Serious Mlerm LLC

TERMS OF USE

LAST MODIFIED ON 1 Feb 2024

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| **Important:** Please read these Terms of Use carefully before continuing to use this game.  Section 17. of this Terms of Use Agreement contains a binding arbitration clause and class action waiver. If you live in the United States, this Section affects your rights about how to resolve disputes that you may have with us.  **Please read it carefully.** |

This Terms of Use (the “Agreement”) applies to the video game software "Earth, Fire, and Wind" (the “Service”), provided by Serious Mlerm LLC (“Serious Mlerm”).

1. Acceptance of Terms

By continuing to use the Service, you agree as follows:

* 1. You understand and intend that this Agreement is a legally binding agreement and the equivalent of a signed, written contract;
  2. You will use the Service in accordance with applicable laws and regulations and in accordance with the terms and conditions in this Agreement as it may be amended by Serious Mlerm from time to time; and
  3. You understand, accept, and have received this Agreement and its terms and conditions, and acknowledge and demonstrate that you can access this Agreement.

If you do not agree with the terms and conditions in this Agreement, please discontinue all further use of the Service.

1. Serious Mlerm’s License to You

Serious Mlerm grants you a single, non-exclusive, non-transferable and limited personal license to access and use the Service. This license is conditioned on your continued compliance with the terms and conditions in this Agreement. You may not rent, lease, lend, sell, transfer, redistribute, or sublicense the Service and, if you sell or otherwise transfer a device on which any part of the Service is installed to a third party, you must remove the Service from such device before doing so.

Additionally, you may not copy, decompile, reverse-engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the Service, any updates, or any part thereof (except as and only to the extent that any foregoing restriction is prohibited by applicable law or to the extent as may be permitted by the licensing terms governing use of any open-sourced components included with the Service).

1. Messages from Serious Mlerm

You understand that you may receive business-related communications from Serious Mlerm through the Service or through email, such as product and other announcements, and administrative notices. You agree that these communications are not “unsolicited commercial email advertisements” and you agree to receive them.

Marketing-related email messages will be accompanied by instructions for opting out.

1. Third-Party Platforms

Even though you may have accessed the Service through a third-party platform, such as Github or others (each, a “Third-Party Platform”), none of the Third-Party Platforms or their owners are a party to this Agreement and they have no obligations to you in connection with the Service.

1. Support Services

Serious Mlerm may, in its sole discretion, provide you with customer and technical support services related to the Service (“Support Services”). Serious Mlerm is not required to provide Support Services unless otherwise required by applicable law. No failure to provide, or to continue to provide, Support Services will be a default of Serious Mlerm under this Agreement. Any supplemental software code provided to you as part of the Support Services will be treated as part of the Service, and as between you and Serious Mlerm will be and remain the sole property of Serious Mlerm and will be subject to the terms and conditions of this Agreement.

Serious Mlerm customer support may be reached by contacting us at not.the.boulder@gmail.com. None of the Third-Party Platforms or their owners have any obligation whatsoever, under any circumstances, to provide Support Services with respect to the Service. You agree that you will look solely to Serious Mlerm in connection with Support Services.

1. Modification, Termination, and Monitoring of the Service

Serious Mlerm reserves the right to modify or discontinue, temporarily or permanently, the Service (or any part of the Service) with or without notice at any time. You agree that Serious Mlerm will not be liable to you or any third party for any modification, suspension, or discontinuance of the Service.

Serious Mlerm reserves the right to monitor use of the Service to determine compliance with this Agreement, as well as the right to edit or remove any Service content, information, or materials, in whole or in part, at our sole discretion. We reserve the right to refuse access to the Service to anyone, for any reason, at any time.

1. Security of Data Transmission and Storage

Electronic communications using the Service may not always be encrypted. You acknowledge that there is a risk that data, including email, electronic communications, and personal data, may be accessed by unauthorized third parties when communicated between you and Serious Mlerm or between you and other parties.

1. Hyperlinks

The Service may contain links to other sites and software applications, including through display advertisements (the “Linked Services”). Serious Mlerm does not control the Linked Services, and Serious Mlerm and its affiliates and agents make no representations whatsoever concerning the content, accuracy, security or privacy of those Linked Services. The fact that Serious Mlerm has provided a link to an external location is not an endorsement, authorization, sponsorship, or affiliation with respect to such Linked Services, its owners, or its providers. There are risks in using any information, software, or products found on the Internet, and Serious Mlerm cautions you to make sure you understand these risks before retrieving, using, relying upon, or purchasing anything via the Internet. You agree that under no circumstances will you hold Serious Mlerm or its affiliates or agents liable for any loss or damage caused by use of or reliance on any content, goods, or services available on Linked Services.

