

MPLAYER ONLINE SERVICE AGREEMENT

1. **Terms of Online Service Agreement.** The *Mplayer Service* For Network Game Play and Web Site (defined below) (collectively, the “*Mplayer Service*”) are provided by *Mpath Interactive, Inc.* (“*Mpath*”) to you (“you”), subject to the terms of this *Mplayer Online Service Agreement* (“*Agreement*”). As part of the *Mplayer Service*, *Mpath* maintains a World Wide Web site, www.mplayer.com (the “*Web Site*”). 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 *Mplayer Service* 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 who has entered into this *Agreement* with *Mpath*.

2. **Account Information.**

(i) **Master Account, Sub-Accounts.** YOU REPRESENT THAT YOU ARE AT LEAST EIGHTEEN (18) YEARS OLD. When you register online for the *Mplayer Service*, 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 *Mplayer Service*, and may result in immediate termination of your account and subject you to civil and/or criminal liability.

(ii) **Passwords.** Upon your registration as a Member of the *Mplayer* Service, 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 may assign passwords, but no employee will ever ask for your password at a later time. You acknowledge that although the *Mplayer* Service 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 the *Mplayer* Service, 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 *Mplayer* Service 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.

3. **Charges.**

(i) **Charges.** Current rates and surcharges for using the *Mplayer* Service may be obtained by using the billing section of the Web Site. *Mpath* reserves the right to change its fees and billing methods at any time effective thirty (30) days after notice thereof is posted on the Web Site. You agree to review the billing information on the Web Site periodically to become aware of such

changes. If any such change is unacceptable to you, you may terminate your status as a Member of the *Mplayer* Service as provided in Section 9. Your continued use of the *Mplayer* Service following any such posting shall be deemed acceptance of such change. YOUR MONTHLY MEMBERSHIP FEE IS PAYABLE IN ADVANCE AND IS NOT REFUNDABLE IN WHOLE OR IN PART. You are responsible for all Internet service provider access charges associated with connecting to Internet services, including the *Mplayer* Service. Each time you use the *Mplayer* Service 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.

(ii) **Late Payments.** If *Mpath* does not receive the full amount of your Member 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.

4. **Rights and Responsibilities.**

(i) **Content.** You acknowledge that; (a) the *Mplayer* Service 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 *Mplayer* Service permits 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 *Mplayer Service* 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 *Mplayer Service*. 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 *Mplayer Service* for adherence to this Agreement. You agree to use the *Mplayer Service* 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 *Mplayer Service* or another service will not be permitted and shall entitle *Mpath* to immediately terminate your membership without notice.

5. **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 the *Mplayer Service* 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.

6. **Disclaimer of Warranty.** YOU EXPRESSLY AGREE THAT USE OF THE *MPLAYER SERVICE*, ALL SOFTWARE DISTRIBUTED BY *MPATH*, AND THE INTERNET ARE AT YOUR SOLE RISK. THE *MPLAYER SERVICE* 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. IN PARTICULAR, *MPATH* DOES NOT WARRANT THAT USE OF THE *MPATH* SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT YOU WILL HAVE UNINTERRUPTED, ERROR-FREE OR CONTINUED ACCESS TO THE *MPLAYER* SERVICE.

7. **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 THE *MPLAYER* SERVICE. *MPATH* SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL 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 THE *MPLAYER* SERVICE OR WITH ANY OTHER PRODUCT OR SERVICE PROVIDED BY *MPATH*. *MPATH*'S ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDY WITH RESPECT TO USE OF THE *MPLAYER* SERVICE 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 THE *MPLAYER* SERVICE. 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.

8. **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 the *Mplayer* Service. *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.

9. **Termination.** Either you or *Mpath* may terminate your subscription to the *Mplayer* Service 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 *Mplayer* Service, (ii) Content available through the *Mplayer* Service or change therein, or (iii) amount or type of fees or billing methods, or change therein, is to terminate your subscription to the *Mplayer* Service 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 are terminated or canceled, no refund of any fees, including monthly membership fee, will be granted and any online time credited to your Master Account(s) or Sub-Accounts is not convertible to cash or other form of credit.

10. **Impermissible Conduct.** You may not engage in conduct or communication while using the *Mplayer* Service which is unlawful or which restricts or inhibits any other user from using or enjoying the *Mplayer* Service. You agree to use the *Mplayer* Service 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 *Mplayer* Service, or in violation of *Mpath*'s or any third party's rights. You acknowledge, however, that communication over the *Mplayer* Service often occurs in real-time, or may be posted on one of the *Mplayer* Service's message boards or libraries, and *Mpath* cannot, and does not intend to, screen communication in advance.

You may not post or use the *Mplayer* Service to: (1) harass, threaten, embarrass or cause distress, unwanted attention or discomfort upon another user of the *Mplayer* Service 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, except in those areas 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, or (11) modify any files which *Mpath* does not specifically authorize you to modify.

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

(i) **Offensive Communication.** The *Mplayer* Service 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 the *Mplayer* Service 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 *Mplayer* Service. This material places an unnecessary load on the *Mplayer* Service 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 *Mplayer* Service.

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

(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.

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.

11. **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 *Mplayer* Service.

12. **Third Party Products and Services.** *Mpath* does not endorse, warrant or guarantee any product or service offered through the *Mplayer* Service 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.

13. **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.

8. **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 1-916-445-1254.

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.

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