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Nintendo Account User Agreement

THIS IS AN IMPORTANT AGREEMENT THAT APPLIES TO YOUR USE OF THE NINTENDO ACCOUNT SERVICES!

If you are under the age of 18 (or the age of majority where you live), STOP! You must get your parent or legal guardian to read and accept this Agreement on your behalf.

Nintendo Account User Agreement

Effective Date: 03/2017

This Nintendo Account User Agreement (the "Agreement") is by and among you, Nintendo Co., Ltd. ("NCL"), and Nintendo of America Inc. ("NOA", and together with NCL, "Nintendo," "we," "us," or "our"), and applies to your use of the Nintendo Account Services through your Nintendo Account (defined below).

If you do not agree to the terms of this Agreement, please do not use the Nintendo Account Services.

NOTE: TO THE FULLEST EXTENT PERMITTED BY LAW, THIS AGREEMENT CONTAINS A BINDING INDIVIDUAL ARBITRATION AND CLASS ACTION WAIVER PROVISION IN SECTION 16 THAT AFFECTS YOUR RIGHTS UNDER THIS AGREEMENT AND WITH RESPECT TO ANY "CLAIM" (AS DEFINED IN SECTION 16) BETWEEN YOU AND NINTENDO. YOU HAVE A RIGHT TO OPT OUT OF THE BINDING ARBITRATION AND CLASS ACTION WAIVER PROVISION PROVIDED THAT YOU FOLLOW THE PROCEDURE SET FORTH IN SECTION 16.

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1. Definitions

"Nintendo Account" means the account created by a person that is used in connection with the Nintendo Account Services.

"Nintendo Account Service(s)" means the services, applications, software, content, and data we make available to you through your Nintendo Account, including, for example, the Nintendo Switch Parental Controls application, video games, and add-on content.

2. License

Subject to the terms of this Agreement, Nintendo grants you a non-exclusive, non-transferable, revocable license to use the Nintendo Account Services solely for your personal and non commercial use. You are not allowed to lease, rent, sublicense, publish, copy, modify, adapt, translate, reverse engineer, decompile or disassemble all or any portion of the Nintendo Account Services without Nintendo's written consent, or unless otherwise expressly permitted by applicable law.

3. Creating and Managing Your Nintendo Account

You must have a Nintendo Account to use the Nintendo Account Services. Unless we permit otherwise, each person may only have one Nintendo Account.

When you create your Nintendo Account, you must provide us with accurate information. You must promptly update your Nintendo Account information if it changes. We reserve the right to deny, ban, or cancel your Nintendo Account and any accounts associated with your Nintendo Account for any reason.

If you change the country of your Nintendo Account, you must agree to the Nintendo Account User Agreement applicable to the new country and use any existing account balance. Certain Nintendo Account Services and Nintendo Account rights may be impacted if you change your country registration.

To protect your Nintendo Account, please keep your Nintendo Account information confidential. You are responsible for all activity and purchases on or through your Nintendo Account and any accounts associated with your Nintendo Account. Please notify Nintendo if you learn of any unauthorized use of your Nintendo Account or associated accounts.

4. Use of the Nintendo Account Services

The Nintendo Account Services may be accessed through devices manufactured by Nintendo or certain third party devices. Some Nintendo Account Services may only be accessed on a Nintendo device. We offer a variety of Nintendo Account Services, so additional terms and conditions may apply to your use of certain Nintendo Account Services.

The Nintendo Account Services include third party services, applications, software, content, and data ("Third Party Services"). Nintendo does not review or monitor the Third Party Services, and we are

not responsible for any Third Party Services. If you access or use any Third Party Services, you do so at your own risk.

The Nintendo Account Services may vary by country or region and not all Nintendo Account Services are available to all Nintendo Account holders.

We may allow you to link and unlink your Nintendo Account to and from certain Nintendo Account Services, Nintendo devices, and smart device applications. Once you link your Nintendo Account to a Nintendo device, all activity on that device will be subject to this Agreement.

In the event that you unlink your Nintendo Account from a Nintendo Account Service, device, or application, you may not be able to enjoy the rights and benefits of your Nintendo Account via that Nintendo Account Service, device, or application. Nintendo is not responsible or liable to you for any losses resulting from any such disconnection.

Your Nintendo Account may not be transferred to another person. If you sell or transfer your Nintendo device or smart device, you must unlink your Nintendo Account from the device and any on-device Nintendo Account Services.

You are responsible for all costs incurred in connection with your use of the device on which you access the Nintendo Account Services, including for example, all mobile data and service plans.

From time to time, we may suspend, modify, or terminate all or some of the Nintendo Account Services without notice or liability to you.

