



PRIMERO GAMES

TERMS OF SALE¹

1. Introduction. The sale of Hardware and Services and the license of Software (including the transfer of such items without charge) as well as your use of such items are subject to, and governed by, these Terms of Sale (this "Agreement"). You accept and agree to be bound by this Agreement, and agree that all transactions between you and Primero in the past, present and future shall be governed by this Agreement. This Agreement applies to direct purchasers and others who purchase through a reseller. This Agreement shall apply and govern, regardless of any additional or conflicting terms on any purchase order or other correspondence or documentation submitted by you to Primero, and any such additional or conflicting terms are deemed rejected by Primero. Primero's offer to sell is expressly limited to acceptance of this Agreement.

2. Definitions. "Primero" means Primero Games, LLC or the entity identified on your sales order or invoice, and shall include any Primero subsidiaries, affiliates, predecessors (including, but not limited to, Cadillac Jack) and successors with which an order is or was placed or fulfilled. The term "you" means the company or individual on the sales order or invoice, and shall include any of your affiliates that places an order or uses Hardware, Software or Services. "Hardware" means tangible materials provided hereunder including, but not limited to, computer chips, motherboards, security devices, printers, monitors, bill acceptors and cabinets. "Software" means any software, library, utility, tool, or other computer or program code, in object or source-code form, as well as the related documentation and content, provided by Primero to you. Software includes, but is not limited to, software located in or on the Hardware, locally installed on your systems, and software accessed by you through the Internet or other remote means (such as websites, portals and "cloud-based" solutions). "Services" means any and all services provided by Primero including, but not limited to, repairs, technical support and installation services. "Deliverables" means the tangible and intangible materials, including reports, studies, drawings, findings, manuals, procedures and recommendations prepared by Primero or its suppliers, licensors or subcontractors in the course of performing Services. "Service Agreements" are service contracts entered into between Primero and you. In the event of a conflict between a Service Agreement and this Agreement, this Agreement shall control. The terms "fill code", "timer reset code" and "activation code" mean a computer code sold or provided by Primero that enables Software to operate or continue operating.

3. Ordering and Payment.

a. **Orders; Payment Terms; Late Fees.** Your order is subject to acceptance or cancellation by Primero at its principal office in Georgia, in Primero's sole discretion, before it becomes a binding contract. Each Software license, each Service and each order for Hardware will be interpreted as a single agreement, independent of any other orders. Orders for miscellaneous parts are subject to availability and are cancellable by Primero. Orders for miscellaneous parts are noncancellable by you. Timely payment of the price and all charges is of the essence. Terms of payment are within Primero's sole discretion, and unless otherwise agreed to by Primero, payment must be received by Primero prior to Primero's acceptance of an order. Payment for Hardware, Software licenses and Services must be made by credit card (you agree that Primero may pass along credit card surcharges to you), check, cash, automated clearing house, wire transfer, electronic funds transfer or some other prearranged payment method, unless credit terms have been agreed to by Primero. Such credit approval may be revoked without further notice from Primero. Payment to Primero in respect of Hardware, Software licenses or Services, as applicable, shall be made to the account indicated by Primero. Primero shall have the right to withhold fill codes, timer reset codes and activation codes from you until Primero's receipt of all amounts that are due. Primero shall have no liability to you for any such withholding of Software codes. For overdue invoices of \$45 or greater, Primero reserves the right to charge you a late penalty per invoice of \$45 per month or 1.5% per month applied against undisputed overdue amounts; provided, however, such fees shall not exceed the maximum rate permitted by law. Late penalties will be recalculated every 30 days based on your current outstanding balance. Primero further reserves the right to seek collection of all overdue amounts (including by referral to third party collectors), plus all fees (including reasonable attorneys' fees) and costs associated with such collection. If a past due account is collected by or through an attorney, 15 percent of the unpaid balance of all obligations also shall be due as attorneys' fees.

b. **Invoices.** If an order is not paid in advance, invoices are due and payable within the time period noted on your invoice measured from the date of the invoice, or if not noted, then due upon receipt. Primero may invoice parts of an order separately or may invoice purchases of Hardware, Software licenses and Services in one invoice to you.

