be brought in the federal or state courts of Hennepin County, Minnesota. Both you and Kinuu consent to venue and personal jurisdiction there. We both agree to waive our right to a jury trial.

Regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to your use of the Game Software or other Kinuu products or services must be filed within one (1) year after such claim or cause of action arose, or else that claim or cause of action will be barred forever.

16. MISCELLANEOUS

This Agreement represents the complete agreement between you and Kinuu concerning the Game Software and supersedes all prior agreements and representations, warranties or understandings between you and Kinuu (whether negligently or innocently made but excluding those made fraudulently), regarding the same subject matter. Kinuu reserves the right to amend this Agreement at

any time, at its sole discretion. If any part of the Agreement is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the Agreement shall continue in effect. Any failure by us to enforce or exercise any provision of the Agreement or related rights shall not constitute a waiver of that right or provision.

Kinuu may assign this Agreement, in whole or in part, at any time. Notwithstanding, you may not assign, transfer or sublicense any or all of your rights or obligations under the Agreement without Kinuu's express prior written consent. Kinuu's performance of the Agreement is subject to existing laws and legal process, and nothing contained in the Agreement is in derogation of Kinuu's right to comply with governmental, court, and law enforcement requests or requirements relating to your use of the Game Software or information provided to or gathered by Kinuu with respect to such use. In addition to any excuse provided by applicable law, we shall be excused from liability for non-delivery or delay in delivery of the Game Software arising from any event beyond our reasonable control, whether or not foreseeable by either party, including but not limited to, labor disturbance, war, terrorism, fire, denial of service attack, internet outages, accident, adverse weather, inability to secure transportation, governmental act or regulation, and other causes or events beyond our reasonable control, whether or not similar to those which are enumerated above. The parties agree that all correspondence relating to this Agreement shall be written in the English language.

17. Contact

You may contact Kinuu by email at HopeAtKinuu@Kinuu.com

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