5. Updates to the Nintendo Account Services

The Nintendo Account Services are constantly evolving, and we may update or change features and functionality of the Nintendo Account Services from time to time ("Updates"). You may not be able to continue using some of the Nintendo Account Services after the Updates. Some of these Updates may be provided automatically without notice to you. By accepting this Agreement, you consent to Nintendo providing you with, and installing, automatic Updates to the Nintendo Account Services. You agree that any Update is covered by this Agreement.

6. User-Generated Content

The Nintendo Account Services may allow you to create and share User-Generated Content. "User Generated Content" means text, images, audio, video, or other content that you create and share with the public or other users of the Nintendo Account Services.

You own your User-Generated Content. However, Nintendo retains ownership of any Nintendo Intellectual Property (as defined in Section 12) that is contained in your User-Generated Content. Since you own and control your User-Generated Content, you are responsible for it.

Nintendo is not responsible or liable for any User-Generated Content. We are not responsible for any loss or damages associated with any User-Generated Content, nor are we liable for any incorrect, defamatory, libelous, false, obscene, or offensive content you may encounter in connection with

User-Generated Content. User-Generated Content is the sole responsibility of the user that made it available in connection with the Nintendo Account Services.

By accepting this Agreement, you give Nintendo permission to use and change your User Generated Content in any way and for any purpose for free. More specifically, you grant Nintendo and its affiliates and subsidiaries a worldwide, royalty-free, irrevocable, perpetual, non exclusive, and sublicenseable license to use, reproduce, modify, adapt, publish, translate, distribute, perform, and display all or any portion of your User Generated Content, and to incorporate your User-Generated Content in other works, in any form, media or technology now known or later developed, including for promotional or marketing purposes, without any payment to you.

Your User-Generated Content may be viewed, reproduced, published and/or modified by Nintendo and third parties. Nintendo may delete any User-Generated Content from the Nintendo Account Services and/or Nintendo servers at any time, for any reason, in its sole discretion without notice or liability to you. Nintendo reserves the right to not post or publish User-Generated Content and is not obligated to store any User-Generated Content.

User-Generated Content that you make available through the Nintendo Account Services must comply with the Nintendo Code of Conduct (see Section 11).

By making User-Generated Content available via the Nintendo Account Services, you represent that you are entitled to do so and agree that Nintendo is not obligated to monitor or protect your rights in any User-Generated Content. However, you give Nintendo the option and right to enforce your rights in such User-Generated Content, including, for example, the right to take legal action (at our cost) on your behalf.

7. Shopping Services; Rewards Program; Online Subscription Services

As part of the Nintendo Account Services, we make certain shopping services available to you (the "Shopping Services"). The Shopping Services may be accessed through your Nintendo Account to (a) establish and maintain an account balance and (b) view, download, or purchase certain products, software, content, and services ("Products"). The Shopping Services may vary by country, and may not be available in all countries.

In using the Shopping Services, you are responsible for all activity and purchases on or through your Nintendo Account and any accounts associated with your Nintendo Account. This includes unauthorized, fraudulent, or erroneous transactions through your Nintendo Account, subject to any payment processing rules or applicable law. Please notify Nintendo if you learn of any unauthorized purchases through your Nintendo Account.

Except as otherwise permitted by Nintendo or as required by applicable law, account balances are not returnable or refundable. Please refer to [Purchase Terms](#) for additional terms applicable to the Shopping Services and Product purchases.

Nintendo offers a rewards program and online subscription services. Please see [here](#) and [here](#) for applicable terms. We reserve the right to modify such terms at any time without notice to you.

8. Digital Items

As part of the Nintendo Account Services, Nintendo or third parties may make certain digital content or items available to you ("Digital Items"). If you buy or acquire any Digital Items, you obtain a limited license (as set forth in Section 2) to use such Digital Items in connection with the Nintendo Account Services. Other than this limited license, you have no right or title in or to Digital Items. Digital Items cannot be sold or transferred to a third party (unless a transfer is permitted within the Nintendo Account Services) and cannot be exchanged for or converted to cash or legal tender or for any goods or services outside of the Nintendo Account Services. Except as authorized by Nintendo or as required by applicable law, Digital Items are not returnable or refundable.

9. Use of Information

Nintendo (including its subsidiaries and affiliates) may access, use, monitor, delete, disclose or preserve information associated with your use of the Nintendo Account Services (including, without limitation, User-Generated Content) as is necessary, in Nintendo's discretion, (a) to comply with applicable laws, rules, regulations, or orders; (b) to enforce this Agreement or protect the rights of Nintendo, its users, or the public; (c) to help prevent a loss of life or serious physical injury to anyone; (d) to prevent potentially illegal or offensive activities; and (e) to provide and improve features of the Nintendo Account Services.

