

# TRIAL BOOM TERMS OF USE

**Updated: 05.25.2018**

**IMPORTANT NOTICE: THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION AND A WAIVER OF CLASS ACTION RIGHTS AS DETAILED IN SECTION 3**

## **PRODUCT LICENSE AND SERVICE AGREEMENT (the "Agreement")**

You agree that your use of this Trial Boom website, application ("App"), account, product, service or other property (including Service and/or Service Provided Content as defined below), including any patches, updates, and downloadable content associated with any App or other software (collectively "Product" or "Products"), shall be subject to the terms of this Agreement. All rights not expressly granted to you are reserved by Trial Boom and its licensors. Use of the Product is also subject to acceptance of Trial Boom's Privacy Policy available at <https://www.trialboom.com/legal/privacy-policy>.

**Our Privacy Policy was recently updated in light of GDPR.**

Please read and review both this Agreement and the Privacy Policy before using this Product. If you do not agree with or wish to accept the terms of either this Agreement or the Privacy Policy then please do not use the Product. By using this Product or otherwise accepting this Agreement and the Privacy Policy, you agree to be bound by this Agreement and the Privacy Policy and represent you satisfy all of the eligibility requirements below

## **1. ACCESS AND COSTS**

You acknowledge and agree that you will provide at your own cost and expense the equipment, Internet or other connection charges, required to access and use the Product. Trial Boom makes no warranty that the Product can be accessed on all personal computers, games consoles, smartphones, tablets or other devices (each, a "Device", or in the plural, "Devices"), by means of any specific Internet or other connection provider, or in all countries.

**YOU ARE SOLELY RESPONSIBLE FOR ANY THIRD PARTY COSTS YOU INCUR TO USE THE PRODUCT.**

## **2. LICENSE**

A. Trial Boom grants you a personal, limited, non-exclusive license to use the Product for your non-commercial use. To the fullest extent permitted by applicable law, this license granted to use the Product is non-transferable. You may not rent, lease, lend, sell, redistribute or sublicense the Product. You may not copy (except as expressly permitted by this license and any other

applicable terms, conditions, or usage rules), decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the Product, any updates, or any part thereof (except as and only to the extent allowed by applicable law or to the extent as may be permitted by the licensing terms governing use of any open sourced components included with the licensed application). You may not remove or alter Trial Boom's or its licensors trademarks or logos, or legal notices included in the Product or related assets. Any attempt to use the Product in breach of the terms of this Agreement is a violation of the rights of Trial Boom and its licensors. The terms of this Agreement will govern any upgrades provided by Trial Boom that replace and/or supplement the Product, unless such upgrade is accompanied by a separate (and/or updated) agreement in which case the terms of that agreement will govern.

B. If the Product is an App then unless expressly authorized by Trial Boom in writing installation and use is restricted to an authorized Device; and you are prohibited from making a copy of the App available on a network where it could be used or downloaded by multiple users.

C. The license rights granted to you herein are also subject to the limitations set forth below. Any use of the Product in violation of these limitations is a material breach of the Agreement, subjects you to immediate revocation of your license, and will be regarded as an infringement of Trial Boom's copyrights and other rights in and to the Product. You agree that you will not, under any circumstances:

- i. use, develop, host or distribute cheats, automation software (bots), modded lobbies, hacks, mods or any other unauthorized third-party software in connection with the Product, or engage in any form of cheating, boosting, or booting;
- ii. exploit or reverse engineer the Product (or any of its parts), for any commercial purpose, including without limitation (a) to enable use at a cyber cafe, computer gaming center or any other location-based site without the express written consent of Trial Boom; (b) for gathering in-game currency, items or resources for sale outside the Product; (c) performing in-game services in exchange for payment outside the Product, e.g., power-leveling; or (d) the sale of accounts, log-in information, or other Product materials, access, or rights;
- iii. use any unauthorized third-party software that intercepts, "mines", or otherwise collects information from or through the Product;
- iv. except as authorized by Trial Boom in writing, host, provide or develop matchmaking services for the Product, or intercept, emulate or redirect the communication protocols used by Trial Boom in any way, for any purpose, including without limitation unauthorized play over the internet, network play, or as part of content aggregation networks;
- v. facilitate, create or maintain any unauthorized connection to the Product, including without limitation (a) any connection to any unauthorized server that emulates, or attempts to emulate, the Product; and (b) any connection using programs or tools not expressly approved by Trial Boom in writing;
- vi. violate any applicable law or regulation in connection with your use of Product;
- vii. disrupt or assist in the disruption of: (i) any computer, device or server used to support the Product; or (ii) any other player's use of a Product;

- viii. interfere or attempt to interfere with the operation of the Product in any way through any means or device including, but not limited to, launching a denial of service attack, spamming, hacking, or uploading computer viruses or time bombs; or
- ix. reproduce, distribute, display, transfer or use any part of the Product except as expressly authorized by Trial Boom; or
- x. scrape, copy, aggregate, redistribute, alter, reproduce or re-use any user's (whether specific to any particular user or as an aggregation) information accessible through the Product. You understand that access to the Product may result in access to other user's names, screen names, email addresses and other information as set out in the Privacy Policy available at <https://www.trialboom.com/legal/privacy-policy> ("Personal Information") which is protected by applicable data protection and privacy laws and regulations. You understand, acknowledge and agree that any Personal Information from other users constitute the confidential information of Trial Boom.

