

DEVELOPER PROGRAM TERMS OF USE

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BY INDICATING YOUR ACCEPTANCE BELOW, BY PARTICIPATING IN THE Z2LIVE DEVELOPER PROGRAM AS SUCH PROGRAM IS MORE SPECIFICALLY DESCRIBED BELOW ("**PROGRAM**") OR BY DOWNLOADING, ACCESSING OR USING THE DEVELOPER SDK OR OTHER MATERIALS FURNISHED BY Z2LIVE AS PART OF OR IN CONNECTION WITH THE PROGRAM, YOU: (A) CERTIFY YOU HAVE THE CAPACITY AND AUTHORITY TO LAWFULLY BIND YOURSELF AND (IF APPLICABLE) THE BUSINESS YOU REPRESENT TO THESE TERMS OF USE ("**TERMS OF USE**"); AND (B) AGREE (ON BEHALF OF YOURSELF AND (IF APPLICABLE) THE BUSINESS YOU REPRESENT) TO BE BOUND BY THESE TERMS OF USE. IF YOU DO NOT AGREE TO THESE TERMS OF USE, DO NOT INDICATE YOUR ACCEPTANCE BELOW, PARTICIPATE IN THE PROGRAM OR DOWNLOAD, ACCESS OR USE THE SDK OR ANY OTHER PROGRAM MATERIALS.

As used in these Terms of Use: "**we**," "**us**," "**our**," or "**Z2Live**" means Z2Live, Inc.; "**Developer**," "**you**" and "**your**" means the Program developer applicant (if registering as an individual) or the business employing the applicant (if registering as a business) that has agreed to be bound by these Terms of Use; and "**Z2Live Site**" means the website of Z2Live that has its primary home page identified by the URL <http://www.Z2Live.com> (or any successor or replacement site). You agree as follows:

1. Developer Program

If you are accepted by Z2Live as a developer participant in the Program by notice from Z2Live, you will, during the Term (as defined below), have access to and be able to use the development tools, software and services provided by Z2Live on the Z2Live Site to Program participants, including, but not necessarily limited to, the Z2Live software development kit (and associated libraries and code therein) made available by Z2Live from time to time as part of the Program (the "**Developer SDK**") for use in developing stand-alone applications developed by you with the Developer SDK (each, a "**Developer Application**") and distributing the Developer Application to any individual or business entity to which you have granted a license or right to access and use the Developer Application (a "**User**").

2. Registration

In connection with your participation in the Program, you agree to (a) provide certain current, complete, and accurate information about You through the Program's registration process and (b) maintain and update this information as required to keep it current, complete and accurate. As part of the Program registration process and thereafter throughout your participation in the Program, you should read and be familiar all of with our policies, guidelines and terms on the Z2Live Site, including our Terms of Use and Privacy Policy (collectively, "**Z2Live Policies**").

3. Personal Account and Security

You may access and participate in the Program only after creating a unique web password, developer-token and account ("**Password**", "**Token**" and "**Account**") via Z2Live's signup procedure. You are exclusively responsible for all activities that occur under your Account, whether or not it occurs with your knowledge. You are not permitted to publish your Password, Token or Account on any publicly accessible information system such as a website, newsgroup, mailing list or forum. You are also exclusively responsible for maintaining the confidentiality of your Password, Token and Account, and are exclusively responsible for any failure to do so, and any results thereof. In this regard, you agree to immediately notify Z2Live of any suspected or actual unauthorized access to or use of your Account or any other breach of security known to you. You may change your Password at any time by following the instructions on the Z2Live Site. Z2Live reserves the right to terminate your Account, the Term and your access to the Program immediately if any misuse of the Program is suspected.

4. SDK License

Subject to these Terms of Use and any additional written agreements between Z2Live and you, Z2Live grants to you a nonexclusive, nontransferable, limited license during the Term to download, install and use the Developer SDK for the sole purpose of developing Developer Applications and distributing Developer Applications to Users. You may make a single copy of the Developer SDK for archival and back-up purposes only.

