

## Terms of Service

Last updated: August 10, 2017

IMPORTANT NOTICE: THIS AGREEMENT IS SUBJECT TO A WAIVER OF CLASS ACTION RIGHTS AND BINDING ARBITRATION AS DETAILED IN THE “DISPUTE RESOLUTION” SECTION. THESE PROVISIONS AFFECT YOUR LEGAL RIGHTS, PLEASE READ THEM.

The LiquidSky Terms of Service (the “**Terms**”) govern our relationship with anyone who accesses the LiquidSky website (the “**Website**”) mobile application or other software (the “**App**”) or any other service under LiquidSky’s control (collectively, the “**Services**”). Please read the Terms, the LiquidSky Privacy Policy (“**Privacy Policy**”), the LiquidSky Copyright Policy (the “**Copyright Policy**”) and the LiquidSky Acceptable Use Guidelines (“**Guidelines**”) carefully. Your use of the Services constitutes your agreement to these Terms, the [Privacy Policy](#), the [Copyright Policy](#), and the Guidelines, which are incorporated herein by reference (collectively, the “Agreement”).

Your use of the Services is only for purposes that are permitted by this Agreement. Any use or access of the Services by any means other than those authorized by this Agreement is prohibited unless specifically agreed to in writing with LiquidSky. On an ongoing basis, LiquidSky makes changes and additions to the Services including but not limited to: new games, programs, features, and functionality. We may, without prior notice, change the Services; stop providing the Services or features of the Services, to you or to users generally. You may not use the Services if you do not agree to be, or are unable to be, bound by the Agreement.

As further described below, LiquidSky offers several different subscription plans for the Services.

As used in the Agreement “**SkyComputer**” means the cloud-accelerated web browsing and streaming functionality provided by LiquidSky. “**SkyStorage**” means the cloud-based storage service provided as part of the Services.

1. **Privacy**. The Privacy Policy, which is incorporated herein by reference, tells you about the way we handle and protect your personal information (as referenced in the Privacy Policy) when you use the Services.
2. **Eligibility**. If you are under 18 years of age, you represent and agree that you possess the legal consent of your parent or guardian to access and use the Services. No part of the Services is directed to persons under the age of 13. IF YOU ARE UNDER 13 YEARS OF AGE, PLEASE DO NOT USE OR ACCESS THE SERVICES AT ANY TIME OR IN ANY MANNER. You represent and warrant to LiquidSky that you meet the eligibility criteria in the preceding sentence. If you use the Services on behalf of an organization, you are

agreeing to this Agreement for that organization and promising that you have the authority to bind that organization to this Agreement. In that case, “you” and “your” will refer to that organization.

3. Acceptable Use Guidelines. In order to provide a safe and welcoming environment for all of our users, we have established certain ground rules regarding your behavior on our Services that are specified in the Guidelines. The Guidelines apply to your use of any or all of the Services and Your Content (as defined below). We reserve the right to close or suspend your account on the Services (an “**Account**”) if you breach the Guidelines.

4. Accepting and Changing the Agreement. By clicking “I Accept” you acknowledge that you have reviewed and agree to be bound by the terms and conditions of the Agreement. If you do not agree to be bound by the terms of the Agreement, please do not use the Services. We may change the Agreement at any time in our sole discretion, but we will endeavor to provide you with notice of any material changes to the Agreement.

5. Our License to You. The Services are licensed, not sold, to you for use in accordance with this Agreement. As between LiquidSky and you, LiquidSky owns and will retain all right, title and interest in and to the Services. Subject to your complete and ongoing compliance with this Agreement. LiquidSky hereby grants you a personal, limited, revocable, non-transferable license to (i) use the App on compatible, authorized devices that you own or control, and (ii) access and use the Website, in both instances solely for your own use.

6. Third Party Terms and Services. Our Services offer connectivity with a growing number of games, programs, and other services provided by third parties (collectively, “**Third Party Services**”). Use of some Third Party Services may require you to have an account with that Third Party Service, and the providers of Third Party Services may have their own disclosures, policies, and agreements, including, but not limited to, third party end user license agreements, privacy policies, and terms of service (“**Third Party Terms**”). You are responsible for complying with the applicable Third Party Terms when you use such Third Party Services. Some features offered within Third Party Services may not be available when you access the Third Party Services using the Services and some Third Party Services may prohibit users in certain age brackets (e.g., under 18). In some instances you may need to change your user settings within such Third Party Service in order to permit LiquidSky to confirm your eligibility for certain services or offerings. LiquidSky does not endorse and is not responsible or liable for the availability or performance of any Third Party Service or any websites, content, products services or information offered by or on behalf of a Third Party Service.