### 3. BINDING ARBITRATION AND CLASS ACTION WAIVER

READ THIS SECTION CAREFULLY. IT MAY SIGNIFICANTLY AFFECT YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT.

These BINDING ARBITRATION AND CLASS ACTION WAIVER provisions apply to you if you are domiciled in and/or acquired and use the Product in the United States. These provisions may also apply to you if you are domiciled in and/or acquired and use the Product from outside the United States. See JURISDICTION AND APPLICABLE LAW below for details.

**Initial Dispute Resolution:** Trial Boom's Customer Support department is available on the web <https://www.trialboom.com/support> to address any concerns you may have regarding the Product. The parties shall use their best efforts to settle any dispute, claim, question, or disagreement directly through consultation and good faith negotiations which shall be a precondition to either party initiating a lawsuit or arbitration.

**Binding Arbitration:** If the parties do not reach an agreed upon solution within a period of 30 days from the time informal dispute resolution is pursued pursuant to the paragraph above, then either party may initiate binding arbitration as the sole means to formally resolve claims, subject to the terms set forth below. Specifically, all claims arising out of or relating to this Agreement (including its interpretation, formation, performance and breach), the parties' relationship with each other and/or your use of the Product shall be finally settled by binding arbitration administered by JAMS in accordance with the provisions of its Comprehensive Arbitration Rules or Streamlined Arbitrations Rules, as appropriate, excluding any rules or procedures governing or permitting class actions. This arbitration provision is made pursuant to a transaction involving interstate commerce, and the Federal Arbitration Act (the "FAA") shall apply to the interpretation, applicability, enforceability and formation of this Agreement notwithstanding any other choice of law provision contained in this Agreement. The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve all disputes arising out of or relating to the interpretation, applicability, enforceability, or formation of this Agreement, including without limitation any claim that all or any part of this Agreement is void or voidable,

or whether a claim is subject to arbitration. The arbitrator shall be empowered to grant whatever relief would be available in a court under law or in equity. The arbitrator's award shall be binding on the parties and may be entered as a judgment in any court of competent jurisdiction.

The JAMS Rules governing the arbitration may be accessed at <http://www.jamsadr.com/> or by calling JAMS at (800) 352-5267. Your arbitration fees and your share of arbitrator compensation shall be governed by the JAMS Comprehensive Arbitration Rules, but shall not incorporate the JAMS Class Action Procedures, and, to the extent applicable, the Consumer Minimum Standards, including the then-current limit on arbitration filing fees. To the extent the filing fee for the arbitration exceeds the cost of filing a lawsuit, Trial Boom will pay the additional cost. The parties understand that, absent this mandatory provision, they would have the right to sue in court and have a jury trial. They further understand that, in some instances, the costs of arbitration could exceed the costs of litigation and the right to discovery may be more limited in arbitration than in court.

**Location:** Arbitration will take place in Denver, Colorado.

**Class Action Waiver:** The parties further agree that any arbitration shall be conducted in their individual capacities only and not as a class action or other representative action, and the parties expressly waive their right to file a class action or seek relief on a class basis. **YOU AND TRIAL BOOM AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.** If any court or arbitrator determines that the class action waiver set forth in this paragraph is void or unenforceable for any reason or that an arbitration can proceed on a class basis, then the arbitration provision set forth above shall be deemed null and void in its entirety and the parties shall be deemed to have not agreed to arbitrate disputes.

#### **Exception - Litigation of Intellectual Property and Small Claims Court**

**Claims:** Notwithstanding the parties' decision to resolve all disputes through arbitration, either party may bring an action in state or federal court that only asserts claims for patent infringement or invalidity, copyright infringement, moral rights violations, trademark infringement, and/or trade secret misappropriation, but not, for clarity, claims related to the license granted to you for the Product under this Agreement. Either party may also seek relief in a small claims court for disputes or claims within the scope of that court's jurisdiction.

**30 Day Right to Opt Out:** You have the right to opt-out and not be bound by the arbitration and class action waiver provisions set forth in the "Binding Arbitration", "Location", and "Class Action Waiver" paragraphs above by sending written notice of your decision to opt-out to the following address: Trial Boom LLC, 2225 Buchtel Blvd. Unit #801 Denver, CO 80210, Attn: Legal. The notice must be sent within 30 days of purchasing the Product (or if no purchase was made, then within 30 days of the date on which you first access or use the Product and agree to these terms); otherwise you shall be bound to arbitrate disputes in accordance with the terms of those paragraphs. If you opt-out of these arbitration provisions, Trial Boom also will not be bound by them.