¹ Effective June 3, 2019



c. **Errors; Corrections.** Primero is not liable for pricing, typographical or other errors in any sales order or invoice, and reserves the right to cancel or correct orders or invoices arising from such errors. Errors shall be determined by Primero in its sole discretion. You must notify Primero within five business days of the date of your invoice if you believe any part of your order is incorrect. Otherwise, the order will be deemed correct. If you pay by credit card and you disagree with any charges, you agree not to cancel, revoke, charge back, or dispute any previously entered charge on your credit card with the credit card company, unless prohibited by law. If you do so, and it is later determined that the charge was properly authorized, you agree to indemnify Primero for all damages incurred by Primero as a result of the improper cancellation, revocation, charge back, or dispute.

d. **Shipping Charges; Taxes; Risk of Loss.** Taxes, shipping charges, and handling charges are not included in the prices unless expressly indicated at the time of sale. Unless otherwise specified in writing by Primero, you shall pay all freight, insurance, and taxes (including but not limited to import or export duties, sales, use, value add and excise taxes). Unless you provide Primero with a valid and accurate tax-exemption certificate applicable to your purchase and ship-to location, you are responsible for sales tax and any other taxes or governmental fees associated with your order. Loss or damage that occurs during shipping is your responsibility. Shipping and delivery dates are provided as estimates only. PRIMERO SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR PENALTY FOR DELAY IN DELIVERY OR FOR FAILURE TO GIVE NOTICE OF ANY DELAY.

e. **Title; Grant of Security Interest.** Title to Hardware and Software licenses passes from Primero to you upon shipment to you. Title to Software itself shall always remain with Primero or its applicable licensors. If you do not make payment in full prior to shipment, you hereby grant to Primero a first priority, purchase money security interest in the Hardware that you purchased as evidenced by the applicable invoice. If partial payment is made on an invoice, the purchase price shall be allocated equally among all items on the invoice until paid in full. Primero may file a UCC-1 financing statement without your signature for any Hardware that is subject to a security interest hereunder. You agree not to grant or allow any liens or other security interests with regard to any Hardware that is subject to a security interest hereunder. You agree that Primero may take possession of the Hardware and resell it to satisfy any unpaid obligations.

f. **Prices.** The prices charged for Hardware, Software licenses, and Services purchased under this Agreement shall be the amounts set forth on Primero's sales order or as provided by the applicable invoice or Service Agreement. In instances where you purchase through a reseller, prices will be as agreed between you and such third party. As stated above, Primero has the authority to correct any errors in pricing. Quoted prices are subject to cancellation or change in Primero's discretion. Primero reserves the right to charge (i) for any updates, fixes, upgrades, new versions, or other changes to the Software or Hardware, (ii) for activations (including new activations and re-activations), fill codes, and timer reset codes, and (iii) a new fill charge for "fills" lost due to dead batteries or lost for other reasons. Additional service charges may apply if you request Services that are performed outside of contracted hours or are beyond the normal coverage for the particular Service.

g. **Changed or Discontinued Hardware, Software, or Services.** Primero may revise or discontinue Hardware, Software, or Services offerings at any time without prior notice to you. A change in Hardware, Software, or Services may occur after you place an order, but before Primero ships the Hardware or Software or performs the Service. As a result, Hardware, Software, or Services you receive might display minor differences from the Hardware, Software, or Services you order. However, the Hardware, Software, and Services will meet or exceed all material specifications of such order.

h. **Hardware May Be Used; Counterfeit Products.** You understand and agree that Hardware sold hereunder may be new, equivalent-to-new, used, or reconditioned. You agree that Primero may retain any counterfeit products that come into its possession.

i. **Returns; Exchanges; Cancellation of Orders.** Unless (i) Primero has agreed in writing to allow you to return or exchange Hardware or Software or cancel an order, or (ii) as provided in Primero's Limited Warranty Statement (described below), returns, exchanges and cancellations are not permitted. All sales are final. Before returning or exchanging anything, you must contact us to obtain an authorization number to include with your return. You must return Hardware to us in its original or equivalent packaging, and you are responsible for risk of loss, as well as shipping and handling fees. Additional fees, including up to a 15% restocking fee, may apply even if Primero has agreed to such return, exchange, or cancellation. Credit for partial returns may be less than invoice or individual component prices due to bundled or promotional pricing associated with your original purchase.



