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18 UNITED STATES DISTRICT COURT  
19 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
20 SAN FRANCISCO DIVISION

JCS

CV 11 0167

21 SONY COMPUTER ENTERTAINMENT  
22 AMERICA LLC, a Delaware limited liability  
23 company,

24 Plaintiff,

25 v.

26 GEORGE HOTZ; HECTOR MARTIN  
27 CANTERO; SVEN PETER; and DOES 1 through  
28 100,

Defendants.

Case No. \_\_\_\_\_

COMPLAINT FOR INJUNCTIVE RELIEF  
AND DAMAGES BASED ON  
VIOLATIONS OF DIGITAL MILLENNIUM  
COPYRIGHT ACT; VIOLATIONS OF THE  
COMPUTER FRAUD AND ABUSE ACT;  
CONTRIBUTORY COPYRIGHT  
INFRINGEMENT; VIOLATIONS OF THE  
CALIFORNIA COMPREHENSIVE  
COMPUTER DATA ACCESS AND  
FRAUD ACT; BREACH OF CONTRACT;  
TORTIOUS INTERFERENCE WITH  
CONTRACTUAL RELATIONS; COMMON  
LAW MISAPPROPRIATION; AND  
TRESPASS

1 Plaintiff Sony Computer Entertainment America LLC ("SCEA") hereby alleges as  
2 follows:

3 **NATURE OF THE ACTION**

4 1. This is a complaint for injunctive relief and damages based on Defendants'  
5 unlawful circumvention and distribution of circumvention devices in violation of the Digital  
6 Millennium Copyright Act, 17 U.S.C. § 1201, *et seq.*; violations of the Computer Fraud and  
7 Abuse Act, 18 U.S.C. § 1030, *et seq.*; contributory copyright infringement arising under the  
8 Copyright Act, 17 U.S.C. § 501, *et seq.* (Copyright Act); as well as related state and common  
9 law claims for violation of the California Comprehensive Computer Data Access and Fraud  
10 Act, Cal. Penal Code § 502, *et seq.*, breach of contract, tortious interference with contractual  
11 relations, trespass and common law misappropriation.

12 2. On information and belief, Plaintiff SCEA alleges that each Defendant,  
13 individually and in concert with the other Defendants has (1) circumvented effective  
14 technological protection measures that SCEA employs to protect against unauthorized  
15 access to and copying of SCEA's proprietary PlayStation® 3 computer entertainment system  
16 ("PS3 System"), and other SCEA copyrighted works, and (2) trafficked in circumvention  
17 devices and components thereof that enable unauthorized access to and copying of one or  
18 more PS3 System and SCEA's other copyrighted works. SCEA further alleges that each  
19 Defendant, individually and in concert with the other Defendants, has intentionally accessed  
20 one or more of SCEA's PS3 Systems without authorization and/or trafficked in passwords or  
21 similar information used to gain access to the system. In connection with the foregoing, each  
22 Defendant, individually and in concert with the other Defendants, violated multiple federal  
23 and state acts and common laws, and has caused, and unless enjoined will continue to  
24 cause irreparable injury and damage to SCEA.

25 **PARTIES**

26 3. SCEA is a Delaware company with its headquarters and principal place of  
27 business at 919 East Hillsdale Boulevard, Foster City, California, 94404. SCEA is engaged  
28 in the business of marketing and distributing computer video game console hardware and

1 peripheral accessories and developing, marketing and distributing video game software.

2 4. On information and belief, Defendant George Hotz ("Hotz") a/k/a Geohot is an  
3 individual residing at 20 Cornelius Way, Cambridge, MA 02141.

4 5. On information and belief, Defendant Doe 1 is an individual residing in San  
5 Francisco, California. Doe 1 is known on the Internet by the moniker "Bushing" and will be  
6 referred to herein by that name.

7 6. On information and belief, Defendant Hector Martin Cantero ("Cantero") is an  
8 individual residing at Samano 74A Num.24, Samano, Cantabria 39709, Spain.

9 7. On information and belief, Defendant Sven Peter ("Peter") is an individual  
10 residing in Hungary.

11 8. On information and belief, Defendant Doe 2 is an individual residing in the  
12 Netherlands. Doe 2 is known on the Internet by the moniker "Segher" and will be referred to  
13 herein by that name.

14 9. SCEA is unaware of the true names and capacities of the other Defendants  
15 named as Does herein (the "Other Doe Defendants"). SCEA is informed and believes and  
16 on that basis alleges that each of the Other Doe Defendants is legally liable and responsible  
17 directly or indirectly for the matters alleged herein. SCEA will seek leave to amend this  
18 Complaint to show the true names and capacities of the Other Doe Defendants when, and if,  
19 they become known.

20 10. By working together, cooperating with one another, expressing a common  
21 interest, publishing instructions and demonstrations that induce and encourage fellow  
22 Defendants to engage in the unlawful conduct alleged herein, and by ratifying fellow  
23 Defendants' unlawful conduct by announcing such conduct with approval and encouraging  
24 the furtherance of such conduct, Defendants joined and participated in a tortious scheme to  
25 commit the acts alleged herein in furtherance of a conspiracy.

26 11. Defendants were aware of and knew the unlawful and tortious quality of their  
27 collective conduct.

28 12. Defendants engaged in such unlawful conduct willfully, intentionally, and

1 knowingly, in furtherance of their tortious scheme, and with the knowledge that such tortious  
2 scheme would injure SCEA.

3 13. Because Defendants consented to form a conspiracy with knowledge of the  
4 conspiracy's unlawful nature, because Defendants committed such unlawful acts, and  
5 because such acts injured and continue to injure SCEA, each Defendant is jointly and  
6 severally liable for each and every tortious or otherwise unlawful act committed by all other  
7 Defendants in furtherance of the conspiracy.

### 8 JURISDICTION AND VENUE

9 14. This Court has subject matter jurisdiction over the claims relating to the  
10 Copyright Act (17 U.S.C. § 501), the Digital Millennium Copyright Act (17 U.S.C. § 1201),  
11 and the Computer Fraud and Abuse Act (18 U.S.C. § 1030) pursuant to 28 U.S.C. § 1331  
12 and 28 U.S.C. § 1338(a) (any act of Congress relating to copyrights, patents, and  
13 trademarks). This Court also has subject matter jurisdiction over the remaining claims under  
14 the doctrines of ancillary and pendent jurisdiction.

15 15. This Court has personal jurisdiction over each Defendant for the following  
16 reasons, among others:

17 (a) On information and belief, Hotz has purposely availed himself of the benefits of  
18 this district by doing business with PayPal, Inc., a company located in San Jose, California.  
19 Specifically, Hotz has utilized his PayPal account to solicit and obtain financial benefits in  
20 connection with the unlawful conduct alleged herein. Hotz is also subject to personal  
21 jurisdiction pursuant to the PlayStation Network Terms of Service and User Agreement  
22 ("PSN User Agreement"), which is attached hereto as Exhibit A. On information and belief,  
23 Hotz has used software updates delivered by SCEA for one or more PS3 Systems he is  
24 using. To obtain such software, users must consent to the terms and conditions of the PSN  
25 User Agreement, which require that "both parties submit to personal jurisdiction in California  
26 and further agree that any dispute arising from or relating to this Agreement shall be brought  
27 in a court within San Mateo County, California." On information and belief, Hotz has  
28 committed and continues to commit unlawful acts directed to SCEA in California, knowing

1 that the brunt of the harm resulting from this conduct will be suffered by SCEA in California.  
2 On information and belief, Hotz has conspired with others in California and in this district in  
3 connection with the unlawful conduct alleged herein.

4 (b) On information and belief, Bushing is an individual residing in San Francisco,  
5 California. Bushing is also subject to personal jurisdiction pursuant to the terms of the PSN  
6 User Agreement. On information and belief, Bushing has used software updates delivered  
7 by SCEA for his PS3 System. To obtain such software, users must consent to the terms and  
8 conditions of the PSN User Agreement, which require that "both parties submit to personal  
9 jurisdiction in California and further agree that any dispute arising from or relating to this  
10 Agreement shall be brought in a court within San Mateo County, California." On information  
11 and belief, Bushing is a member of FAIL0VERFLOW, a group of hackers who have  
12 conspired and continue to conspire to engage in unlawful circumvention of the effective  
13 technological protection measures ("TPMs") in the PS3 System. On information and belief,  
14 Bushing has committed and continues to commit unlawful acts directed to SCEA in  
15 California, knowing that the brunt of the harm resulting from this conduct will be suffered by  
16 SCEA in California. On information and belief, individually or as a member of  
17 FAIL0VERFLOW, Bushing also has conspired and continues to conspire with Hotz on  
18 circumvention activities involving, among other things, the PS3 System.

19 (c) On information and belief, Cantero is a member of FAIL0VERFLOW, a group of  
20 hackers who have conspired and continue to conspire to engage in unlawful circumvention of  
21 the TPMs in the PS3 System. On information and belief, Cantero has used software updates  
22 delivered by SCEA for his PS3 System. Additionally, Cantero has used and continues to use  
23 github.com, an interactive online software sharing community based in San Francisco,  
24 California, to post and distribute throughout the Internet, including to persons in this district,  
25 the code and software tools derived from FAIL0VERFLOW's circumvention of the TPMs in  
26 the PS3 System. On information and belief, Cantero has committed and continues to  
27 commit unlawful acts directed to SCEA in California, knowing that the brunt of the harm  
28 resulting from this conduct will be suffered by SCEA in California. On information and belief,

1 individually or as a member of FAIL0VERFLOW, Cantero also has conspired and continues  
2 to conspire with Hotz on circumvention activities involving, among other things, the PS3  
3 System.

4 (d) On information and belief, Peter is a member of FAIL0VERFLOW, a group of  
5 hackers who have conspired and continue to conspire to engage in unlawful circumvention of  
6 the TPMs in the PS3 System. On information and belief, Peter has used software updates  
7 delivered by SCEA for his PS3 System. Additionally, Peter has used and continues to use  
8 github.com, an interactive online software sharing community based in San Francisco,  
9 California, to post and distribute through the Internet, including to persons in this district, the  
10 code and software tools derived from FAIL0VERFLOW's circumvention of the TPMs in the  
11 PS3 System. On information and belief, Peter has committed and continues to commit  
12 unlawful acts directed to SCEA in California, knowing that the brunt of the harm resulting  
13 from this conduct will be suffered by SCEA in California. On information and belief,  
14 individually or as a member of FAIL0VERFLOW, Peter also has conspired and continues to  
15 conspire with Hotz on circumvention activities involving, among other things, the PS3  
16 System.

17 (e) On information and belief, Segher is a member of FAIL0VERFLOW, a group of  
18 hackers who have conspired and continue to conspire to engage in unlawful circumvention of  
19 the TPMs in the PS3 System. On information and belief, Segher has used software updates  
20 delivered by SCEA for his PS3 System. On information and belief, Segher has committed  
21 and continues to commit unlawful acts directed to SCEA in California, knowing that the brunt  
22 of the harm resulting from this conduct will be suffered by SCEA in California. On  
23 information and belief, individually or as a member of FAIL0VERFLOW, Segher has  
24 conspired and continues to conspire with Hotz on circumvention activities involving, among  
25 other things, the PS3 System.

26 16. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c)  
27 because a substantial part of the events or omissions giving rise to the claims occurred here,  
28 a substantial part of the subject property is located here, the Defendants' conduct has been

1 directed into this district, and harm to SCEA has occurred in this district.

