

"You must be at least 18 or have the approval of a parent or legal guardian to accept this Agreement."

MPLAYER ONLINE SERVICE AGREEMENT

1. **Terms of Mplayer Service.** The Mplayer Game Service for Network Game Play and Web Site (defined below) (collectively, "Mplayer") are provided by Mpath Interactive, Inc. ("Mpath") to you ("you"), subject to the terms of this Mplayer Online Service Agreement ("Agreement"). As part of Mplayer, Mpath maintains a World Wide Web site, www.mplayer.com (the "Web Site"). Mplayer is available only to residents of Canada and the United States of America.

2. **Terms of Mplayer Internet Service.** Mpath also provides the Mplayer Internet Access Service ("Mplayer Internet Service") that allows individual users to facilitate on-line computer communications and services as well as direct, interactive TCP/IP data packet access to the global Internet by using dial-up IP (Point-to-Point Protocol or PPP) techniques via v.32bis and v.34 switched services. IF YOU ESTABLISH AN MPLAYER INTERNET SERVICE ACCOUNT, THE PROVISIONS IN THIS PARAGRAPH #2 APPLY TO YOU. The right to use Mplayer Internet Service is strictly limited to you. No more than one (1) Mplayer Internet Service connection may be used at any time with a Mplayer Internet Service account as paid for by you and assigned by Mpath. An Mplayer Internet Service session is defined as a connection between a Customer's host computer and modem (or access device) and a Mpath modem (or access device) using the public switched telephone system ("PSTS"). You may not resell access to Mplayer Internet Service. Mpath shall require local access via the PSTS to provide you with a link to Mpath at a point-of-presence ("POP"). A list of the currently available POP access numbers can be found on the Web Site. It is understood that Mpath and its suppliers of telecommunications services do not normally own or control the various cable, telecommunications or other facilities to which it may require access, such as the PSTS, except those specifically identified as belonging to Mpath. Use of other networks sometimes require approval of the respective network authorities and use will be subject to any acceptable usage policies such networks may establish. If you use other networks, Mpath accepts no responsibility for their authorization. Arrangements for use of, or access to, such facilities must be made with those who own or control them. You are responsible for providing, operating and maintaining the necessary cabling, computer software and hardware used for your use of Mplayer Internet Service. You are also responsible for user/access security and network access. Mpath provides no user access security with respect to any of your Mplayer Internet Service facilities or facilities of others. Mpath may assist in network security breach detection or identification, but is not liable for any inability, failure or mistake in doing so. ALL LOCAL ACCESS INSTALLATION AND DIALUP COSTS ARE MEMBER'S RESPONSIBILITY.

3. **Services.** You may elect to subscribe to just Mplayer and obtain your own Internet access, or you may subscribe to both Mplayer and Mplayer Internet Service. To make this choice simply indicate your preference while installing Mplayer software.. Collectively, Mplayer and Mplayer Internet Service are the "Services" and the definition of Services applies to both or to either Mplayer or Mplayer Internet Service depending on the Services you have chosen.

4. **Agreements.** This Agreement and the Mplayer End User Software License Agreement comprise the entire agreement between Mpath and you, and supersede any prior agreements between you and Mpath with respect to the subject matter hereof or thereof. However, you are subject to any additional terms and conditions of which you are notified and/or which may apply when using third party content, software or services. Mpath may revise this Agreement at any time, and such revision shall be effective thirty (30) days after posting of the revised Agreement at the Web Site on page www.mplayer.com/mplayer-service.html. You agree to review the Agreement periodically to become aware of such revisions. If any such revision is unacceptable to you, you may terminate your membership as provided in Section 9. Your continued use of the Services following posting of the revised Agreement on the Web Site shall be conclusively deemed to be acceptance of all such revisions. The term "Member" in this Agreement refers to any person or entity, including you, that has entered into this Agreement with Mpath.

5. **Account Information.**

(i) **Master Account, Sub-Accounts.** YOU REPRESENT THAT YOU ARE AT LEAST EIGHTEEN (18) YEARS OLD. When you register online for Mplayer, you will receive a password and a master account ("Master Account"). You are entirely liable for all activities conducted through your Master Account and any sub-accounts or Member-names under your Master Account ("Sub-Accounts"). You may permit another individual, including a minor, to use your Master Account or Sub-Accounts subject to your supervision and assumption of all resulting liabilities. You agree to provide Mpath with ongoing, accurate, complete, and updated registration information, and failure to do so constitutes a breach of this Agreement and unauthorized access to the Services, and may result in immediate termination of your account and subject you to civil and/or criminal liability.