4. Term; Termination.

a. **Term.** Each Service will continue for the term stated in the Service Agreement or, if there is no written agreement, until the Service is completed in Primero's discretion, unless otherwise terminated. The term of each Software license shall continue until the "fill", if applicable, runs out or the timer in the Software expires, whichever occurs first, unless otherwise terminated. If the Software does not require a fill code and there is no timer in the Software, then the term of the license shall be three years, unless otherwise terminated. Primero may, at its option, propose to renew a Service by sending you an invoice or a contract extension. You may agree to such renewal of the Service by paying such invoice or by continuing to order Services. For purposes of this Agreement only, each fill code, timer reset code, and activation code provided by Primero shall be considered a new Software license, regardless if such code is made available to you without charge. You agree that it is not Primero's obligation to inform or warn you that a Software license is about to expire or has expired.

b. Termination; Suspension.

i. Either party may terminate a Service if the other party commits a material breach of such agreement and the breach is not cured within 60 days of receipt of written notice from the injured party, except Primero may immediately terminate a Service if you fail to make payment for the Services when due.

ii. Primero may terminate a Software license if you commit a breach of this Agreement and the breach is not cured within 10 days of receipt of written notice from Primero. Primero also may terminate or suspend a Software license as provided in subsection c. of this paragraph 4 below.

c. **Immediate Termination or Suspension By Primero.** Primero may immediately (i) terminate a Software license, (ii) suspend a Software license (including, but not limited to, suspend the provision of fill codes, timer resets codes or activation codes), or (iii) terminate or suspend a Software license for a particular jurisdiction (including, but not limited to, suspend the provision of fill codes, timer resets codes or activation codes), (1) in the event that you are in breach of Section 9 (Hardware and Software Restrictions) or Section 16 (Compliance with Laws), (2) if you are using Software in a jurisdiction for which such Software was not designed as determined by Primero in its sole discretion, (3) if you purchase a fill code, timer reset code or activation code from someone other than Primero without Primero's prior written consent, (4) if, in Primero's sole opinion, a statutory change or judicial or governmental decision or interpretation prohibits the sale, use or possession of Hardware or Software in the applicable jurisdiction, (5) you fail to make any payment when due; (6) if you are acquired by, or merge or consolidate with, a competitor of Primero; (7) if you declare bankruptcy or are adjudicated bankrupt; (8) if a receiver, monitor or trustee is appointed for you or substantially all of your assets; or (9) if you use trademarks or other intellectual property of Primero (or its licensors) in a confusing, inappropriate or unauthorized manner as determined by Primero in its sole discretion.

d. **Effect of Termination.** Upon termination or suspension of a Service or a Software license, all rights and obligations of the parties under this Agreement (except the right to use such Service or Software) shall continue. Upon termination of a Software license, you shall cease use of the Software.

e. **Cross Default.** If Primero has the right to suspend or terminate any Service or Software license hereunder, Primero, in its sole discretion, may suspend or terminate any or all other Services or Software licenses that are subject to this Agreement.

5. Proprietary Rights In the Hardware and Services. All right, title and interest in the intellectual property (including all copyrights, patents, trademarks, trade secrets and trade dress) embodied in the Hardware, as well as the methods by which the Services are performed and the processes that make up the Services, shall belong solely and exclusively to Primero or the applicable suppliers or licensors, and you shall have no rights whatsoever in any of the above, except as expressly granted in this Agreement.

6. Deliverables. Primero and its applicable suppliers or licensors will retain exclusive ownership of all Deliverables, and will own all intellectual property rights, title and interest in any ideas, concepts, know-how, documentation and techniques associated with such Deliverables. Subject to payment in full for the applicable Services, Primero grants you a non-exclusive, non-transferable, royalty-free right to use the Deliverables solely in the state or country in which you do business, solely for your internal use, and solely as necessary for you to enjoy the benefit of the Services.



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7. Maintenance; Software Communication Systems. You understand and agree that Primero does not sell or provide and is not responsible for systems used for remotely accessing or interacting with the Software or for transmitting information (including telephone, computer networks and the Internet). If such systems are otherwise made available, with respect to Software provided or otherwise made available to you by Primero, it may be necessary for Primero to perform scheduled or unscheduled repairs or maintenance or remotely patch or upgrade the Software, which may temporarily degrade the quality of the Software or result in partial or complete outage of the Software. Primero provides no assurance that you will receive advance notification of such activities or that the Software will be uninterrupted or error-free. Any degradation or interruption in the Software shall not give rise to a refund or credit of any money paid by you. You agree that the operation and availability of the systems used for accessing and interacting with the Software or to transmit information (including telephone, computer networks and the Internet) can be unpredictable and may, from time to time, interfere with or prevent access to or use or operation of the Software. PRIMERO SHALL NOT BE LIABLE FOR (I) ANY SUCH INTERFERENCE WITH, PREVENTION OF YOUR ACCESS TO OR USE OF, THE SOFTWARE, OR (II) ANY DAMAGE TO THE SOFTWARE OR HARDWARE CAUSED BY OR RESULTING FROM SUCH COMMUNICATIONS SYSTEMS.