7. Accounts; Your Use of the Services. You are responsible for all activity on your Account, including violations of the Agreement by any third party that accesses the Services through your Account, and for the security of your Account. You also agree to the following:

a. to provide and maintain an active email address through which you can be reached for the duration of your Account.

b. to provide accurate and up-to-date email address and contact information to LiquidSky.

c. that to provide you with any notice or record that is required or permitted by law or this Agreement, we may choose to (i) use the email address or other contact information you provide, (ii) post the notice or record on one or more of our websites, or (iii) provide the notice or record via any other reasonable means we choose.

d. to notify LiquidSky of any unauthorized use of your Account, any impending or threatened event that may negatively impact the Services, security of the Services, or any other violation of the Agreement known to you, including by third parties that have accessed the Services through your Account.

e. to not engage in any activity that interferes with or disrupts, degrades, harms or threatens to harm the Services, security of the Services, our equipment, use of the Services by any of our users.

f. to not represent to any third party that you are a LiquidSky employee or authorized representative of LiquidSky.

g. to not tamper with in any manner, disassemble, reverse engineer, or otherwise modify any hardware or software of the Services made available to you.

h. you will not use the Services or any functionality of the Services (including but not limited to any browser functionality) to do any of the following:

i. Upload, post, transmit, distribute, or otherwise make available material that advocates illegal activity or discusses illegal activities with the intent to commit them;

ii. forge headers, manipulate identifiers, or otherwise disguise the origin of any content transmitted through the Services;

iii. upload, post, email, transmit, distribute, or otherwise make available any material that infringes patent, trademark, copyright, trade secret, or other proprietary rights of any party or that you do not otherwise have a right to make available under any law or contractual relationships;

iv. upload, post, transmit, distribute, or otherwise make available any material containing malware or any other files, programs, or computer code designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment; upload, post, email, transmit, distribute, or otherwise make available any unsolicited advertising (e.g., "spam,");

v. upload, post, email, transmit, distribute, or otherwise make available any material that is unlawful, vulgar, offensive, libelous, slanderous, discriminatory, defamatory, threatening, harassing, invasive of another's privacy, obscene, or otherwise objectionable;

vi. impersonate any person or entity or falsely state or otherwise misrepresent your affiliation with a person or entity; collect personally identifiable information; stalk or otherwise harass another; harm minors in any way; or,

vii. provide material support or resources or disguise the nature, location, source, or ownership of material support or resources provided to any organization(s) designated by the United States government as a foreign terrorist organization pursuant to section 219 of the Immigration and Nationality Act.

The listing of any prohibited activities above is not exhaustive. LiquidSky reserves the right to determine that any conduct that is or could be harmful to the Services, our equipment, or use of the Services by any of our users, is in violation of the Agreement and to exercise any or all of the remedies contained in the Agreement.

8. LiquidSky Content. As used herein, "**LiquidSky Content**" means everything on or used in connection with the Services, including, but not limited to, text; images; graphics; logos; audio and video content; visual, auditory, tactile, and motion user interfaces, and any hardware, software, or computer code (collectively). LiquidSky Content also includes, without limitation, the structure, design, animation, video, effects, overall "look and feel" and arrangement of LiquidSky Content on the Services. As between LiquidSky and you, LiquidSky owns and will retain all right, title and interest in and to the LiquidSky Content. You may not modify, reproduce, distribute, create derivative works or adaptations of, publish, perform, display, transmit or in any way exploit any of the LiquidSky Content in whole or in part except as expressly authorized by LiquidSky. You may not, in whole or in part, reverse engineer, derive (or attempt to derive) any source code, modify, disassemble, decompile, or remove any proprietary notices or labels from the Services or any hardware or software associated or used in connection with the Services. Except as expressly and unambiguously provided herein, LiquidSky does not grant you any express or implied rights in or to the Services, any LiquidSky Content or any software associated or used in connection with the Services. You may not rent, lease, license or sublicense the Services to others, or use the Services in any manner for the benefit of any third party.

9. Your Content. Your Content remains Your Content. You expressly acknowledge and agree that once you submit Your Content for inclusion into our Services, it will be accessible by others, and that there is no confidentiality or privacy with respect to Your Content, including, without limitation, any personally identifying information that you may make available. YOU, AND NOT LIQUIDSKY, ARE ENTIRELY RESPONSIBLE FOR ALL YOUR CONTENT THAT YOU SUBMIT VIA THE SERVICES. However, in order to provide you with the Services, LiquidSky needs certain rights to Your Content. As an example, we cannot offer you SkyStorage without the right to reproduce Your Content on our

servers and display Your Content to you. The rights you grant us to Your Content are set forth below and are limited in each case to the rights we need to provide you with the different features of the Services that you use.