(ii) **Passwords.** Upon your registration for the Services, you will select a password. You are responsible for maintaining the confidentiality of your password and are liable for any harm resulting from disclosing or allowing disclosure of any password or from use by any person of your password to gain access to your Master Account(s) or any Sub-Accounts. Therefore, for security purposes, Mpath recommends that you change your password often. (You can do this by selecting the "Modify Account" function of the Mplayer client software.) At no time should you respond to an online request for a password. Mpath employees will never ask for your password online. You acknowledge that although Mplayer offers a feature that allows you to bypass the password protection, this feature permits anyone who has access to your computer to easily access your Master Account and/or Sub-Accounts. Use of this password bypass feature is at your own risk. **YOU ARE FULLY LIABLE FOR ALL CHARGES UNDER YOUR MASTER ACCOUNT AND/OR SUB-ACCOUNTS, INCLUDING ANY UNAUTHORIZED CHARGES TO THOSE ACCOUNTS.**

(iii) **Member Names.** Upon your registration as a Member of Mplayer, you must choose one or more Member names to identify yourself to other Members and Mplayer staff. You may not select or use a Member name of another person (unless it is also your name), or a name which violates any third party's trademark right, copyright, or other proprietary right, or which Mpath deems in its discretion to be vulgar or otherwise offensive. Mpath reserves the right to delete any vulgar or otherwise offensive Member name, or to require deletion thereof.

(iv) **Former Members.** Members whose accounts have been terminated by Mpath may not access the Services in any manner or for any reason without the express written permission of Mpath. Active Members may not knowingly allow former Members who have been terminated to use the active Members' accounts.

6. **Charges for Services.**

(i) **Charges.** Current rates and surcharges for using the Services may be obtained by using the billing section of the Web Site. Mpath may change its fees and billing methods at any time effective thirty (30) days after notice thereof is posted on the Web Site. All changes will be posted online and you are responsible for reviewing pricing information posted to the Services to obtain timely notice of such changes. If any such change is unacceptable to you, you may terminate your Services as provided in Section 9. Your continued use of the Services following any such posting is deemed acceptance of such change. **YOUR MONTHLY MEMBERSHIP FEES ARE PAYABLE IN ADVANCE AND ARE NOT REFUNDABLE IN WHOLE OR IN PART.** If you use an Internet service provider other than Mplayer Internet Service, you are responsible for all Internet service provider access charges associated with connecting to Internet services, including Mplayer. Each time you use the Services you agree and reaffirm that Mpath is authorized, as applicable, to charge your designated credit or debit card or withdraw funds by means of electronic funds transfer from your checking account. All charges are exclusive of sales tax. Charges are to be paid monthly in the currency in which they were billed. For further information on billing see the Web Site. If your use of the Services is subject to use or sales tax then Mpath may also charge for any such taxes.

(ii) **Usage and Numbers.** Mplayer Internet Service usage is measured in one (1) minute increments rounded upwards.

(iii) **No Proration of Fees.** No proration of fees beyond monthly increments is available to Member upon termination of Mplayer Internet Service for any reason.

(iv) **Late Payments.** If Mpath does not receive the full amount of your account balance within thirty (30) days of the invoice date, an additional 1.5% (or the highest amount allowed by law, whichever is lower) per month late charge may be added to your bill and shall immediately become due and payable. You shall also be liable for all attorney and collection fees arising from Mpath's efforts to collect any unpaid balance in your Master Account(s) or Sub-Accounts.

7. **Rights and Responsibilities.**

(i) **Content.** You acknowledge that; (a) Mplayer contains games, information, communications, software, photos, video, graphics, music, sounds and other material and services (collectively, "Content"), and (b) such Content may be provided under license by independent content providers ("ICPs"), including, but not limited to, game publishers, and other Members. You, and any user of your Master Account or Sub-Accounts, must evaluate, and bear the risk associated with, the accuracy, completeness or usefulness of any Content. Mpath does not pre-screen Content as a matter of policy, but Mpath and ICPs shall have the right, but not the responsibility, to remove Content which is deemed in their discretion harmful, offensive, or otherwise in violation of this Agreement. Such removal may be immediate and without notice.

(ii) **Rights.** You acknowledge that (a) the Services permit access to Content that is protected by copyrights, trademarks, and other proprietary rights owned by Mpath or third parties (collectively, "Rights"), and (b) these Rights are valid and protected in all media existing now or later developed, and (c) except as is explicitly provided otherwise, your use of Content shall be governed by generally applicable copyright and other intellectual property laws. You agree that you may upload or otherwise transmit on or through the Services only Content (including games) that is not subject to any Rights, or Content in which any holder of Rights has given express authorization for distribution on the Services. Unless specified otherwise in your upload or transmission, by submitting Content to any area you automatically grant -- or warrant that the owner of such Content has expressly granted -- Mpath the royalty-free, perpetual, irrevocable, non-exclusive right and license to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, perform and display such Content (in whole or part) worldwide and/or to incorporate it in other works in any form, media, or technology now known or later developed for the full term of any Rights that may exist in such Content.