8. Software.

a. Limited Use License. The Software is licensed, not sold. Subject to your strict compliance with the terms and conditions of this Agreement, Primero hereby grants you a non-exclusive, non-transferable, limited right and license to install and use one copy of the Software per computer chip purchased from Primero, solely and exclusively for your commercial use in the jurisdiction for which such Software was designed.

b. No Right To Ownership. You acknowledge and agree that you shall have no ownership or other property interest in the Software or in any Data (defined below) generated by, or in connection with, the Software, and you further acknowledge and agree that all such rights are and shall forever be owned by and inure to the benefit of Primero or Primero's licensors. Except as expressly licensed to you herein, all right, title, and interest in and to the Software and any and all associated copyrights, trademarks and intellectual properties therein or related thereto and all copies thereof (including, but not limited to, any patches, updates, copies, derivative works, titles, computer code, themes, objects, characters, character names, stories, dialogs, catch phrases, locations, concepts, artwork, images, animation, sounds, musical compositions, audio-visual effects, text, methods of operation, moral rights, "applets" incorporated into the Software, and any related documentation) are owned by Primero or Primero's licensors. The Software is protected by the copyright laws of the United States, international copyright treaties and conventions, and other laws, all of which are in addition to the rights and remedies of Primero hereunder. All rights not specifically granted under this Agreement are hereby reserved by Primero and, as applicable, by its licensors. The Software contains certain licensed materials, and Primero and Primero's licensors may protect their rights in the event of any violation of this Agreement.

c. No Sale or Assignment. Primero does not recognize the unauthorized transfer of a Software license. Therefore, you may not give, purchase, sell, bargain, barter, market, trade, offer for sale, sell, sublicense, assign or otherwise divest your rights, responsibilities or obligations under this Agreement with regard to the Software, either in whole or in part, without the written consent of Primero. Any attempt to do so shall be void and of no effect.

d. Audit. You hereby grant Primero, or an agent designated by Primero, the right to perform an audit of your use of the Software during normal business hours. You agree to cooperate with Primero in such audit, and you agree to provide Primero with all records reasonably related to your use of the Software. The audit will be limited to verification of your compliance with the terms of this Agreement and applicable law.

9. Hardware and Software Restrictions. You agree to only use the Hardware and Software in a manner that is consistent with this Agreement, and you SHALL NOT:

- a.** exploit the Hardware or Software by connecting the Hardware to the Internet, except as required by law or with the prior written consent of Primero;
- b.** use or operate the Software, or permit the use or operation of the Software, in any jurisdiction other than the jurisdiction for which such Software was designed as determined by Primero in its sole discretion;
- c.** use the Hardware or Software, or permit the use of the Hardware or Software, on more than one computer or game console at the same time;
- d.** use the Hardware or Software, or permit use of the Hardware or Software, in a network, multi-user arrangement, or remote access arrangement, including where it could be downloaded by multiple users, except as required by law;
- e.** duplicate, copy or create any form of reproduction of the Hardware or Software;



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- f. reverse engineer, derive source code, modify, decompile, disassemble, copy, or create derivative works, collective works or a compilation of the Hardware or Software including, but not limited to, manipulating or modifying the Software or Hardware so that a fill code, timer reset code or activation code is not necessary;
- g. access or connect to the Software or Hardware to monitor performance, functionality, or information (for benchmarking, competitive or communication purposes or for any other reason), except with the prior written consent of Primero;
- h. remove, disable or circumvent any security protections, proprietary notices or labels contained on or within the Hardware or Software;
- i. export or re-export the Hardware or Software or any copy or adaptation in violation of any applicable laws or regulations; or
- j. create data or executable programs which mimic data or functionality in the Hardware or Software.

Furthermore, you agree that you shall abide by the safety information, maintenance instructions and other relevant notices contained in the Software, on the Hardware or in the documentation accompanying the Hardware, if any.

10. Collection of Data; Retention of Certain Rights to Primero.

a. In connection with your use of the Software and your use of Primero's activation system (and any other system used to track, activate, or renew Software licenses), it may be necessary or desirable for Primero to obtain, receive or collect data or information, including system-specific data, game information, and player information (collectively, the "Data"). All Data shall be the sole and exclusive property of Primero. In the event that you retain any rights in the Data, you hereby grant to Primero an exclusive, worldwide, royalty-free, perpetual, irrevocable license to use (including, but not limited to, in support of Primero's and its affiliates' marketing and sales activities), compile, aggregate, distribute, display, store, process, reproduce, or create derivative works of the Data. You also grant to Primero the right to copy and maintain such material and content on Primero's servers. You represent and warrant that you have obtained all rights, permissions and consents necessary to use and transfer the Data in conjunction with this Agreement.