a. License. By creating, posting, uploading, submitting, sharing, or distributing (collectively, “**Submitting**”) any content or any other materials (collectively, “**Your Content**”) to the Services, you hereby grant LiquidSky a universal, non-exclusive, royalty-free license to use, modify, remove, publish, transmit, or display Your Content solely for the following purposes: (a) if Submitted to SkyStorage and SkyComputer, to display Your Content in accordance with the intended functionality of each of those Services and (b) if Submitted to all other portions of the Services, to make the Services available to you in accordance with this Agreement. The foregoing license is perpetual if you do not delete Your Content from your Account. LiquidSky reserves the right to pre-screen, monitor, moderate, and delete any of Your Content that you or other users Submit to the Services, including, but not limited to, posts made to any forums within the Services. However, we have no obligation to do so, and you may be exposed to content you find vulgar, offensive, libelous, slanderous, discriminatory, obscene or is in violation of a law.

b. Representations and Warranties with Respect to Your Content. You represent and warrant to LiquidSky that: (i) you have all the rights necessary for you to grant the rights described in this Section, (ii) Your Content does not contain any viruses or malware, and (iii) Your Content will not include any content that infringes, misappropriates or otherwise violates any privacy, intellectual property, or any other rights of any party, or which violates the Guidelines, or that is vulgar, offensive, libelous, slanderous, discriminatory or obscene or that violates any law. The promises you make in this Section mean that, if you are installing a video game to your SkyComputer, and you do not own the rights to such video game, you must have obtained all necessary rights to run and play the video game via SkyComputer.

c. Waiver. You hereby waive all “moral rights” with respect to Your Content and all copyrights therein to the extent such moral rights can be waived under the existing law of any applicable jurisdiction, and all uses thereof, and consent to any action of LiquidSky that would violate such moral rights in the absence of such waiver or consent.

d. Loss or Deletion of Your Content. We may remove Your Content from the Services at any time if you are in violation of the Agreement or if we cancel or suspend our Services. We are not responsible for deletion or overwriting of Your Content or other data or files, or accidental loss of Your Content or other data or files. We strongly advise users to back up Your Content to other locations. As set forth in Section 12 below, if your Account is closed, we may permanently delete Your Content from our servers. In addition, we have no obligation to return Your Content to you if your Account is closed as also set forth in Section 12 below, or if LiquidSky discontinues any part of the Services to which you have Submitted Your Content.

## 10. SkyComputer; SkyStorage.

a. SkyComputer. SkyComputer connections can be shared with other users. Sustained high-speed data transfers that excessively impact these shared connections are not permitted. Please be reasonable in your use of SkyComputer. LiquidSky may, at its sole discretion, limit Internet usage and limit the applications that can be used or uploaded to your LiquidSky games or programs. Malware or other applications that may compromise security or reliability are not permitted. Subject to the terms of Section 12 below (“**Account Closure**”), you can access Your Content Submitted to SkyComputer; however, such, access depends upon availability of shared connections. Users with paid subscriptions will have priority access ahead of users utilizing the free service. YOU MAY NOT USE SKYCOMPUTER TO DOWNLOAD OR ACCESS ANY UNAUTHORIZED OR ILLEGAL CONTENT AND YOU WILL INDEMNIFY, DEFEND, AND HOLD LIQUIDSKY HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, PENALTIES AND FEES ASSESSED AGAINST LIQUIDSKY ARISING OUT OF YOUR USE OF SKYCOMPUTER.

b. SkyStorage. If you use SkyStorage, your Account, solely as associated with SkyStorage, is your “**SkyStorage Account.**” SkyStorage allows you to store Your Content on a cloud-based server for access from remote devices. You are responsible for all of Your Content Submitted to or access from your SkyStorage Account. LiquidSky may charge you for use of SkyStorage, pursuant to Section 11.

## 11. Payment Plans.

a. Beta Points. LiquidSky has, in the past, allowed you to earn points in a virtual currency (“**Beta Points**”) by taking certain actions on the Services. As of December 31, 2015, LiquidSky will no longer be offering Beta Points and they, including any accumulated Beta Points will have no value.

b. A la Carte SkyCredits. LiquidSky also offers you the ability to purchase credits for the use of SkyStorage and time on SkyComputer (these credits are referred to herein as “**SkyCredits**”). You may be required to pay a fee using real-world money to obtain a license to use SkyCredits. Regardless of what we call them, SkyCredits are not real money, do not have monetary value, and may never be redeemed for “real world” money, or other items of monetary value from outside of the Services without our written permission. While we may use terms like “buy,” “purchase,” or “sell,” in reference to SkyCredits, we do so only for convenience and such terms in no way indicate that SkyCredits have monetary value or are real money. You acknowledge that SkyCredits are not real currency and are not redeemable for any sum of money from us at any time. We make no guarantee as to the nature, quality or value of the features of the Services or any third-party goods or services that will be accessible through the use of SkyCredits, or the availability or supply of SkyCredits. If you chose to transfer your SkyCredits to another user, you assume all risk associated with such transfer and release LiquidSky from any liability associated with your transfer of SkyCredits.