(iii) **Conduct and Communication.** Mpath may elect at its sole discretion to monitor some, all or none of the areas of the Services for adherence to this Agreement. You agree to use the Services only for lawful purposes. Any conduct by you that in Mpath's sole discretion restricts or inhibits any other Member, person or entity from using or enjoying the Services or another service will not be permitted and shall entitle Mpath to immediately terminate your membership without notice.

8. **End User License.** The Mplayer End User Software License Agreement states the rights you are granted in connection with all software provided by Mpath. By using Mplayer you reaffirm on an ongoing basis that you agree to be bound by the terms and conditions of the then-current version of the Mplayer End User Agreement, which may be found on the Web Site.

9. **Disclaimer of Warranty.** To the maximum extent allowed by law, Mpath, its licensors and subcontractors do not warrant any connection to, transmission over, nor results or use of, any network connection or facilities provided (or failed to be provided) through Mplayer Internet Service. Member is responsible for assessing its own computer and transmission network needs, and the results to be obtained therefrom. YOU EXPRESSLY AGREE THAT USE OF MPLAYER, ALL SOFTWARE DISTRIBUTED BY MPATH, AND THE INTERNET ARE AT YOUR SOLE RISK. MPLAYER AND ALL SOFTWARE DISTRIBUTED BY MPATH ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS, UNLESS SUCH WARRANTIES ARE LEGALLY INCAPABLE OF EXCLUSION. MPATH DISCLAIMS ALL WARRANTIES OR CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, AND THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE, WITH RESPECT TO THE MPATH SERVICE, ALL SOFTWARE DISTRIBUTED BY MPATH, AND THE INTERNET. MPATH ASSUMES NO RESPONSIBILITY FOR ANY DAMAGES SUFFERED BY MEMBER, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA FROM DELAYS,

NONDELIVERIES, ERRORS, SYSTEM DOWN TIME, MISDELIVERIES OR SERVICE INTERRUPTIONS CAUSED BY THE NEGLIGENCE OF MPATH, ITS LICENSORS AND SUBCONTRACTORS, OR MEMBER'S OWN ERRORS AND/OR OMISSIONS. Mpath makes no warranty with respect to any related software or hardware used or provided by Mpath in connection with the Service. Any patent, trademark, trade secret or warranty infringements, whether actual or alleged, are the direct responsibility of the manufacturer of said hardware or software product. Mpath assumes no responsibility for any actions or liabilities arising from the possession or use of these software or hardware products.

10. **Limitation of Liability.** YOU ACKNOWLEDGE THAT MPATH SHALL NOT ASSUME OR HAVE ANY LIABILITY FOR ANY ACTION BY MPATH OR ITS ICPs OR OTHER LICENSORS WITH RESPECT TO CONDUCT, COMMUNICATION OR CONTENT ON MPLAYER. MPATH SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES OR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) IN CONNECTION WITH MPLAYER, MPLAYER INTERNET SERVICE, OR WITH ANY OTHER PRODUCT OR SERVICE PROVIDED BY MPATH. MPATH'S ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDY WITH RESPECT TO USE OF MPLAYER AND ALL SOFTWARE DISTRIBUTED BY MPATH SHALL BE THE REPLACEMENT OF ANY SOFTWARE DEVELOPED BY OR FOR MPATH WHICH IS FOUND TO BE DEFECTIVE, USING MEDIA CHOSEN BY MPATH. MPATH'S LIABILITY TO YOU FOR BREACH OF THIS AGREEMENT IS LIMITED SOLELY TO THE TOTAL CUMULATIVE AMOUNT PAID BY YOU TO ACCESS AND USE MPLAYER. BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CERTAIN DAMAGES, IN SUCH STATES MPATH'S LIABILITY IS LIMITED TO THE EXTENT PERMITTED BY LAW.

11. **Indemnification.** Upon request of Mpath, you agree to defend, indemnify and hold harmless Mpath, its affiliated companies, licensees, distributors and ICPs from all liabilities, claims and expenses, including attorneys' fees, arising from breach of this Agreement by use of, or in connection with, the transmission by or through your Master Account or Sub-Accounts of any Content on Mplayer. Mpath reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you hereunder, and in such event, you shall have no further obligation to provide indemnification for such matter.