**Changes to this Section:** Trial Boom will provide 60-days' notice of any changes to this Section. Changes will become effective on the 60th day and will apply prospectively only to any claims arising after the 60th day.

#### **4. JURISDICTION AND APPLICABLE LAW**

The Product is made available subject to the terms of this Agreement.

You are contracting with Trial Boom LLC, 2225 Buchtel Blvd. Unit #801 Denver, CO 80210, and any claims arising out of this Agreement (including interpretation, claims for breach, and all other claims (including consumer protection, unfair competition, and tort claims)) will be subject to the laws of the State of Colorado, without reference to conflict of laws principles. If any court or arbitrator determines that the "Class Action Waiver" paragraph set forth above is void or unenforceable for any reason or that an arbitration can proceed on a class basis, then any and all claims arising out of this Agreement (including interpretation, claims for breach, and all other claims (including consumer protection, unfair competition, and tort claims)) shall be decided under the laws of the state where you were a citizen at the time you obtained or bought the Product that was subject to this Agreement. In addition, you and we irrevocably consent to the exclusive jurisdiction and venue of state or federal courts in Denver, Colorado to resolve any claims that are subject to exceptions to the arbitration agreement described in **BINDING ARBITRATION AND CLASS ACTION WAIVER** above, or otherwise determined not to be arbitrable.

If you acquired and use this Product outside the United States, then you do so on your own initiative and are responsible for compliance with local laws, if and to the extent local laws are applicable, and you expressly indemnify and hold harmless Trial Boom from any and all claims, loss, injury, damage, or costs arising from your use of the Product to the extent permitted by applicable law. No warranty or representation is made by Trial Boom that the Product or any use of the Product outside of the United States complies with any applicable local law. Further your use of the Product and all claims arising out of or related to the Product or this Agreement will, to the extent permitted under applicable law, be subject to the laws of the State of Colorado, without reference to conflict of laws principles and you consent to the jurisdiction of the courts of the State of Colorado.

To the fullest extent permitted by applicable law, if any user outside of the United States is entitled to commence and/or participate in legal proceedings within the United States, then that user agrees to be bound by the **BINDING ARBITRATION AND CLASS ACTION WAIVER** provisions above.

#### **5. SERVICES**

Separate from any license to use the intellectual property of Trial Boom or its licensors set out in Section 2 above, some Products also contain features or content that are only accessible through online hosting and/or other online services and functionality provided by Trial Boom

("Services"). As detailed in Section 1, you will provide Internet access necessary to use these services at your own cost and expenses. All such Services are provided to you by Trial Boom on a personal, non-commercial and non-transferable basis. All such Services are provided subject to the terms of this Agreement and Trial Boom's Privacy Policy, and such additional terms, if any, as may be applicable to such Services.

## **6. USE OF DATA**

FOR FULL DETAILS ABOUT HOW TRIAL BOOM COLLECTS, STORES AND USES PERSONAL AND OTHER INFORMATION, PLEASE SEE THE PRIVACY POLICY AVAILABLE AT <https://www.trialboom.com/legal/privacy-policy>.

YOU ARE RESPONSIBLE FOR REVIEWING, AND AGREE TO REVIEW, TRIAL BOOM'S PRIVACY POLICY AND THE PRIVACY POLICIES LISTED IN THE TRIAL BOOM PRIVACY POLICY, INCLUDING THOSE OF APPLICABLE THIRD PARTIES THAT MAY COLLECT INFORMATION VIA THIS PRODUCT. IF YOU DO NOT WISH TO REVIEW THOSE PRIVACY POLICIES OR IF YOU ARE CONCERNED ABOUT THE INFORMATION THEY MAY COLLECT, PLEASE DO NOT USE THE PRODUCT.

## **7. USER GENERATED CONTENT**

A. The Product may include message boards, content sharing features, and other means by which you and other users may share content that you create ("UGC"). To the fullest extent permitted by applicable law, by submitting any UGC (including without limitation, images, videos, customer service submissions, idea submissions, suggestions and message postings) you automatically grant (or represent and warrant that the owner of such rights has expressly granted) Trial Boom a perpetual, worldwide, royalty-free, irrevocable, non-exclusive right and license to use, reproduce, modify, adapt, publish, translate, sub-license, create derivative works from and distribute such UGC or incorporate such UGC content into any form, medium, or technology now known or later developed throughout the universe, and agree that Trial Boom shall be entitled to unrestricted use of the UGC for any purpose whatsoever, commercial or otherwise, without compensation, notice or attribution. You waive and agree not to assert any moral or similar rights you may have in any of your UGC.