i. License. SkyCredits obtained via the Services are provided to you under a limited, personal, revocable, non-sublicenseable license to use within the Services. You have no property interest, right or title in or to any such SkyCredits appearing or originating in the Services, or any other attributes associated with use of the Services.

ii. Forfeiture. SkyCredits may be forfeited if we discontinue availability of some or all of the Services. Notwithstanding anything to the contrary in this Agreement, we reserve the right to cancel all SkyCredits at any time without notice and without providing any compensation to you.

iii. Limitation of Liability. We have no liability for hacking or loss of your SkyCredits or any goods or services obtained with SkyCredits. We have no obligation to, and will not, reimburse you for any SkyCredits or any goods or services obtained via SkyCredits that are lost due to your violation of this Agreement. We reserve the right, without prior notification, to limit the quantity of SkyCredits and/or to refuse to provide you with any SkyCredits. Price, exchangeability, and availability of SkyCredits are determined by us in our sole discretion and are subject to change without notice. Subject to applicable law, you agree that we have the absolute right to manage, distribute, regulate, control, modify, cancel, restrict, terminate and/or eliminate SkyCredits as we see fit in our sole discretion, and that we will have no liability for exercising such right. You agree that under no circumstances are we liable to you for any damages or claims that may arise from the loss or use of your SkyCredits regardless of the circumstances. Without limiting any of the foregoing, our maximum liability or responsibility to you is to replenish any SkyCredits lost.

iv. Use. You may use SkyCredits to redeem use of SkyComputer or SkyStorage. We will, in our sole discretion, determine and communicate the availability and exchange rate for any SkyCredits, which may be modified at any time. All redemptions are subject to the Agreement and all limitations and requirements stated via the Services. All acquisitions of SkyCredits and redemptions are final. Once SkyCredits have been spent, they will be subtracted from your Account and cannot be refunded or returned, except in our sole discretion.

c. Subscriptions. LiquidSky offers several different subscription plans for the Services. LiquidSky also offers you the ability to purchase hourly increments of SkyComputer usage.

i. Subscription Plans. All our current subscription plan offerings are set forth on <https://liquidsky.com>. Depending on the subscription plan you choose, we may charge a subscription fee to access the Services (the “**Subscription Fee**”). The Subscription Fee will be set forth on <https://liquidsky.com> and also on the Services. LiquidSky reserves the right to increase the Subscription Fee or institute new charges upon reasonable notice. We reserve the right to cancel your subscription at any time. No refunds will be given for cancelled subscriptions. We reserve the right to change, modify, add and/or discontinue any subscription plan at any time without notice to you.

1. YOU MUST PAY FOR YOUR SUBSCRIPTION TO THE SERVICES PRIOR TO USING THE SERVICES. IT IS IMPORTANT TO NOTE THAT WHEN YOU PURCHASE A SUBSCRIPTION TO THE SERVICES, YOUR SUBSCRIPTION WILL AUTOMATICALLY RENEW FOR SUCCESSIVE PERIODS EQUAL TO YOUR THEN-CURRENT SUBSCRIPTION TERM UNLESS YOU CANCEL YOUR SUBSCRIPTION AS FURTHER DESCRIBED BELOW. YOU MAY CANCEL YOUR SUBSCRIPTION TO THE SERVICES AT ANY TIME, AND THE CANCELLATION WILL BE EFFECTIVE AT THE END OF THE THEN-CURRENT SUBSCRIPTION TERM. AT THE END OF SUCH TERM, WE WILL SEND YOU A REMINDER E-MAIL ABOUT THE SUBSCRIPTION'S AUTOMATIC RENEWAL. AGAIN, IF YOU DO NOT CANCEL, THEN YOUR SUBSCRIPTION WILL AUTOMATICALLY RENEW UNDER THE SAME SUBSCRIPTION. YOU AUTHORIZE LIQUIDSKY TO CHARGE THE PAYMENT METHOD THAT OUR SERVICE PROVIDER HAS ON FILE FOR YOU TO PAY FOR ANY RENEWAL SUBSCRIPTION. YOU WILL BE BILLED FOR THE SAME SUBSCRIPTION PLAN (OR THE MOST SIMILAR SUBSCRIPTION PLAN, IF YOUR PRIOR PLAN IS NO LONGER AVAILABLE) AT THE THEN-CURRENT SUBSCRIPTION PRICE PLUS ANY APPLICABLE TAXES. WE WILL PROCESS YOUR PAYMENTS FOR ANY RENEWAL SUBSCRIPTION USING THE SAME BILLING CYCLE AS YOUR CURRENT SUBSCRIPTION. IN OTHER WORDS, IF WE PROCESS YOUR PAYMENT FOR YOUR CURRENT SUBSCRIPTION ON THE 20TH OF EACH MONTH, THEN WE WILL CONTINUE TO PROCESS YOUR PAYMENT ON THAT DAY FOR ANY RENEWAL SUBSCRIPTION. ADDITIONAL TERMS AND CONDITIONS MAY APPLY UPON RENEWAL, AND SUBSCRIPTION FEES MAY CHANGE AT ANY TIME, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW. WE WILL NOTIFY YOU OF ANY CHANGES TO YOUR SUBSCRIPTION VIA EMAIL. YOU ARE RESPONSIBLE FOR ENSURING THAT THE EMAIL ADDRESS ASSOCIATED WITH YOUR ACCOUNT IS ACCURATE.