5. Distributable SDK Code

You may distribute the individual Developer SDK libraries and code that are specifically designated by Z2Live as being distributable elements of the Developer SDK (the "**Distributable SDK Code**"), in compiled, object code form only, to Users only as an integrated part of the Developer Applications. No additional right of reproduction, modification, adaptation, distribution, use or sale of the Distributable SDK Code is granted to Users. You will indemnify, defend and hold harmless Z2Live from any claim by Users arising, directly or indirectly, from the distribution or use of the Developer Applications. You agree that the terms of distribution and use of the Developer

Applications (whether in the form of a license or other terms and conditions of use that are binding upon all Users) will, with respect to the Distributable SDK Code, include terms substantially as follows:

- This product includes certain software and intellectual property rights belonging to third parties.
- Users may not copy, modify or reverse engineer such third party software and intellectual property rights or remove or obscure any proprietary rights notices with respect to such third party software.
- All such third party software and intellectual property rights are provided "as is", without representation or warranty of any kind, express or implied.
- Consequential damages arising out of or related to any third party software or intellectual property rights are expressly disclaimed. In no event will the liability of any third party provider of software or intellectual property rights exceed the total amounts paid by User for the product.
- User's right to use the product may be terminated by any third party provider of software or intellectual property rights in the event User violates any of the terms relating to any third party software and intellectual property rights.

6. Restrictions

You agree to (a) take all reasonable steps to safeguard the Developer SDK and the Distributable SDK Code; (b) ensure that no unauthorized person will have access to the Developer SDK and/or the Distributable SDK Code; (c) ensure that no unauthorized copy, publication, disclosure or distribution, in whole or in part, in any form, will be made of the Developer SDK and/or the Distributable SDK Code; (d) keep the Developer SDK only on password protected computers; (e) keep all hard copies, computers and portable discs containing the Developer SDK in a secure location on your premises when unattended; (f) not remove any proprietary notices of Z2Live from the Developer SDK or the Distributable SDK Code; (g) not reverse engineer, decompile, translate, adapt, or disassemble the Developer SDK; and (h) not export or re-export the Developer SDK and/or the Distributable SDK Code in violation of any export regulations of any applicable jurisdiction. Further, in connection with your access to and participation in the Program or any part thereof, including the distribution of any Developer Application, you will not: (i) violate any law, statute, ordinance or regulation, or make available or provide any content or information that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, racially, ethnically or otherwise objectionable; (ii) violate any patent, trademark, trade secret, copyright, right to privacy, publicity, or other proprietary right of any party; or (iii) damage, impair, disable, or overburden the Program or in any way interfere with Z2Live's rights or any other Program participant's use and enjoyment of the Program.

7. Support; Feedback

Z2Live has no obligation to provide any technical support for the Developer SDK and/or the Distributable SDK Code, unless separately agreed to in writing by Z2Live. You may, from time to time, at your option, provide Z2Live with comments, suggestions and/or opinions as feedback on the characteristic, performance, functionality and use of the Program and/or the Developer SDK ("**Feedback**"). Feedback, even if designated as confidential by you, will not create any confidentiality obligation for Z2Live. You represent and warrant to the best of your knowledge that any Feedback is not subject to any use restriction or license requirement from you or any third party. Z2Live will be free to use, disclose, copy, license, distribute and exploit the Feedback without obligation or restriction of any kind.

8. Z2Network License

You understand, acknowledge and agree that each Developer Application that you create with the Developer SDK will become part of and may be included by Z2Live, at its discretion, in its multi-player gamer community network on the Z2Live Site and, as applicable, other websites of Z2Live and/or its affiliates (the "**Z2Live Network**"). Accordingly, you hereby grant to Z2Live and its affiliates a non-exclusive, perpetual, irrevocable, worldwide right and license to, directly or indirectly, (a) market, promote and enable and permit multi-player connection, access and use for each Developer Application on and through the Z2Live Network, and (b) use, reproduce, display and distribute your name, logo and other tradenames and trademarks appearing in or on the Developer Application(s) in connection with the exercise of the rights granted herein with respect to the Developer Applications. As part of or in connection with the marketing, promotion and/or use of the Developer Applications within the Z2Live Network as part of the Program, Z2Live may, but is not obligated to, provide or enable the following:

- In-Network Referrals
- Cross Game Invites
- Push Notifications
- Optimized Game Landing Page Templates

- SEO analysis and guidance
- Social Network Integration
- Leader Boards, Achievements/Awards/Badges

In connection with your participation in the Program and use of the Developer SDK, you will work cooperatively with Z2Live and ensure that each Developer Application you develop with the Developer SDK is Z2Live-enabled for multi-player access and use (and is otherwise compatible for use with the Z2Live Network) as contemplated herein, and you will not take any steps or measures that would prevent Z2Live from exercising the rights granted herein.

9. Compensation

You will pay to Z2Live the applicable fees and other compensation, if any, payable in connection with your participation in the Program as set forth in the Z2Live Fee Schedule in effect from time to time, as published by Z2Live at <http://www.Z2Live.com> (or any successor or replacement site). Z2Live will issue invoices for the fees and other compensation payable hereunder with respect to any calendar month of the Term. You will pay Z2Live the full amount of each invoice within the lesser of i.) forty-five (45) days from the close of the month or ii.) thirty (30) days of receipt of payment from Apple, without deduction or offset. All such compensation is payable in the lawful money of the United States. Any amounts not paid when due shall accrue interest at the rate of one percent (1%) per month or the highest rate permitted by applicable usury law, whichever is less, determined and compounded daily from the date due until the date paid.

Z2Live Fee Schedule

Z2Live Offering Details	Fee due to Z2Live
1 year of unlimited multiplayer services including voice chat	\$0.30 per registered user

10. Term

The term of your participation in the Program and the licenses granted to you herein ("**Term**") will begin upon our providing you notice of our acceptance of you as a participant in the Program and will end when terminated by either you or us. Either you or us may terminate the Term at any time for convenience by providing the other thirty (30) days' prior written notice of termination. Upon termination, all rights and obligations of the parties under these Terms of Use will end, except that Sections 6, 7 and 8 - 19 of these Terms of Use will survive termination.

11. Reservation of Rights

Z2Live reserves all right, title and interest (including, without limitation, intellectual property rights) in and to the Program, the Z2Live Site, the Developer SDK, the Distributable SDK Code and all technology embodied therein, including, without limitation, source code, algorithms, concepts, specifications, designs, data, protocols, processes, methods, know-how, trade secrets, patents, copyrights, trademarks and other proprietary rights.

12. Confidentiality

You shall protect all Confidential Information (as defined below) from any unauthorized use or disclosure. We reserve ownership of our Confidential Information, and you shall only use the Confidential Information solely for the purposes for which it is disclosed by us. Without limiting the generality of the foregoing, you shall: (a) use such Confidential Information only as reasonably required for the performance of your obligations under these Terms of Use or as otherwise authorized by Z2Live in writing; (b) not deliver or disclose any such Confidential Information to any third party; and (c) not use any such Confidential Information to perform any services for any third party. You shall use all Confidential Information in strict accordance with all applicable laws and regulations. Within five (5) days of request by Z2Live or upon any termination of the Term, you will return to Z2Live, all Confidential Information, together with all copies thereof. As used herein, the term "**Confidential Information**" means any information that is a trade secret or is proprietary or confidential information of Z2Live, or that Z2Live is obligated to keep confidential (e.g., pursuant to a contractual or other obligation owing to a third party), and includes any non-public information submitted by Z2Live to you under these Terms of Use. Confidential Information does not include information that: (i) was known by you prior to receiving the same from Z2Live; (ii) is independently developed by you without reliance on any Confidential Information; (iii) is acquired by you from a third party without restriction as to use or disclosure; or (iv) is or becomes part of the public domain through no fault or action by you.

