

## MPLAYER™ SOFTWARE BETA TEST SITE LICENSE AGREEMENT

This Beta Test Site License Agreement ("Agreement") is a legal agreement between you ("Licensee") and Mpath Interactive, Inc. ("Vendor").

*Product Definition.* The term "Product" shall mean the hardware, software and related documentation for Mpath Interactive's Mplayer™ service.

*Grant of License.* Vendor grants Licensee a limited, royalty-free, nonexclusive, nontransferable, revocable license (the "License") to use the Product on one computer connected to a closed-network computer system, subject to all terms and conditions of this Agreement. Licensee may not distribute the Product on-line (either on the Internet or otherwise) or otherwise make the Product available to persons other than the Licensee. For purposes of this Section, a computer connected to the Internet or a commercial on-line service may still be deemed to be connected to a "closed network."

*Restrictions.* Licensee agrees that it shall not, directly or indirectly, (i) sell, lease, assign, sublicense or otherwise transfer, (ii) duplicate, reproduce or copy (except to make one backup copy), (iii) disclose, divulge or otherwise make available to any third party, (iv) use except as authorized by this Agreement, or (v) decompile, disassemble or otherwise analyze for reverse engineering purposes the Product, including all Vendor Confidential Information (as defined below "Confidential Information") therein. Licensee shall take all reasonable precautions to prevent inadvertent disclosure of the Product, including all Vendor Confidential Information therein.

*Role of Licensee.* Licensee agrees to use, evaluate, and test the Product. Licensee further agrees to provide Vendor with periodic reports.

*Access to Product.* Licensee agrees to allow Vendor, at mutually agreed times, to have reasonable access to the Product at Licensee's site and on Licensee's computer system for the purpose of using, testing, modifying and correcting the Product.

*Further Assurances.* Licensee hereby assigns to Vendor all right, title and interest in and to all reports, designs, inventions, specifications and other materials developed under this Agreement regarding performance or improvement of the Product, whether prepared by Vendor or Licensee, during the course of or as a result of this Agreement. All such reports, designs, inventions, specifications and other materials shall be Vendor's confidential information and shall be subject to the restrictions defined below ("Confidential Information").

*No Obligation to Support Product.* Vendor shall have no obligation under this Agreement to correct any bugs, defects or errors in the Product or to otherwise support or maintain the Product.

*Ownership of Product.* Vendor shall retain sole and exclusive ownership of all right, title and interest in and to the Product. Licensee agrees that Vendor owns all rights, title and interest, including but not limited to copyright, patent, trade secret, and all other intellectual property rights, in the Product and any changes, modifications or corrections to the Product. If Licensee is ever held or deemed to be the owner of any copyright rights in the Product or any changes, modifications or corrections to the Product, then Licensee hereby irrevocably assigns to Vendor all such rights, title and interest and agrees to execute all documents necessary to implement and confirm the letter and intent of this Section.

*Confidential Information.* Licensee acknowledges that the Product contains and any communications between Vendor and Licensee will contain valuable trade secrets and confidential information owned by Vendor, including but not limited to information regarding the development status of the Product, Product release dates or milestones, the functionality of the Product, the architecture of the Product, the appearance and content of the Product, the method and pattern of user interaction with the Product, and the content of the Product's documentation (collectively, such trade secrets and confidential information are referred to as "Vendor Confidential Information"). Licensee specifically acknowledges and agrees that it shall not permit any third party, nor any employee, representative or agent thereof, to have access to the Product or to any Vendor Confidential Information therein without Vendor's express prior written consent, unless such Vendor Confidential Information has already become public knowledge through no act or omission of Licensee.

**NO WARRANTY.** Since the product is provided free of charge AND FOR TEST PURPOSES ONLY, the Product is provided on an "as is" basis, without warranty of any kind, including without limitation the warranties of merchantability, fitness for a particular purpose and non-infringement. The entire risk as to the quality and performance of the Product is borne by licensee. Should the Product prove defective, licensee, and not vendor, assume the entire cost of any service and repair. This disclaimer of warranty constitutes an essential part of the Agreement.

**LIMITATIONS OF LIABILITY.** Under no circumstances and under no legal theory, tort, contract, or otherwise, shall Vendor or its Vendors or suppliers be liable to licensee or any other person for any indirect, special, incidental, or consequential damages of any character including, without limitation, damages for loss of goodwill, work

stoppage, computer failure or malfunction, or any and all other commercial damages or losses, even if Vendor shall have been informed of the possibility of such damages or for any claim by any other party. VENDOR SHALL HAVE SOLE RESPONSIBILITY FOR PROTECTING ANY DATA OF VENDOR USED IN CONNECTION WITH THE PRODUCT.

*No Assignment.* Licensee may not assign or otherwise transfer in any way any of Licensee's rights and obligations arising out of this Agreement without the prior written consent of Vendor.

*Force Majeure.* Neither party shall be responsible for any delay or failure to perform obligations specified in this Agreement due to causes beyond the party's reasonable control.

*Term of License.* The License shall expire on May 1, 1996. In addition, Licensee may terminate the license granted by this Agreement by providing prior written notice to Vendor stating the effective date of the termination. Vendor may terminate the license granted by this Agreement by providing written notice to Licensee stating the effective date of the termination, which notice shall be provided at least five (5) days prior to the effective date.

*Return of Product.* Within ten (10) days following the termination or expiration of the license granted by this Agreement, Licensee agrees to (i) return to Vendor all copies of the Product, and (ii) delete all copies of the product from all of Licensee's computer systems.

*Independent Parties.* Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, agent or employment relationship between Vendor and Licensee.

*Waiver.* The waiver or failure of either party to exercise in any respect any rights provided for in this Agreement shall not be deemed a waiver of any further right under this Agreement.

*Severability.* If any term or provision of this Agreement should be declared invalid by a court of competent jurisdiction or by operation of law, the remaining terms and provisions of this Agreement shall be unimpaired, and the invalid term or provision shall be replaced by such valid term or provision as comes closest to the intention underlying the invalid term or provision.

*Notices.* Any notice or other communication required or permitted in this Agreement shall be in writing and shall be deemed to have been duly given three (3) days after mailing by first class certified mail, postage prepaid, to the following address:

*To Vendor:*

Mpath Interactive, Inc.  
10455-A Bandlely Drive  
Cupertino, CA 95014  
Attn: Tim Weaver

*Amendments.* No amendment or modification of any provision of this Agreement shall be effective unless the same shall be in writing and signed by both parties.

*Applicable Law.* This Agreement shall be 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.

*Equitable Relief.* Licensee acknowledges and agrees that due to the unique nature of Vendor's proprietary and confidential information, there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach may allow Licensee or third parties to unfairly compete with Vendor resulting in irreparable harm to Vendor, and therefore, upon any such breach or threat thereof, Vendor shall be entitled to injunctions and other appropriate equitable relief in addition to whatever remedies it may have at law.