B. To the extent the Product permits other users to access and use your UGC, you also grant all other users of the Product the right to use, copy, modify, display, perform, create derivative works from, and otherwise communicate and distribute your UGC on or through the Product without further notice, attribution or compensation to you.

C. You represent and warrant that any UGC you provide (i) does not and will not violate any third party intellectual property rights and/or any other person's rights, including, without limitation, any privacy rights and/or so-called "moral rights"; and (ii) its use as contemplated herein does not and will not require the payment of any royalty or any consideration to a third

party. You may not upload or post any UGC that infringes the copyright, trademark or other intellectual property rights of a third party nor may you upload any UGC that violates any third party's right of privacy or right of publicity, or may require the payment of a royalty or other consideration to a third party. You are responsible and liable for any UGC you place on or through the Product, including the transmission, posting, or other provision of text, files, links, software, photographs, video, sound, music or other information or material. You may only upload your own UGC to the Product; do not upload anyone else's UGC.

D. Trial Boom has no obligation to monitor, approve, verify, or prescreen any UGC that you and other users may contribute to or through the Product. Trial Boom reserves the right (but has no obligation) to remove, block, edit, move or disable UGC for any reason in Trial Boom's sole discretion. To the maximum extent permitted by applicable law, Trial Boom does not assume any responsibility or liability for your UGC or that of other users, or for any failure to monitor, edit, or remove UGC. You agree that you shall not hold Trial Boom liable for any loss or damage arising from the contents of any UGC (yours or another user's) including without limitation in respect of any defamation, harassment, or false endorsement claims.

E. Listed below are some, though not all, violations that may result in Trial Boom terminating or suspending your access to the Product and/or restricting your ability to access and/or post UGC. You agree not to do any of the following actions while using the Product:

- i. Harass, threaten, embarrass or cause distress or discomfort upon another participant, user, or other individual or entity;
- ii. Transmit any UGC that Trial Boom considers to be disruptive, unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, hateful, or racially, sexually, ethnically or otherwise objectionable;
- iii. Impersonate any person or entity, including but not limited to Trial Boom;
- iv. Disrupt normal Product functionality, or otherwise act in a manner that negatively affects other participants and/or the overall Product experience;
- v. Post or transmit any unsolicited advertising, promotional materials, or any other forms of solicitation;
- vi. Intentionally or unintentionally violate any applicable law, regulation or treaty while using or accessing the Product;
- vii. Post multiple posts of the same content (e.g., "spam"); or
- viii. Invade the privacy or violate or infringe any right of any person or entity, including, without limitation, any intellectual property right.

F. TRIAL BOOM DOES NOT ENDORSE, OR GUARANTEE THE ACCURACY, EFFICACY OR VERACITY OF, ANY UGC GENERATED BY USERS.

G. Some Products may permit you to share certain information about yourself with the public, including people who may not be registered users of the Product, and the public may access and use that information and associate it with you. You acknowledge and confirm that you have no expectation of privacy when using such Product features, including without limitation, uploading or submitting UGC; comparing your statistics, personal bests and leaderboards against other users; searching for other users by username; discovering events that other users have signed up for, and linking to social media accounts that publicly display user information. See Section 9.E below for further details.

## **8. COPYRIGHT NOTICE**

A. Trial Boom respects the intellectual property rights of others and expects its players and the users of its services to do the same. If you believe that any content appearing in the Product and/or UGC has been copied in a way that constitutes copyright infringement, please forward the following information to the Copyright Agent named below.

B. Please be aware that to be effective, your copyright infringement notification must comply with the Digital Millennium Copyright Act ("DMCA"). You are encouraged to review 17 U.S.C. § 512(c)(3) of the DMCA or consult with an attorney prior to sending a notice hereunder.

C. To file a copyright infringement notice, you will need to send a written communication that includes the following to the address listed below:

- A. Your name, address, telephone number, and email address;
- B. A description of the copyrighted work that you claim has been infringed;
- C. The exact URL or a description of where the alleged infringing material is located;
- D. A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;
- E. An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; and
- F. A statement by you, under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

Trial Boom LLC  
2225 Buchtel Blvd. Unit #801  
Denver, Colorado 80210  
Attn: Trial Boom Legal Dept.  
E-Mail: [legal@trialboom.com](mailto:legal@trialboom.com)



D. Please note that the DMCA provides that you may be liable for damages (including costs and attorney fees) if you knowingly misrepresent that material or activity is infringing. Please also note that the information provided in your copyright infringement notice may be provided to the person responsible for the allegedly infringing material.