b. In addition, Primero reserves to itself the right to provide advertising and other content (including, but not limited to, content delivered through video, audio, print, digital images, screen savers, live streaming and any other means or methods now known or hereafter devised) on, through or in connection with the Software licensed to you and the Hardware sold to you. In the event that you retain any such rights, you hereby grant to Primero an exclusive, perpetual, unlimited, worldwide, irrevocable, transferrable license and right to provide such advertising and other content on, through or in connection with the Software licensed to you and the Hardware sold to you. In exchange for such content distribution rights, Primero will pay to you an amount determined by Primero in its sole discretion from revenues actually received and collected by Primero from the content providers and eligible for sharing with applicable Primero customers, which amount shall be allocated among such Primero customers in accordance with such criteria as determined by Primero in its sole discretion. For clarity, in no event shall you have any right to provide any content on, through or in connection with the Software and Hardware licensed or sold by Primero to you, except for game content licensed to you by Primero. You also agree to cooperate with Primero in such content distribution efforts and provide repairs, maintenance, software changes, part changes, and access to the Hardware and Software.

11. Important limitations on Primero's Liability.

a. **Assumption of Risks.** You assume all risks arising out of, or in any way related to, your possession, use or operation the Hardware and Software. Such risks include, but are not limited to, civil or criminal action against you or your customer. You agree that you have consulted with your own legal counsel regarding the legality of the Hardware and the Software in the applicable jurisdiction. You understand and assume the risk that the Software may have end-of-life codes that cause the Software to stop operating without warning. You understand that Primero does not have control over the activation system (a/k/a Software timer reset system or Coupons Expert system) (the "Third Party Activation System"), which system is controlled and managed by a licensor of Primero. You assume the risk that such system might temporarily fail, cease to operate, or function improperly. You assume the risk that Primero is not able to acquire or maintain a license to sell Software in a particular jurisdiction. You covenant not to sue Primero for any reason arising out of your possession, use, or operation of the Hardware, Software, or the Third Party Activation System. Also, you (i) voluntarily waive any and all claims, causes of action, demands, obligations, losses, liabilities, and damages, known or unknown (collectively, "Claims") that you have or may have against Primero arising out of your possession, use, or operation of the Hardware, Software, or the Third Party Activation System, and (ii) release Primero from all Claims that you have or may have arising out of your possession, use or operation of the Hardware, Software, or the Third Party Activation System.



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b. Limited Warranty; Disclaimers.

i. PRIMERO'S LIMITED WARRANTY STATEMENT CAN BE FOUND AT www.primerogames.com/warranty. IF AN ITEM OF HARDWARE OR SOFTWARE IS NOT COVERED BY SUCH LIMITED WARRANTY STATEMENT, THERE IS NO WARRANTY AND SUCH ITEM IS PROVIDED "AS IS." THE TERMS AND CONDITIONS OF THE PRIMERO LIMITED WARRANTY STATEMENT ARE INCORPORATED HEREIN BY THIS REFERENCE. IN ADDITION, ALL SERVICES ARE PROVIDED "AS IS."

ii. EXCEPT AS EXPRESSLY STATED IN THE PRECEDING SENTENCES OF THIS PARAGRAPH, PRIMERO MAKES NO EXPRESS OR IMPLIED WARRANTY AND DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO THE HARDWARE, SOFTWARE AND SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY (1) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY OR NON-INFRINGEMENT; (2) RELATING TO THE PERFORMANCE OF ANY HARDWARE OR SOFTWARE OR PRIMERO'S PERFORMANCE OF THE SERVICES; (3) REGARDING THE RESULTS TO BE OBTAINED FROM THE HARDWARE, SOFTWARE, SERVICES OR THE RESULTS OF ANY RECOMMENDATION BY PRIMERO; (4) RELATING TO THE LEGALITY OF THE HARDWARE OR SOFTWARE IN ANY JURISDICTION; (5) REGARDING THE TAXES THAT MAY BE DUE ARISING FROM THE USE OR OPERATION OF THE SOFTWARE; (6) THAT PRIMERO WILL PROVIDE LEGAL SUPPORT IN CONNECTION WITH THE HARDWARE, SOFTWARE OR SERVICES; (7) THAT THE PAYOUTS PERMITTED BY THE SOFTWARE WILL RESULT IN A PROFIT; (8) THAT A BILL ACCEPTOR CANNOT BE MANIPULATED OR "STRUNG"; OR (9) THAT THE HARDWARE OR SOFTWARE WILL WORK TOGETHER WITH ANY COMMUNICATION SYSTEM, REPORTING SYSTEM, THE INTERNET OR ANY PRIVATE NETWORK.