10. Privacy Policy

Our [Privacy Policy](#) describes how we use, share, and protect your personal information when you use the Nintendo Account Services. By using the Nintendo Account Services, you agree that we can use your personal information in accordance with our Privacy Policy.

11. Nintendo Code of Conduct

To help keep the Nintendo Account Services friendly for all users, you agree that you will adhere to Nintendo's Code of Conduct found [here](#).

12. Intellectual Property Rights

Other than your right to use the Nintendo Account Services as described in this Agreement, and as between you and Nintendo, we retain and reserve all right, title, and interest in and to the Nintendo Account Services, including without limitation, to all Nintendo Intellectual Property. "Nintendo Intellectual Property" means all registered and unregistered trademarks, service marks, logos, registered and unregistered designs, copyrights, database rights, inventions, patents, trade secrets, know-how, and other confidential and proprietary information of Nintendo, including without limitation, all other proprietary or intellectual property rights of any kind in any country.

13. Breach and Termination of the Agreement; Changes to the Agreement

Nintendo may terminate this Agreement, or any part of it, if you fail to comply with its terms. Nintendo may also terminate all or a portion of this Agreement, at any time, for legal, technical or commercial reasons. Upon any such termination, you must immediately stop using the Nintendo Account Services.

You may terminate this Agreement by deleting your Nintendo Account and discontinuing use of the Nintendo Account Services. If you initiate deletion of your Nintendo Account, or if we suspend, ban and/or delete your Nintendo Account for any reason, access to some or all of the Nintendo Account Services may be lost, and any accounts associated with your Nintendo Account may be suspended or deleted.

We may change the terms of this Agreement from time to time. When we update the Agreement, we will post the current version of the Agreement on Nintendo's website. If you do not agree to the changes, you must immediately stop using the Nintendo Account Services. If you continue to use the Nintendo Account Services, you will be confirming your acceptance of the updated Agreement.

14. Indemnity

If Nintendo (including its subsidiaries and/or affiliates) is subject to any actual or threatened claims, costs, damages, losses, or other liabilities (collectively, "Covered Losses") as a result of your use of any of the Nintendo Account Services, or any data, information, or other item you make available through the Nintendo Account Services, then you agree to indemnify us from all such Covered Losses and any related costs, such as reasonable attorneys' fees.

Some jurisdictions limit consumer indemnities, so some or all of the indemnity provisions above may not apply to you. If you are obligated to indemnify us, we will have the right, in our sole discretion, to control any action or proceeding and determine whether we wish to settle it, and if so, on what terms.

15. Disclaimer of Warranties and Limitation of Liability

USE OF THE NINTENDO ACCOUNT SERVICES IS AT YOUR SOLE RISK. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY NINTENDO OR ITS REPRESENTATIVES CREATES A WARRANTY. THE NINTENDO ACCOUNT SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AND NINTENDO DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE NINTENDO ACCOUNT SERVICES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NINTENDO WILL NOT BE LIABLE TO YOU FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, ARISING OUT OF OR RELATING TO YOUR ACCESS, USE, MISUSE, OR INABILITY TO USE THE NINTENDO ACCOUNT SERVICES, EVEN IF NINTENDO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, NINTENDO'S AGGREGATE LIABILITY TO YOU IN CONNECTION WITH ANY CLAIMS ARISING OUT OF OR RELATING TO THE NINTENDO ACCOUNT SERVICES IS LIMITED TO THE AMOUNT YOU ACTUALLY PAID FOR THE NINTENDO ACCOUNT SERVICES. IF A LAW RESTRICTS OUR ABILITY TO LIMIT LIABILITY OR DISCLAIM WARRANTIES, THE LIMITATIONS LISTED ABOVE MAY NOT APPLY TO YOU. IN THAT CASE, WE LIMIT OUR LIABILITY AND DISCLAIM WARRANTIES TO THE GREATEST EXTENT PERMITTED BY LAW.

16. Dispute Resolution; Binding Arbitration; Class Action Waiver

PLEASE READ THIS CAREFULLY. IT AFFECTS YOUR RIGHTS.