## **9. TRIAL BOOM ACCOUNTS**

**YOU ARE RESPONSIBLE FOR ALL ACTIVITY ON YOUR ACCOUNT. YOU SHOULD NOT REVEAL YOUR ACCOUNT PASSWORD TO OTHERS.**

### **A. REGISTRATION**

If the Product requires you to provide registration information, all such requirements to provide information are subject to both this Agreement and the Trial Boom Privacy Policy which are incorporated by reference herein, together with any other Third Party Terms. You have the option of providing such information or not. However, should you choose not to provide the information, your access to the Product may be limited or non-available. If you do decide to provide us with the requested information, you represent and warrant that you will provide only true, current and accurate information. You agree not to impersonate any person or entity or misrepresent your identity or affiliation with any person or entity. From time to time, you may be asked to confirm your registration information (such as your email address) to continue using the Product; if you choose not to do so, your access to the Product may be restricted or terminated. You agree to update your registration data to keep it current and accurate within a reasonable time after any change to that data.

### **B. ELIGIBILITY**

You affirm that you are at least the age specified in any applicable age rating or restriction specified for the Product, and are fully able and competent to enter into the terms, conditions, obligations, representations and responsibilities set forth in this Agreement, and to abide and comply with this Agreement.

Subject to any applicable age ratings or other restrictions, you may establish a Trial Boom account only if (i) you are 18 years of age and a "natural person" in your country of residence, or (ii) if your parent or guardian reads and accepts the terms of this Agreement and the Trial Boom Privacy Policy on their and your behalf if you are aged 13 or over but under 18 years of age. Corporations, limited liability companies, partnerships and other legal or business entities may not establish an account, unless otherwise specified in a separate agreement between Trial Boom and that other legal or business entity. Individuals prohibited by Trial Boom from using the Product may not create or use an account. By accepting this Agreement, you hereby represent and warrant that you meet these eligibility requirements.

### **C. PARENTS AND GUARDIANS**

You agree that you will be responsible for all uses of the account by your child whether or not such uses were authorized by you. Nothing herein limits Trial Boom's rights to suspend, terminate or delete any account.

#### **D. ACCOUNT SUSPENSION/TERMINATION**

TRIAL BOOM MAY SUSPEND, TERMINATE, MODIFY, OR DELETE ANY ACCOUNT AT ANY TIME FOR ANY REASON OR FOR NO REASON, WITH OR WITHOUT NOTICE TO YOU, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. For purposes of explanation and not limitation, many account suspensions, terminations and/or deletions may be the result of violations of this Agreement.

#### **E. SOCIAL MEDIA**

If you are a registered user of social media sites you may be able to connect your social media account and your Trial Boom account (if your applicable Trial Boom account has this functionality enabled). Your social media accounts are subject to their own Third Party Terms. You acknowledge and agree that your social media account provider is not responsible for your Trial Boom account, including for any liability connected to your use of your Trial Boom account, and that irrespective of whether you use an anonymous gamer tag or username, once you connect your Trial Boom account to your social media account, your real name will be available and viewable by your social media "friends". Please also see Trial Boom's Privacy Policy available at <https://www.trialboom.com/legal/privacy-policy> for additional information on social networks.

#### **F. USERNAMES AND GROUP DESIGNATIONS:**

Depending on which Product and platform or Device you are using, your username on the platform may be your username in the Trial Boom account. Additionally, some Trial Boom accounts may allow users to form different "clans", "squads", "teams", or other groups (collectively "groups") with unique group names. When you choose a username or a group name, or otherwise create a label that can be seen by other users, you must abide by the following guidelines as well as the rules of common decency. If Trial Boom finds such a name to be offensive or improper, it may, in its sole and absolute discretion, change or remove the name, and/or suspend or terminate your use of the service. In particular, you may not use any name:

- i. Belonging to another person with the intent to impersonate that person, including without limitation any Product administrators or any other employee or agent of Trial Boom;
- ii. That incorporates vulgar language or which is otherwise offensive, defamatory, obscene, hateful, or racially, sexually, ethnically or otherwise objectionable;
- iii. That is subject to the rights of any other person or entity without written authorization from that person or entity;
- iv. That belongs or refers to a popular culture figure, celebrity, media personality, icon or persona;
- v. That is, contains, or is substantially similar to a trademark or service mark, whether registered or not;

- vi. Belonging to any religious figure or deity; or
- vii. Related to drugs, sex, alcohol, or criminal activity.

You may not use a misspelling or an alternative spelling to circumvent the name restrictions listed above, nor can you have a "first" and "last" name that, when combined, violate the above name restrictions.

To the fullest extent permitted by applicable law, you are responsible for all use of your account. You must notify Trial Boom immediately of any unauthorized use of your username, password, account information, or any other breach of security that you become aware of relating to your Account. Such notification should be made via the Customer Support web page at [www.trialboom.com/support](http://www.trialboom.com/support).

## **10. SERVICE PROVIDED CONTENT**

A. "Service Provided Content" consists of those materials provided to Product users (with or without an account as applicable) such as unlockable content, virtual assets, codes, achievements, etc. You understand that while at times you may "earn" "buy" or "purchase" "Service Provided Content"; you do not in fact own or have any property interest in the "Service Provided Content" and the price of any "Service Provided Content" does not refer to any credit balance of real currency or its equivalent. Rather, any Service Provided Content that you receive is licensed to you as set out in Section 2 and subject to all other terms of this Agreement and Trial Boom's Privacy Policy.