iii. WITH RESPECT TO YOUR USE OF THE SOFTWARE OR HARDWARE (1) PRIMERO MAKES NO REPRESENTATION OR EXPRESS OR IMPLIED WARRANTY THAT SOFTWARE OR HARDWARE IS OR WILL BE SECURE, ACCURATE, COMPLETE, UNINTERRUPTED, WITHOUT ERROR, OR FREE OF VIRUSES, WORMS, OTHER HARMFUL COMPONENTS, OR OTHER PROGRAM LIMITATIONS, OR THAT ANY ERRORS WILL BE CORRECTED; (2) YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION OF PROBLEMS CAUSED BY VIRUSES OR OTHER HARMFUL COMPONENTS, UNLESS SUCH ERRORS OR VIRUSES ARE THE DIRECT RESULT OF PRIMERO'S WILLFUL MISCONDUCT; (3) PRIMERO DISCLAIMS AND MAKES NO WARRANTIES OR REPRESENTATIONS AS TO THE ACCURACY, QUALITY, RELIABILITY, SUITABILITY, COMPLETENESS, TRUTHFULNESS, USEFULNESS OR EFFECTIVENESS OF ANY REPORTS, DATA, RESULTS OR OTHER INFORMATION OBTAINED OR GENERATED BY YOU RELATED TO YOUR USE OF THE SOFTWARE OR HARDWARE; (4) USE OF THE SOFTWARE AND HARDWARE IS ENTIRELY AT YOUR OWN RISK AND PRIMERO SHALL HAVE NO LIABILITY RELATING TO SUCH USE; AND (V) PRIMERO MAKES NO REPRESENTATION OR EXPRESS OR IMPLIED WARRANTY THAT THE THIRD PARTY ACTIVATION SYSTEM WILL BE OPERATIONAL OR ACCURATE.

iv. If you are an authorized reseller, you shall not make any warranty commitment, whether written or oral, on Primero's behalf. You shall indemnify Primero against any such warranties made by you.

c. Limitation of Liability

i. EXCEPT FOR THE OBLIGATIONS SPECIFICALLY SET FORTH IN PRIMERO'S LIMITED WARRANTY STATEMENT, PRIMERO WILL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE HARDWARE, SOFTWARE, SERVICES, OR THIRD PARTY ACTIVATION SYSTEM PROVIDED HEREUNDER (INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS OPPORTUNITY, BUSINESS INTERRUPTION OR DOWNTIME, LOST OR CORRUPTED DATA OR SOFTWARE, LOSS OF REVENUE OR PROFITS, LOSS OF USE OF A SYSTEM OR NETWORK OR THE RECOVERY OF SUCH, OR UNINTENDED OR EXCESSIVE PAYOUTS DUE TO SOFTWARE MALFUNCTIONS OR ANY OTHER REASON).

ii. IN ADDITION TO THE OTHER LIMITATIONS SET FORTH HEREIN, IF PRIMERO IS DETERMINED TO BE LIABLE FOR ANY CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, PRIMERO'S TOTAL LIABILITY FOR ANY AND ALL SUCH CLAIMS SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY YOU FOR THE SPECIFIC HARDWARE, SOFTWARE OR SERVICE GIVING RISE TO SUCH CLAIMS. THIS LIMIT OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT (I.E., THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT).

iii. THESE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY TO ALL CLAIMS FOR DAMAGES, WHETHER BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT OR OTHERWISE. THE PARTIES AGREE THAT THESE LIMITATIONS OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR PRIMERO'S SALE OR LICENSING OF HARDWARE, SOFTWARE OR SERVICES TO YOU, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES.



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d. **Limitation of Claim Period.** NEITHER PARTY SHALL BE LIABLE FOR ANY CLAIM BROUGHT MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION FOR SUCH CLAIM FIRST AROSE.

e. **Limitations Not Permitted by Law.** NOTHING HEREIN SHALL EXCLUDE OR LIMIT PRIMERO'S WARRANTY OR LIABILITY FOR LOSSES THAT MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW. IN ANY EVENT, PRIMERO'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

