

Legal Document Non-Disclosed Testing Agreement

THIS NON-DISCLOSED TESTING AGREEMENT DESCRIBES THE TERMS BY WHICH YOU ARE OFFERED ACCESS TO THE PRE-RELEASE PRODUCT KNOWN AS FANTASY ADVENTURE (THE “GAME”) WHICH IS CURRENTLY BEING DEVELOPED BY THE COMPANY KNOWN AS *RAPTOR IN A TOP HAT GAMES* (“*RAPTOR*”) AS PART OF THE CLOSED BETA TESTING PROGRAM. This Agreement is between you and *Raptor in a Top Hat Games*. You acknowledge and agree that *Raptor* is the sole holder of the intellectual property rights of any game asset. If you are a resident of the US or Canada you acknowledge and agree that any social tools used in game are owned by *Facebook, Inc.* Otherwise you acknowledge and agree with *Facebook Ireland Limited*.

BY ACCESSING THE GAME, YOU ACCEPT THE TERMS AND CONDITIONS BELOW. DO NOT ACCESS THE GAME AND CONTACT *RAPTOR* IMMEDIATELY TO BE REMOVED FROM THE PROGRAM. Also, you hereby acknowledge that you choose to accept and be bound by the terms of this Agreement every time you re-enter the Game.

In order to participate in this Game Testing Program for the Game, you must read and accept the terms of the agreement below. Please read the following NON-DISCLOSED TESTING AGREEMENT closely.

NON-DISCLOSED TESTING AGREEMENT (the “Agreement”)

Raptor in a Top Hat Games (“*Raptor*”) is currently developing a game for the social network Facebook under the working title, “Fantasy Adventure” (the “Game”). *Raptor* has set up period of time for closed beta testing (the “Testing Period”) which allows a limited number of people to try out the game to give feedback to *Raptor*. This feedback can include thoughts on graphics and aesthetics, game balance, performance, spelling and grammatical errors and general game feedback. In order to participate in this Testing Period, you must agree to the following:

- (A) You represent and warrant that you are eighteen (18) years of age or older. IF YOU ARE UNDER 18 YEARS OF AGE YOU MAY NOT PARTICIPATE IN THE TESTING PERIOD.
- (B) You represent and warrant that you are entering into this Agreement on a completely voluntary basis with no expectation of any form of compensation whatsoever other than what is expressly provided for in this Agreement.
- (C) You acknowledge that the Testing Period shall run from the time you access the game on Facebook and shall end upon the expiration of the Testing Period, unless otherwise extended or terminated by *Raptor* at *Raptor’s* sole discretion.
- (D) You acknowledge that *Raptor* may, in its sole discretion for any reason and at any time during the Testing Period terminate your participation therein without any form of compensation due to you whatsoever for this termination.
- (E) You acknowledge that in becoming part of the Testing Period, which *Raptor* is providing you free of charge access to the game and that *Raptor* has not made any other promises.
- (F) You agree that *Raptor* may, in its sole discretion, terminate the Testing Period at any time.
- (G) You agree that your participation in the Testing Period does not constitute an employment Agreement or offer of such an agreement, *Raptor* expects you only to use your leisure time

to participate in this program, and does not expect you to forego other activities during the time you spend participating in this voluntary program.

- (H) You understand that you may stop being a volunteer tester of the Game at any time that you wish through emailed notice.
- (I) You agree that while the role you will play in helping *Raptor* develop better software is helpful; it does not constitute a critical or vital role in the development of the Game such as to entitle you to any claims of ownership or rights to receive any other compensation of any kind for your participation.
- (J) You acknowledge, understand and agree that all items acquired during the Testing Period are non-refundable and non-tradable. These can be added/removed/changed by *Raptor* at its sole discretion for any reason.
- (K) You acknowledge, understand and agree that items acquired during the Testing Period cannot be saved up for or used in the commercial version of the Game. These will be removed from your account before going into the next test phase or commercial release.
- (L) You agree to all of the terms of the Agreement set forth below.