BY ENTERING INTO THIS AGREEMENT YOU AND NINTENDO EXPRESSLY WAIVE THE RIGHT TO TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

a. Our Contact Center is available to address any concerns you may have regarding your Nintendo Account and the Nintendo Account Services. You may contact them by phone at 1-800-255-3700, by email at useragreement@noa.nintendo.com, or by regular mail sent to Nintendo of America Inc., Attn: User Agreement, 4600 150th Ave NE, Redmond, WA 98052 USA. Most matters are quickly resolved in this manner to our customers' satisfaction. Any matter we are unable to resolve and all disputes or claims arising out of or relating to the Nintendo Account Services or this Agreement, including its formation, enforceability, performance, or breach (each, a "Claim"), with the exception of the matters described in Section 16(c) below, shall be finally settled by binding arbitration administered by the American Arbitration Association in accordance with the provisions of its Commercial Arbitration Rules and the supplementary procedures for consumer-related disputes of the American Arbitration Association (the "AAA"), excluding any rules or procedures governing or permitting class actions. The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve all Claims. 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 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. Any such arbitration shall be conducted by the parties in their individual capacities only and not as a class action or other representative action, and the parties waive their right to file a class action or seek relief on a class basis. If any court or arbitrator determines that the class-action waiver set forth in the preceding sentence is void or unenforceable for any reason or that an arbitration can proceed on a class basis, then the arbitration provision set forth in this Section shall be deemed null and void in its entirety and the parties shall be deemed to have not agreed to arbitrate Claims.

b. The rules governing the arbitration may be accessed at www.adr.org or by calling the AAA at +1-800-778-7879. To the extent the initial filing fee for the arbitration exceeds the initial filing fee for a lawsuit, we will pay the difference in fees. If the arbitrator finds the arbitration to be non-frivolous, we will pay all of the actual filing and arbitrator fees for the arbitration, provided your claim is less than \$75,000. The arbitration rules also permit you to recover attorney's fees in certain cases.

c. Section 16(a) does not apply to any Claim (i) in which a party is attempting to protect its intellectual property rights (such as its patent, copyright, trademark, trade secret, or moral rights, but not including its privacy or publicity rights), or (ii) that may be brought in small-claims court.

d. 30-Day Right to Opt Out. You have the right to opt out of the provisions of this Section 16 by sending written notice of your decision to opt out to the following address: Nintendo of America Inc., Attn: CS Admin, 4600 150th Ave NE, Redmond, WA 98052 within 30 days from the date you created your Nintendo Account. Such notice must include the name of each person opting out, contact information, and the email address registered to your Nintendo Account. If you send timely written notice containing the required information, then Section 16 will not apply to you or Nintendo. If you do not send such notice, then you agree to be bound by this Section 16.

17. Severability

If any part of this Agreement is determined to be unlawful, void or for any reason unenforceable, then that part will be severed from this Agreement and the remainder of the Agreement will remain intact. If we do not enforce any provision of this Agreement, that will not be considered a waiver of our rights. Any waiver of this Agreement must be in a written document signed by an authorized representative of Nintendo.

18. Governing Law; Venue

The laws of the State of Washington, U.S.A., without regard to its conflict of laws provisions, will govern this Agreement and any dispute of any sort pertaining to this Agreement or the Nintendo Account Services that might arise between you and Nintendo.

If Section 16 is held to be invalid or unenforceable, then for any Claims the parties consent to the exclusive jurisdiction of the courts located in King County, Washington, U.S.A.

19. Contact Information

If you wish to contact Nintendo concerning the Nintendo Account Services, you may use the contact information provided at [here](#).

20. Customers Using Smart Device Operating Systems from Apple, Inc.

This Section 20 applies to users who use any Nintendo Account Services on smart device operating systems provided by Apple, Inc. (hereinafter "Apple"). In the event of conflict between this Section 20 and the Agreement, this Section 20 shall apply.

a. Nintendo grants a license to you only, for the nonexclusive, nonassignable right to download and use the Nintendo Account Services for your personal, noncommercial purposes, according to the terms of the iTunes Store Service User Agreement.

b. Apple bears no responsibility for any claims by you or a third party related to your possession or use of the Nintendo Account Services, including the following:

- (1) A claim of product liability;
- (2) A claim that the Nintendo Account Services do not comply with applicable law and regulations;
- (3) A claim based on any consumer protection act or similar laws and regulations;
- (4) A claim by you or a third party that the Nintendo Account Services or the use of the Nintendo Account Services by you infringes the intellectual property rights of you or a third party.

c. You acknowledge and agree that Apple has no responsibility to provide maintenance or support services for the Nintendo Account Services.

d. The Nintendo Account Services are provided by Nintendo Co., Ltd., headquartered at 11-1 Hokotate-cho, Kamitoba, Minami-ku, Kyoto 601-8501, Japan. Please see Section 19 of this Agreement for contact information concerning the Nintendo Account Services.

e. You represent and warrant that you do not live in a US export-embargoed country or a country designated as a State Sponsor of Terrorism by the United States government and that you are not on the list of people barred or excluded from the United States.

f. You acknowledge and agree that Apple and Apple's subsidiaries are third-party beneficiaries to this Agreement, and that, by acknowledging the provisions of this Agreement, you acknowledge that Apple has the right (or is deemed to have acknowledged the right) to enforce this Agreement against you as third-party beneficiary.