13. Indemnification

You agree to indemnify, defend and hold harmless Z2Live from and against any and all costs, losses, damages, liabilities, judgments and expenses (including reasonable fees of attorneys and other professionals), arising out of or in connection with any claim, action or proceeding (any and all of which are a "**Claim**") which in any way may result from or arise in any manner out of: (a) your access to or participation in the Program; (b) your breach of any

representation, warranty or obligation that you have under these Terms of Use or the Z2Live Policies, including but not limited to your unauthorized use or disclosure of any Confidential Information; (c) the development, distribution or use of any Developer Application or the performance or non-performance thereof. At our option, you will assume control of the defense and settlement of any Claim subject to indemnification by you (provided that, in such event, we may at any time elect to take over control of the defense and settlement of any such Claim). In no event may you settle any Claim without our prior written consent.

14. Limitation of Liability

PARTICIPATION IN THE PROGRAM IS AT YOUR SOLE RISK. WE WILL NOT BE LIABLE FOR INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OR ANY LOSS OF REVENUE, PROFITS, OR DATA ARISING IN CONNECTION WITH THESE TERMS OF USES, THE PROGRAM, THE Z2LIVE SITE, THE DEVELOPER SDK, THE DISTRIBUTABLE SDK CODE OR ANY DEVELOPER APPLICATION OR OTHER PRODUCT OR SERVICE OFFERED BY YOU TO A USER OR OTHER THIRD PARTY, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, OUR AGGREGATE LIABILITY ARISING WITH RESPECT TO THESE TERMS OF USE AND THE PROGRAM WILL NOT EXCEED ONE HUNDRED DOLLARS (\$100).

15. Disclaimers of Warranties

EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THESE TERMS OF USE, WE DO NOT MAKE, AND HEREBY SPECIFICALLY DISCLAIM, ANY AND ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE AND WE HEREBY DISCLAIM ANY CLAIM IN TORT (INCLUDING NEGLIGENCE, PRODUCT LIABILITY OR STRICT LIABILITY), IN EACH CASE, REGARDING THE Z2LIVE SITE, THE PROGRAM, THE DEVELOPER SDK, THE DISTRIBUTABLE SDK CODE OR ANY OTHER PRODUCT, ITEM OR SERVICE PROVIDED UNDER THESE TERMS OF USE.

16. US Government Rights

The Developer SDK and the Distributable SDK Code are "commercial computer software" as the term is described in 48 CFR 252.227-7014(a)(1). If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to these Terms of Use as specified in 48 CFR 12.212 and 48 CFR 12.211 of the Federal Acquisition Regulations and its successors. If acquired by or on behalf of any agency within the Department of Defense, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to these Terms of Use as specified in 48 CFR 227.7202-3 of the DOD FAR Supplement and its successors.

17. Relationship of Parties

You and Z2Live are independent contractors, and nothing in these Terms of Use will create any partnership, joint venture, agency, franchise, employment or similar relationship between the parties. You will have no authority to make or accept any offers or representations on our behalf. You will not make any statement, whether on your website or otherwise, that reasonably would contradict anything in this section.

18. Modification

We may amend any of the terms and conditions contained in these Terms of Use (including the Z2Live Policies) at any time and solely at our discretion. Any changes will be effective upon the posting of such changes on the Z2Live Site, and you are responsible for reviewing these locations and informing yourself of all applicable changes or notices. All notices of changes to these Terms of Use will be posted for at least thirty (30) days. You should refer regularly to the Z2Live Site to understand the current Terms of Use and Z2Live Policies. YOUR CONTINUED PARTICIPATION IN THE PROGRAM AND/OR USE OF THE DEVELOPER SDK AFTER OUR POSTING OF ANY CHANGES WILL CONSTITUTE YOUR ACCEPTANCE OF SUCH CHANGES OR MODIFICATIONS. IF YOU DO NOT AGREE TO ANY SUCH CHANGES, YOU MUST TERMINATE THE TERM AS PROVIDED ABOVE. We may also discontinue offering or modify any part of the Program without liability.

