

This is an **archived** copy of the Holvonix LLC Terms of Service and Privacy Policy **effective as of January 23, 2018**.

You may find the **current** revisions at:

- Terms of Service - <https://holvonix.com/legal/terms.html>
- Privacy Policy - <https://holvonix.com/legal/privacy-policy.html>

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# Holvonix LLC Terms of Service

Effective January 23, 2018

These Terms of Service (“**Terms**”) govern your access to and use of all Services (as that term is defined below). By accessing or using any Service, you agree to be bound by these Terms. You may use a Service only if you comply with these Terms and all applicable laws and are not barred from receiving Services under the laws of any applicable jurisdiction. **PLEASE READ THESE TERMS CAREFULLY. THESE TERMS INCLUDE PAYMENT AND REFUND POLICIES, A BINDING ARBITRATION CLAUSE, A CLASS ACTION WAIVER, DISCLAIMERS OF WARRANTIES, LIMITATIONS OF LIABILITY, AND OTHER IMPORTANT CLAUSES THAT AFFECT YOUR LEGAL RIGHTS.**

“**We**,” “**us**” and “**our**” refer to Holvonix LLC, a California (USA) limited liability company (“**Holvonix**”).

“**App**” means any app that we provide and any products and services that may be associated with that app.

“**Website**” means any website that we provide and any products or services that may be associated with that website.

“**Licensed Content**” means any content (including, but not limited to, graphic art, soundtracks, and videos) that we provide without specifying separate license terms.

“**Service**” means any App, Licensed Content, or Website, and “**Services**” means all Apps, Licensed Content, and Websites. **Regardless of the use of the terms “purchase,” “buy” or similar terms, SERVICES ARE LICENSED (subject to these Terms), NOT SOLD.**

“**You**” and “**your**” refer to each user of a Service and, as applicable, any individual or entity on behalf of which such individual uses such Service.

## 1. Permissible Users

You affirm that you are at least 13 years of age. **If you are younger than 13 years old, you may not use any Service.**

By using a Service, you represent that you are at least 18 years of age or the age of majority in your jurisdiction (whichever is greater), or if you are under 18 years of age or the age of majority in your jurisdiction (whichever is greater) but are at least 13 years old (a “**Minor**”), that you are using such Service with the consent of your parent or legal guardian and that you have received your parent’s or legal guardian’s permission to use the Service and agree to these Terms.

If you are a parent or legal guardian of a Minor, you hereby agree to bind the Minor to these Terms and to fully indemnify us and hold us harmless if the Minor breaches any of these Terms. Furthermore, you agree that you will be responsible for paying any charges that the Minor may incur in the course of using any Service, including without limitation charges for in-App purchases (see Section 4).

## 2. Your License to Use Services

Subject to and so long as you comply with these Terms, we hereby grant to you a limited, revocable, nontransferable, non-sublicensable license to (i) use each Service for which you have paid all associated fees (if any), and (ii) incorporate into User Content (as that term is defined below) any products that Holvonix may provide to you expressly for that purpose (“Tool Content”) and distribute such Tool Content only with its associated User Content. This license is further subject to any restrictions upon such activities that may be required to comply with provisions governing your use of any third-party content that is incorporated into, or that you otherwise use in connection with, each Service.

You agree that your rights hereunder, including without limitation rights pertaining to any in-App purchases that you have made, have value solely with respect to the Services as set forth herein and cannot be exchanged for money, goods or services.

You are responsible for maintaining in confidence any security credentials that are associated with your use of any Service and for not disclosing those credentials to any third party. If you become aware of any unauthorized use of such credentials, you agree to notify us immediately.

Except and solely to the extent that you are a parent or legal guardian acting on behalf of a Minor, you may not facilitate the use of any Service by any third party (“**Unauthorized Use**”), whether by providing to any third party, directly or indirectly, your security credentials associated with any Service, any device by which you gain access to any Service, or otherwise. We will not be liable to you or to any third party for any loss or damage arising from any Unauthorized Use.

You may not:

- Provide any false information or impersonate anyone else when using any Service
- Allow anyone else to impersonate you for the purpose of using any Service
- Take any action to disable any Service or impair its operation
- Use any Service in a way that violates any local, state or national law, regulation or order of any court or any intellectual property or other right of any third party
- Reverse engineer, decompile, or disassemble any Service, except and only to the extent that such activity is expressly permitted by (i) applicable law notwithstanding this limitation or (ii) open source software licenses as discussed in Section 5
- Distribute Tool Content on a standalone basis or in a way that violates the rights of our licensors or other third party
- Facilitate or encourage any violations of these Terms

If we present to you any additional policies regarding your use of a particular Service (“**Service-Specific Policies**”), you agree to comply with all such Service-Specific Policies with respect to that Service.

Any Service or component thereof may require Internet connectivity to function. Messaging and data rates may apply. You must comply with applicable third party agreements (for example, your wireless data service agreement) when using any Service.

“**Prohibited Content**” means any content that (i) falsely implies our endorsement of, recommendation of, or association with any third party, (ii) uses our name or any of our trade names, trademarks, or service marks in violation of these Terms or any applicable law, (iii) violates the terms or policies of any third party to which such content is provided, or (iv) is or includes any hate speech, threatening statement, incitement to violence, pornography, nudity, or graphic or gratuitous violence. You may not use any Service to create or distribute any Prohibited Content.

**It is solely your responsibility to ensure that making or distributing (i) any User Content (as that term is defined below) or (ii) any recording of your use of an App does not violate any rights of third parties, including without limitation any privacy, publicity, or intellectual property rights of other users or our licensors.**

### 3. Our Ownership and License Rights

We and, as applicable, our licensors, retain all right, title, and interest in and to the Services and all data created by the Services (except User Content, as that term is defined below), and all intellectual property rights in all of the foregoing.

You may not reproduce, publish, transfer, sell, lease, sublicense, distribute, or make derivative works of any Service or any information contained therein.