2 **INTRADISTRICT ASSIGNMENT**

3 17. Intra-district assignment to any division of the Northern District is proper under  
4 Local Rule 3-2(c) and the Assignment Plan of this Court as an Intellectual Property Action.

5 **GENERAL ALLEGATIONS**

6 **I. SCEA and the PS3 System**

7 18. Sony Computer Entertainment Inc. ("SCEI"), a global leader of consumer-  
8 based computer entertainment, manufactures, distributes and markets the PS3 System.

9 19. Prior to April 1, 2010, SCEA was a wholly-owned subsidiary of SCEI. SCEA  
10 currently is a subsidiary of Sony Corporation of America.

11 20. SCEA is known for its sales of home entertainment products and is highly  
12 regarded in the video game industry. Chief among the many products SCEA sells is the PS3  
13 System, a computer entertainment system featuring hardware and firmware designed for the  
14 playing of video games, Blu-Ray and DVD movies. The PS3 System is a highly  
15 sophisticated apparatus that, in conjunction with compatible video game software, simulates  
16 three-dimensional action. The PS3 System also features PlayStation Network, an  
17 entertainment network that supports online gameplay and PS3 System connectivity and  
18 through which SCEA sells downloadable game content, movies and other digital content to  
19 the Internet.

20 21. The PS3 System has enjoyed wide success throughout the United States and  
21 the world. Over 41 million PS3 Systems have been sold worldwide since the product release  
22 in November 2006. There are hundreds of different video game titles currently available for  
23 the PS3 System in the United States. These validly licensed video games typically sell for  
24 retail prices of between \$40.00 and \$70.00.

25 **A. SCEA's Copyrights and Copyright Licenses**

26 22. SCEA develops and publishes video game software for the PS3 System.  
27 SCEA has made and continues to make a substantial investment of time, effort and expense  
28 in the design, development, testing, manufacturing and marketing of its interactive

1 entertainment software video games.

2 23. These video games include a significant quantity of creative audiovisual  
3 material, stories, and characters that are wholly original to SCEA. SCEA's copyrighted video  
4 game works are referred to collectively herein as the "SUBJECT WORKS." The SUBJECT  
5 WORKS contain material wholly original to SCEA and are copyrightable subject matter  
6 pursuant to 17 U.S.C. § 102. SCEA owns the valuable copyrights to the audiovisual images,  
7 stories, characters and other protectable features of the "SUBJECT WORKS."

8 24. SCEA is currently, and at all relevant times has been, the sole owner of all  
9 rights, title, and interest in and to the copyrights in the SUBJECT WORKS.

10 25. SCEA has published, produced, and distributed the SUBJECT WORKS in  
11 accordance with the provisions of the Copyright Act and all other laws governing copyright.  
12 SCEA has secured the exclusive rights and privileges in and to numerous copyrights for its  
13 video games, and has received copyright registrations for numerous SUBJECT WORKS,  
14 which registrations are valid and subsisting throughout the world through international  
15 treaties.

16 26. Among other copyright registrations, SCEA has registered copyright nos. PA 1-  
17 616-055 (Ratchet & Clank Future: Tools of Destruction), PA 1-619-506 (Resistance 2), and  
18 PA 1-611-286 (Uncharted Drake's Fortune) for the SUBJECT WORKS.

19 27. In addition to developing video game software for the PS3 System, SCEA  
20 licenses third-party software developers to develop interactive entertainment software  
21 products for the PS3 System. These third party licensees are authorized to use proprietary  
22 PlayStation 3 technology to develop video game software for the PS3 System, to publish and  
23 distribute their video games and to use the PlayStation trademarks and copyrighted designs  
24 in connection with those video games. SCEA receives royalties on each PlayStation 3 video  
25 game manufactured pursuant to its licenses with third party publishers.

26 28. SCEA's PlayStation3 video games and all third-party-developed video games  
27 validly licensed to be played on the PS3 System are programmed with copyrighted computer  
28 code, referred to as the PlayStation3 Programmer Tools ("PS3 Programmer Tools"). The



1 PS3 Programmer Tools authenticate authorized video game software and permit them to  
2 interact with the central processing unit and microprocessors in the PS3 System. Video  
3 game software that does not incorporate the PS3 Programmer Tools cannot be played on  
4 the PS3 System. The PS3 Programmer Tools are also incorporated within the PS3 System  
5 firmware.

6 29. The PS3 Programmer Tools are original works of authorship constituting  
7 copyrightable subject matter.

8 30. SCEI is the owner of all rights, title, and interest in, to and under the copyrights  
9 in the PS3 Programmer Tools. The U.S. Copyright Office has issued to SCEI Copyright No.  
10 TX0007208564 (for the PS3 Programmer Tools). SCEI has licensed to SCEA the exclusive  
11 rights to use, copy and distribute the PS3 Programmer Tools in the U.S., and SCEI has  
12 authorized SCEA to sublicense these rights to third party video game developers and  
13 publishers in the U.S.

14 **B. SCEA's Technological Protection Measures**

15 31. SCEA's affiliates have invested hundreds of millions of dollars developing the  
16 PS3 System, including the PS3 System's TPMs. All genuine PS3 Systems are  
17 manufactured with TPMs that effectively control access to the PS3 System. Those TPMs  
18 are designed to prevent, among other things, (a) unauthorized or unlicensed software from  
19 playing on the PS3 System; (b) unauthorized access, copying and decryption of the  
20 SUBJECT WORKS or PS3 Programmer Tools; and (c) users from playing infringing copies  
21 of the SUBJECT WORKS.

22 32. The PS3 System is designed to run multiple levels of authorized, encrypted  
23 code in one or more sequences. Each level features TPMs, which control access, encrypt  
24 and decrypt code, and authenticate signatures to the files within the code. Each signature is  
25 generated using a pair of electronic keys ("Keys"), and the PS3 System will not execute a file  
26 unless that file contains an authentic signature. Each signature and each Key is encrypted.

27 33. One purpose of the PS3 System's TPMs is to prevent users from playing  
28 illegally copied and/or, pirated games. Unauthorized or unlicensed video game discs (such

1 as those burned from genuine game discs) do not have an authorized signature code.

2 Accordingly, a normally-functioning PS3 System will not run those pirated video games.

3 34. Another purpose of the PS3 System's access control and encryption TPMs is  
4 to prevent, restrict or otherwise limit access to certain sections of the PS3 System software  
5 and hardware. In this way, the TPMs ensure that the PS3 System functions in a safe and  
6 reliable manner, and protects the encrypted PS3 Programmer Tools and those encrypted  
7 Keys that are stored within the PS3 System. Because the PS3 System and its code are  
8 protected by these TPMs, users can neither access nor read the signatures or the Keys, and  
9 therefore cannot use those elements to gain access to the PS3 System to run a pirated video  
10 game.

11 35. By requiring the user to insert a legitimate, authorized or licensed video game  
12 that contains an authored signature, the TPMs also prevent, restrict or otherwise limit  
13 infringement of SCEA's SUBJECT WORKS and the PS3 Programmer Tools.

14 36. The PS3 System is designed to allow only the operation of legitimate,  
15 authorized and approved software that is licensed for distribution in the region or  
16 geographical territory of the console's sale. By taking these precautions, SCEA has been  
17 able to protect its exclusive rights to copy, sell, distribute and manufacture the SUBJECT  
18 WORKS and to create derivative works. In addition, SCEA has been able to protect its and  
19 SCEI's substantial investment in the development, creation, and distribution of the PS3  
20 System and the SUBJECT WORKS.

## 21 **II. Defendants' Unlawful Conduct**

22 37. Since the release of the PS3 System, software pirates have attempted to write  
23 code to run unauthorized software on SCEA's PS3 Systems. As described below, until  
24 recently, their efforts were prevented by the TPMs that secure the various levels of the PS3  
25 Systems. In late December 2010, members of a group of computer hackers named  
26 FAIL0VERFLOW discovered a way to access certain levels of the PS3 System by  
27 circumventing the corresponding TPMs. The group then provided other computer hackers  
28 the tools to run unauthorized and pirated software on PS3 Systems. Building on

1 FAIL0VERFLOW's work, Defendant Hotz unlawfully gained access to a critical level of the  
2 PS3 System by circumventing the corresponding TPMs. Hotz recently publicly distributed  
3 the circumvention devices necessary to access that level, providing them to the public via the  
4 Internet and released software code that will allow users to run unauthorized or pirated  
5 software on the PS3 System. Unless this Court enjoins Defendants' unlawful conduct,  
6 hackers will succeed in their attempts to ensure that pirated software can be run on the PS3  
7 System, resulting in the destruction of SCEA's business.

8 **A. The FAIL0VERFLOW Defendants' Illegal Activities**

9 38. On or about December 2010, members of a self-named group called  
10 FAIL0VERFLOW conspired to circumvent the TPMs that protect the PS3 Systems. The  
11 FAIL0VERFLOW group consists of, at minimum, Defendants Bushing, Cantero, Peter and  
12 Segher (the "FAIL0VERFLOW Defendants"). Each of these Defendants has a history of  
13 circumventing technological protections and touting their exploits.

14 39. The FAIL0VERFLOW Defendants appeared at the 27th annual Chaos  
15 Communication Conference (the "Chaos Conference"), a well-known and publicized hacker  
16 event in Berlin on December 29, 2010, to deliver a detailed explanation of the group's  
17 circumvention methods. The explanation was broadcast live through multiple video and  
18 audio streams on the Internet. Subsequently, highlight reels from the Chaos Conference,  
19 including the FAIL0VERFLOW Defendants' presentation, was published on the Internet,  
20 including in California.

21 40. During their presentation at the Chaos Conference, the FAIL0VERFLOW  
22 Defendants provided instructions for a method of circumventing the TPMs for certain levels  
23 of the PS3 System. Through their instruction, the FAIL0VERFLOW Defendants intentionally  
24 encouraged and have continued to encourage and induce others to engage in the same or  
25 similar circumvention of the TPMs in the PS3 System.

26 41. Shortly after their presentation, the FAIL0VERFLOW Defendants published on  
27 a public website the code, software tools and Keys derived from their circumvention of the  
28 TPMs of the PS3 System. Armed with the FAIL0VERFLOW circumvention instructions,

1 other hackers have circumvented the TPMs and published and trafficked on the Internet in  
2 circumvention devices and components thereof for certain levels of the PS3 System.

3 42. On information and belief, the FAIL0VERFLOW Defendants utilized, relied  
4 upon, and could not have developed their circumvention method without, information  
5 supplied by Defendant Hotz from his earlier attempts to circumvent the TPMs of the PS3  
6 System.

7 **B. Defendant George Hotz's Illegal Activities**

8 43. Defendant Hotz is a well-known hacker who has gained notoriety for  
9 circumventing the technological protection measures in a number of sophisticated software  
10 and hardware systems. Hotz circumvented the TPMs in the PS3 System, intentionally  
11 accessed the PS3 System without authorization, and misappropriated certain Keys.

12 44. SCEA uses these Keys to digitally authenticate code that runs on a critical level  
13 of the PS3 System. With access to this particular level, one can control crucial functions and  
14 operations of the PS3 System.