1. License Grant

Upon acceptance of the terms and conditions herein, or in the event that you access the game, you are granted the revocable, limited right to play the game using only one (1) account for the sole purpose of evaluating the Game as permitted under Section 1.3 below as part of the Testing Period. You may only use the game for the purposes set forth in Section 1.3 and 1.4 below and may not use any part of the game in any way except in the ways provided in this Agreement. All other rights are reserved to *Raptor*.

1.1 License Restrictions

You shall not:

- a. Sublicense to, transfer, distribute or permit use of the game by, any third party;
- b. Reverse engineer, decompile, or disassemble the game;
- c. Make copies of the game;
- d. Share your Account with any third party.

1.2 Indemnification

You: (a) agree to indemnify, defend and hold *Raptor* harmless from and against all claims, losses, liabilities, damages, expenses, and costs which result from any breach or alleged breach of any of your covenants, representations, warranties or obligations herein; and (b) hereby release, *Raptor* and direct and indirect parents, subsidiaries, affiliates and sister corporations, and their respective officers, directors, employees and agents, from and against any losses, liabilities, claims, obligations, costs and/or expenses (including reasonable legal fees) which result from, arise out of or in connection with the use of the Game and/or your participation in the Testing Period.

1.3 Testing and Evaluation Obligations

You hereby agree to perform all of the following obligations in connection with this Testing Period: (a) to test, evaluate and analyze the Game (b) to comply with the reasonable requests of *Raptor* from time to time regarding testing; and (c) to provide feedback, analysis, bug reports, test results, suggestions and comments to *Raptor* as otherwise voluntarily provided by you (collectively, "Feedback"). ALL OF YOUR FEEDBACK SHALL BE THE SOLE AND EXCLUSIVE PROPERTY OF *RAPTOR*.

YOU HEREBY ASSIGN ALL OF YOUR RIGHT, TITLE AND INTEREST IN THE FEEDBACK, AND ALL INTELLECTUAL PROPERTY RIGHTS RELATED THERETO TO *RAPTOR*. YOU AGREE THAT *RAPTOR* SHALL HAVE THE RIGHT TO USE, MODIFY, AND OTHERWISE EXPLOIT ALL OR PART OF THE YOUR FEEDBACK OR ANY DERIVATIVE THEREOF IN ANY MANNER OR MEDIA NOW KNOWN OR HEREAFTER DEvised WITHOUT ANY COMPENSATION OR CREDIT TO YOU. You hereby represent and warrant that you have the right to enter into this Agreement and to assign and grant the rights set forth herein, and that any Feedback which is provided by you hereunder is original work made solely by you and does not infringe any third party intellectual property rights.

1.4 Term of the Agreement

Your participation in the Testing Period, and the grant of license herein, may be terminated by *Raptor* at any time, for any reason or for no reason, in *Raptor's* sole and absolute discretion, by providing emailed notice to you. You may, at any time and for any reason or for no reason, terminate your participation in the Testing Period by emailed notice to *Raptor*. The Testing Period shall terminate upon the earlier of (a) *Raptor's* emailed notice to you; or (b) the commercial release of the Game. The termination of your participation in the Testing Period however, shall not modify or supersede the survival provision in Section 7.1 below.

2 Confidentiality

2.1 Confidential Information Defined

"Confidential Information" shall mean (a) any and all information relating to, contained in or relayed through the Game, and the Testing Period, including, without limitation, information relating to: the performance, capabilities and contents of the Game, your Feedback, any other Testing Period participant's Feedback, and any *Raptor* employee's feedback and comments, and (b) the existence and terms of this Agreement. See Addendum B below for a list of examples of Confidential Information. You shall use best efforts to safeguard and to prevent unauthorized use or disclosure of the Confidential Information, unless otherwise expressly authorized in writing as provided in Section 2.3 below. Your obligation to keep the Game confidential will continue until *Raptor* publicly discloses to the public through no fault of yours Confidential Information or announces the termination of this agreement.

2.2 Confidentiality Obligation

You shall keep the Confidential Information in confidence and shall not publish, disclose, distribute, transmit, post or otherwise make available, directly or indirectly, any Confidential Information to any third party except as otherwise expressly set forth herein.