**“User Content”** means any content, including without limitation any screen capture, video or audio recording, that you create or distribute using any Service, including any Tool Content that may be incorporated therein. You retain your rights to all User Content, except for any Tool Content that is incorporated therein, with respect to which we and, as applicable, our licensors own all rights. If you share any User Content with any third party, you hereby grant to us a perpetual, irrevocable, royalty-free, non-exclusive, worldwide license, including a right to grant sublicenses, to use, store, reproduce, adapt, modify, translate, publicly distribute, publicly perform, publicly display, and create derivative works of such User Content and such derivative works. You agree not to include any Prohibited Content in any User Content.

You hereby waive all moral rights relating to User Content, including, without limitation, any and all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as “moral rights,” “artist’s rights,” “droit moral,” or the like. This waiver applies to rights of identification of authorship and any and all rights of approval, restriction or limitation on use, or subsequent modification or destruction.

The Services may use any or all of the information described in the [Privacy Policy \(link: https://holvonix.com/legal/privacy-policy.html\)](https://holvonix.com/legal/privacy-policy.html). You consent to our using, transmitting, and storing this information. In addition, you hereby grant to us a perpetual, irrevocable, royalty-free, non-exclusive, worldwide license, including a right to grant sublicenses, to use, store, reproduce, adapt, modify, translate, publicly distribute, publicly perform, publicly display, and create derivative works of all such information and such derivative works. Furthermore, you may disclose information to third parties as described in Section 2 of the [Privacy Policy \(link: https://holvonix.com/legal/privacy-policy.html\)](https://holvonix.com/legal/privacy-policy.html) and we may share your information with third parties as described in Section 3 of the [Privacy Policy \(link: https://holvonix.com/legal/privacy-policy.html\)](https://holvonix.com/legal/privacy-policy.html). You hereby grant to us a perpetual, irrevocable, royalty-free, non-exclusive, worldwide license, including a right to grant sublicenses, to use, store, reproduce, adapt, modify, translate, publicly distribute, publicly perform, publicly display, and create derivative works of all such information and transmit such information and derivative works to such third parties. In addition, you grant to each such third party a perpetual, irrevocable, worldwide, royalty-free, non-exclusive license, including a right to grant sublicenses, to use, store, reproduce, adapt, modify, translate, publicly distribute, publicly perform, publicly display, and create derivative works of such information.

Services may contain digital rights management (“DRM”) technology and/or anti-cheat technology that help enforce these Terms and protect our rights and the rights of our licensors, and you consent to the use of such technology. You agree not to circumvent DRM and anti-cheat technology, except as (and only to the extent) expressly permitted by applicable law notwithstanding this limitation or by open source software licenses (as discussed in Section 5).

You acknowledge that we may use Services to present advertisements or referral or affiliate links (**“Advertising Content”**) to you and that we may be compensated by third parties for doing so or when you or others interact with Advertising Content. Furthermore, you agree that: (i) we may include Advertising Content in any content you share using a Service; (ii) neither we nor any third party owe any compensation with regards to Advertising Content to you or to anyone with whom Advertising Content is shared; and (iii) you are solely responsible for following all applicable laws, regulations, and third-party policies regarding your sharing of Advertising Content.

You understand that by using any Service, you may encounter content that may be deemed offensive, indecent, or objectionable, which content may or may not be identified as having explicit language. Nevertheless, you agree to use the Services at your sole risk and that we shall not have any liability to you for content that may be found to be offensive, indecent, or objectionable.

We make no representations, recommendations or endorsements with regard to, and assume no responsibility for the suitability of, any content provided by any third party, whether that content appears within any Service or elsewhere, including without limitation (i) the title and lyrics of any music that may be performed in conjunction with your use of any Service and (ii) any content provided by websites or apps to which Services link. You acknowledge that you may find some third-party content offensive and, in such case, your only remedy will be to stop viewing or listening to that content.

Our reference to or use of a third party's name, trade name, trademark, or service mark does not imply the third party's endorsement of, recommendation of, or association with us.

At any time, in our sole discretion and with or without notice to you, we may modify, discontinue, or change the availability of any Service or any portion or version thereof or terminate some or all of your rights with respect thereto.

We may, at our sole discretion, make available to you, either free of charge or for an additional fee, one or more newer versions (each an “**Update**”) of a Service. Each Update will become part of, and will be subject to the provisions of these Terms pertaining to, its associated Service. Some Updates may be available only to certain users or devices. Some Services may install Updates automatically, and you consent to such installation. Failure to update your copy of a downloadable Service may render it non-functional. We have no obligation to provide any Update for any Service, regardless of whether the Service is a Pre-Release Service (as that term is defined in the Additional Terms for Pre-Release Services set forth below) or is labeled as “early access.” We have no obligation to continue to make any version of any downloadable Service available for download in the future, and it is your responsibility to download and preserve a copy (subject to these Terms) of any downloadable Service to which you have a valid license.

While we are pleased to receive feedback about our existing Services (please see Section 13), we do not accept unsolicited submissions of any type, whether concerning enhancements to existing Services, ideas for Services that may be offered in the future, or otherwise. Any feedback about existing Services will be considered non-confidential, and we will have an unrestricted right to use it. You hereby assign to us all right, title, and interest to such feedback and any other submissions that you may provide to us, including all intellectual property rights therein. You agree that you will not be compensated for evaluating any Service or for any feedback or submissions that you may provide, and that you will bear all of your own costs associated with using any Service.

## 4. Refund, Payment, and In-App Purchase Policies

**All purchases, including without limitation App and in-App purchases, are FINAL, and WE WILL NOT PROVIDE ANY REFUNDS.** However, if you make a purchase via a third-party distribution platform (including without limitation Google Play, the Apple App Store, the Windows Store, or Steam), the distribution platform may have its own policies for refunds; consult your agreement with the distribution platform and its policies to see if and how you may obtain a refund via the distribution platform.