15 45. On or about January 2, 2011, Hotz published these Keys on his website under  
16 the banner "keys open doors." Recognizing that his unlawful conduct would harm SCEA,  
17 Hotz addressed SCEA in the same post in an attempt to obtain employment: "if you want  
18 your next console to be secure, get in touch with me." Hotz's January 2<sup>nd</sup> post encourages  
19 and induces other owners or users of PS3 Systems to copy and implement this  
20 circumvention device.

21 46. Hotz utilized, relied upon, and could not have developed his circumvention  
22 method without information supplied by the FAIL0VERFLOW Defendants. Hotz recognized  
23 the FAIL0VERFLOW Defendants' contribution to his circumvention method, stating "props to  
24 fail0verflow." The FAIL0VERFLOW Defendants confirmed their collaboration with Hotz by  
25 posting the following statement on their Twitter page: "We discovered how to get the  
26 keys ... Geohot exploited metldr, then used our trick to get its keys."

27 47. Through his January 2, 2011 posting, Hotz enabled software pirates to create  
28 and sell unauthorized copies of the SUBJECT WORKS, falsely authenticate those copies

1 and play the infringing copies. Indeed, software pirates using these Keys could write code  
2 that will allow them to falsely authenticate almost any unauthorized software and run that  
3 software on the PS3 System. Consequently, unless Defendants are immediately enjoined,  
4 users will be able to copy, create, sell and play unauthorized or pirated games without limit.

5 48. As alleged above, hackers will use the Keys to implement unauthorized  
6 software on the PS3 System. Hotz himself built an illegal tool to generate unauthorized and  
7 infringing programs that utilize the Keys. Shortly before publishing the Keys, Hotz released a  
8 different unauthorized and infringing program called the "dePKG firmware decrypter".

9 Firmware is a fixed program or data structure that internally controls various electronic  
10 devices. On information and belief, the purpose of Hotz's dePKG program is to decrypt,  
11 modify and re-encrypt the SCEA firmware that operates the PS3 System. That firmware  
12 contains SCEI's copyrighted PS3 Programmer Tools. Each time it is used, Hotz's dePKG  
13 program circumvents the TPMs in the PlayStation 3 firmware, and copies and modifies the  
14 PS3 Programmer Tools.

15 49. As Hotz demonstrated in a YouTube posting distributed on or about January 7,  
16 2011, Hotz used the Keys together with the dePKG firmware decrypter to circumvent the  
17 TPMs in the PS3 System and created and ran an unauthorized and modified version of  
18 SCEA's firmware. Unless Defendants are immediately enjoined, Defendants and other  
19 software pirates will use the Keys and dePKG firmware decrypter to accomplish similar acts  
20 of piracy.

21 50. In furtherance of his unlawful conduct, on or about January 8, 2011, Hotz  
22 published on his website a circumvention device or component thereof, that disables, avoids,  
23 bypasses, removes, deactivates and impairs a critical TPM in the PS3 System. Hotz's  
24 circumvention technology allows users to install and run unauthorized software, including  
25 pirated games in circumvention of the TPMs on the PS3 System.

26 51. On or about January 9, 2011, Hotz published programs that enable encryption  
27 and signing of unauthorized content to permit that content to run in circumvention of the  
28 TPMs on the PS3 System. By distributing the circumvention devices discussed herein, Hotz

1 has caused irreparable injury and damage to SCEA.

2 52. By their unlawful conduct, Defendants market, promote, offer to the public and  
3 traffic in circumvention devices or components thereof for the purpose of the circumventing  
4 the TPMs in the PS3 System. Defendants are encouraging, contributing to, causing, and/or  
5 inducing circumvention of the TPMs in the PS3 System and infringement of SCEA's  
6 copyrights in the SUBJECT WORKS. Defendants have caused and continue to cause  
7 irreparable injury and damage to SCEA.

8 **C. Defendants' Breach of Contract and Tortious Interference With SCEA's**  
9 **Contractual Relations**

10 53. All PS3 System users who have used software updates delivered by SCEA for  
11 the PS3 System are bound by the PSN User Agreement or similar agreement. A copy of the  
12 PSN User Agreement is attached as Exhibit A and incorporated herein by reference. On  
13 information and belief, Defendants herein have consented and are subject to the terms of the  
14 PSN User Agreement or similar agreement. The PSN User Agreement or similar agreement  
15 prohibits, among other things: circumvention of TPMs; unauthorized access to code and  
16 hardware; and use and distribution of unauthorized, illegal or modified hardware, software  
17 and hacked and reversed-engineered code in connection with the PS3 System. On  
18 information and belief, Defendants through their unlawful conduct alleged herein have  
19 breached the PSN User Agreement or similar agreement. On information and belief,  
20 Defendants are also inducing others to copy, distribute, publish, and create derivative works  
21 of one or more of the SUBJECT WORKS; circumvent TPMs in the PS3 System; and traffic in  
22 circumvention devices or components thereof in breach of the PSN User Agreement or  
23 similar agreement. Each Defendant's actions was knowing, deliberate, willful and in utter  
24 disregard of SCEA's rights.

25 ///  
26 ///  
27 ///  
28 ///

**FIRST CLAIM FOR RELIEF**

(Violation of Digital Millennium Copyright Act, 17 U.S.C. § 1201, *et seq.*)  
*Against All Defendants*

1  
2  
3 54. SCEA incorporates by reference and realleges each and every allegation set  
4 forth in the foregoing paragraphs as though fully set forth herein.

5 55. Defendants, individually and acting in concert, have violated SCEA's rights  
6 under 17 U.S.C. § 1201(a)(1), by directly circumventing TPMs that effectively control access  
7 to the PS3 System, the SUBJECT WORKS, and the PS3 Programmer Tools.

8 56. Defendants individually and collectively, have directly, or acting in concert with  
9 a third party, violated SCEA's rights under 17 U.S.C. § 1201(a)(2) by offering to the public,  
10 providing, or otherwise trafficking in, promoting, distributing and placing in the market  
11 circumvention services, technology, devices or components thereof – including but not  
12 limited to the circumvention method, code, and software tools offered and distributed by the  
13 FAIL0VERFLOW Defendants, and the Keys, "dePKG firmware decrypter" program, and the  
14 "3.55 Jailbreak" and signing tools offered and distributed by Hotz. These circumvention  
15 devices are primarily designed or produced for the purpose of circumventing TPMs that  
16 effectively control access to the PS3 System, the SUBJECT WORKS, and the PS3  
17 Programmer Tools. These circumvention services, technology, devices, or components  
18 thereof, have no commercially significant purposes other than to circumvent the TPMs in the  
19 PS3 System, and are manufactured, marketed and distributed by Defendants with  
20 knowledge of their circumventing uses.

21 57. The FAIL0VERFLOW Defendants individually and collectively, have directly, or  
22 acting in concert with a third party, violated 17 U.S.C. § 1201(b) by offering to the public,  
23 providing, or otherwise trafficking in their method of circumventing the TPMs in the PS3  
24 System, as well as their code and software tools, which constitute technologies, products,  
25 services, devices, components, or parts thereof that are primarily designed for the purpose of  
26 circumventing protection afforded by a TPM that effectively protects copyright rights. Such  
27 technologies, products, services, devices, components, or parts thereof have limited or no  
28 commercially significant purpose or use other than to circumvent TPMs that effectively

1 protect copyright rights, and the FAILOVERFLOW Defendants have marketed them with the  
2 knowledge that they will be used in circumventing TPMs that effectively protects copyright  
3 rights.

4 58. Hotz has directly, or acting in concert with a third party, violated 17 U.S.C. §  
5 1201(b) by offering to the public, providing, or otherwise trafficking in the Keys, his "dePKG  
6 firmware decrypter" program, and his "3.55 Jailbreak," and signing tools which constitute  
7 technologies, products, services, devices, components, or parts thereof that are primarily  
8 designed for the purpose of circumventing protection afforded by a TPM that effectively  
9 protects copyright rights. Such technologies, products, services, devices, components, or  
10 parts thereof have limited or no commercially significant purpose or use other than to  
11 circumvent TPMs that effectively protect copyrights, and Hotz has marketed them with the  
12 knowledge that they will be used in circumventing TPMs that are designed to protect  
13 copyright rights.

14 59. SCEA is informed and believes and thereon alleges that the Defendants'  
15 actions are knowing, deliberate, willful and in utter disregard of SCEA's rights.

16 60. As a direct and proximate result of Defendants' conduct set forth above, SCEA  
17 has been injured and damaged in an amount to be proven.

18 61. The above actions of the Defendants constitute direct and contributory  
19 violations of SCEA's rights under the Digital Millennium Copyright Act, 17 U.S.C. §§ 1201-  
20 1205. Defendants have violated, and on information and belief will continue to violate, the  
21 Digital Millennium Copyright Act, 17 U.S.C. §§ 1201-1205, unless enjoined by the Court.

22 **SECOND CLAIM FOR RELIEF**

23 (Violation of Computer Fraud and Abuse Act, 18 U.S.C. § 1030, *et seq.*)  
24 *Against All Defendants*

25 62. SCEA incorporates by reference and realleges each and every allegation set  
26 forth in the foregoing paragraphs as though fully set forth herein.

27 63. All Defendants have violated the Computer Fraud and Abuse Act, 18 U.S.C.  
28 § 1030(a)(2)(C), by intentionally accessing one or more PS3 Systems – which consist of  
protected computers used for interstate commerce or communications – without



1 authorization or by exceeding authorized access to the PS3 System, and by obtaining  
2 information from the PS3 System.

3 64. All Defendants have violated the Computer Fraud and Abuse Act, 18 U.S.C.  
4 § 1030(a)(4), by knowingly and with intent to defraud, accessing one or more PS3 Systems –  
5 which consist of protected computers – without authorization, or by exceeding their  
6 authorized access, and by means of such access furthering the intended fraud and obtaining  
7 the Keys. The Keys are of value, consist of more than the mere use of the computer, and  
8 are worth far more than \$5,000 over any 1-year period.

9 65. All Defendants have violated the Computer Fraud and Abuse Act, 18 U.S.C.  
10 § 1030(a)(5)(A), by knowingly causing the transmission of a program, information, code, or  
11 command, and as a result of such conduct, intentionally causing damage without  
12 authorization to a protected computer.

13 66. All Defendants have violated the Computer Fraud and Abuse Act, 18 U.S.C.  
14 § 1030(a)(5)(B), by intentionally accessing one or more PS3 Systems – which consist of  
15 protected computers – without authorization, and as a result of such access, recklessly  
16 causing damage.

17 67. All Defendants have violated the Computer Fraud and Abuse Act, 18 U.S.C.  
18 § 1030(a)(5)(C), by intentionally accessing one or more PS3 Systems – which consist of  
19 protected computers – without authorization, and as a result of such conduct, causing  
20 damage and loss.

21 68. All Defendants have violated the Computer Fraud and Abuse Act, 18 U.S.C.  
22 § 1030(a)(6)(A), by knowingly and with intent to defraud trafficking in a password or similar  
23 information through which a computer may be accessed without authorization, where such  
24 trafficking has affected and continues to affect interstate and foreign commerce.

25 69. Hotz has violated the Computer Fraud and Abuse Act, 18 U.S.C. §  
26 1030(a)(7)(B), by transmitting in interstate and foreign commerce a communication  
27 containing a threat to obtain information from a protected computer without authorization, or  
28 in excess of his authorization, or to impair the confidentiality of information obtained from a

1 protected computer without authorization, or by exceeding his authorized access thereto,  
2 with the intent to extort employment from SCEA.

