

# TwoPointOh Games, LLC, Authorized Retailer Agreement

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The following terms and conditions of this TwoPointOh Games Authorized Retailer Agreement (“Agreement”) are hereby accepted and agreed to by all purchasers, customers and retailers (collectively referred to herein as “Retailer” or “Retailers”) of TwoPointOh Games, LLC, a Washington Limited Liability Company (“TwoPointOh Games”). All products sold by TwoPointOh Games are hereinafter referred to as “Product” or “Products.”

## TERMS AND CONDITIONS

For good and valuable consideration as set forth herein, the following terms and conditions are hereby accepted and agreed to by and between Retailer and TwoPointOh Games.

**Retailer Orders:** Retailer orders are not binding on TwoPointOh Games until accepted by TwoPointOh Games at its principal office in Anacortes, Washington. TwoPointOh Games will advise, by mail or email, of any out-of-stock Product within 72 hours of Product order placement by Retailer. All initial Product orders from a Retailer are subject to a minimum purchase quantity of 12 units per order. Orders received by 3:00 p.m. Pacific Standard Time will ship within 72 hours of receipt. A \$15.00 rush-shipping fee will be charged for orders received after 11:00 a.m. Pacific Standard Time with same day shipping requested. Backorders will be filled in chronological order.

**International Markets:** Retailer hereby acknowledges and agrees that Retailer will not ship TwoPointOh Games Products outside of the United States of America. Retailer acknowledges that TwoPointOh Games has, or may have, distribution agreements with international retailers that prohibit Retailer from selling goods in any given country outside of the United States.

**Online Sales:** TwoPointOh Games permits online sales of its products by Authorized Retailers, but only through online stores that are an extension of the Retailer's "brick and mortar" presence. TwoPointOh Games retains the exclusive and sole right to sell its products through any other third party online sales channel (third party channels include, but are not limited to: Amazon, Google Shopping, eBay, Craigslist, Overstock, etc). Authorized Retailers are not permitted to sell (either directly or indirectly) to other parties whose intent is to list those products for sale on third party websites.

**TwoPointOh Games MAP Policy:** Retailer shall set its own resale prices for the Products; however, Retailer shall strictly adhere to the minimum advertised price policy of TwoPointOh Games ("MAP Policy") during the Term of this Agreement. A copy of TwoPointOh Games's MAP Policy as of the date hereof is attached hereto as Exhibit A and incorporated herein by this reference.

**Sales Channels:** Retailer may sell Products only to end-user consumers, and only at Retailer's brick and mortar locations and directly related online sales channels as noted on the TwoPointOh Games Company Information Form (the "Company Information Form") included in the Retailer's initial application package, or such other brick and mortar locations, as may be approved in writing from time to time by TwoPointOh Games. Without limiting the foregoing general restrictions, Retailer shall not (a) advertise, sell or offer to sell any Products via unauthorized third party sales channels (including, but not limited to: Amazon, Google Shopping, eBay, Craigslist, Overstock, etc), or (b) sell Products to any individual or entity that the Retailer believes has the intention of reselling or trans-shipping the Products, either domestically or internationally.

**Intellectual Property Rights; Limited Trademark Authorization:** Retailer acknowledges and agrees that TwoPointOh Games is the exclusive owner of all rights in and to all trademarks, marks, trade names, copyrights, patents (pending or approved), designs, logos, work in progress, and other intellectual property rights of any type or nature associated with or included with the Products, including without limitation, any documentation concerning the use, development, manufacture, sale, marketing or operation of the Products (the "Intellectual

Property”). Retailer shall not modify, disassemble, decompile, adapt, alter, translate, or create derivative works from any materials associated or included with, or embedded into, any Product. Subject to the foregoing, TwoPointOh Games grants to Retailer, subject to prior review by and written approval of TwoPointOh Games, a limited non-exclusive right to use the trademark of TwoPointOh Games solely in connection with the advertising, marketing and sale of Products by Retailer. Any such use shall strictly conform to TwoPointOh Games’s brand image guidelines as in effect from time to time (the “Brand Guidelines”). Retailer will not do anything to compromise TwoPointOh Games’ rights in and to its trademark, nor shall it adapt, use, file or attempt to file anywhere in the world any trademarks, trade names, patents, logos or other Intellectual Property which are identical or confusingly similar to TwoPointOh Games’ Intellectual Property. Upon termination of this Agreement, all rights granted herein shall be immediately revoked without the need for any further writing, and Retailer shall immediately discontinue use of the TwoPointOh Games trademark, including, but not limited to, any use which may have previously been authorized by TwoPointOh Games. The Retailer shall not use any other logo, trademark, tradename or service mark in combination with the TwoPointOh Games trademark or other TwoPointOh Games Intellectual Property. The Retailer has no right to sublicense, transfer or assign the use of the TwoPointOh Games trademark for any purpose other than the limited purposes described herein. Retailer shall not register or use the TwoPointOh Games trademark as part of an Internet domain name. All use of the TwoPointOh Games trademark by Retailer shall inure to the sole benefit of TwoPointOh Games. The Intellectual Property belongs solely to TwoPointOh Games and is not to be used by the Retailer for any purposes whatsoever other than those expressly provided in this Agreement. TwoPointOh Games may revoke the ability of a Retailer to use its trademark at any time for any reason whatsoever in TwoPointOh Games’s sole and absolute discretion

**Prices:** All prices for Products charged to Retailers are subject to change by TwoPointOh Games without notice. All orders are subject to the TwoPointOh Games MAP Policy.