For certain Apps, you may be able to make non-renewing subscription, auto-renewing subscription, consumable, or non-consumable in-App purchases. Each in-App purchase grants you a limited, revocable, nontransferable, non-sublicensable license to use certain features or content in the App with respect to which it is purchased. The in-App purchase will become part of, and will be subject to the provisions of these Terms pertaining to, that App. Consumable in-App purchases (which will be marked as such within the App): cannot be transferred among devices; can be downloaded only once; and after being downloaded or consumed, cannot be replaced. Once a consumable in-App purchase is acquired and received by you, we will not have any liability to you in the event of any loss, destruction, or damage to that in-App purchase. When

you make an in-App purchase, we have no obligation to refund to you the amount you paid for any in-App purchase, irrespective of any failure of performance of, or any dissatisfaction you may have with, that purchase.

**For Apps from the Apple App Store:** For Apps from the Apple App Store, the types of in-App purchases are further described in “[About in-app purchases \(link: https://support.apple.com/HT202023\)](https://support.apple.com/HT202023)” at Apple Support. The following policies apply to auto-renewing subscription in-App purchases made via Apps from the Apple App Store: (1) payment will be charged to your iTunes account at confirmation of purchase; (2) the subscription automatically renews unless auto-renew is turned off at least 24-hours before the end of the current period; (3) your account will be charged for renewal within 24-hours prior to the end of the current period; (4) subscriptions may be managed by the user and auto-renewal may be turned off by going to the user’s account settings after purchase (see “[View, change, or cancel your subscriptions \(link: https://support.apple.com/HT202039\)](https://support.apple.com/HT202039)” at Apple Support); (5) any unused portion of a free trial period, if offered, will be forfeited when you purchase a subscription, as applicable.

**For Apps from Google Play:** If you cancel a subscription in-App purchase for an App from Google Play, you will not receive a refund for the current billing period, but the subscription content will remain available for the remainder of the current billing period. We will not provide any refunds for any App or in-App purchase made via Google Play more than 48 hours after the purchase.

Without limiting any of the foregoing restrictions on refunds, upon issuance of a refund to you (whether by us or a third party): (i) all licenses granted to you under these Terms shall terminate with respect to the Refunded Content (as defined below), (ii) you shall promptly cease all use and distribution of the Refunded Content, (iii) you shall promptly destroy all copies of the Refunded Content in your possession, and (iv) the remainder of these Terms (including but not limited to all licenses granted by you to us) shall remain in full force and effect. With respect to a refund for the license fee for a Service (for example, but without limitation, the download price for an App), “Refunded Content” means that Service, its associated Tool Content, its Updates, and all in-App purchases that are a part of that Service; with respect to a refund for an in-App purchase or Update, “Refunded Content” means that in-App purchase or Update. You acknowledge that if you are issued a refund for a license fee for a Service, you will irrevocably lose access to all in-App purchases and Updates that are a part of that Service, without any further refunds or other recourse for those in-App purchases or Updates.

You acknowledge that some advertised App features may be available to you only if you make one or more in-App purchases.

## 5. Incorporated Provisions

Our [Privacy Policy \(link: https://holvonix.com/legal/privacy-policy.html\)](https://holvonix.com/legal/privacy-policy.html) is incorporated into these Terms.

Some Services may utilize open source software. In each such case, we will make applicable open source license terms available to you from within the Service to the extent that those terms so require.

The Additional Terms for Apps on Apple-Branded Devices (“**Apple-Branded Device Terms**”) set forth below are incorporated into these Terms solely with respect to Apps on Apple-branded devices running iOS, watchOS, tvOS, or macOS. In the event of any conflict between the Apple-Branded Device Terms and any other provision of these Terms, the Apple-Branded Device Terms will govern; provided, however, that in no event will the Apple-Branded Device Terms supersede any of the provisions set forth in Section 7 (Indemnity), Section 8 (Disclaimer of Holvonix Warranties) or Section 9 (Limitation of Holvonix’s Liability and Damages) of these Terms.

The Additional Terms for Pre-Release Services (“**Pre-Release Terms**”) set forth below are incorporated into these Terms solely with respect to Pre-Release Services (as that term is defined in the Pre-Release Terms). In the event of any conflict between the Pre-Release Terms and any other provision of these Terms, the Pre-Release Terms will govern.

You acknowledge that you have read and have understood the Important Safety Information set forth below.

The Additional Disclaimers and Limitation of Liability Regarding Epic Materials set forth below are incorporated into these Terms.

## 6. Your Representations and Warranties

You represent and warrant that you reside in the United States of America, or that you reside in another country in which use of the Services is permitted under applicable law. You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.

You represent that you have the capacity to enter into a valid contract.

If you are using any Service on behalf of another individual or any entity, you represent that you currently have, and you warrant that so long as you continue to use such Service you will continue to have, all authority required to use the Service on behalf of that individual or entity and to bind that individual or entity to these Terms.

If you use any Service in a manner that incurs any charge (including without limitation any charge for any in-App purchase) that another individual or entity is obligated to pay, you warrant that such individual or entity has authorized you to incur such charge.

You warrant that (a) you have the right to provide any information that you do provide in the course of using the Services, and (b) to the best of your knowledge, all such information is truthful and accurate. You warrant that you have the right to grant every license, including without limitation the User Content license, that you have granted in Section 3. You warrant that (a) you have the right to make and to distribute all User Content and (b) doing so will not violate these Terms or any privacy, publicity, intellectual property or other right of any third party.

## 7. Indemnity

You will indemnify, defend (at our request) and hold us, our owners, members, officers, managers, employees, agents, representatives, affiliates, partners, suppliers, distributors, and licensors harmless from and against any and all claims, damages, losses, costs (including attorneys’ fees), or other expenses that arise directly or indirectly out of or from (a) your breach or alleged breach of the Terms or any misrepresentation made by you; (b) your use of any Service; (c) your violation of any intellectual property right or any other right of any third party; or (d) your failure to comply with any law, statute, ordinance, or regulation. You will cooperate as fully required by us in the defense of any claim. We reserve the right to assume the exclusive defense and control of any matter subject to indemnification by you, and you will not in any event settle any claim without our prior written consent.