3 70. All Defendants have violated the Computer Fraud and Abuse Act, 18 U.S.C.  
4 § 1030(b), by conspiring to commit the 18 U.S.C. § 1030(a) offenses listed above.

5 71. SCEA is informed and believes and thereon alleges that the actions of  
6 Defendants are knowing, deliberate, willful and in utter disregard of SCEA's rights under the  
7 Computer Fraud and Abuse Act.

8 72. SCEA has standing to bring the Computer Fraud and Abuse Act claims set  
9 forth above, and is entitled to remedies at law and equity pursuant to 18 U.S.C. § 1030(g)  
10 because Defendants' conduct has caused a loss to SCEA during any 1-year period  
11 aggregating far more than \$5,000 in value, and because Defendants' conduct has caused  
12 damage affecting 10 or more PS3 Systems – which are protected computers – during any 1-  
13 year period.

14 73. Defendants' unlawful conduct set forth above has directly and proximately  
15 caused irreparable injury to SCEA, and SCEA has sustained damages in an amount to be  
16 proven. Unless restrained and enjoined, Defendants will continue to commit such acts.  
17 SCEA's remedy at law is not adequate to compensate it for these inflicted and threatened  
18 injuries, entitling SCEA to remedies including injunctive relief as provided by 18 U.S.C.  
19 § 1030(g), in addition to compensatory damages.

20 **THIRD CLAIM FOR RELIEF**

21 (Contributory Copyright Infringement—Copyright Act, 17 U.S.C. § 501, *et seq.*)  
22 *Against All Defendants*

23 74. SCEA incorporates by reference and realleges each and every allegation set  
24 forth in the foregoing paragraphs as though fully set forth herein.

25 75. SCEA has been, and still is, the sole proprietor or exclusive licensees of all  
26 rights, title, and interest in the copyrights in the SUBJECT WORKS.

27 76. After the registration dates for SCEA's various copyright registrations in some  
28 or all of the SUBJECT WORKS, Defendants have induced, encouraged, caused, and  
materially contributed to the infringing conduct of potential purchasers and thus have

1 contributorily infringed, and will continue to infringe, those copyrights by knowingly  
2 distributing and placing in the market circumvention devices – including but not limited to the  
3 distribution of Keys, the "dePKG firmware decrypter" program, the "3.55 Jailbreak" and  
4 signature tools, and the circumvention method, code, and software tools distributed by the  
5 FAIL0VERFLOW Defendants – that are intended to, and do, induce, encourage, cause,  
6 assist, and materially contribute to the infringing conduct of others, including individuals who  
7 copy, publish, and modify the SUBJECT WORKS within the United States.

8 77. SCEA is informed and believes and thereon alleges that individuals have  
9 infringed the SUBJECT WORKS by copying, publishing, and modifying such SUBJECT  
10 WORKS, and that such infringement is a direct result of Defendants' efforts to encourage,  
11 cause, assist, and materially contribute to infringement of SCEA's copyright rights.

12 78. SCEA is informed and believes and thereon alleges that Defendants' acts  
13 alleged above were and are deliberate, knowing, willful, malicious, oppressive, and without  
14 regard to SCEA's copyrights.

15 79. The above acts by Defendants constitute contributory copyright infringement of  
16 SCEA's copyrights in the SUBJECT WORKS. As a result, Defendants have infringed, and  
17 will continue to infringe, upon SCEA's intellectual property rights pursuant to 17 U.S.C. § 501  
18 *et seq.*, unless enjoined by the Court.

19 80. Defendants' copyright infringement has caused, and will continue to cause,  
20 SCEA to suffer substantial injuries, loss and damage to its proprietary rights to the  
21 copyrighted products and, further, has damaged SCEA's business reputation and goodwill,  
22 diverted trade and caused a loss of profits, all in an amount not yet ascertained.

23 81. Defendants' copyright infringement, and the threat of continuing infringement,  
24 has caused, and will continue to cause, SCEA repeated and irreparable injury.

25 **FOURTH CLAIM FOR RELIEF**  
26 (California Computer Crime Law - Cal. Penal Code § 502, *et seq.*)  
27 *Against All Defendants*

28 82. SCEA incorporates by reference and realleges each and every allegation set  
forth in the foregoing paragraphs as though fully set forth herein.

1 83. SCEI is the sole owner of all rights, title, and interest in, and SCEA is the  
2 exclusive licensee of, the PS3 Programmer Tools, which constitute computer program or  
3 data pursuant to § 502(b)(3), § 502(b)(6), and § 502(e)(1).

4 84. All Defendants have violated California's Computer Crime Law, § 502(c)(1)(B),  
5 by knowingly accessing and without permission altering, damaging, or otherwise using the  
6 PS3 Programmer Tools in order to wrongfully control or obtain property or data, including but  
7 not limited to the Keys accessed by Defendants.

8 85. All Defendants have violated California's Computer Crime Law, § 502(c)(2), by  
9 knowingly accessing and without permission taking, copying, or making use of data from a  
10 computer, computer system, or computer network.

11 86. All Defendants have violated California's Computer Crime Law, § 502(c)(4), by  
12 knowingly accessing, and without permission adding, altering, damaging, or deleting data,  
13 computer software, and computer programs to the PS3 Programmer Tools.

14 87. All Defendants have violated California's Computer Crime Law, § 502(c)(6), by  
15 knowingly and without permission providing or assisting in providing a means of accessing  
16 the PS3 Programmer Tools.

17 88. As the exclusive licensee of the PS3 Programmer Tools, a computer program  
18 or data pursuant to § 502(b)(3), § 502(b)(6), and § 502(e)(1), SCEA has suffered damage  
19 and loss by reason of the Defendants' above violations.

20 89. SCEA seeks compensatory damages and injunctive relief, and attorney's fees  
21 pursuant to § 502(e)(1)-(2).

22 90. SCEA further requests forfeiture of all computers, computer systems, computer  
23 networks, software and data owned by Defendants' and used during the commission of the  
24 above violations pursuant to § 502(g).

25 **FIFTH CLAIM FOR RELIEF**  
26 (Breach of the PlayStation Network Terms of Service and User Agreement)  
27 *Against Defendants*

28 91. SCEA incorporates by reference and realleges each and every allegation set  
forth in the foregoing paragraphs as though fully set forth herein.

1 92. SCEA is informed and believes and thereon alleges that Defendants agreed to  
2 the terms of the PSN User Agreement or similar agreement and entered into that contract or  
3 similar agreement with SCEA. The PSN User Agreement or similar agreement is a written  
4 contract that limits their use of the PS3 System, related hardware, and related code,  
5 including restricting access and governing allowable uses.

6 93. SCEA performed all conditions, covenants, and promises required on its part to  
7 be performed in accordance with the terms and conditions of the contract.

8 94. SCEA is informed and believes and thereon alleges that Defendants each  
9 breached the PSN User Agreement or similar agreement by, among other things,  
10 circumventing the PS3 System's TPMs; gaining unauthorized access to code and hardware  
11 outside of the scope of rights conferred by the User Agreement; using, making and  
12 distributing unauthorized, illegal, or modified hardware and/or software in connection with the  
13 PS3 System; hacking or reverse engineering any code or equipment in connection with the  
14 PS3 System; and uploading, accessing and transmitting any infringing content in violation of  
15 the PSN User Agreement or similar agreement.

16 95. Defendants' breach has directly and proximately caused harm to SCEA and  
17 SCEA is entitled to monetary damages in an amount to be determined at trial and  
18 reasonable attorneys' fees.

19 **SIXTH CLAIM FOR RELIEF**  
20 (Tortious Interference With Contractual Relations)  
*Against All Defendants*

21 96. SCEA incorporates by reference and realleges each and every allegation set  
22 forth in the foregoing paragraphs as though fully set forth herein.

23 97. SCEA has contractual relationships with users of the PlayStation Network.

24 98. Defendants have knowledge of these contractual relationships.

25 99. Defendants intentionally interfered with SCEA's contractual relationships with  
26 its users through the unlawful conduct alleged herein.

27 100. The contractual relationships between SCEA and its users have been  
28 breached or disrupted by Defendants.

1           101. As a direct and proximate result of this interference with its contractual  
2 relationships, SCEA has been injured in an amount to be determined at trial.

3           102. SCEA is entitled to injunctive relief preventing any further tortious interference  
4 of its contractual relationships.

5                                   **SEVENTH CLAIM FOR RELIEF**  
6                                   (Trespass)  
7                                   *Against All Defendants*

8           103. SCEA incorporates by reference and realleges each and every allegation set  
9 forth in the foregoing paragraphs as though fully set forth herein.

10          104. SCEA possesses an ownership interest in the PS3 System.

11          105. Defendants have intentionally and substantially interfered with SCEA's legally  
12 protected ownership interest in the PS3 System, thereby damaging and/or impairing the PS3  
13 System functioning.

14          106. Each Defendant's interference with SCEA's possession of the PS3 System has  
15 directly and proximately caused harm to SCEA and SCEA is entitled to a preliminary and  
16 permanent injunction preventing any further trespass.

17                                   **EIGHTH CLAIM FOR RELIEF**  
18                                   (Common Law Misappropriation)  
19                                   *Against All Defendants*

20          107. SCEA incorporates by reference and realleges each and every allegation set  
21 forth in the foregoing paragraphs as though fully set forth herein.

22          108. SCEA has invested substantial time and money in the development of its  
23 intellectual property and proprietary information.

24          109. Defendants have appropriated SCEA's property at little or no cost to them.  
25 Each Defendant's misappropriation of SCEA's property has directly and proximately caused  
26 harm to SCEA, and SCEA is entitled to a preliminary and permanent injunction preventing  
27 any further misappropriation of its property and to monetary damages in an amount to be  
28 determined at trial.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, SCEA prays as follows:

3 1. That the Court enter judgment in favor of SCEA and against Defendants on all  
4 counts;

5 2. That the Court issue a preliminary and permanent injunction order enjoining and  
6 restraining Defendants and their agents, servants, employees, successors and assigns, and  
7 all other persons acting in concert with or in conspiracy with or affiliated with Defendants,  
8 from:

9 a. directly or contributorily violating SCEA's rights under the Digital Millennium  
10 Copyright Act, 17 U.S.C. § 1201 or the Computer Fraud and Abuse Act;

11 b. continuing to market, offer, transfer, advertise, promote, develop, manufacture,  
12 import, provide or otherwise traffic in any circumvention devices, including but not limited  
13 to the Keys;

14 c. contributorily infringing or authorizing infringement of any of SCEA's copyrights,  
15 including SCEA's copyrights in the SUBJECT WORKS;

16 d. continuing to market, offer, sell, transfer, advertise, promote, develop or  
17 manufacture any products that infringe or contribute to the infringement of SCEA's  
18 intellectual property rights, including its rights in the SUBJECT WORKS, or to participate  
19 in or facilitate any such activity;

20 e. moving, discarding, destroying, deleting, transferring, or otherwise disposing of  
21 any of the circumvention devices or any other devices that circumvent SCEA's copyright  
22 protection scheme or that infringe or contribute to the infringement of SCEA's intellectual  
23 property rights, including, but not limited to, its copyrights;

24 f. intentionally accessing SCEA's PS3 System without authorization; trafficking in  
25 SCEA's passwords or proprietary information; or knowingly causing the transmission of  
26 SCEA's proprietary information in violation of the Computer Fraud and Abuse Act, 18  
27 U.S.C. § 1030, *et seq.*;

28 g. engaging in any tortious interference with SCEA's contractual relations; and

1 h. engaging in any other activity constituting trespass or misappropriation of  
2 SCEA's property.