12. **Termination.** Either you or Mpath may terminate your subscription to the Services at any time. Your only right with respect to any dissatisfaction with any (i) Agreement term, or policy or practice of Mpath in operating the Services, (ii) Content available through the Services or change therein, or (iii) amount or type of fees or billing methods, or change therein, is to terminate your subscription to the Services by notifying Mplayer Customer Service of your desire to terminate and confirming such request in writing or electronically if requested. Your notice of termination will be effective upon receipt by Mpath, or upon receipt of confirmation if confirmation is requested. If your Master Account and Sub-Accounts or your Mplayer Internet Service account is terminated or canceled, no refund of any fees, including monthly membership fee, will be granted and any online time credited to your Account(s) is not convertible to cash or other form of credit.

13. **Impermissible Conduct.** You may not engage in conduct or communication while using the Services which is unlawful or which restricts or inhibits any other user from using or enjoying the Services. You agree to use the Services only for lawful purposes. Mpath reserves the right to terminate your membership if it determines in its sole discretion that you have engaged in any impermissible conduct. Set forth below are some common examples of impermissible conduct. This list is not exhaustive. Mpath reserves the right, but does not assume the responsibility, to restrict conduct which Mpath deems in its discretion to be harmful to individual Members, damaging to the communities which use the Services, or in violation of Mpath's or any third party's rights. You acknowledge, however, that communication over the Services and the Internet often occurs in real-time, or may be posted on one of Mplayer's or the Internet's message boards or libraries, and Mpath cannot, and does not intend to, screen communication in advance.

You may not post or use the Services to: (1) harass, threaten, embarrass or cause distress, unwanted attention or discomfort upon another user of the Services or other person or entity, (2) post or transmit sexually explicit images or other content which is deemed by Mpath to be offensive, (3) transmit any unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, hateful, racially, ethnically or otherwise

objectionable Content, (4) cause the screen to "scroll" faster than other users are able to type to it or carry out any action with a similar disruptive effect, (5) impersonate any person, including but not limited to, an Mpath official or employee, an ICP or ICP official or employee, or a moderator, forum leader, guide or host, or communicate under a false name or a name that you are not entitled or authorized to use, (6) disrupt the normal flow of dialogue in a chat room or otherwise act in a manner that negatively affects other users, individuals or entities, (7) post or transmit chain letters or pyramid schemes, (8) post or transmit any unsolicited advertising, promotional materials, or other forms of solicitation to other Member's, individuals or entities on Mplayer, except in those areas of Mplayer that are designated for such a purpose, (9) violate any operating rule, policy or guideline of any other interactive service, (10) intentionally or unintentionally violate any applicable local, state, national or international law or regulation, (11) modify any files which Mpath does not specifically authorize you to modify or (12) "spam" by sending more than one unsolicited piece of mail to a single address or posting to many newsgroups.

Some of the foregoing types of impermissible behavior are discussed in more detail below:

(i) **Offensive Communication.** Mplayer is a community-oriented service composed of many different communities of people. Please remember that there may be children online. If you use vulgar or abusive language online, even if masked by symbols or other characters, or engage in other impermissible behavior, you may either receive a warning, or be temporarily or permanently excluded from one or more chat or game rooms or other activities, or your Membership may be terminated immediately and you may be subject to civil liability and/or investigation and prosecution by law enforcement.

(ii) **Harassment.** Harassment occurs when a Member targets another individual or entity to cause distress, embarrassment, unwanted attention, or other discomfort. Mpath does not condone harassment in any form and may suspend or terminate the accounts of any Member who harasses others. You may have a disagreement with someone's point of view, but personal attacks, or attacks based on a person's race, national origin, ethnicity, religion, gender, sexual orientation, disablement or other such affiliation, are prohibited. If you have a disagreement with someone's point of view, address the subject, not the person. This provision shall not be construed to prohibit actions against fictional characters or other fictional entities in the context of normal game play.

(iii) **Graphic Files.** Mpath prohibits the transfer or posting on Mplayer of sexually explicit images or other content deemed offensive by Mpath

(iv) **Scrolling.** "Scrolling" means repeatedly causing the screen to roll faster than users are able to type to it. It is caused by a user entering a set of random characters or by repeatedly entering a carriage return or taking any action with a similar disruptive effect. Scrolling is an expressly prohibited form of disruption.

(v) **Impersonation.** This can involve the portrayal of another person or entity, such as the impersonation of Mpath or ICP staff, or communication under a false name or a name that you are not authorized to use. Members must avoid the portrayal of Mpath or ICP staff or other persons in all forms of online communication, including, but not limited to, Member names, Member profiles, voice, text or graphic chat and message postings.