## 8. Disclaimer of Holvonix Warranties

Your access to and use of the Services is at your own risk. You understand and agree that Services are provided to you on an “AS IS” and “AS AVAILABLE” basis. Without limiting the foregoing, WE DISCLAIM ANY WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

We make no warranty and disclaim all responsibility and liability for the completeness, accuracy, availability, timeliness, security or reliability of any Service. We will not be responsible or liable for any harm that results from your access to or use of any Service or from termination of your access to any Service or any portion thereof. We make no warranty that any Service will meet your requirements or be available

on an uninterrupted, secure, or error-free basis; that any Service or the server that makes any Service available is free from any harmful components, including, without limitation, viruses; or that your use of any Service is lawful in any particular jurisdiction. No advice or information, whether oral or written, obtained from us or through any Service, will create any warranty not expressly made herein. The foregoing provisions of this Section 8 are subject to any limitations imposed by applicable law.

## **9. Limitation of Holvonix's Liability and Damages**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE AND OUR OWNERS, MEMBERS, OFFICERS, MANAGERS, EMPLOYEES, AGENTS, REPRESENTATIVES, AFFILIATES, PARTNERS, SUPPLIERS, DISTRIBUTORS, AND LICENSORS WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, DATA, USE OR GOODWILL, OR OTHER INTANGIBLE LOSSES, RESULTING FROM (i) YOUR ACCESS TO OR USE OF OR INABILITY TO ACCESS OR USE OR TERMINATION OF YOUR ABILITY TO ACCESS OR USE ANY SERVICE OR ANY ERRORS OR OMISSIONS IN ANY SERVICE'S OPERATION, OR ANY INFORMATION OBTAINED FROM ANY SERVICE; (ii) ANY CONDUCT OF OR ANY INFORMATION PROVIDED BY ANYONE OTHER THAN US; (iii) ANY ACTION TAKEN IN CONNECTION WITH AN INVESTIGATION BY US, OR ANY OF OUR AFFILIATES, OR ANY LAW ENFORCEMENT AUTHORITIES REGARDING YOUR OR ANY OTHER PARTY'S USE OF ANY SERVICE; OR (iv) ANY DAMAGE TO YOUR OR ANY OTHER USER'S COMPUTER, MOBILE DEVICE, OR OTHER EQUIPMENT OR TECHNOLOGY, WHETHER SUCH DAMAGES ARISE FROM WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, IRRESPECTIVE OF WHETHER WE HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED ITS ESSENTIAL PURPOSE. IN NO EVENT WILL WE OR OUR AFFILIATES BE LIABLE TO YOU OR ANYONE ELSE FOR LOSS, DAMAGE OR INJURY, INCLUDING, WITHOUT LIMITATION, DEATH OR PERSONAL INJURY. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE FOREGOING LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. IN NO EVENT WILL OUR TOTAL LIABILITY AND THAT OF OUR AFFILIATES TO YOU FOR ALL DAMAGES, LOSSES OR CAUSES OF ACTION EXCEED ONE HUNDRED UNITED STATES DOLLARS (\$100.00).

YOU AGREE THAT IN THE EVENT YOU INCUR ANY DAMAGES, LOSSES OR INJURIES THAT ARISE OUT OF OUR ACTS OR OMISSIONS, THE DAMAGES, IF ANY, CAUSED TO YOU ARE NOT IRREPARABLE OR SUFFICIENT TO ENTITLE YOU TO AN INJUNCTION PREVENTING ANY EXPLOITATION OF ANY SERVICE, AND YOU WILL HAVE NO RIGHT TO ENJOIN OR RESTRAIN THE DEVELOPMENT, PRODUCTION, DISTRIBUTION, ADVERTISING, EXHIBITION OR EXPLOITATION OF ANY SERVICE.

YOU UNDERSTAND THAT PURSUANT TO THE PROVISIONS OF THESE TERMS, YOU MAY BE WAIVING RIGHTS WITH RESPECT TO CLAIMS THAT ARE AT THIS TIME UNKNOWN OR UNSUSPECTED, AND IN ACCORDANCE WITH SUCH WAIVER, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND, AND HEREBY EXPRESSLY WAIVE, THE BENEFITS OF SECTION 1542 OF THE CIVIL CODE OF CALIFORNIA (USA), AND ANY SIMILAR LAW OF ANY STATE OR TERRITORY, WHICH PROVIDES AS FOLLOWS: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

## **10. Choice of Law, Jurisdiction and Forum; Arbitration; Time for Filing Cause of Action**

These Terms will be governed by and construed in accordance with the laws of the State of California (USA), without giving effect to its conflict of laws provisions or your state or country of residence. You and we consent to the exclusive jurisdiction of the state and federal courts in the County of Santa Clara, California (USA) and expressly waive any objection or defense based on lack of personal jurisdiction or venue in

connection with any dispute arising out of or relating to these Terms or any Service. Notwithstanding this, you agree that we shall still be allowed to apply for injunctive or other equitable relief in any jurisdiction.

For any claim related to these Terms or any Service, excluding claims for injunctive or other equitable relief, either we or you may elect at any point in or during a dispute or proceeding to resolve the claim through binding non-appearance-based arbitration. A party electing arbitration will initiate it through an established alternative dispute resolution (“ADR”) provider in the United States mutually agreed upon by the parties. The ADR provider and the parties must comply with the following rules: (a) the arbitration will be conducted, at the option of the party seeking relief, by telephone, online, or based solely on written submissions; (b) the arbitration will not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and (c) any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

**ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THESE TERMS OR ANY SERVICE MUST COMMENCE WITHIN ONE YEAR AFTER THE CAUSE OF ACTION ACCRUES; OTHERWISE, THE CAUSE OF ACTION IS PERMANENTLY BARRED.**

Neither you nor we will have the right to participate in a class action, either as a class representative, class member or class opponent; act as a private attorney general; or join or consolidate claims with claims of any other person or involving any other transaction. No court, arbitrator or other forum will have authority to conduct any such class, private attorney general or multiple-party proceeding with respect to any cause of action arising under or relating to these Terms.