2.3 Permitted Disclosures

You may disclose the information that is specifically identified in Addendum A, if any, on online message boards, forums or other similar venues in accordance with the restrictions set forth in this Agreement. Said restrictions are to be applied no matter whether the venue is open to the general public or with access that is regulated and/or restricted. *Raptor* reserves the right to amend Addendum A from time to time upon emailed notice to you. Notwithstanding anything contained herein to the contrary, you shall not make any false statements to anyone about *Raptor*, this Testing Period, or any other participants in the Program.

3 Ownership

Raptor retains all right, title and interest in and to the Game, and all game data in connection therewith. The Game is copyrighted and is protected by International copyright laws and treaty provisions. You acknowledge that *Raptor* and/or its licensors own all intellectual property rights in and to the Game, including, without limitation, all patent rights, copyrights, inventions, trade secret

rights, trade dress rights, trademark rights and intellectual property rights. You agree to prevent any unauthorized copying of the Game. Except for the revocable, limited license as expressly provided herein, *Raptor* does not grant you any express or implied right in any patents, copyrights, trademarks, or trade secret information of *Raptor*, and/or its licensors. You agree that *Raptor*, own all right, title, and interest in any and all of your Feedback, without any remuneration, compensation or credit to you.

4 Injunctive Relief

You acknowledge and agree that a breach of Sections 1-3 of this Agreement will cause irreparable injury, that money damages would be an inadequate remedy and that *Raptor* shall be entitled to ex parte injunctive relief without bond, to restrain you, from such breach. Nothing in Section 4 shall be construed as preventing *Raptor* from pursuing any and all remedies available to it, including the recovery of money damages from you.

5 Warranty

5.1 No Warranty

YOU ACKNOWLEDGE THAT THE GAME PROVIDED HEREUNDER IS A PRE-RELEASE PRODUCT AND MAY WELL CONTAIN ERRORS AND DEFECTS AND IS NOT THE FINAL PRODUCT. THE GAME IS PROVIDED WITHOUT ANY EXPRESS OR IMPLIED WARRANTY OF ANY KIND.

5.2 No Liability for Damages

YOU ACCEPT THAT *RAPTOR* HAS NO LEGAL RESPONSIBILITIES OR OBLIGATION IN PAYING FOR ANY FORM OF DAMAGES CAUSED BY THE GAME.

5.3 No Support

Raptor does not provide any support for the Game. However questions and or/comments regarded the Game may be answered if received by email. *Raptor* cannot make any representations as to the accuracy of any reply sent, if any.

5.4 Test Environment

YOU ACKNOWLEDGE, UNDERTAND AND ACCEPT THAT THE GAME WILL RUN IN A TEST ENVIRONMENT. Any mission progress, collected resources, gifted items or any other value or status indicators that you achieve through game play as part of the Testing Period will be erased at *Raptor's* sole discretion at any time, and that such data will not be exported into the Game once the Game is commercially released.

6. Obligations

6.1 Feedback

It is understood and agreed to that as part of the Testing Period, you are expected to provide Feedback, this is including but not limited to potential changes, improvements, additions to the Game as well as to provide analysis of the Game and its features. You hereby waive any rights to the/expect no remuneration for the submitted Feedback.

6.2 Reporting Bugs

It is understood and agreed that, as part of your participation in the Testing Period, it is your responsibility to report all known bugs, 'undocumented features' and other defects and problems related to the Game to *Raptor* as soon as they are found ("Bugs").

7 Miscellaneous

7.1 Survival

Sections 1.1, 1.2, 1.3, 1.4, 2, 3, 4, 5, 6.1, 6.2, 7, 8 and 9 of this Agreement shall continue in full force and effect even after (a) the Testing Period has been terminated or completed and/or (b) your participation in the Testing Period has been terminated up until the game has been commercially released or *Raptor* announces the termination of this agreement.

7.2 Severability

If any provision of this Agreement shall be held invalid or unenforceable, in whole or in part, such provision shall be modified to the minimum extent necessary to make it valid and enforceable, and the validity and enforceability of all other provisions of this Agreement shall not be affected thereby.

7.3 Amendment

This Agreement may be amended by *Raptor* from time to time at their sole discretion. New information and terms will be emailed to the address provided by the tester when they signed up. You agree to check for emails regarding amendments and new information and follow them accordingly.