12. Indemnification. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU AGREE TO DEFEND, INDEMNIFY AND HOLD HARMLESS PRIMERO AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS AGAINST ALL CLAIMS, ACTIONS, CAUSES OF ACTION, LOSSES, DAMAGES AND LIABILITIES ARISING OUT OF OR IN CONNECTION WITH (i) YOUR USE, POSSESSION, OR OPERATION OF THE HARDWARE, SOFTWARE, OR THE THIRD PARTY ACTIVATION SYSTEM, (ii) ANY VIOLATION OF THIS AGREEMENT BY YOU, OR (iii) BODILY INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE ARISING IN CONNECTION WITH THE PERFORMANCE OF SERVICES BY PRIMERO AND CAUSED BY YOUR NEGLIGENCE OR WILFUL MISCONDUCT OR PRIMERO'S NEGLIGENCE, EXCEPT FOR INJURY OR DAMAGE CAUSED BY THE SOLE NEGLIGENCE OF PRIMERO. Primero reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with Primero in such matter.

13. Confidentiality. For purposes of this Agreement, "Confidential Information" shall mean data and information relating to the business of Primero, regardless of whether the data or information constitutes a trade secret, disclosed to you or of which you became aware of as a consequence of your relationship with Primero that has value to Primero and is not generally known to competitors of Primero including, but not limited to, trade secrets, methods of operation, names of customers, price lists, financial information and projections, route books, personnel data, and similar information; provided, however, that such term shall not mean data or information (A) which has been voluntarily disclosed to the public by Primero, (B) which has been independently developed and disclosed by others, or (C) which has otherwise entered the public domain through lawful means. Confidential Information may be marked as "confidential" or other similar designation, but such designation is not required. You shall not use Confidential Information except as is necessary to carry out your obligations under this Agreement or as permitted by Primero in writing. You may not disclose Confidential Information to third parties unless such disclosure is to your employees on a "need-to-know" basis in connection with this Agreement. You agree to take the necessary precautions to maintain the confidentiality of the Confidential Information by using at least the same degree of care as you employ with respect to your own Confidential Information of a similar nature, but in no case less than a commercially reasonable standard of care to maintain confidentiality. If you are required by a court or government agency to disclose Confidential Information, you shall provide advance notice to Primero before making such a disclosure. The obligations with respect to Confidential Information shall continue for so long as the information or material remains confidential or a trade secret, as applicable.

14. Independent Contractor Relationship; Assignment; Subcontracting. The parties are independent contractors. No provision of this Agreement will or shall be deemed to create an association, trust, partnership, joint venture or other entity or similar legal relationship between Primero and you, or impose a trust, partnership or fiduciary duty, obligation, or liability on or with respect to such entities. Neither party is obligated to transact business with the other party by reason of this Agreement. Neither party will have any rights, power or authority to act or create an obligation, express or implied, on behalf of another party except as specified in this Agreement. Primero has the right to assign, subcontract or delegate in whole or in part this Agreement, or any rights, duties, obligations or liabilities under this Agreement, by operation of law or otherwise. You may not assign this Agreement or any rights, duties, obligations or liabilities under this Agreement, without the written permission of Primero.

15. Force Majeure. Neither party shall be liable to the other for any failure to perform any of its obligations (except payment obligations) under this Agreement during any period in which such performance is delayed by circumstances beyond its reasonable control, such as ice, snow, acts of God, fire, flood, war, terrorism, embargo, strike, riot, labor disputes, epidemics, industry-wide shortages of supplies or the intervention of any governmental authority (a "Force Majeure"). In such event, however, the delayed party must promptly provide the other party with written notice of the Force Majeure. The delayed party's time for performance will be excused for the duration of the Force Majeure, but if the Force Majeure event lasts longer than 30 days, then the other party may terminate the applicable sales order or the applicable Service by giving written notice to the delayed party.

16. Compliance with Laws. In connection with the purchase, use or operation of the Hardware, Software or Services, or otherwise in carrying out your obligations under this Agreement, you represent and warrant the



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following: (a) you shall obtain all licenses, permits and approvals required by any government or applicable authority, and you will comply with all country, federal, state and local laws, ordinances, codes, regulations, rules, policies and procedures of any government or other competent authority where the Hardware, Software or Services are purchased by you or are to be sold, used or deployed, including, without limitation, all anti-corruption laws, including, the U.S. Foreign Corrupt Practices Act ("Applicable Laws"); (b) you shall not take any action or permit or authorize any action in violation of the Applicable Laws; and (c) in no event shall Primero be obligated under this Agreement or otherwise to take any action or omit to take any action that Primero believes, in good faith, would cause it to be in violation of any Applicable Laws (e.g., selling Software licenses in a jurisdiction where it does not have a license to do so, if such a license is required by Applicable Laws). You shall use your best efforts to regularly inform Primero of any requirements under any Applicable Laws that directly or indirectly affect the sale, use or distribution of Hardware, Software, or Services, or Primero's trade name, trademarks or other commercial, industrial or intellectual property interests. The Software originates in the United States and may be subject to United States export laws and regulations. You may not export or re-export, in whole or in part, the Software to certain countries, persons or entities prohibited from receiving exports from the United States. Additionally, the Software may be subject to the import and export laws of other countries, and you agree that you will comply with any such foreign import and export laws, as applicable.