3 3. That Defendants be required to deliver to SCEA, to be held for destruction or other  
4 disposition at the conclusion of this litigation, any and all computer hardware and peripherals  
5 containing circumvention devices, technologies, programs, parts thereof, or other unlawful  
6 material, including but not limited to code and software, hard disc drives, computer software,  
7 inventory of CD-ROMs, computer diskettes, or other materials containing circumvention  
8 devices, technologies, programs, parts thereof, or other unlawful material;

9 4. That judgment be entered in favor of SCEA and against Defendants for all  
10 damages suffered by SCEA as a result of Defendants' violation of the Digital Millennium  
11 Copyright Act, 17 U.S.C. §§ 1201-1205;

12 5. That judgment be entered in favor of SCEA and against Defendants for all profits  
13 received due to Defendants' violation of the Digital Millennium Copyright Act, 17 U.S.C. §§  
14 1201-1205;

15 6. That judgment be entered in favor of SCEA and against Defendants for statutory  
16 damages based upon Defendants' violation of the Digital Millennium Copyright Act, 17  
17 U.S.C. §§ 1201-1205;

18 7. That judgment be entered in favor of SCEA and against Defendants for all  
19 damages sustained by SCEA as a result of Defendants' copyright infringement under the  
20 Copyright Act;

21 8. That judgment be entered in favor of SCEA and against Defendants for all profits  
22 received due to Defendants' copyright infringement in violation of the Copyright Act;

23 9. That judgment be entered in favor of SCEA and against Defendants for statutory  
24 damages based upon Defendants' acts of copyright infringement under the Copyright Act;

25 10. That Defendants be required to account for and to pay over to SCEA the  
26 Defendants' profits and damages sustained by SCEA by reason of Defendants' unlawful acts  
27 alleged herein, and that such amounts be trebled as provided by law;

28 ///



1 11. That the Court issue an order requiring Defendants to file with this Court and serve  
2 on SCEA within thirty (30) days after service of an injunction a report, in writing, under oath,  
3 setting forth in detail the manner and form in which Defendants have complied with the  
4 injunction;

5 12. That the Court award SCEA its reasonable attorneys' fees and costs of suit  
6 incurred herein;

7 13. That SCEA be awarded prejudgment and post-judgment interest on the above  
8 damages awards; and

9 14. That SCEA be awarded such other and further relief as the Court deems just and  
10 proper.

11 DATED: January 11, 2011

Respectfully submitted,

12 KILPATRICK TOWNSEND & STOCKTON LLP

13  
14  
15 By: 

JAMES G. GILLILAND, JR.

16 Attorneys for Plaintiff  
17 SONY COMPUTER ENTERTAINMENT AMERICA LLC

18 63091187 v2  
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## Exhibit A

**TERMS OF SERVICE AND USER AGREEMENT**

Version 7.1 (December 7, 2010)

**PLEASE READ THIS ENTIRE AGREEMENT AND INDICATE WHETHER YOU AGREE TO ITS TERMS BY CLICKING THE "ACCEPT" OR "DO NOT ACCEPT" BUTTON AT THE END OF THE AGREEMENT. YOUR ACCESS TO THE PLAYSTATION®NETWORK ("PSN") AND QRIOCITY™ SERVICES ("QRIOCITY") (COLLECTIVELY, "SONY ONLINE SERVICES") IS EXPRESSLY CONDITIONED UPON YOUR ACCEPTANCE OF THE TERMS OF THIS AGREEMENT. IF YOU CLICK THE "DO NOT ACCEPT" BUTTON, YOU WILL NOT BE ABLE TO ACCESS PSN OR QRIOCITY.**

**THIS AGREEMENT IS A CONTRACT BETWEEN YOU AND SONY COMPUTER ENTERTAINMENT AMERICA LLC ("SCEA") AND CAN BE ACCEPTED ONLY BY AN ADULT OF LEGAL AGE OF MAJORITY IN THE COUNTRY IN WHICH YOUR SONY ONLINE SERVICES ACCOUNT IS REGISTERED.** If you are under the legal age of majority, you must ask your parent or legal guardian to consent to this Agreement and Privacy Policy. By clicking the "ACCEPT" button yourself, you affirm that you have reached the legal age of majority and you accept this Agreement. You also affirm that you are accepting this Agreement on behalf of, and all legal and financial responsibility and liability for the actions of, your child and you hereby expressly ratify and confirm any acts of your child and all users of your subordinate accounts ("Sub Accounts").

This Agreement applies to software, content and access to software, content and services provided through or in connection with Sony Online Services, including via the PlayStation®Store and virtual communities, whether delivered onto the PlayStation®3 computer entertainment system, the PSP® (PlayStation®Portable) system, a personal computer, selected BRAVIA® televisions, Sony Blu-ray® Disc players or otherwise. Such access, software, and content include subscriptions, data, system software, fixes, updates or newer releases and related materials.

If you accept this Agreement, you are subject to its terms and all other agreements that you have entered into in connection with Sony Online Services. You agree that you will not directly or indirectly use Sony Online Services (i) in any way for any commercial purpose, (ii) in any way that violates the law or the community code of conduct, or (iii) in any way that harms or has the potential to harm SCEA, its parent company, or any affiliates, subsidiaries, licensors, providers, partners of SCEA or its parent company or users. You agree that you will not use any unauthorized hardware, including peripherals not sold or licensed by a Sony company such as, by way of example only, non-licensed game enhancement devices, controllers, adaptors and power supply devices (collectively, "Non-Licensed Peripherals") or software to access or use Sony Online Services or any content or service provided on or through Sony Online Services.

**I. ACCOUNT REGISTRATION**

To access Sony Online Services, you must create an appropriate Sony Online Service account (either a PSN account or Qriocity account). Through Qriocity's Video on Demand service ("VOD"), you may purchase and view content using

selected BRAVIA® televisions or Sony Blu-ray® Disc players ("VOD Devices"). Through PSN, you may purchase content and services offered on either PSN or Qriocity, such as new levels for your favorite games, comics, movies, television shows or original programs. You may view your content using SCEA-authorized devices, including a PlayStation®3 computer entertainment system, PSP® (PlayStation®Portable) systems, personal computers and VOD Devices. You will also be able to participate in SCEA's online community in PSN and PlayStation®Home, (including chatting via voice and video with your friends) and play games online. Existing PSN accounts will not have to create a separate Qriocity account to enjoy the benefits of Qriocity. If you've created a Qriocity account, you may transition that account to a PSN account. Sony Online Services may not be available, or may not be supported, in some countries and some languages. SCEA reserves the right to deny the creation of any account at its discretion and for any reason. Currently, there is no charge to create a Sony Online Services account, but there may be charges associated with certain online content or services available through Sony Online Services. All information provided during account registration must be truthful and accurate; SCEA reserves the right to cancel any account that uses untruthful or inaccurate information. There are two types of accounts: Master Accounts and Sub Accounts. All accounts must have an associated mailbox for receiving electronic text mail.

If you have reached the legal age of majority, you can create a Master Account for yourself. Where available, each Master Account can create up to six (6) associated Sub Accounts. You are not permitted to create Sub Accounts for adults or persons under the legal age of majority who are not your children or for whom you are not the legal guardian. Your children must be of a certain age in order to have a Sub Account. Sub Accounts may not be available in all countries.

A Master Account has access to and control over the following aspects of its Sub Accounts: (i) financial aspects; (ii) content availability and (iii) certain communication features. Text mail from SCEA that relates to a Sub Account's purchases will be sent to the mailbox of the associated Master Account. At its sole discretion, SCEA may send text mail to the Master Account relating to the Sub Account's other activities. The Master Account holder is jointly and severally legally and financially responsible for the actions of his or her Sub Account holders on Sony Online Services.

Where available, a child under the legal age of majority can only have a Sub Account associated with a Master Account of the child's parent or legal guardian. If you are creating a Sub Account for a child, you must provide (i) your consent for SCEA to disclose, pursuant to SCEA's Privacy Policy, your child's personally identifying information to third parties for the purpose of allowing your child to participate in Sony Online Service activities, such as video and voice chat and gameplay in PSN; and (ii) your credit card information if requested by SCEA for Sub Accounts for children under the age of 13 in the United States and Canada or under the specific age applicable to your country. Your credit card will be used to verify parental consent under laws requiring such consent. You will not be charged a fee for creating the Sub Account. If you do not consent to the disclosure of this requested information, you will not be able to create a Sub Account for the child. If all requested information is provided, a separate email containing a code will be sent to the Master Account's email account with instructions to complete registration by

entering the code into the Sub Account using a personal computer. You will need to create for your child an Online ID that will be associated with the child's PSN Sub Account. **Please note that the Online ID is publicly available to and viewable by all PSN users and your child may receive text emails from any PSN users, including adults, in your child's PSN account mailbox. The parent's Master Account will not be notified of such text emails sent to a child's Sub Account mailbox.** As the parent or legal guardian, it is your sole responsibility to monitor your child's access to or use of Sony Online Services, as well as any communications made or received by your child on or through Sony Online Services.

Some content may be objectionable or inappropriate to some users, including children under a certain age, which may vary from country to country. Please consider your child's age and check any content ratings and descriptions where available, before you access, download or purchase access to any items or permit your child to do so. In some cases, third parties provide ratings or descriptions for items, and SCEA therefore cannot guarantee the accuracy or completeness of such information. In addition, not all content is rated.

Some content that you access on your PlayStation®3 computer entertainment system, PSP® (PlayStation®Portable) system or other SCEA-authorized may be accessible by all users of that system. Please monitor all access to content and communications that may be objectionable or age inappropriate. Parental controls will not apply to certain types of content such as content that is considered user communication, certain categories of downloadable content or certain categories of streamed material. Parental controls may also not apply to some content that is not rated. Your child may not be able to access some content or play games rated for users older than his or her registered age. In some countries, parents and legal guardians with Master Accounts will be permitted to set their parental controls to override content restrictions on certain materials for associated Sub Accounts. Please see the following website for more information: <http://playstation.com/> and <http://qriocity.com/>.

Both Master Account and Sub Account holders select their own sign-in ID and password to gain access to their accounts. PSN account holders must also select their own Online ID. All users should safeguard their account information to prevent use by any other user. Certain information, which may include the Online ID, "About Me" statement, avatar pictures, country/area of residence, preferred language and recently played game titles, will be provided to all PSN users, including children. SCEA shall have no liability for any unauthorized usage of any account. Deletion or termination of a Master Account may result in the deletion and termination of all associated Sub Accounts.

## 2. COMMUNITY CODE OF CONDUCT

You must adhere to the following rules of conduct, and also follow a reasonable, common-sense code of conduct. Users are required to take into consideration community standards and refrain from abusive or deceptive conduct, cheating, hacking, or other misuse of Sony Online Services. Rights of other users should be respected.