## **11. Entire Agreement**

These Terms, including all provisions that are incorporated by reference, are the entire and exclusive agreement between us and you regarding the Services and all other matters governed by these Terms.

We may revise these Terms from time to time. If any revision is material, we will notify you via the applicable Service or by other means. By continuing to access or use the Services after any revision becomes effective, you agree to be bound by the revised Terms.

## **12. General**

You and we are independent contractors. We are not your agent, and you are not our agent.

Our failure to enforce any right or provision of these Terms will not be deemed a waiver of such, or any other, right or provision.

If any provision of these Terms is held to be invalid or unenforceable, the remaining provisions will remain in full force and effect.

You may not transfer any of your rights or obligations under these Terms without our prior written consent. We may assign any of our rights or obligations under the Terms without notice to you.

There are no third-party beneficiaries of these Terms.

The headings contained in these Terms are for convenience only and shall not be interpreted to limit or otherwise affect the provisions of these Terms.

These Terms (including its incorporated provisions) were written in English. To the extent any translated version of these Terms conflicts with the English version, the English version controls. Any notice required or permitted under these Terms must be in English.



## 13. How to Contact Us

If you have any questions, comments, complaints or claims concerning any Service or these Terms, please contact us at:

Holvonix LLC, Terms & Privacy Questions  
PO Box 1171  
Mountain View, CA 94042  
United States of America  
terms-and-privacy@holvonix.com

*If you decide to contact us, we recommend that you minimize the amount of personally identifiable information and other sensitive information that you include in your communications with us.* You acknowledge that any support (if and when available) that we provide may be solely in English.

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## Additional Terms for Apps on Apple-Branded Devices

**1. Acknowledgement:** You acknowledge that the Terms constitute an agreement between you and us, and not with Apple Inc. (“**Apple**”), and that we, rather than Apple, are solely responsible for Apps and the content thereof. You agree to comply with all Usage Rules set forth in Apple’s App Store Terms of Service available via <https://www.apple.com/legal/internet-services/itunes/> (link: <https://www.apple.com/legal/internet-services/itunes/>) (which permits you to specify your country of residence).

**2. Scope of License:** You may use the App solely on Apple products that you own or control. You must comply with the App Store Terms of Service available via <https://www.apple.com/legal/internet-services/itunes/> (link: <https://www.apple.com/legal/internet-services/itunes/>) (which permits you to specify your country of residence). Use of any App with Apple’s Game Center is subject to Apple’s Game Center Terms and Conditions available via <https://www.apple.com/legal/internet-services/gamecenter/> (link: <https://www.apple.com/legal/internet-services/gamecenter/>) (which permits you to specify your country of residence).

**3. Maintenance and Support:** You acknowledge that Apple has no obligation to furnish any maintenance and support services with respect to any App.

**4. Warranty:** In the event that an App purchased via an Apple distribution platform fails to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the App to you. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to any App, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be our sole responsibility.

**5. Product Claims:** We, rather than Apple, are responsible for addressing any claims by you or any third party relating to any App or your possession or use of any App, including, but not limited to: (i) product liability claims; (ii) any claim that the App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

**6. Intellectual Property Rights:** In the event of any third party claim that an App or your possession or use thereof infringes that third party’s intellectual property rights, we, rather than Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.

**7. Third Party Beneficiary:** You and we acknowledge and agree that Apple, and Apple’s subsidiaries, are third party beneficiaries of the Terms, and that, upon your acceptance of the Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce the Terms against you as a third party beneficiary thereof.

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## Additional Terms for Pre-Release Services

1. “**Pre-Release Service**” means any Service or version thereof that we, at our sole discretion, invite you to use before we make that Service or version available to the general public.
2. You will be able to identify that a Service or version thereof is a Pre-Release Service because either (i) we will have used a term such as “pre-release”, “early access,” “alpha”, “beta”, “testing” or a similar term within the Service or (ii) we will have invited you to use an App or version thereof via Apple’s TestFlight program or Google Play’s testing program.
3. We have no obligation to invite you to use any Pre-Release Service or to provide any Pre-Release Service to you. You may decline any invitation to use a Pre-Release Service and may stop using any Pre-Release Service at any time.
4. We may discontinue any Pre-Release Service, or terminate your rights with respect to any Pre-Release Service, at any time. You agree that promptly following our providing notice of such discontinuance or termination, you will stop using the Pre-Release Service and, as applicable, will uninstall it.
5. You acknowledge that we may provide Pre-Release Services, or any components thereof, at prices that are different from the prices for Services that we make available to the general public, and that we may change such prices at any time in our sole discretion.
6. You agree not to disclose any information about or related to any Pre-Release Service to any third party without our prior written consent.

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## Important Safety Information

- **Muscle, joint, and eye strain:** Take frequent breaks when playing video games. Take a longer rest if you experience any soreness, fatigue, or discomfort.
- **Photosensitive seizure warning:** A very small percentage of people may experience seizures or blackouts when exposed to flashing lights or patterns, including while playing video games or watching videos, even if they have no history of seizures or epilepsy. Symptoms may include dizziness, nausea, confusion, involuntary movements, jerking, shaking, twitching, loss of awareness, disorientation, altered vision, tingling, numbness, or other discomforts.
- **If symptoms occur during game play, immediately stop playing and see a doctor.**
- **Parents or legal guardians** should monitor their Minor(s) for signs of symptoms.
- **Consult a doctor** before playing video games if you have ever suffered these or similar symptoms or if you have any questions or concerns. This safety information is not a substitute for medical advice.