(vi) **Room Disruption.** This includes purposefully interfering with the normal flow of dialogue in a chat room. Room disruption may occur by repeatedly interrupting conversation between Members, by acting in such a way as to antagonize, harass or create hostility in a chat room, or by making commercial postings, solicitations or advertisements.

(vii) **Chain Letters and Pyramid Schemes.** Transmission of chain letters and pyramid schemes of any kind is not allowed on the Services. This material places an unnecessary load on the Services and is considered a nuisance by many Members. Certain chain letters and pyramid schemes are illegal. Letters or messages that offer a product or service based on the structure of a chain letter are a waste of resources and are not permitted on the Services.

(viii) **Advertising and Solicitation.** You may not use the Services to send unsolicited advertising, promotional material, or other forms of solicitation to other Members. You may not use the Services to collect or

"harvest" Member names without the express prior permission of those Members. Mpath reserves the right to block or filter mass email solicitations on or through the Services.

(ix) **Improper Use of Proprietary Materials.** Use of material which is subject to the Rights of any person or entity without the express permission of the Rights holder is prohibited and will result in the termination of your membership and possible civil and/or criminal liability.

(x) **Spamming.** Posting to many news groups at once and sending multiple unsolicited emails to a single email address is prohibited. Your account will be in jeopardy if one or more of the following offenses are reported: a) Posting a message to more than 10 newsgroups; b) Posting an off-topic message to a newsgroup or mailing list (as defined by the newsgroup or mailing list's rules); c) Sending unsolicited mail to more than 25 people or d) Sending more than two unsolicited emails to a single email address. If repeated spamming occurs, we reserve the right to terminate your account.

If you witness any conduct that violates Mpath's usage guidelines, you may contact Mpath Customer Service through any means described on the Web Site. Mpath will handle information you provide in its sole discretion, and may decide to take no action.

14. **Use of Personal Publishing Tools.** Mpath may provide Members with personal publishing tools to enable Members to create personal home pages or other content. Use of such publishing tools will be subject to this Agreement. Mpath reserves the right to require the removal of links or other content on or through Members' home pages or personal Internet sites if providing such content or links causes undue load or other problems on the Services.

15. **Third Party Products and Services.** Mpath does not endorse, warrant or guarantee any product or service offered through the Services by any third party, will not be a party to or in any way monitor any transaction between you and third-party providers of products or services, and will not bear any responsibility for their products, services, policies or actions. Members using any such products and services may be subject to additional terms and conditions relating to the use of such third party content, software or services and failure to abide by those additional terms and conditions may result in termination of membership.

16. **Member Lists.** From time to time, Mpath Service may make its Member list available to select companies that offer products and/or information that Mpath believes might be of interest to its Members. If you do not want your name released to these companies, please contact Mpath Service Customer Service.

17. **General Provisions.** You may not use, copy, modify, sublicense, rent, sell, assign or transfer the license granted pursuant to this Agreement, or the Mpath Service, except as expressly provided in this Agreement. Any assignment in violation of this Agreement is void. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable, and such decision shall not affect the enforceability; (i) of such provision under other circumstances, or (ii) of the remaining provisions hereof under all circumstances. The paragraph headings contained in this Agreement are for the purposes of convenience only and are not intended to define or limit the contents of said paragraphs. Mpath and you are independent contractors under this Agreement. Mpath's failure to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the right of any party to enforce each and every such provision thereafter. The express waiver by Mpath of any provision, condition or requirement of this Agreement shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement. Notwithstanding anything else in this Agreement, no default, delay or failure to perform on the part of Mpath shall be considered a breach of this Agreement if such default, delay or failure to perform is shown to be due to causes beyond the reasonable control of Mpath. This Agreement is governed by and construed under California law as such law applies to agreements between California residents entered into and to be performed entirely within California, except as governed by Federal law. Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs may be contacted in writing at 1020 N Street, #501, Sacramento, CA 95814 or by telephone at (916) 445-1254. All notices given by Member or required under this Agreement shall be in writing and addressed to Mpath at 10455-A Bandley Drive, Cupertino, CA 95014, or faxed to (408) 342-8811, Attn.: Mpath Account Administration.

You acknowledge that you have read this Agreement, understand it, and agree to be bound by its terms and conditions. This Agreement represents the complete and exclusive statement of the agreements concerning the Mpath Service between you and Mpath and supersedes all prior agreements between the parties. It may be amended only by a writing executed by both parties.