B. Trial Boom does not recognize the transfer of accounts or Service Provided Content. You may not purchase, sell, resell, lend, rent, gift, trade or otherwise transfer any account or Service Provided Content, or offer to purchase, sell, resell, lend, rent, gift, trade or otherwise transfer any Product account or materials, and any such attempt shall be null and void.

C. Upon termination of any Account, the Agreement, or license, you acknowledge and agree that, to the fullest extent permitted by applicable law, you shall retain no access or control over any aspect thereof.

## **11. CONSENT TO MONITOR**

A. Communications made using a Product should not be considered private. Trial Boom may monitor and/or record your communications (including without limitation chat text) when you are using a Product, and you hereby provide your irrevocable, express consent to such monitoring and recording. You acknowledge and agree that you have no expectation of privacy concerning the transmission of any UGC or communications, including without limitation chat text or voice communications. Because voice chat and other communications may be viewed and/or heard by other users, users should avoid revealing any personally identifiable information.

B. Additionally, Trial Boom may, with or without notice to you, disclose your Internet Protocol (IP) address(es), personal information, chat logs, and other information about you and your activities consistent with the Trial Boom Privacy Policy available at <https://www.trialboom.com/legal/privacy-policy>.

## **12. SUPPORT**

If you have a complaint regarding the Product or desire further information on use of a Product, visit Trial Boom's Customer Support web page at [www.trialboom.com/support](http://www.trialboom.com/support).

## **13. TERMINATION.**

The license granted under this Agreement is effective until terminated by you or Trial Boom. Your rights under this Agreement will terminate automatically without notice from Trial Boom if you fail to comply with any term(s) of this Agreement or applicable Third Party Terms. Upon termination of the license, you shall cease all use of the Product, and destroy all copies, full or partial, of the Product.

Trial Boom reserves the right to terminate this Agreement without cause on immediate written notice.

## **14. THIRD PARTIES**

The Product may enable, or require, access to other third party materials, services or web sites ("Third Party Materials"). Use of Third Party Materials may require additional terms of service.

You understand that by using any Third Party Materials you may encounter content that may be deemed offensive, indecent, or objectionable. You agree (i) to use Third Party Materials at your sole risk; (ii) that Trial Boom shall not have any liability to you for Third Party Materials; (iii) Trial Boom is not responsible for examining or evaluating the content, accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect of such Third Party Materials. Third Party Materials are provided solely as a convenience to you.

Your right to use the Product is also predicated on your compliance with any applicable terms of service, terms of use, and privacy policies you have agreed and accepted with Third Parties ("Third Party Terms").

Applicable third parties (such as your console account, mobile phone, or internet access account provider) may also impose limits on the use of or access to certain Products, in any case and without notice or liability. You agree that Trial Boom shall not be liable for any acts or omissions of such third parties.

## **15. LEGAL DISCLAIMER, WARRANTY DISCLAIMER, AND LIMITATION OF LIABILITY**

### **A. LEGAL DISCLAIMER.**

**THE INFORMATION CONTAINED IN THE TRIAL BOOM WEBSITE AND IN ANY OF ITS PRODUCTS AND SERVICES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY, AND SHOULD NOT BE CONSTRUED AS LEGAL ADVICE ON ANY MATTER.**

The transmission and receipt of information contained on the Trial Boom website and within any products and services, in whole or in part, or communication with Trial Boom via the Internet or e-mail through this website does not constitute or create a lawyer-client relationship between us and any recipient. You should not send us any confidential information in response to this website or any products or services Trial Boom provides. Such responses will not create a lawyer-client relationship, and whatever you disclose to us will not be privileged or confidential unless we have agreed to act as your legal counsel and you have executed a written engagement agreement with Trial Boom. The material contained in the Trial Boom website and within Trial Boom products and services may not reflect the most current legal developments. The content and interpretation of the law addressed herein is subject to revision. We disclaim all liability in respect to actions taken or not taken based on any or all the contents of this site to the fullest extent permitted by law. Do not act or refrain from acting upon this information without seeking professional legal counsel.