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## Additional Disclaimers and Limitation of Liability Regarding Epic Materials

Some Services may include the Unreal® Engine code and other code, materials, and information (the “**Epic Materials**”) from Epic Games, Inc. (“**Epic**”). All Epic Materials are provided on an “as is” and “as available” basis, “with all faults” and without warranty of any kind. We, Epic, and Epic’s affiliates disclaim all warranties, conditions, common law duties, and representations (express, implied, oral, and written) with respect to the Epic Materials, including without limitation all express, implied, and statutory warranties and conditions of any kind, such as title, non-interference with your enjoyment, authority, non-infringement, merchantability, fitness or suitability for any purpose (whether or not Epic knows or has reason to know of any such purpose), system integration, accuracy or completeness, results, reasonable care, workmanlike effort, lack of negligence, and lack of viruses, whether alleged to arise under law, by reason of custom or usage in the trade, or by course of dealing. Without limiting the generality of the foregoing, we, Epic, and

Epic's affiliates make no warranty that (1) any of the Epic Materials will operate properly, including as integrated in any Service, (2) that the Epic Materials will meet your requirements, (3) that the operation of the Epic Materials will be uninterrupted, bug free, or error free in any or all circumstances, (4) that any defects in the Epic Materials can or will be corrected, (5) that the Epic Materials are or will be in compliance with a platform manufacturer's rules or requirements, or (6) that a platform manufacturer has approved or will approve any Service, or will not revoke approval of any Service for any or no reason. Any warranty against infringement that may be provided in Section 2-312 of the Uniform Commercial Code or in any other comparable statute is expressly disclaimed by us and Epic. We, Epic, and Epic's affiliates do not guarantee continuous, error-free, virus-free, or secure operation of or access to the Epic Materials. This paragraph will apply to the maximum extent permitted by applicable law.

To the maximum extent permitted by applicable law, neither we, Epic, Epic's licensors, nor its or their affiliates, nor any of our or Epic's service providers, shall be liable in any way for loss or damage of any kind resulting from the use or inability to use the Epic Materials or otherwise in connection with these Terms, including but not limited to loss of goodwill, work stoppage, computer failure, or malfunction, or any and all other commercial damages or losses. In no event will we, Epic, Epic's licensors, nor its or their affiliates, nor any of our or Epic's service providers be liable for any loss of profits or any indirect, incidental, consequential, special, punitive, or exemplary damages, or any other damages arising out of or in connection with these Terms or the Epic Materials, or the delay or inability to use or lack of functionality of the Epic Materials, even in the event of our, Epic's, or Epic's affiliates' fault, tort (including negligence), strict liability, indemnity, product liability, breach of contract, breach of warranty, or otherwise and even if we, Epic or Epic's affiliates have been advised of the possibility of such damages. These limitations and exclusions regarding damages apply even if any remedy fails to provide adequate compensation.

Because some states or jurisdictions do not allow the exclusion or the limitation of liability for consequential or incidental damages, in such states or jurisdictions, our liability, and that of our service providers, Epic, Epic's licensors, its and their affiliates, and Epic's service providers, shall be limited to the full extent permitted by law.

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## Holvonix LLC Privacy Policy

Effective January 23, 2018

This Privacy Policy explains how we collect, use and disclose information received from users of our Services. “**We**,” “**us**” and “**our**” refer to Holvonix LLC, a California limited liability company (“**Holvonix**”). “**You**” and “**your**” refer to each user of any Service and, as applicable, any individual or entity on behalf of which such individual uses such Service. Capitalized terms that are not defined in this Privacy Policy have the meanings specified in the [Terms of Service \(link: https://holvonix.com/legal/terms.html\)](https://holvonix.com/legal/terms.html).

This Privacy Policy applies only to our Services and does not apply to the practices of third parties. Certain Services may reference additional privacy policies, and where such additional policies conflict with this Privacy Policy, those additional policies will control with respect to those Services.

We may revise this Privacy Policy from time to time. If any revision is material, we will notify you via the applicable Service or by other means. By continuing to access or use such Service after those changes become effective, you agree to be bound by the revised Privacy Policy.

### 1. Our Collection and Use of Information

We may collect, store, and use information you provide to us, directly or via a third party. This information may include **personally identifiable information** (“PII”), including but not limited to your name, email

address, profile, billing, or account information, and other contents of your communications. By way of example (but not limitation), you may provide PII to us when you:

- create or use an account,
- make or attempt to make a purchase or other transaction (including “free” purchases),
- contact us for support or for any other reason,
- sign up for a mailing list,
- use a third-party platform account with a Service,
- use a Service to distribute, backup, or store User Content or other information,
- post reviews of our Services or other products, or
- interact with our social media accounts.

Furthermore, we may automatically collect, store, and use the following information when you use, download, or attempt to use or download a Service:

- The source by which you arrived at a Service, such as a web page URL, advertisement or search terms
- How you interact with Services, such as Website pages visited, App screens viewed, buttons and links clicked, game-related information and statistics, in-App purchases, URLs or query terms used, and social interactions, such as “liking” a page
- The device and software you are using and their settings, such as hardware make and model, screen size and resolution, browser, hardware and software versions, language, locale, and user agent strings
- Internet connection information, such as IP address, and derived information, such as rough geolocation (not GPS location) and Internet or mobile service provider
- Precise location (if you choose to let a Service use your precise location)
- Unique device identifiers
- Advertising and analytics identifiers, such as the Identifier for Advertising (IDFA) for iOS devices or the Android Advertising ID (AAID) for Android devices (if your device has them), and anonymous cookies or identifiers for Google Analytics, DoubleClick, or other advertising, referral, or affiliate services (“**Advertising and Analytics Identifiers**”)
- Other anonymous cookies or similar technologies required for the functioning or security of the Service
- Information about errors or crashes encountered when using the Services
- If you choose to opt-in, information about music you listen to while using an App (“**Opt-In Music Information**”), such as song, album, artist, genre, and tempo metadata (if you later opt-out, our servers won’t collect further Opt-In Music Information, however previously collected information may not be deleted)
- Other server log information, including timestamps

If you use the capture, recording or broadcasting features of a Service, you consent to the recording of your screen, camera, audio and microphone.