8 Entire Agreement

This Agreement constitutes the entire agreement between the parties hereto relating to the subject matter hereof and supersedes all prior oral and written and all contemporaneous oral negotiations, commitments and understandings of the parties.

9. Violation

In the event that you violate any of the terms set forth in this Agreement or in the Testing Period Code Rules of Conduct as embodied in Addendum C, you hereby acknowledge that *Raptor*, in its sole discretion, may remove your access to the Testing Period, bar you from accessing the commercially released version of the Game and future *Raptor* products, as well as subject you to legal action that *Raptor* may see fit.

ADDENDUM A - PERMITTED DISCLOSURES

1. The fact that there is a Testing Period.
2. The fact that you are a member of the Testing Period.

ADDENDUM B - EXAMPLES OF CONFIDENTIAL INFORMATION

1. Any contact/private information for *Raptor* personnel that is provided to you.
2. Any contact information (address, password, etc.) to any private areas for use in connection with the Testing Period, including but not limited to, chat, email and message boards.
3. Any information/discussions/postings from the private boards for the Testing Period.
4. Any comments/information that would allow people who are not currently part of the Testing Period to get access to the Testing Period or Game through either legitimate or illegitimate means.
5. Post or distribute any screen captures, pictures, videos, podcasts, screenshots or any other representations, known or unknown, of any content of the Game.
6. Any public posting or commentary of the game based on your participation in the Testing Period.
7. Any comments or discussions on new features or other new functionalities in the Game.
8. Any details regarding the stability of the Game.
9. General comments about the Game's overall development.
10. Any comments on any aspect of the Game not covered by Addendum A above.

ADDENDUM C - TESTING PERIOD RULES OF CONDUCT

- 1 You are a privileged guest on this program and as a guest, we expect you to exhibit common courtesy to all *Raptor* personnel as well as other members of the Testing Period on the closed game boards. *Raptor* will exhibit the same courtesy towards you.
2. You will be helping us shape the Game into a great product and we value your feedback. However, that is not a license to be hasty, demanding or generally unreasonable. Please remember that others are playing and will be giving feedback a lot of differing opinions regarding what is right or wrong with the game.
3. We expect feedback. Although the game will be free to play we have given you the privilege to play it before anyone else, we would like something in return.
4. When posting messages about the game in our private message boards or when sending email, please try to be as professional as possible. If you like something, don't hesitate to tell us. If you don't like something or think something can be improved don't hesitate to tell us that as well. We want honest feedback and for you to speak your mind, as long as it is in a clear and reasonable manor then we do not mind what your opinion on something is.
5. Before posting messages publicly about the game outside the *Raptor* boards, please be sure you are adhering to the confidentiality terms of this Agreement and the instructions in Addendum A and Addendum B above.
6. If requested by *Raptor* personnel to help test a particular aspect of the game, please cooperate. The sooner we work things out, the sooner the game goes live.
7. Vulgar expressions, coarse language, abusive behaviour, verbal harassment will not be tolerated towards anyone!
8. Please report any and all bugs to us; we do not want any present at time of launch. If you have information about a bug or something abusing/exploiting bugs then please tell us. The sooner they are fixed the sooner we can push for a commercial release.
10. You are not an officer or employee of *Raptor*, so don't pretend to be one! We can and will lock anyone out of all *Raptor* products who tries.
11. In the event that a player has engaged in unacceptable behaviour, said player will be treated accordingly. *Raptor* in its sole discretion, reserves the right to terminate the player's access to the Testing Period immediately and without further notice and decide upon other suitable punishment if needed.
12. Remember that this isn't the final product, your here to help make it that.

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Bibliography

Bioware, EA, Lucasarts. (2009, August 29). *www.swtor.com*. Retrieved November 2011, from Game Testing Agreement: <http://www.swtor.com/game-testing-agreement>

NDAs For Free. (n.d.). *www.ndasforfree.com*. Retrieved November 2011, from Software Beta Tester Nondisclosure Agreement: <http://www.ndasforfree.com/NDAS/GetSoftwareBeta.html>