### **B. WARRANTY DISCLAIMER.**

**TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PRODUCT IS PROVIDED "AS IS" AND TRIAL BOOM DOES NOT WARRANT THAT THE PRODUCT WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, THAT THE PRODUCT IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT ALL OF THE PRODUCT CONTENT WILL BE ACCURATE. TO THE EXTENT PERMITTED BY APPLICABLE LAW, TRIAL BOOM EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE, AND NON-INFRINGEMENT.**

### **C. LIMITATION OF LIABILITY.**

- i. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NEITHER TRIAL BOOM NOR ITS PARENT, SUBSIDIARIES, LICENSORS OR AFFILIATES SHALL BE LIABLE IN ANY WAY FOR DAMAGE OR LOSS OF ANY KIND RESULTING FROM (A) THE USE OF OR INABILITY TO USE THE PRODUCT INCLUDING WITHOUT LIMITATION LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION; (B) THE LOSS OR DAMAGE TO CHARACTERS, ACCOUNTS, STATISTICS, INVENTORIES, VIRTUAL GOODS,**

OR USER PROFILE INFORMATION; OR (C) INTERRUPTIONS OF SERVICE INCLUDING WITHOUT LIMITATION ISP DISRUPTIONS, SOFTWARE OR HARDWARE FAILURES, FAILURES OF ANY THIRD PARTY BILLING SOLUTIONS OR OTHER SERVICES, OR ANY OTHER EVENT WHICH MAY RESULT IN A LOSS OF DATA OR DISRUPTION OF SERVICE. IN NO EVENT WILL TRIAL BOOM BE LIABLE TO YOU OR ANYONE ELSE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, REMOTE, SPECULATIVE, PUNITIVE OR CONSEQUENTIAL DAMAGES.

ii. IN NO CASE SHALL TRIAL BOOM'S LIABILITY EXCEED THE AMOUNT THAT YOU PAID TO US DURING THE TWELVE (12) MONTHS PRIOR TO THE TIME YOUR CAUSE OF ACTION AROSE.

iii. IMPORTANT INFORMATION RELATING TO WARRANTY DISCLAIMER AND LIMITATION OF LIABILITY: BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF CERTAIN WARRANTIES OR THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL, INCIDENTAL, OR OTHER TYPES OF DAMAGES, IN SUCH STATES OR JURISDICTIONS, YOU MAY HAVE DIFFERENT OR ADDITIONAL RIGHTS ACCORDING TO THE APPLICABLE LAWS OF COUNTRY FROM WHICH YOU VALIDLY ACQUIRED AND USE THE PRODUCT AND IN WHICH CASE THE LIABILITY OF TRIAL BOOM AND ITS AFFILIATES SHALL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

## **16. INDEMNIFICATION**

You agree to indemnify, defend and hold harmless Trial Boom and its affiliates, and their respective officers, directors, owners, agents, employees, contractors, information providers and licensors ("Indemnified Party", and collectively the "Indemnified Parties") from and against any claims, liability, losses, costs and expenses (including attorneys' fees) incurred by an Indemnified Party in connection with (i) any breach by you of the Agreement, and/or (ii) your posting or uploading any UGC.

Trial Boom reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and in such case, you agree to cooperate with Trial Boom's defense of such claim.

## **17. RISK OF LOSS**

You bear all risk of loss for accessing or completing the download of any Product and for any loss of any Product that you have accessed or downloaded, including any loss due to a file corruption or Device crash.

Any Product may be available for limited periods of time, and/or subject to other access restrictions (including for example, possession of other specific Product(s) for access or use). Products may become unavailable due to potential content provider licensing restrictions or other reasons; Trial Boom will not be liable to you if any Product is or becomes unavailable for download or access, for any reason, to the fullest extent permitted by applicable law.

## 18. AVAILABILITY

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In addition, Products that may be accessed from, displayed on or linked to from a Device are not available in all languages or in all countries. To the fullest extent permitted by applicable law (i) Trial Boom, and its licensors, reserve the right to change, suspend, remove, or disable access to any Product at any time without notice, and (ii) Trial Boom will not be liable for the removal of or disabling of access to any Product.

## 19. OWNERSHIP

All title, ownership, and intellectual property rights in and to the Product (including, but not limited to, any titles, trademarks, service marks, and trade names, computer code, themes, objects, characters, character names, stories, dialog, catch phrases, locations, concepts, artwork, animations, sounds, musical compositions, audio-visual effects, methods of operation, moral rights, and any related documentation) are owned by Trial Boom and/or Trial Boom's licensor(s). **The Product is licensed, not sold, for your use.** Your license confers no title or ownership in this Product and should not be construed as a sale of any rights in the Product.

YOU ACKNOWLEDGE AND AGREE THAT, OTHER THAN LICENSE GRANTED TO YOU BY THIS AGREEMENT, YOU SHALL HAVE NO OWNERSHIP OR OTHER PROPERTY INTEREST IN ANY PRODUCT OR SERVICE PROVIDED CONTENT (INCLUDING WITHOUT LIMITATION ANY VIRTUAL GOODS), AND YOU FURTHER ACKNOWLEDGE AND AGREE THAT TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ALL RIGHTS IN AND TO SUCH PRODUCTS AND SERVICE PROVIDED CONTENT ARE AND SHALL FOREVER BE OWNED BY AND INURE TO THE BENEFIT OF TRIAL BOOM AND ITS LICENSORS.