Some non-personally identifiable information (“non-PII”) may be collected by or associated with first-party or third-party cookies (which are small pieces of text that websites send to and receive from browsers), web beacons, or similar technologies, such as HTML5 local storage and application data caches. While you may configure your system to disable some or all of these features, Services may not function without them.

In addition, we may receive your non-PII (such as analytics, sales reports, or review statistics) from third-party distribution and social media platforms.

We may use your information (including PII and non-PII) to:

- provide Services to you or others,
- authenticate and authorize access to Services,
- process your transactions,
- respond to or otherwise communicate with you,
- address any issues that you may have raised,

- understand how you use the Services,
- improve or create Services or other products,
- distribute your User Content or other information when you post it publicly or choose to share it with third parties,
- publish information about the Services (such as leaderboards),
- customize content for you,
- target and serve advertisements,
- detect or prevent spam, malware, security violations, cheating, or harmful or fraudulent behavior,
- protect our Services, you or our other users, the public, or Holvonix,
- meet our accounting, tax, or other legal and regulatory obligations, and
- enforce the Terms of Service, Privacy Policy, our other policies, or our legal rights.

You agree to receive communications from us via the contact method(s) you have provided. ***If you decide to contact us, we recommend that you minimize the amount of PII and other sensitive information that you include in your communications with us.***

Information that you provide to or that is collected by one Service may be used by any of our other Services as well. We may share your information as described in this Privacy Policy. Certain Service features may require additional information and may not function without it.

You have no expectation of privacy concerning your use of any Pre-Release Service. You agree to receive e-mail and other communications from us regarding your experience with Pre-Release Services. With regards to Pre-Release Services available via Apple's TestFlight program, you further agree that (i) Apple may automatically collect crash data and statistics related to your use of TestFlight and any Pre-Release Service in a personally identifiable form; (ii) Apple may provide this information to us; and (iii) this information may be automatically provided to Apple and to us immediately once any Pre-Release Service is installed (or attempted to be installed) and at any time thereafter.

You agree **not** to send us any social security numbers, drivers' license or identification card numbers, account numbers, credit or debit card numbers, security codes, access codes, passwords, answers to security questions, medical information, health insurance information, or any other "personal information" as defined by California Civil Code s. 1798.82.

We and third parties may store and process your information globally. Your information may be transferred to, and maintained on, computers located outside of your state, province, country or other governmental jurisdiction where the privacy laws may not be as protective as those in your jurisdiction. If you are located outside the United States and choose to provide your information to us, we may transfer your information to the United States and process it there.

## 2. Your Sharing of Information with Third Parties

You may use certain Services to interact with third parties (including without limitation via communication/messaging, multiplayer gaming, collaboration, social media, or sharing features).

Certain Services may contain links to, or (via embedded widgets or otherwise) may provide information to or receive information from, websites or services that are owned or operated by third parties, which may include, but are not necessarily limited to, Twitter, YouTube, Google, Apple, and Facebook. Third-party websites or services may set or use first-party or third-party cookies, identifiers, or similar technologies according to their own policies.

Furthermore, in the course of interacting with such third parties, you, or a Service acting on your behalf, may disclose personally identifiable information to those third parties. For example, your email address or other login credentials or contents of messages you send may be communicated when:

- Making an App, in-App, or other purchase from Apple's App Store or iTunes Store or Google Play

- Using Apple Game Center or Google Play Games
- Confirming with Apple or Google that you have an appropriate license to use the App
- Posting Service-related content or comments on Facebook, Twitter, YouTube or other social networks

You may disclose information about yourself or others in the course of contributing content about the Services or us to store, review, rating or social network websites or apps. This information may take the form of, but will not necessarily be limited to, forums posts, reviews, audio or video recordings, comments, blog posts, chats or the like. Any such information may become publicly available, thus you should have no expectation of privacy or confidentiality with respect to that information.

When you create User Content, it may contain PII or non-PII. If you share any User Content, we and any third parties may store, use, and distribute that User Content for any purpose.

When you make a purchase from or otherwise enter into a transaction involving a third party concerning Holvonix-related products or services, the third party may share information you have provided (possibly including PII) with us.

We are not responsible for content that you provide to third parties (including any such content that third parties may share with us) or that you receive from third parties. We are not responsible for those third parties' privacy or security practices. We recommend that you carefully review those third parties' privacy policies, including any opt-out facilities they may provide. We are not responsible for any inaccurate link to any website of, or any inaccurate information about, any third party.

### **3. Our Sharing of Information with Third Parties**

We may provide your information to our third-party service providers (including but not limited to web, email, or file hosts, social media platforms, Service distribution platforms, payment processors, financial services, analytics and advertising providers, accountants, and attorneys) so they may process and store it on our behalf.

We may share your information with our subsidiary, parent, or sister companies (that may exist now or in the future).

We may share non-PII publicly.

We may share any information (including PII) that you instruct us to share. When you use our Services to interact with third parties, you instruct us to collect, store, and share your information (including PII) associated with those interactions (including without limitation message content, gameplay information, and User Content).

If you choose to use third-party services like Apple Game Center or Google Play Games, we may share your non-PII, such as gameplay information and statistics and Opt-In Music Information, with such third-party services, and those third-party services may associate and display your non-PII with your PII (for example, by showing your scores with your username) according to those third-party services' policies.

Via our Services, we may publicly share and display non-PII, such as gameplay information and statistics and Opt-In Music Information, without publicly associating it with your PII. For example, we may publish high-scores, lists of popular or recently-played songs, comparisons of scores of users from different states or on different in-game teams, or other leaderboard or competitive information on our Websites or in our Apps.