The actions that are prohibited include the following:

- You may not engage in deceptive or misleading practices.
- You may not abuse or harass others, including stalking behavior.
- You may not take any action, or upload, post, stream, or otherwise transmit any content, language, images or sounds in any forum, communication, public profile, or other publicly viewable areas or in the creation of any Online ID that SCEA, in its sole discretion, finds offensive, hateful, or vulgar. This includes any content or communication that SCEA in its sole discretion deems racially, ethnically, religiously or sexually offensive, libelous, defaming, threatening, bullying or stalking.
- You may not organize hate groups.
- You may not upload, post, stream, or otherwise transmit any content that contains any viruses, worms, spyware, time bombs, or other computer programs that may damage, interfere with, or disrupt Sony Online Services.
- You may not use, make, or distribute unauthorized software or hardware, including Non-Licensed Peripherals, in conjunction with Sony Online Services, or take or use any data from Sony Online Services to design, develop or update unauthorized software or hardware, including cheat code software or devices that circumvent any security features or limitations included on any software or devices.
- You may not modify or attempt to modify the online client, disc, save file, server, client-server communication, or other parts of any game title, or content.
- You may not cause disruption to any account, system, hardware, software, or network connected to Sony Online Services for any reason, including for the purpose of gaining an unfair advantage in a game.
- You may not attempt to hack or reverse engineer any code or equipment in connection with Sony Online Services.
- You may not provide anyone with your name or any other personally identifying information other than your Online ID, nor the name, password or personally identifying information of any other person or business through any means, including messaging, chat or any other form of PSN communication.
- You may not take any action that SCEA considers to be disruptive to the normal flow of chat or gameplay, including uploading, posting, streaming, or otherwise transmitting any unsolicited or unauthorized material, including junk mails, spams, excessive mails or chain letters.
- You may not introduce content that is commercial in nature such as advertisements, solicitations, promotions and links to web sites.
- You may not introduce content that could be harmful to SCEA, its licensors, or players, such as any code or virus that may damage any property or interfere with the use of the property or Sony Online Services.
- You may not upload, post, stream, access, or otherwise transmit any content that you know or should have known to be infringing, or that violates, any third party rights, any law or regulation, or contractual or

fiduciary obligations.

- You may not impersonate any person, including an SCEA or third party employee.
- You may not provide SCEA or any third party company with false or inaccurate information, including reporting false complaints to our consumer services or providing false or inaccurate information during account registration.
- You may not sell, buy, trade, or otherwise transfer your Online ID, Sony Online Services account or any personal access to Sony Online Services through any means or method, including by use of web sites.
- You may not conduct any activities that violate any local, state or federal laws, including copyright or trademark infringement, defamation, invasion of privacy, identity theft, hacking, stalking, fraud, and the distribution of counterfeit software or Sony Online Services accounts.

Unless otherwise required by applicable law, there is no requirement or expectation that SCEA will monitor or record any activity on Sony Online Services, including communications, although SCEA reserves the right to do so and you hereby give SCEA your express consent to monitor and record your activities and communications. SCEA reserves the right to remove any content and communication from Sony Online Services at SCEA's sole discretion without notice. SCEA may use any data it collects, including the content of your communications, the time and location of your activities, your Online ID and IP address and any other collectable data, to enforce this Agreement or protect the interests of SCEA, Sony Online Services users or SCEA's licensors. Such information may be disclosed to appropriate authorities or agencies. Any other use is subject to the terms of the Privacy Policy. SCEA has no liability for any violation of this Agreement by you or by any other Sony Online Services user.

### 3. ACCESS TO CONTENT

SCEA may provide you with the ability to buy access to a variety of content, including game-specific items, video content, comics and game and subscriptions. All content is provided by SCEA, including content created or published by third parties. Third parties may administer access to some content, including delivery, gameplay or customer service. To enable third parties to provide such access to you, SCEA must provide them with your personal information. If you do not consent to allow us to share your personal information with third parties for the purpose of providing you with access to Sony Online Services content, you will not be able to participate in any Sony Online Services. In order to access certain content, you may be required to accept additional content-specific usage terms and conditions of SCEA or third party companies ("Usage Terms"). Notwithstanding any provision of any other agreement, in the event of any conflict between this Agreement and the Usage Terms or any other terms and conditions in connection with Sony Online Services or any disc-based product used with PSN, this Agreement shall control.

In addition, you may be able to set your PlayStation®3 computer entertainment system or other authorized device to download or receive new content automatically from the PlayStation®Store without further notice to you when you sign into PSN. Such content will be subject to the terms of this Agreement.

#### 4. WALLET

All access to content may only be purchased from SCEA using funds from a wallet associated with your Sony Online Services account. Your existing PSN wallet will be used for purchase of content or services offered on Qriocity. You must transition your Qriocity account to a PSN account for purchase of content or services available on PSN. All purchases made by the Sub Account or the Master Account must be made through the Master Account's wallet. A Sub Account does not have a separate wallet. Master Accounts can set a maximum spending amount for each Sub Account, effective at the beginning of the following month. A Master Account holder can fund the wallet up to a maximum amount determined by SCEA ("Limit"), using either (i) a credit or debit card; (ii) a prepaid card or promotional code with a specified value where available; or (iii) other payment methods approved by SCEA and made available from time to time in each specific country. SCEA has no obligation to reverse or refund unauthorized charges made on your credit or debit card.

Except as otherwise permitted by applicable law or as expressly provided in this Agreement, funds added to the wallet are non-refundable and non-transferable. Wallet funds have no value outside Sony Online Services and can only be used to purchase access to content from SCEA through Sony Online Services. Subject to applicable law, wallet funds that are deemed abandoned or unused by law will not be returned or restored.

#### 5. PREPAID CARDS AND PRODUCT CODES

SCEA may provide prepaid cards that allow users to redeem content on Sony Online Services or fund the wallet. The value of a prepaid card contributes to the Limit. If you acquire a prepaid card that has a value that, when added to the wallet's existing balance, exceeds the Limit, you will not be able to apply the value of the prepaid card to the wallet until sufficient funds have been spent from the wallet to allow the sum of the full value of the prepaid card and wallet to be equal to or less than the Limit. Except as permitted by SCEA, the Master Account wallet will only accept prepaid cards with currency value from the same country as the one designated for the Master Account.

SCEA or third parties may provide product codes which can be used to access content, including promotional content. Product codes may not be available in all countries or to all users, and age restrictions may apply. Some product codes must be used before a specified expiration date and in accordance with specified terms and conditions. Unless otherwise stated, product codes may be used once only by the recipient and may not be transferred or sold to any other person.

SCEA is not responsible or liable for any claims arising as a result of prepaid cards or product codes, including any problems or defects in connection with prepaid cards or product codes. Your use of the prepaid card in the United States and Canada is subject to terms and conditions at <http://www.us.playstation.com/card>. Additional terms and conditions may accompany the prepaid card or the product code.

#### 6. PURCHASES AND TRANSACTIONS



All purchases and transactions on any Sony Online Service are solely between you and SCEA. By completing a transaction through your Master Account or allowing a transaction to take place through an associated Sub Account, you are (i) agreeing to pay for all purchases made by the Master Account and its associated Sub Accounts, including recurring charges for subscriptions that are not cancelled; (ii) authorizing SCEA to deduct from the wallet and charge your credit card all applicable fees due and payable for all purchases made by the Master Account and its associated Sub Accounts; and (iii) agreeing to any applicable Usage Term and the terms and conditions associated with use of the particular content or service. To the extent permitted by applicable law, all sales are final upon the completion of your purchase, including purchase of rental content, subscriptions and other prepaid products or services. To the extent permitted by applicable law, access to content is not transferable except as expressly allowed under applicable terms of service. Prior to your purchase, you are encouraged to review description of the content or service you are acquiring and the content itself, where available (such as trailers, previews and demos). SCEA reserves the right to deduct from the wallet any fee, penalty or other charge resulting from a Master Account holder's request to the Master Account holder's credit card company to reverse charges for a purchase. SCEA reserves the right to terminate the Master Account and all Sub Accounts associated with the Master Account for failure to pay for purchases, among other things. In lieu of termination of the Master Account, SCEA may elect to provide a mechanism by which a Master Account may fund the wallet to prevent the Master Account and its associated Sub Accounts from being terminated. Except as otherwise provided, all transactions are made in the currency of your country of residence. Features, specifications, prices, services and content are subject to change or withdrawal at any time and SCEA does not provide any refunds in the event of a price drop, a subsequent promotional offering or product removal. Special product, prices and promotions are no longer valid once they are changed or removed. Prices listed do not include sales tax. Applicable sales tax will be calculated and added at the time you purchase access to the specific content. In certain jurisdictions, local laws require that prices include all applicable taxes, in which case this will be indicated at the time of purchase. To the extent permitted by applicable law, all sales are subject to the laws of the State of California, County of San Mateo.

You may be able to make purchases only from a designated Sony regional company which is determined by your country/area of residence. Your country/area of residence may be verified by your credit or debit card number and may be rejected if the information does not match. If you are a Master Account holder, you will receive an email summary for each purchase after it is made, if you have given us a valid, current, operational email address. Please print and retain these emails for your records. You can view your purchase history in the account management area.

Although SCEA will try to ensure that all prices, product descriptions, and its associated terms and conditions are accurate, errors may occur. If we discover an error in the price of items you have ordered, we will contact you promptly. You will have the option of either reconfirming your order at the correct price or canceling it. If we are unable to contact you, your order will be cancelled.

Upon SCEA's confirmation of your purchase, access to the purchased item will be made available to you through your Sony Online Services account that you used to purchase the item, until such time as SCEA removes the item. We encourage you to

download or access your purchased item immediately after purchase. You bear all risk of loss for accessing your content, including completing the download of any content, ensuring that you have the necessary capabilities to view your content, including content provided at high resolution/definition, and for any loss of content you have downloaded, including any loss due to a file corruption or hard drive crash. You are solely responsible if you do not choose to download or access the content before it is removed and for ongoing storage and safekeeping of your content. SCEA is not obligated to provide you with replacement copies for any reason.

If you do not have sufficient funds in your wallet to make a purchase and you have previously entered your credit card information, we may automatically charge your credit card a minimum amount determined by SCEA ("Minimum Fee") to make the purchase, even if the Minimum Fee exceeds the cost of your purchase. Any difference between the Minimum Fee and the cost of the purchase will be credited to your wallet. Additional procedures apply to subscription purchases. Please read Section 10 ("SUBSCRIPTIONS") of this Agreement for details. Purchases of access to content or services are not refundable.

#### **7. GENERAL LICENSE RESTRICTIONS AND TERMS**

Except as stated in this Agreement, all content and software provided through Sony Online Services are licensed non-exclusively and revocably to you, your children and children for whom you are a legal guardian (collectively for purposes of this section, "You" or "Your"), solely for Your personal, private, non-transferable, non-commercial, limited use on a limited number of activated PlayStation®3 computer entertainment systems, PSP® (PlayStation®Portable) systems, VOD Devices and any other hardware devices, including peripherals that are sold or licensed by a Sony company, authorized by SCEA in the country in which your account is registered. All intellectual property rights subsisting in Sony Online Services, including all software, data, and content subsisting in or in connection with the operation of Sony Online Services, the Online ID, the access to content and hardware used in connection with Sony Online Services (collectively defined as "Property"), belong to SCEA and its licensors. All use or access to Property shall be subject to the terms of this Agreement, other applicable agreements, if any, and all applicable copyright and intellectual property rights laws. You may not sell, rent, sublicense, modify, adapt, translate, reverse engineer, decompile, or disassemble any portion of the Property. Except as stated in this Agreement or otherwise expressly permitted by SCEA in writing, you may not reproduce or transfer any portion of the Property. You may not create any derivative works, attempt to create the source code from the object code, or download or use any Property for any purpose other than as expressly permitted. You may not bypass, disable, or circumvent any encryption, security, digital rights management or authentication mechanism in connection with Sony Online Services or any of the content or service offered through Sony Online Services. You acknowledge that Sony Online Services and content or service provided through Sony Online Services, may contain security or technical features that will prevent use of such content or service in violation of this Agreement. The Property is not licensed to you for resale, public performance, display, distribution or broadcast. You acknowledge that some content providers and licensors are intended third party beneficiaries who have rights to enforce this Agreement against you and your permitted users. Except as expressly granted in this Agreement, SCEA and its licensors reserve all rights, interests, and remedies in connection with Sony Online

Services and the Property.