2. **Cancellation Refund Policy.** YOU MAY CANCEL YOUR SUBSCRIPTION TO THE SERVICES AT ANY TIME, AFTER WHICH WE WILL NOT RENEW YOUR SUBSCRIPTION. YOUR CANCELLATION WILL BE EFFECTIVE AT THE END OF THE THEN-CURRENT SUBSCRIPTION TERM. NO REFUNDS WILL BE GIVEN.

ii. Unlimited Subscription Plan. Our unlimited subscription plan provides you with unlimited access to the Services. You may login through unlimited number of devices but only for one Account. You can only have one Account per person not per household. We reserve the right to monitor your use of the Services through the unlimited subscription plan. Our unlimited subscription plan allows you to enjoy uninterrupted individual sessions for the number of hours set forth on <https://liquidsky.com>, after which we will restart your SkyComputer. We reserve the right to stop offering the unlimited subscription plan with thirty (30) days advance notice to you. If we do so, you will have



unlimited access to the Services till your next payment date and then you will either lose access to the Services or will be downgraded to another subscription plan that you choose.

iii. Hourly Payments. You may also purchase hourly increments of SkyComputer usage for the fees set forth on the Services.

iv. We use a third party payment processor to process fees. All purchases are charged in U.S. dollars.

d. Free. LiquidSky may also offer you the ability to earn SkyCredits by watching advertisements on the Services.

e. Carryovers. All SkyCredit tiers (a la carte, subscription and free) allow you carryover SkyCredits from month-to-month. Unused SkyCredits are not redeemable for cash or credit and are not transferable. If you have SkyCredits in your Account and you upgrade to our unlimited subscription plan, you will be able to retain the SkyCredits that you earned prior to the upgrade.

## 12. Account Closure.

a. CLOSING YOUR ACCOUNT WILL RESULT IN PERMANENT LOSS OF ACCESS, CONTENT, SERVICES AND VALUE ON THE SERVICES. PLEASE READ THIS “ACCOUNT CLOSURE” SECTION CAREFULLY BEFORE PROCEEDING WITH CLOSURE. You may close your Account at any time. If you decide to close your Account, please contact LiquidSky customer support at [support@liquidsky.com](mailto:support@liquidsky.com). Voluntary Account closure may immediately and permanently terminate your access to the Services using the closed Account; immediately and permanently terminate your access to all content, messages, services on the Services that the closed Account would otherwise have access to or could derive value from; and result in your immediate and permanent forfeiture of any coupons, access passes, SkyCredits, user generated content, Your Content, or anything that may be of value directly or indirectly associated with the Account, if any, whether purchased or not.

b. LiquidSky reserves the right to terminate Accounts at any time, with or without notice, including for a violation of this Agreement. Without limiting the generality of the forgoing, if a free Account is inactive for ninety (90) days, then we may delete any or all of Your Content without providing additional notice as otherwise set forth in this Section 12. If we close your Account, we may keep your Account data for longer periods to protect LiquidSky’s or others’ rights and property, to prevent fraud, or where we in good faith believe such longer retention is required by law or legal process we may have received. For all closed Accounts, we reserve the right to retain information as necessary or appropriate for lawful business purposes, to prevent fraud, to protect our rights and property, or as required by law. Any remaining payments due on the Account will remain due and collectible after the Account is closed until they are paid.

c. Should LiquidSky not receive timely payment for the continuation of your Account, all saved data and programs will be deleted from LiquidSky servers after a grace period of 48 hours.