**Payment Terms:** Payment terms to Retailers with an established credit limit are as follows: standard shipment net 30 days from date of invoice. A finance charge of 1.5% per month may be assessed on delinquent invoices but not at any time to exceed the highest legal rate of interest legally allowed. Terms and finance commitments granted to Retailer are contingent upon Retailer maintaining current payments on its account.

**Freight:** Orders are shipped FOB Anacortes, Washington. TwoPointOh Games will ship using the common carrier and method of its reasonable best judgment unless instructions are provided on the order from Retailer specifying otherwise and unless TwoPointOh Games consents to such instructions in writing. TwoPointOh Games will prepay freight charges and bill Retailers with open credit status. COD payments will include freight charges. TwoPointOh Games assumes no responsibility for common carrier time in transit delays.

**Freight Claims:** Risk of loss for the Products passes to the Retailer upon loading of the Product order on the common carrier in Anacortes, Washington. All Products are packed carefully for shipment; therefore, TwoPointOh Games is not responsible for Products damaged in transit once the common carrier has accepted the Product. Should Retailer discover damage or loss in shipment, Retailer shall be responsible for contacting the common carrier immediately and filing a claim. TwoPointOh Games will assist Retailer in every possible way to settle any claim for damage or loss in shipment; however, TwoPointOh Games is not responsible for the collection of claims or replacement of such Product. Risk of loss during shipment belongs to the Retailer and it is recommended that the Retailer obtain insurance to cover its risk during Product shipment.

**Errors and Shortages:** All claims for shortages or errors in shipment by TwoPointOh Games must be made in writing (by certified mail, overnight mail, or email (with confirmation of receipt)) within five (5) days of receipt of shipment by a Retailer.

**Product Returns:** No returns will be allowed unless authorized in advance in writing by TwoPointOh Games and accompanied by a material return authorization number issued by TwoPointOh Games. Shipments arriving at TwoPointOh Games

without a material return authorization number will be refused and returned to Retailer. A material return authorization number will be issued for defective materials, warranty credit, or a shipping error. Returns will not be accepted for any other reason. TwoPointOh Games does not reimburse or give credit for return freight incurred by Retailer. All returns from Retailer will be subject to a restocking fee equal to 15% of the cost invoiced by TwoPointOh Games for the returned Product.

**Taxes:** Taxes applicable to Product sold shall be added to the purchase price and paid by Retailer unless Retailer provides TwoPointOh Games with a valid tax exemption certificate acceptable to the governing taxing authorities evidencing that the Retailer is not obligated to pay such taxes.

**Liability:** TwoPointOh Games shall not be liable for any loss or damage resulting from inability to timely deliver Product to Retailer due to fire, labor disputes, accidents, acts of civil or military authority or from any other cause beyond TwoPointOh Games' sole and reasonable control.

**Attorney's Fees; Forum:** If Retailer's account with TwoPointOh Games is placed in the hands of an attorney or other third party for collection, whether or not a suit is filed, Retailer shall reimburse TwoPointOh Games for its reasonable attorneys' fees as well as other costs of collection and any resulting litigation expenses. In the event of collection of past due monies, jurisdiction and venue for such legal action shall be exclusively in Skagit County, Washington.

**Injunctive Relief:** TwoPointOh Games and Retailer agree that any violation by Retailer of any of the terms of this Agreement could cause TwoPointOh Games irreparable harm without adequate remedy at law. TwoPointOh Games shall be entitled to injunctive relief against any such violation or intended violation by Retailer.

**Governing Law:** Retailer's account with TwoPointOh Games, and all transactions and any disputes between Retailer and TwoPointOh Games arising out of this Agreement or their business relationship generally, shall be governed by and/or construed under the laws of the State of Washington. Venue shall at all times lie in

Skagit County, Washington. BOTH PARTIES AGREE THAT IN ANY LITIGATION TRIAL BY JURY IS WAIVED. Any legal action against TwoPointOh Games arising out of this Agreement must be commenced within one (1) year from the date such action could first be brought or be forever barred.

**Modification:** Additions or modification to the terms of TwoPointOh Games' Retailer Agreement will be sent to the Retailers via email or first class US mail to the billing address of the Retailer on file with TwoPointOh Games. TwoPointOh Games retains the right to unilaterally modify this Retailer Agreement from time to time.

**Personal Certification of Customer's Representative:** The individual accepting this Agreement on behalf of Retailer certifies in his or her individual capacity that: (a) he or she is authorized to do so on behalf of Retailer; and (b) that to his or her knowledge after reasonable investigation, the contents of and the financial and other data submitted as part of this Agreement and the related documents, accurately represent Retailer's business, prospects and financial condition as of the date reflected in that information; and (c) there has been no material change in Retailer's business, prospects or financial condition between the dates reflected in that information and the date shown.

**Effectiveness of Agreement:** This Agreement shall be effective upon Retailer placing their first Product order with TwoPointOh Games.

**TWOPOINTOH GAMES MAKES NO REPRESENTATIONS OR WARRANTIES TO THE RETAILER IN CONNECTION WITH THIS AGREEMENT, INCLUDING (WITHOUT LIMITATION) IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. TWOPOINTOH GAMES WILL NOT BE LIABLE TO RETAILER FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, AND, WITHOUT LIMITING THE FOREGOING, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED TEN THOUSAND UNITED STATES DOLLARS (\$10,000.00).**

The parties are independent contractors and this Agreement will not be construed to create partnership, joint venture or other relationship. Neither party will have, or hold itself out to third parties as having, any authority to bind or enter in to any agreement on the other party's behalf.