Additional terms and conditions, including use restrictions or purchase requirements may apply to a particular item. Use or license terms may be more restrictive depending on the item. Please read carefully all specific terms of use for a particular content or service before purchasing or accepting SCEA's offer. The restrictions to which a particular content or service is subject are in the sole discretion of SCEA or its licensors and are subject to change at any time. Use of the terms "purchase," "sale," "sold," "sell," "rent" or "buy" on or in connection with Sony Online Services shall not mean or imply any transfer of ownership of any content, data or software or any intellectual property rights therein from SCEA or its licensors to any user or third party. All other company, product, and service names and logos referenced on Sony Online Services are the marks, trade names, trademarks/service marks, and registered trademarks/service marks ("Marks") of their respective owners. You may not use or reproduce any Marks without the owner's express written consent. You may not remove any proprietary notices or labels from any content.

#### 8. VIDEO CONTENT

You may use either your Qriocity account or PSN account to purchase video content. Subject to the terms of this Agreement and any additional terms and conditions for the particular content, SCEA licenses digitalized content of programs, including television shows and movies ("Video Content") to you for your personal, private, non-commercial viewing in the United States only using a limited number of activated PlayStation®3 computer entertainment systems, PSP® (PlayStation®Portable) systems, personal computers ("PSN Devices") and VOD Devices (collectively, "Authorized Devices") during the authorized viewing period ("Authorized Term"). Video Content may be made available to you as a rental or purchase. You may rent the content for a limited duration ("Rental Content"), or enjoy the content continuously ("Sold Content"). Use of Video Content is subject to certain digital rights management rules and terms and conditions of this Agreement. Except for rights explicitly granted to you, all rights in the Video Content are reserved by SCEA and its third party licensors.

Only one copy of Rental Content may be viewable on an Authorized Device and each copy will have a rental time period ("Rental Period") during which you can first start playback for that copy. The Rental Period for each copy of Rental Content will be displayed to you prior to you finalizing your rental purchase. Once you start the first playback for your copy of Rental Content, that copy is viewable for up to 24 hours. After such time, you will not be able to view the Rental Content. Rental Content may not be reproduced.

You may select which Authorized Device you want to use to view your Rental Content. If you have a Qriocity account, you may view your content from any one of your activated VOD Devices only. If you have a PSN account, you may view your Rental Content purchased on PSN or Qriocity from any one of your activated Authorized Devices, except that if the Rental Content is in high definition format, it may be viewed on one (1) activated PlayStation®3 computer entertainment system or one (1) VOD Device. Rental Content may not be transferred between a PSN Device and a VOD Device. Once playback has started on a VOD Device, you may not view that content using any other Authorized Device without another purchase.

However, if you start playback on a PSN Device, the account that purchased the Rental Content may, during the Authorized Term, transfer that content to a limited number of activated PSN Devices, as described below.

Rental Content in standard definition format downloaded onto a PlayStation®3 computer entertainment system or a personal computer may be transferred to up to three (3) PSP® (PlayStation®Portable) systems. Rental Content in standard definition format for use with a PSP® (PlayStation®Portable) system may be transferred to up to one (1) PlayStation®3 computer entertainment system and two (2) personal computers.

You may view Sold Content for an unlimited number of times on an activated PSN Device only. The account that purchased the Sold Content may copy that content to a limited number of PSN Devices, as described below.

Sold Content in standard definition format downloaded onto a PlayStation®3 computer entertainment system or a personal computer may be copied for use on up to three (3) PSP® (PlayStation®Portable) systems. Sold Content in standard definition format for use with a PSP® (PlayStation®Portable) system may be copied for use on up to one (1) PlayStation®3 computer entertainment system and two (2) personal computers. Sold Content in high definition format may be viewed on only one (1) activated PlayStation®3 computer entertainment system.

**You may have the option to purchase Video Content in high definition and standard definition format. You acknowledge that delivery of content is dependent on variables not under SCEA's control, including but not limited to, the speed and availability of your broadband or network connection. You may experience delays or technical difficulties caused by or related to such variables. If you have purchased Video Content and view it using a VOD Device, you may not be able to view your content in the format that you've purchased due to such variables. To the extent permitted by applicable law, you will not receive a refund or credit for any content that you are not able to view or have difficulty viewing due to such variables. We strongly encourage you to purchase content suitable for your viewing capabilities. You bear all responsibility for ensuring that you have the viewing capabilities to view content in the appropriate format or at all.**

Proper activation of an Authorized Device by the account that purchased the Video Content is required for all downloads, transfers, copies and viewings. Purchase of Video Content is connected to the purchasing account. An account can activate no more than the maximum number of Authorized Devices, regardless of the number of copies of Video Content purchased. Video Content may not be transferred from one account to another. You may not exceed the total number of accounts on any Authorized Device. Please refer to <http://playstation.com/> and <http://qriocity.com/> for more information on the total number of permitted Sony Online Services accounts. SCEA reserves the right to limit the number of times an Authorized Device may be activated or deactivated.

Downloading or streaming is not permitted outside the Authorized Term. In addition, once Video Content has been downloaded or accessed, you will not be able to download it again from PSN without purchase of another copy.

Some content such as movie trailers may not be representative of the actual feature presentation. Digitalized versions of some content may not be identical with the original formatted content or previously released versions of the same titled content.

Video Content will play on displays ranging from standard definition to 1080p depending on the content. Video output in certain formats may require additional equipment, sold separately.

For more information on Video Content available on PSN, please visit <http://playstation.custhelp.com/>. For more information on Rental Content available on Qriocity, please visit <http://qriocity.com/>.

For specific information on ratings for some Video Content, please visit [http://www.mpaa.org/FilmRat\\_Ratings.asp](http://www.mpaa.org/FilmRat_Ratings.asp) and <http://tv.guidelines.org/>.

## 9. COMIC CONTENT

Subject to the terms of this Agreement and any additional terms and conditions for the particular content, SCEA licenses to PSN account holders digital comic book content ("Comic Content") via purchase or download on PSN for your personal, private, non-commercial viewing in the United States on up to three (3) activated PSP® (PlayStation®Portable) system(s). Additional software for viewing Comic Content may be required. Except for rights explicitly granted here, all rights in Comic Content are reserved by SCEA and its third party licensors.

Some Comic Content may not be identical with the original formatted content or versions of the same titled content not provided by SCEA.

## 10. SUBSCRIPTIONS

SCEA may offer you the opportunity to purchase subscriptions that provide access to particular products or services for a specified period of time. **Subscriptions renew automatically unless you cancel the subscription. The cost of each subscription will automatically be deducted from your wallet at the beginning of each subscription term without further notice to you.** Subscriptions may not be shared among any PSN accounts, including the Master Account with its associated Sub Accounts.

Some subscriptions may be single-product- or service-specific, while other subscriptions may be comprised of several content items, services or features, which may include special offers, discounted, free, paid-for, exclusive or early access content or automatic download of SCEA selected content. Individual content items and service within a composite subscription may also be offered for sale separately as a one-time purchase or single-product-specific subscription. Subscription charges may be increased at the end of each subscription term. **As each product offering will have terms and conditions that vary, please review each product description, cost and subscription term carefully before purchase or download. As with all purchases, please print and retain a copy of your email purchase receipt for your reference.**

SCEA may also offer a free trial period with some subscriptions. If you do not cancel your subscription before expiration of a trial period, your wallet will

automatically be charged the cost of the subscription at the beginning of each subscription term without further notice to you. To avoid being charged, you must cancel your subscription prior to expiration. **Please review all terms and conditions carefully before you accept any offer or promotion.**

If you do not have sufficient funds in your wallet to cover the cost of your subscription at the time the subscription is renewed, the subscription will be cancelled unless the automatic funding feature on the Master Account is set to "ON." If the automatic funding feature on the Master Account is set to "ON," your credit card will be charged automatically the greater of the subscription cost or the Minimum Fee. **Every time you or one of your associated Sub Accounts purchases a new subscription, the automatic funding feature in the Master Account is set automatically to "ON." The Master Account holder may change this setting to "OFF" at any time. However, the setting will return to "ON" upon subsequent purchase of any subscription, so setting your automatic funding feature to "OFF" may not effectively cancel your subscription. In order to stop receiving a subscription and avoid being charged, you must cancel your subscription in the Account Management area.**

If you no longer wish to receive your subscription, you must cancel your subscriptions via PSN account management or contact SCEA's customer service at <http://www.us.playstation.com/Corporate/ContactUs> or the address located at the end of this Agreement. Cancellation will take effect at the beginning of the next subscription term. **Except as otherwise stated in this Agreement, upon cancellation of your subscription or termination of the Master Account or Sub Account, you will not receive a refund or credit for any subscriptions for which you have paid.** Further, you will not be able to access content or services provided in your subscription except as permitted by SCEA. Content which you downloaded onto a device and which was provided to you through a subscription at no additional cost beyond the subscription price may not be accessible. Game play information, including trophies earned during a trial offer, promotional period or subscription term may not be available.

## 11. MAINTENANCE AND UPGRADES

From time to time, it may become necessary for SCEA to provide certain content to you to ensure that Sony Online Services and content offered through Sony Online Services, your PlayStation®3 computer entertainment system, the PSP® (PlayStation® Portable) system or other SCEA-authorized hardware is functioning properly in accordance with SCEA guidelines. Some content may be provided automatically without notice when you sign in. Such content may include automatic updates or upgrades which may change your current operating system, cause a loss of data or content or cause a loss of functionalities or utilities. Such upgrades or updates may be provided for system software for your PlayStation®3 computer entertainment system, the PSP® (PlayStation® Portable) system, or other SCEA-authorized hardware. Access or use to any system software is subject to terms and conditions of a separate end user license agreement found at <http://www.us.playstation.com/termsfuse>. You authorize SCEA to provide such content and agree that SCEA shall not be liable for any damages, loss of data or loss of functionalities arising from provision of such content or maintenance services. It is recommended that you regularly back up any archivable data located on the hard

disk.