13. Copyright Policy. Please visit <https://liquidsky.com/copyright> to review our Copyright Policy.

#### 14. Dispute Resolution

a. Binding Arbitration. In the event of a dispute arising under or relating to this Agreement (each, a “Dispute”), either party may elect to finally and exclusively resolve the dispute by binding arbitration governed by the Federal Arbitration Act (“FAA”). Any election to arbitrate, at any time, shall be final and binding on the other party. IF EITHER PARTY CHOOSES ARBITRATION, NEITHER PARTY SHALL HAVE THE RIGHT TO LITIGATE SUCH CLAIM IN COURT OR TO HAVE A JURY TRIAL, EXCEPT EITHER PARTY MAY BRING ITS CLAIM IN ITS LOCAL SMALL CLAIMS COURT, IF PERMITTED BY THAT SMALL CLAIMS COURT RULES AND IF WITHIN SUCH COURT’S JURISDICTION. ARBITRATION IS DIFFERENT FROM COURT, AND DISCOVERY AND APPEAL RIGHTS MAY ALSO BE LIMITED IN ARBITRATION. All disputes will be resolved before a neutral arbitrator, whose decision will be final except for a limited right of appeal under the FAA. The arbitration shall be commenced and conducted by the Judicial Arbitration and Mediation Services (“JAMS”) pursuant to its then current Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those rules, or, where appropriate, pursuant to JAMS’ Streamlined Arbitration Rules and Procedures. All applicable JAMS’ rules and procedures are available at the JAMS website <http://www.jamsadr.com>. Each party will be responsible for paying any JAMS filing, administrative and arbitrator fees in accordance with JAMS rules. Judgment on the arbitrator’s award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The arbitration may be conducted in person, through the submission of documents, by phone, or online. If conducted in person, the arbitration shall take place in the United States county where you reside. The parties may litigate in court to compel arbitration, to stay a proceeding pending arbitration, or to confirm, modify, vacate or enter judgment on the award entered by the arbitrator. The parties shall cooperate in good faith in the voluntary and informal exchange of all non-privileged documents and other information (including electronically stored information) relevant to the Dispute immediately after commencement of the arbitration. Nothing in this Agreement will prevent LiquidSky from seeking injunctive relief in any court of competent jurisdiction as necessary to protect LiquidSky’s proprietary interests.

b. No Class Actions. You agree that any arbitration or proceeding shall be limited to the Dispute between us and you individually. To the full extent permitted by law, (i) no arbitration or proceeding shall be joined with any other; (ii) there is no right or authority for any Dispute to be arbitrated or resolved 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. YOU AGREE THAT YOU MAY BRING CLAIMS AGAINST US ONLY IN YOUR INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.

15. Governing Law; Choice of Forum. The laws of the State of New York, excluding its conflicts of law rules, govern this Agreement and your use of the Services. Your use of the Services may also be subject to other local, state, national, or international laws. To the extent that any action relating to any dispute hereunder is permitted to be brought in a court of law, such action will be subject to the exclusive jurisdiction of the state and federal courts located in New York County, New York, and you hereby irrevocably submit to personal jurisdiction in such courts, and waive any defense of inconvenient forum.

16. Representations and Warranties. In addition to the representations and warranties in Section 9.b, you represent and warrant that (i) you have the full power and authority to enter and perform under the Agreement, (ii) the execution and performance of your obligations under the Agreement does not constitute a breach of or conflict with any other agreement or arrangement by which you are bound, and (iii) the Agreement is a legal, valid, and binding obligation of you, enforceable in accordance with its terms and conditions.

17. Indemnification. To the fullest extent permitted by law, you agree to defend, indemnify and hold LiquidSky, its directors, officers, employees, contractors, affiliates, suppliers, and licensors (collectively “**LiquidSky Indemnified Parties**”) harmless from any liability, damage, settlement, loss, or expense (including, without limitation, attorneys’ fees and costs) incurred in connection with any third-party claim, demand or action (“**Claim**”) brought or made against any of the LiquidSky Indemnified Parties arising out of or relating to (a) any violation by you of any of the Agreement, (b) your misuse of the Services, (c) any unauthorized modification or alteration of any hardware or software made available to you in connection with the Services (d) any information, content or materials (including, without limitation, any Feedback (as defined below) or Your Content) provided or made available by you; and/or (e) any use of Services to access Third Party Services without authorization. If you have to indemnify any of the LiquidSky Indemnified Parties under this Section, LiquidSky and/or the relevant LiquidSky Indemnified Parties will have the right to control the defense, settlement, and resolution of any Claim at your sole expense. You may not settle or otherwise resolve any Claim without LiquidSky’s prior express written permission.

18. DISCLAIMER. SOME OR ALL ASPECTS OF THE SERVICES MAY NOT FUNCTION ON CERTAIN DEVICES. TO THE FULLEST EXTENT PERMITTED BY LAW, LIQUIDSKY PROVIDES THE SERVICES ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT ANY WARRANTIES OF ANY KIND. LIQUIDSKY UTILIZES THE INTERNET, WHICH BY ITS VERY NATURE CAN BE UNRELIABLE AND UNPREDICTABLE. INTERNET CONNECTION AND RELIABILITY PROBLEMS MAY REDUCE SERVICE QUALITY AND IN SOME CASES MAKE THE SERVICES