If you use a third-party platform account (including without limitation an Apple, Facebook, Google, or Twitter account) with a Service, the Service may authenticate you with the third party and we may collect, store, and use information, including PII, from you and/or the third party that allows us to associate you with the third-party platform account. Furthermore, in order to provide social features of the Services, we may (i) collect, store, and use your profile picture, name, information about your friends, and any other information you choose to share with us from such a third-party platform account and (ii) automatically

associate with, and post to, your third-party platform account any Service information, including without limitation the fact that you've used the Service, gameplay scores and achievements, and identifiers of and links to content you have played. Service information associated with or posted to your third-party platform account may be automatically shared with or visible to your friends or the public, within our Services, the third-party platform, and elsewhere, and such information may be associated publicly with your PII. We recommend that you review the privacy settings associated with any third-party platform accounts carefully.

In order to provide push notifications to your devices, we may collect, store, and use device identifiers and transmit such notifications through third-party services. In order to backup and/or share across your devices your Service data, we may collect and store your Service data and share it with third-party services including without limitation Apple iCloud, Google Cloud Storage, and Google's Android Backup Service.

We may need to disclose PII or non-PII when required by law, such as subpoenas or court orders, or in compliance with applicable laws. We will only reveal such information when we have a good faith belief that the request meets applicable legal standards, or that it is necessary to exercise our legal rights, or defend against legal claims, or where in our reasonable belief, an individual's physical safety may be at risk or threatened.

In the event of a merger, acquisition, reorganization, sale of assets, or bankruptcy, we may sell, transfer or otherwise share some of our assets, including PII and non-PII. Any third party to which we transfer, sell or share such assets will have the right to continue to use the information that you provide to us.

## 4. Advertising, Analytics, and Your Choices

We may gather, consolidate, and analyze information about you and serve advertisements to you, and we may use third-party analytics, referral, and advertising products, including but not limited to products provided by Apple Inc., Facebook, Inc., Google LLC, Twitter, Inc., and their subsidiaries, affiliates, partners, and independent ad networks, to do so. For more information about Google's use of data, please see [How Google uses data when you use our partners' sites or apps \(link: https://www.google.com/policies/privacy/partners/\)](https://www.google.com/policies/privacy/partners/). For more information about Facebook's use of data, please see the [Facebook Data Policy \(link: https://www.facebook.com/about/privacy/\)](https://www.facebook.com/about/privacy/).

We and third-party vendors may:

- use web beacons, first-party cookies or identifiers, third-party cookies or identifiers, URL tracking parameters, and Advertising and Analytics Identifiers individually or together;
- combine or link information from one or more Services and third-party analytics, advertising, or store services;
- use cookies, identifiers, web beacons, URL tracking parameters, or other storage to identify referrals and to serve ads based on your prior visits to or use of our Services or others' websites or apps; and
- use Advertising and Analytics Identifiers and interest and demographic categories derived from them to better target advertisements, analyze use of our Services, track conversions, and re-market to and segment our audience.

If your system supports the required settings, you may use instructions described or linked below to control or opt-out of some advertising or analytics features, such as interest-based ads:

- In general
  - For Apps – modern iOS device: [Apple Support \(link: https://support.apple.com/en-us/HT202074\)](https://support.apple.com/en-us/HT202074)
  - For Apps – modern Android device: [Google Ads Help \(link: https://support.google.com/ads/answer/2662922\)](https://support.google.com/ads/answer/2662922) (see instructions for cases where cookie technology may not be available)
  - For Websites: [http://www.aboutads.info/choices \(link: http://www.aboutads.info/choices\)](http://www.aboutads.info/choices), [http://www.networkadvertising.org/choices/ \(link: http://www.networkadvertising.org/choices/\)](http://www.networkadvertising.org/choices/), [http://youradchoices.ca/ \(link: http://youradchoices.ca/\)](http://youradchoices.ca/), and <http://www.youronlinechoices.eu/>

([link: http://www.youronlinechoices.eu/](http://www.youronlinechoices.eu/)) (refer to the sites to see which advertiser honors which opt-outs, if any)

- Google features
  - [Google Ads Settings \(link: https://www.google.com/settings/ads\)](https://www.google.com/settings/ads) for interest-based ads and the DoubleClick cookie
  - Google Analytics' [currently available opt-outs \(link: https://tools.google.com/dlpage/gaoptout/\)](https://tools.google.com/dlpage/gaoptout/) for websites
- Facebook ads: <https://www.facebook.com/help/568137493302217> ([link: https://www.facebook.com/help/568137493302217](https://www.facebook.com/help/568137493302217))
- Twitter's privacy controls for tailored ads
  - <https://support.twitter.com/articles/20170405> ([link: https://support.twitter.com/articles/20170405](https://support.twitter.com/articles/20170405))
  - Use the Do Not Track functionality in your web browser (for websites)

Apple Inc. or its applicable affiliated entity (collectively, "Apple") and/or Performance Horizon Group Limited (or another third party, where applicable) may use code or cookies on our Services to track the performance of Apple's marketing efforts. No personally identifiable information is collected in such process.

If you do not wish to see ads or to have analytics collected, you should not use any of the Services. Opt-outs will not disable all analytics and ads features and may not reduce the number of ads you see. Our Services may not respond to "do not track" signals or other mechanisms that provide the ability to exercise choice regarding the collection, use or sharing of your information.

You can check the settings, information, "gear," or similar menus or dialogs of a Service for any additional privacy choices the Service may offer.

## 5. Security

While we use reasonable security measures to protect your information under our control, no security measures are perfect. We cannot control the actions of others with whom you may choose to share information. We are not responsible for circumvention of any security measures or privacy settings contained in any Service. If we learn of a security breach, we will notify you if and as required by applicable law.

## 6. How to Contact Us

If you have any comments or questions regarding our Privacy Policy, please see the How to Contact Us section of the [Terms of Service \(link: https://holvonix.com/legal/terms.html\)](https://holvonix.com/legal/terms.html).