## 12. USER MATERIAL AND INFORMATION

You may have an opportunity to permit SCEA to share with third parties information relating to your participation in Sony Online Services, including your sign-in ID, friend's list, communications, purchase history and game play history ("Information"). If you choose to do so, use or distribution of your Information on any third party website or service may be subject solely to that third party's terms of service and privacy policy. Before electing to share your Information, please be aware of the kinds of Information you will be sharing and review the third party's terms of service and privacy policy. SCEA may also provide your Information to its subsidiaries or affiliates and vendors in order to provide you the Sony Online Services. You hereby authorize SCEA to use, distribute, copy, display, and publish your Information for any legitimate business purpose, including tournaments and ranking, without payment to you. In addition, you will have the option to create, post, stream or transmit content such as pictures, photographs, game related materials, or other information through PSN to share with others ("User Material"), provided no rights of others are violated. To the extent permitted by law, you authorize and license SCEA a royalty free and perpetual right to use, distribute, copy, modify, display, and publish your User Material for any reason without any restrictions or payments to you or any third parties. You further agree that SCEA may sublicense its rights to any third party, including its affiliates and subsidiaries. You hereby waive all claims, including any moral rights, against SCEA, its affiliates and subsidiaries for SCEA or any third party's use of User Material to the extent permitted by applicable law. By creating, posting, streaming, or transmitting any User Material, you represent and warrant that you have the appropriate rights to use, create, post, distribute, and transmit User Material and to grant SCEA the foregoing license. You further agree to cooperate with SCEA in resolving any dispute that may arise from your Information or User Material. SCEA reserves the right to remove any Information or User Material at its sole discretion.

Some games played on or provided through PSN may have features that allow your information, including game play, Online ID, Friend's list, messages and related gaming information to be recorded by a user and distributed to any third party publicly, including users outside of PSN. You agree that any third party may record, use and distribute such information for any reason without any restrictions or compensation to you. Additional terms and conditions may apply, including SCEA's Privacy Policy and the terms and conditions of any game publisher or service provider. Please review all terms carefully. If you do not want your information to be used, recorded or distributed, please do not play the game online through PSN.

Through your use of Sony Online Services, you may be provided with information about SCEA's or a third party's products or services. This information includes, but is not limited to, promotions, advertisements, product placements or marketing materials within Sony Online Services or a game, irrespective of whether the game is connected with or provided through PSN. You agree that SCEA and its partners and providers may collect information regarding your activities, access, or game play, and may use and distribute such information subject to the terms of SCEA's Privacy Policy or the policies of third parties where applicable. SCEA does not endorse any of the third party products or services advertised, promoted or

marketed.

### 13. TERMINATION / CANCELLATION

If SCEA determines in its sole discretion that you or your associated Sub Accounts have violated any term of this Agreement, the Usage Terms, or any other terms and conditions connected with Sony Online Services or have otherwise injured or damaged the Sony Online Services community, SCEA may take all actions to protect its interests, including termination or suspension of your Sony Online Services account (both the Master Account and any associated Sub Accounts), automatic removal or blockage of content, implementation of upgrades or devices intended to discontinue unauthorized use, or reliance on any other remedial efforts as necessary to remedy the violation. If the violation is in connection with content that you or your Sub Accounts have accessed, you must immediately cease use of such content and delete all copies from all of your devices. Upon termination of your account for any reason, you will not receive a refund for items (including subscriptions and pre-paid products or services), value accumulated on in-game items or any unused balance in your wallet except as required by law or as expressly provided in this Agreement. Any game ranking or scores, or information in connection with Sony Online Services will not be retained or accessible by you or your associated Sub Accounts. In some situations, we may suspend or terminate your Master Account, but permit you to retain your associated Sub Accounts. If you do not terminate your Sub Accounts, you will be liable for all their acts. You may not alter any of the settings on your Master Account, including parental control settings placed on your Sub Accounts prior to the termination or suspension of your Master Account. Your Sub Accounts will be permitted to use the remaining funds in your wallet provided that the Sub Account has not exceeded the limit you placed on the Sub Account. Additionally, you will not receive further correspondence from SCEA about your Sub Accounts, including purchases made by your Sub Accounts. SCEA reserves the right to bring legal action and to participate in any government or private legal action or investigation relating to your conduct, which may require the disclosure of your information. Unless as otherwise stated in this Agreement, SCEA, at its sole discretion, may indefinitely suspend, or discontinue any and all online access to content at any time, including for maintenance service or upgrades, without prior notice or liability.

### 14. GENERAL LEGAL

SCEA, at its sole discretion, may modify the terms of this Agreement at any time, including imposing a fee for creating PSN accounts. By accepting this Agreement or by accessing Sony Online Services, you agree to be bound by all current terms of the Agreement. To access a printable, current copy of this Agreement, go to <http://www.us.playstation.com/termsfuse> or <http://www.qriocity.com> on your personal computer. If material changes to this Agreement are made, you will be notified by e-mail or a posting as you sign in to Sony Online Services. If necessary, you will be given additional choices regarding such change(s). Your continued use of Sony Online Services, including use of your associated Sub Account(s), will signify your acceptance of these changes. If you do not accept material changes to the Agreement, then you may contact us to terminate this Agreement and your account(s). If there are funds in your wallet as of the date SCEA terminates your account, those funds may be refunded to you and you will not be able to access Sony



#### Online Services.

This Agreement shall inure to the benefit of the parties, including any successors in interest of SCEA. SCEA has the right to assign any and all of its rights and obligations hereunder to any affiliate(s) or to any company in the Sony family group of companies.

If any provision of this Agreement is held illegal or otherwise unenforceable by a court of competent jurisdiction, that provision shall be severed and the remainder of the Agreement shall remain in full force and effect.

Except as otherwise required by applicable law, this Agreement shall be construed and interpreted in accordance with the laws of the State of California applying to contracts fully executed and performed within the State of California. Except as otherwise required by applicable law, both parties submit to personal jurisdiction in California and further agree that any dispute arising from or relating to this Agreement shall be brought in a court within San Mateo County, California. In the event of litigation to enforce any part of this Agreement, all costs and fees, including attorney's fees, shall be paid by the non-prevailing party to the extent permitted by applicable law.

#### 15. WARRANTY DISCLAIMER AND LIMITATION OF LIABILITY

No warranty is given about the quality, functionality, availability or performance of Sony Online Services, or any content or service offered on or through Sony Online Services. All services and content are provided "AS IS" and "AS AVAILABLE" with all faults. SCEA does not warrant that the service and content will be uninterrupted, error-free or without delays. In addition to the limitations of liability in Sections 1, 2, 11 and 13 of this Agreement, SCEA expressly disclaims any implied warranty of merchantability, warranty of fitness for a particular purpose and warranty of non-infringement. SCEA assumes no liability for any inability to purchase, access, download or use any content, data or service. **YOUR SOLE AND EXCLUSIVE RECOURSE IN THE EVENT OF ANY DISSATISFACTION WITH OR DAMAGE ARISING FROM SONY ONLINE SERVICES OR IN CONNECTION WITH THIS AGREEMENT AND SCEA'S MAXIMUM LIABILITY UNDER THIS AGREEMENT OR WITH RESPECT TO YOUR USE OF OR ACCESS TO SONY ONLINE SERVICES SHALL BE LIMITED TO YOUR DIRECT DAMAGES, NOT TO EXCEED THE UNUSED FUNDS IN YOUR WALLET AS OF THE DATE OF TERMINATION. EXCEPT AS STATED IN THE FOREGOING SENTENCE, SCEA EXCLUDES ALL LIABILITY FOR ANY LOSS OF DATA, DAMAGE CAUSED TO YOUR SOFTWARE OR HARDWARE, AND ANY OTHER LOSS OR DAMAGE SUFFERED BY YOU OR ANY THIRD PARTY, WHETHER DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL AND HOWEVER ARISING, AS A RESULT OF ACCESSING OR DOWNLOADING ANY CONTENT TO YOUR PLAYSTATION®3 COMPUTER ENTERTAINMENT SYSTEM, THE PSP® (PLAYSTATION®PORTABLE) SYSTEM, BRAVIA® TELEVISION, SONY BLU-RAY® DISC PLAYER OR ANY HARDWARE DEVICE, OR USING OR ACCESSING SONY ONLINE SERVICES. UNLESS THIS PROVISION IS UNENFORCEABLE IN YOUR JURISDICTION, THE**

**FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.** Internet Service Provider fees are the full responsibility of the user. Authorized Devices sold separately.

#### **16. PHOTSENSITIVITY NOTICE**

A very small percentage of individuals may experience epileptic seizures or blackouts when exposed to certain light patterns or flashing lights. Exposure to certain patterns or backgrounds on a television screen or when playing content such as video games may trigger epileptic seizures or blackouts in these individuals. These conditions may trigger previously undetected epileptic symptoms or seizures in persons who have no history of prior seizures or epilepsy. If you, or anyone in your family has an epileptic condition or has had seizures of any kind, consult your physician before playing. **IMMEDIATELY DISCONTINUE** use and consult your physician before resuming play. If you or your child experience any of the following health problems or symptoms: (i) dizziness; (ii) altered vision; (iii) eye or muscle twitches; (iv) loss of awareness; (v) disorientation; or (vi) seizures or any involuntary movement or convulsion. **RESUME PLAY ONLY ON APPROVAL OF YOUR PHYSICIAN.**

Use and handling of content, including video games, to reduce the likelihood of a seizure: (i) use in a well-lit area and keep as far away as possible from the television screen; (ii) avoid large screen televisions; (iii) use the smallest television screen available; (iv) avoid prolonged use of the PlayStation® system; (v) take a 15-minute break during each hour of play; or (vi) avoid playing when you are tired or need sleep.

Stop using the content or Sony Online Services immediately if you experience any of the following symptoms: lightheadedness, nausea, or a sensation similar to motion sickness, discomfort or pain in the eyes, ears, hands arms, or any other part of the body. If the condition persists, consult a doctor.

#### **17. 3D DEVICE USE NOTICE**

Some people may experience discomfort (such as eye strain, eye fatigue or nausea) while watching 3D video images or playing stereoscopic 3D games on 3D televisions. If you experience such discomfort, you should immediately discontinue use of your television until the discomfort subsides.

SCEA recommends that all viewers take regular breaks while watching 3D video or playing stereoscopic 3D games. The length and frequency of necessary breaks may vary from person to person. Please take breaks that are long enough to allow any feelings of discomfort to subside. If symptoms persist, consult a doctor.

The vision of young children (especially those under six years old) is still under development. SCEA recommends that you consult your doctor (such as a pediatrician or eye doctor) before allowing young children to watch 3D video images or play stereoscopic 3D games. Adults should supervise young children to ensure they follow the recommendations listed above.

PLEASE CONTACT SONY COMPUTER ENTERTAINMENT AMERICA LLC CONSUMER SERVICES FOR FURTHER INFORMATION OR QUESTIONS VIA OUR WEBSITE <http://www.us.playstation.com/Corporate/ContactUs> OR BY PHONE AT 877-971-7669 OR AT THE FOLLOWING ADDRESS: SONY COMPUTER ENTERTAINMENT AMERICA LLC CONSUMER SERVICES DEPARTMENT, P.O. BOX 5888, SAN MATEO, CALIFORNIA, 94402-0888, UNITED STATES OF AMERICA. YOU MAY ALSO CONTACT US FOR FURTHER INFORMATION ON QRIOCITY VIA OUR WEBSITE <http://www.qriocity.com> OR BY PHONE TOLL FREE AT 888-868-1986, TOLL CALL AT 239-768-7669 OR AT THE FOLLOWING ADDRESS QRIOCITY CONSUMER SERVICE, SONY NETWORK ENTERTAINMENT INTERNATIONAL LLC, 6080 CENTER DRIVE, SUITE 1000, LOS ANGELES, CALIFORNIA, 90045, UNITED STATES OF AMERICA.

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