UNAVAILABLE. IN ADDITION TO AN INTERNET CONNECTION, THE SERVICES ALSO REQUIRE SUITABLE, CAPABLE, RELIABLE, AND FULLY OPERATIONAL DEVICES AND SOFTWARE, WHICH ARE ALL OUTSIDE OF LIQUIDSKY'S CONTROL. LIQUIDSKY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE. NO ADVICE, STATEMENTS OR INFORMATION OBTAINED BY YOU FROM LIQUIDSKY OR ANY OF ITS REPRESENTATIVES OR FROM ANY THIRD PARTY OR THROUGH THE SERVICES WILL CREATE ANY REPRESENTATION OR WARRANTY NOT EXPRESSLY STATED IN THE AGREEMENT. LIQUIDSKY DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY WEBSITE, PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH OR IN CONNECTION WITH THE SERVICES. LIQUIDSKY IS NOT RESPONSIBLE FOR ANY INTERNET, TELEPHONE, WIRELESS, OR OTHER FEES ASSOCIATED WITH YOUR USE OR ACCESS OF ANY SERVICES, PRODUCT, OR CONTENT THROUGH THE SERVICES, INCLUDING YOUR USE OR ACCESS OF ANY FREE SERVICE, PRODUCT, OR CONTENT THROUGH THE SERVICES.

19. LIMITATION OF LIABILITY. IN CONNECTION WITH ANY WARRANTY, CONTRACT, OR COMMON LAW TORT CLAIMS: (I) LIQUIDSKY OR ANY OF ITS AFFILIATES, SUPPLIERS OR LICENSORS SHALL NOT BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES WHICH MAY BE INCURRED BY YOU OR FOR ANY LOSS OF PROFIT, LOSS OF GOODWILL, WORK STOPPAGE, LOSS OR CORRUPTION OF DATA, SOFTWARE OR HARDWARE (INCLUDING, WITHOUT LIMITATION, COMPUTER) FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER DAMAGES OR LOSSES ARISING FROM OR RELATING TO THE USE OR INABILITY TO ACCESS AND USE THE SERVICES, EVEN IF LIQUIDSKY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (II) ANY DIRECT DAMAGES THAT YOU MAY SUFFER AS A RESULT OF YOUR USE OF THE SERVICES SHALL BELIMITED TO THE GREATER OF \$100 AND THE FEES YOU PAID TO LIQUIDSKY IN THE TWELVE MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES. THEREFORE, SOME OF THE ABOVE LIMITATIONS ON WARRANTIES IN THIS SECTION MAY NOT APPLY TO YOU. THE SERVICES MAY CONTAIN TECHNICAL INACCURACIES, TYPOGRAPHICAL ERRORS, OR OMISSIONS. WE ARE NOT RESPONSIBLE FOR ANY SUCH TYPOGRAPHICAL, TECHNICAL, PRICING, OR OTHER ERRORS LISTED ON OR OMITTED FROM THE SERVICES. WE RESERVE THE RIGHT TO MAKE CHANGES, CORRECTIONS, AND/OR IMPROVEMENTS TO THE SERVICES AT ANY TIME WITHOUT NOTICE.

20. No Liability for Objectionable Content. The Services will provide access to games and other content that is rated mature or that you or others may otherwise consider objectionable or inappropriate for persons under age 18.

21. Miscellaneous. You and LiquidSky are independent parties, and nothing in the Agreement constitutes a partnership or joint venture between you and LiquidSky, or makes either party the agent of the other. Unless otherwise specified herein, the Agreement constitutes the entire agreement between you and LiquidSky with respect to the subject matter hereof and supersede all prior or contemporaneous communications, negotiations and proposals with respect to such subject matter. You may not assign or transfer the Agreement or any of your rights or obligations under the Agreement (whether by operation of law or otherwise) without the prior written consent of LiquidSky. This Agreement will be binding on you, your assigns, heirs, executors, administrators and estate. This Agreement, and any rights and licenses granted hereunder, may be assigned by us without restriction. The following Sections will survive termination of this Agreement: 9.b, 9.c, 11.b.iii, and 12 - 22.

22. Feedback. While our own staff is continually working to develop and evaluate our own product ideas and features, we pride ourselves on paying close attention to the interests, feedback, comments, and suggestions we receive from our users. We take this feedback seriously. If you choose to contribute by sending LiquidSky or our employees any ideas for products, services, features, modifications, enhancements, content, refinements, technologies, content offerings, promotions, strategies, or product/feature names, or any related documentation, artwork, computer code, diagrams, or other materials (collectively “**Feedback**”), then regardless of what your communication may say, the following terms will apply, so that future misunderstandings can be avoided. For clarity, “Feedback” includes all modifications, enhancements, developments and suggestions regarding the Services made by members of the beta-testing community on the Services. Accordingly, by sending Feedback to LiquidSky, you agree that:

a. LiquidSky has no obligation to review, consider, or implement your Feedback, or to return to you all or part of any Feedback for any reason;

b. Feedback is provided on a non-confidential basis, and LiquidSky is not under any obligation to keep any Feedback you send confidential or to refrain from using or disclosing it in any way; and

c. You irrevocably grant LiquidSky and its successors and assigns perpetual and unlimited permission to use the Feedback and derivatives thereof for any purpose and without restriction, free of charge and without attribution of any kind, including, by way of example and not limitation, by making, using, selling, offering for sale, importing, and promoting commercial products and services that incorporate or embody Feedback, whether in whole or in part, and whether as provided or as modified.