You agree that all Products and Third Party Materials contain proprietary content, information and material that are protected by applicable intellectual property and other laws, including but

not limited to copyright, and that you will not use such proprietary content, information or materials in any way whatsoever except for permitted use. No portion of the Products or Third Party Materials may be reproduced in any form or by any means other than as permitted under applicable license.

## **20. PAYMENT**

**YOU AGREE TO PAY ALL FEES AND APPLICABLE TAXES INCURRED BY YOU OR ANYONE USING A PRODUCT FROM YOUR DEVICE.**

A. **Payment Options / Third Party Billing Partners.** You may pay for certain Products and Service Provided Content using the methods made available to you, and you agree to the terms and conditions applicable to each payment method you choose. Payment methods may vary by console, platform, system or Device that you use to access the Product or Service Provided Content.

B. By paying for a Product or Service Provided Content you (i) represent that you are authorized to use the payment method you have selected and that any payment information you provide is true and accurate; (ii) authorize the party charging you for the Product or Service Provided Content to take payment from you for the Product or Service Provided Content, using the payment method you have selected.

## **21. CHANGES TO THE AGREEMENT**

Except for Section 4 (Binding Arbitration and Class Action Waiver), Trial Boom reserves the right, at its sole and absolute discretion, to change, modify, add to, supplement or delete any of the terms and conditions of this Agreement at any time, effective with or without prior notice, and by any means, including without limitation by posting notification on any Product website, by email, through a patch process, pop-up screen or in-Product notice. Your continued use of the Product following any revision to this Agreement constitutes your acceptance of any such changes. Additionally, you may be asked to affirmatively accept updates to this Agreement from time to time. Note that if you do not accept affirmatively indicate your acceptance when requested, you may not be able to continue to use the Product or Service Provided Content. In relation to Products and Service Provided Content you have paid for, if you do not wish to accept a change to the Agreement, please stop using the Product or Service Provided Content and contact Trial Boom for refund options.

## **22. DRM**

If you access content protected with Digital Rights Management (DRM), the software may automatically request media usage rights from a rights server online and download and install DRM updates so that you can play the content.



## **23. GENERAL**

### **A. Severability**

If any provision of this Agreement shall be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of any remaining provisions.

### **B. Survival**

SECTIONS 3, 4, 7, 11, 13 to 23 inclusive, and, those other sections that by their terms apply after this Agreement ends, and the Privacy Policy, will survive any termination or cancellation of this Agreement.

### **C. Assignment and Transfer**

We may assign this Agreement, in whole or in part, at any time without notice to you. You may not assign this agreement or transfer any rights to use the services.

### **D. Notices**

You consent to Trial Boom providing you notifications about the Product or information the law requires us to provide via email to any address that you specified if you were required to register for the Product. Notices emailed to you will be deemed given and received when the email is sent. If you don't consent to receive notices electronically, you must stop using the Product. For Products that do not require you to register or provide an email address, notices and other information may be made available in updates to this Agreement.

### **E. Force Majeure**

Trial Boom shall not be liable for any delay or failure to perform resulting from causes outside Trial Boom's reasonable control, including without limitation any failure to perform hereunder due to unforeseen circumstances or cause beyond Trial Boom's control such as acts of God, war, terrorism, riots, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, or shortages of transportation facilities, fuel, energy, labor or materials.

### **F. Equitable Remedies**

In the event that you breach this Agreement, you hereby agree that Trial Boom would be irreparably damaged if this Agreement were not specifically enforced, and therefore you agree that Trial Boom shall be entitled, without bond, other security, or proof of damages, to appropriate equitable remedies with respect to breaches of this Agreement, in addition to such other remedies as Trial Boom may otherwise have available to it under applicable laws.

### **G. Export and Commercial Items**

You may not use or otherwise export or re-export the Product except as authorized by United States law and, if applicable, the laws of the jurisdiction in which the Product was obtained. In particular, but without limitation, the Product may not be exported, re-exported, or downloaded into (or transferred to a resident of) (a) North Korea, Iran, Syria, Sudan, any U.S. embargoed countries or any country against which the U.S. Government maintains comprehensive economic sanctions, or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals and Blocked Persons or the U.S.

Department of Commerce Denied Person's List or Entity List. By using the Product, you represent and warrant that you are not located in, under the control of, or a resident of any such country, or on any such list. You also agree that you will not use these Products for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of nuclear, missiles, or chemical or biological weapons.

The Product and related documentation are "Commercial Items", as that term is defined at 48 C.F.R. 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. 12.212 or 48 C.F.R. 227.7202, as applicable. Consistent with 48 C.F.R. 12.212 or 48 C.F.R. 227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States.

#### H. Entire Agreement

This Agreement constitutes the entire agreement and understanding between you and Trial Boom, and supersedes any prior or contemporaneous agreements or understandings, whether written or oral, relating to the matters contained herein.