17. Waivers. No failure or delay on the part of Primero in exercising any power or right under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such power or right preclude any other further exercise thereof or the exercise of any other power or right. No waiver of any provision of this Agreement, or any breach or default, shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. All rights and remedies provided for herein shall be cumulative and in addition to any other rights or remedies such parties may have at law or in equity.

18. Updates to Terms of Sale. Primero reserves the right to change this Agreement at any time, effective upon posting an updated version at www.primerogames.com/termsofsale. Regardless of any previous Primero Games' Terms of Sale or other written or verbal agreements between you and Primero, once you agree to this Agreement by any method, your rights and obligations with respect to all of your Primero products and Services shall be as provided solely in this Agreement, as updated.

19. Governing Law. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of Georgia, USA, as if performed wholly within the state and without giving effect to the principles of conflicts of law. The parties agree that the UN Convention for the International Sale of Goods will have no force or effect on this Agreement.

20. Venue. The state courts sitting in Gwinnett County, Georgia and the U.S. District Court for the Northern District of Georgia shall have exclusive jurisdiction over any claims arising hereunder, and you consent to personal jurisdiction of, and venue in, such courts and agree to waive any and all objections to the exercise of jurisdiction over the parties by such courts and to venue in such courts.

21. Waiver of Jury Trial. THE PARTIES AGREE TO WAIVE, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ANY RIGHT TO A JURY TRIAL WITH RESPECT TO ANY DISPUTE.

22. No Class Actions. YOU SHALL NOT BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS WITH OTHER CUSTOMERS, OR PURSUE ANY CLAIM AS A REPRESENTATIVE OR CLASS ACTION OR IN A PRIVATE ATTORNEY GENERAL CAPACITY, AGAINST PRIMERO.

23. Dispute Resolution. You and Primero will attempt to resolve any dispute (other than your failure to pay on time) through face-to-face negotiation with persons fully authorized to resolve the dispute or through mediation utilizing a mediator agreed to by the parties, rather than through litigation. The existence or results of any negotiation or mediation will be treated as confidential. Notwithstanding the foregoing, either party will have the right to obtain from the state courts sitting in Gwinnett County, Georgia or the U.S. District Court for the Northern District of Georgia a temporary restraining order, preliminary injunction, or other equitable relief to preserve the status quo, prevent irreparable harm, avoid the expiration of any applicable limitations period, or preserve a superior position with respect to other creditors, although the merits of the underlying dispute will be resolved in accordance with this paragraph. In the event the parties are unable to resolve the dispute within 60 days of notice of the dispute to the other party, the parties shall be free to pursue all remedies available at law or in equity.



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24. Notices. All notices required or permitted under this Agreement will be in writing and will be deemed given (i) one day after deposit with a commercial express courier specifying next day delivery (or three days for international courier packages specifying three-day delivery), with written verification of receipt, (ii) if sent by email to a valid and established email address, (iii) if sent by fax, with confirmation by email, or (iv) if delivered in person. All communications will be sent to (i) Primero at its principal office, and (ii) to you at the addresses set forth on the invoice, or such other address as may be designated by a party by giving written notice to the other party pursuant to this paragraph, or, in the absence of such an address from you, to the address to which the last invoice under this Agreement was sent before notice is served. Notwithstanding the foregoing, Primero notices regarding changes in this Agreement may be made as described above under "Updates to Terms of Sale".

25. Entire Agreement; Severability. This Agreement is the entire agreement between you and Primero with respect to its subject matter and supersedes all prior oral and written understandings, communications, or agreements between you and Primero. If any provision of this Agreement should be found to be void or unenforceable, such provision will be stricken or modified, but only to the extent necessary to comply with the law, and the remainder of this Agreement will remain in full force and will not be terminated.

26. Counterparts. This Agreement may be executed in one or more counterparts.
IN WITNESS WHEREOF, the undersigned have duly executed this Agreement.

_____(company name)

Signature: _____

Print Name: _____

Title: _____

PRIMERO GAMES, LLC

Signature: _____

Title: _____