## ACCEPTABLE USE GUIDELINES

These LiquidSky Acceptable Use Guidelines (“**Guidelines**”) apply to all of your contributions to and participation in any LiquidSky-sponsored service offerings, website, communications system or forum, including, without limitation, any content you create, post, upload, submit, share or distribute through the use of the Services, including uploading or downloading information, such as data files, written text, computer software, music, audio files or other sounds, photographs, videos or other images that you upload to LiquidSky and including contributions or interactions via text or voice chat, via text messaging, via forums or via message boards, whether within or outside of a game, and any LiquidSky Community Forums (the “**Forums**”). The Guidelines are incorporated by reference into our Terms of Service. LiquidSky will have sole discretion to address any behavior exhibited on the Services it considers inappropriate, regardless of whether the specific conduct is expressly prohibited by these Guidelines. LiquidSky will evaluate each incident and take whatever action it deems appropriate, which may include temporary or permanent suspension or closure of your access to all or part of the Services.

1. LiquidSky does not provide authorization or licenses for any games or other software services that are provided by Third Party Services. While LiquidSky may act as a conduit to such services, users must still register with those third parties (if required) and otherwise comply with their user agreements.
2. LiquidSky takes no responsibility for user experiences with Third Party Services. This includes any dissatisfaction with those services. It also includes any user behavior that may violate state, federal, or international laws, particularly with regards to internet sites users may choose to visit using a browser on LiquidSky, actions they may take on those sites, and materials they may download, whether to LiquidSky’s computers or their own.
3. You must ensure that Your Content does not detract from any other user’s experience using the Services. In particular, creating, uploading, posting or linking to any of the following is prohibited (“**Prohibited Content**”), subject to LiquidSky’s sole discretion: (a) content that is defamatory, libelous, slanderous, discriminatory, obscene, vulgar, pornographic, sexually explicit, harmful, invasive of a person or entity’s privacy or publicity rights, abusive, inflammatory, in violation of any applicable law or otherwise objectionable or insulting; (b) content that directly or indirectly harasses, threatens, embarrasses, or causes distress or discomfort to another user or third party, such as repeatedly sending unwanted messages or making insulting or offensive statements about race, ethnicity, gender, sexual orientation, nationality, religion or religious figures, etc.; (c) personal attacks, hate speech and harassment; (d) content that disrupts the normal flow of dialogue in any Forums, abusiveness, disrupting communications, etc., (e) attempts to impersonate another person, such as a LiquidSky representative or a celebrity, or attempts to mislead participants by indicating that you are affiliated with LiquidSky or its partners; and (f) content that refers to real life violence, use of illegal drugs or engaging in illegal activities.

4. LiquidSky users are prohibited from engaging in the following acts, referred to collectively as “**Prohibited Activities:**” (a) probe, scan, or test the vulnerability of any system or network; (b) breach or otherwise circumvent any security or authentication measures; (c) access, tamper with, or use non-public areas of the Services, shared areas of the Services you have not been invited to, LiquidSky (or our service providers’) computer systems; (d) interfere with or disrupt any user, host, or network, for example by sending a virus, overloading, flooding, spamming, or mail-bombing any part of the Services; (e) plant malware or otherwise use the Services to distribute malware; (f) access or search the Services by any means other than our publicly supported interfaces (for example, “scraping”); (g) send altered, deceptive or false source-identifying information, including “spoofing” or “phishing”; (h) publish anything that is fraudulent, misleading, or infringes another's rights; (i) promote or advertise products or services other than your own without appropriate authorization; (j) impersonate or misrepresent your affiliation with any person or entity; or (k) publish or share materials that are unlawfully pornographic or indecent, or that advocate bigotry, religious, racial or ethnic hatred.

5. You must obey all applicable laws, regulations and rules that apply to your activities in connection with the Services. You may not use, post or link to any of the following types of material: content that you do not own or have permission to freely distribute; content that would infringe on any patent, trademark, trade secret, copyright, or other intellectual property rights of any party; content that contains software viruses, “auto,” “macro” or “cheat utility” software programs, or any other computer code or files that are designed to disrupt, damage, or limit the functioning of any software or hardware; content that is illegal under any local, state, federal, or international law, rule, regulation or treaty; and content that promotes or encourages any illegal activity, including illegal hacking or distribution of software or systems.

6. LiquidSky may not be used for the promotion of third party services, products, websites, or organizations. Posting or linking to content that would constitute advertising, promotional messaging, junk mail, spam, pyramid schemes, chain letters, or any other form of unauthorized solicitation or commercial activity is strictly prohibited.