19. Miscellaneous

The laws of the State of Washington govern these Terms of Use, without giving effect to any principles of conflicts of laws. Any dispute with us or our affiliates relating in any way to these Terms of Use or your use of the Program will be adjudicated in any state or federal court in King County, Washington, and you consent to exclusive jurisdiction and venue in such courts with regard to such disputes and matters. You may not assign these Terms of Use or your rights under these Terms of Use, by operation of law or otherwise, without our prior written consent. Subject to that restriction, these Terms of Use will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and assigns. Our failure to enforce your strict performance of any provision of these Terms of Use will not constitute a waiver of our right to subsequently enforce such provision or any other provision of

these Terms of Use. We will send all notices and other communication to you at your account administrator's e-mail address. We may specify other means of notifying or communicating with you. You must send us all notices and other communication relating to the Program or these Terms of Use by contacting us by email through the Z2Live Site at <http://www.Z2Live.com>, or by mailing or faxing us at the address and fax number located on the Z2Live Site. In the event of any conflict between the Terms of Use and/or Privacy Policy and these Terms of Use, the Terms of Use and/or Privacy Policy will prevail. These Terms of Use represent the entire agreement between the parties with respect to the subject matter described herein and supersede any previous or contemporaneous oral or written agreements and understandings with regard thereto.

Z2LIVE COMMUNITY CODE OF CONDUCT

The following actions are prohibited when accessing the Z2Live Community; Partner will not

- Post, upload, publish, submit or transmit any text, graphics, images, software, music, audio, video, information or other material that: (i) infringes, misappropriates or violates a third party's patent, copyright, trademark, trade secret, moral rights or other Intellectual Property Rights, or rights of publicity or privacy; (ii) violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability; (iii) is fraudulent, false, misleading or deceptive; (iv) is defamatory, obscene, pornographic, vulgar or offensive; (v) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (vi) is violent or threatening or promotes violence or actions that are threatening to any other person; or (vii) promotes illegal or harmful activities or substances (including but not limited to activities that promote or provide instructional information regarding the manufacture or purchase of illegal weapons or illegal substances).
- Use, display, mirror, frame or utilize framing techniques to enclose Z2Live websites or iPhone applications, or any individual element or materials within the Z2Live websites or iPhone applications, Z2Live publishing's name, any Z2Live trademark, logo or other proprietary information, the content of any text or the layout and design of any page or form contained on a page, without Z2Live express written consent;
- Access, tamper with, or use non-public areas of the Z2Live websites or iPhone applications, Z2Live's computer systems, or the technical delivery systems of Z2Live's providers;
- Attempt to probe, scan, or test the vulnerability of any Z2Live's network or breach any security or authentication measures;
- Avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure implemented by Z2Live or any of Z2Live's providers or any other third party to protect the Z2Live websites or iPhone applications;
- Attempt to access or search the Z2Live websites or iPhone applications or download Z2Live content from the Z2Live websites or iPhone applications through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers, data mining tools or the like) other than the software and/or search agents provided by Z2Live or other generally available third party web browsers;
- Send any unsolicited or unauthorized advertising, promotional materials, email or other form of solicitation;
- Use any meta tags or other hidden text or metadata utilizing a Z2Live trademark, logo URL or product name without Z2Live's express written consent;
- Forge any TCP/IP packet header or any part of the header information in any email or newsgroup posting, or in any way use the Z2Live websites or iPhone applications or Z2Live content to send altered, deceptive or false source-identifying information;
- Attempt to decipher, decompile, disassemble or reverse engineer any of the software used to provide the Z2Live websites or iPhone applications or Z2Live content;
- Interfere with, or attempt to interfere with, the access of any user, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, or mail-bombing Z2Live websites;
- Collect or store any personally identifiable information from the Z2Live websites or iPhone applications from

other users of the Z2Live websites or iPhone applications without their express permission;

- Impersonate or misrepresent your affiliation with any person or entity;
- Violate any applicable law or regulation; or
- Encourage or enable any other individual to do any of the foregoing.

Z2Live has the right to monitor access to or use of the Z2Live websites or iPhone applications for the purpose of operating the Z2Live websites or iPhone applications, to ensure compliance with applicable agreements, or to comply with applicable law or the order or requirement of a court, administrative agency or other governmental body. Z2Live reserves the right, at any time and without prior notice, to remove or disable access to any part of the Z2Live websites or iPhone applications, in its sole discretion.