1. Trademarks and Copyrights

The Service is owned by Serious Mlerm and is protected by United States copyright laws and international treaty provisions. All Service content, trademarks, services marks, trade names, logos, and icons are proprietary to Serious Mlerm. Nothing contained in the Service should be seen as granting any license or right to use any trademark displayed in the Service without the written permission of Serious Mlerm or such third party that may own the trademarks displayed in the Service. Your use of the trademarks displayed in the Service, or any other content in the Service, except as provided in this Agreement, is strictly prohibited.

Intellectual property displayed through the Service is either the property of, or used with permission by, Serious Mlerm. You are prohibited from using or authorizing the use of this intellectual property unless specifically permitted under the Agreement. Any unauthorized use of this intellectual property may violate copyright laws, trademark laws, the laws of privacy and publicity, or other regulations and statutes.

1. Disclaimer of Warranties

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| **Your use of the Service is entirely at your own risk.**  The Service is provided by Serious Mlerm on an as-is basis. Serious Mlerm expressly disclaims all warranties of any kind, whether express or implied, including, but not limited to the implied warranties of merchantability, fitness for a particular purpose and non-infringement.  Serious Mlerm makes no warranty that (i) the Service will meet your requirements, (ii) that operation of the Service will be uninterrupted, timely, secure, or error-free, or (iii) the results that may be obtained from the use of the Service will be accurate or reliable.  No advice or information, whether oral or written, obtained by you from Serious Mlerm, or through the Service creates any warranty regarding the Service not expressly stated in this Agreement. |

Because some states or jurisdictions do not allow the disclaimer of implied warranties, the foregoing disclaimer may not apply to you.

1. Limitation of Liability

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| You expressly understand and agree that Serious Mlerm is not liable for any direct, indirect, incidental, special, consequential, or exemplary damages, including damages for loss of profits, goods, goodwill, use, data, or other intangible losses (even if Serious Mlerm has been advised of the possibility of such damages), resulting from the use or the inability to use the Service or any other matter relating to the Service.  You hereby expressly and irrevocably waive, and agree never to assert any claims against any Third-Party Platform that you may have under any theory of law or equity anywhere in the world, in connection with rights licensed under this Agreement, your possession or use of the Service, or the content of the Service. Any claims arising out of the Service are subject to the limitations set forth in this Agreement and may be brought only against Serious Mlerm, as described in Sections 16. and 17. below. |

Because some states or jurisdictions do not allow the exclusion or the limitation of liability for consequential or incidental damages, in such states or jurisdictions, the liability of Serious Mlerm and its affiliates will be limited to the fullest extent permitted by law.

1. Indemnification

You agree to indemnify and hold Serious Mlerm and its affiliates, officers, agents, and employees harmless from any claim, demand, loss, costs, or expense, including attorneys’ fees, made by any person or entity arising out of your violation of this Agreement, state or federal laws or regulations, or any other person’s rights, including infringement of any copyright or violation of any proprietary or privacy right. Under no circumstances, including any negligent act, will Serious Mlerm or its affiliates or agents be liable for any damages of any kind that result from the use of, or the inability to use, the Service.

1. Your Personal Information

Certain personal and other information that we collect, process, and share is subject to our Privacy Policy. As a condition of using the Service you agree to the terms of the Privacy Policy, as it may be changed from time to time. You agree that your use of the Service is subject to the Privacy Policy.

1. Disclosures Required by Law

Serious Mlerm reserves the right to disclose any information, including personally identifiable information about you, as necessary to satisfy any applicable law, regulation, legal process, or governmental request. Serious Mlerm reserves the right to fully cooperate with any law enforcement authorities or court order requesting or directing Serious Mlerm to disclose the identity of any user believed to be in violation of this Agreement.

By accepting this Agreement, you waive all rights and agree to hold Serious Mlerm harmless from any claims resulting from any action taken by Serious Mlerm during or as a result of its investigations or from any actions taken as a consequence of investigations by either Serious Mlerm or law enforcement authorities.

1. Legal Compliance

By using the Service, you represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.

1. Governing Law; Mediation; Jurisdiction

The Agreement, and all future agreements you enter into with Serious Mlerm, unless otherwise indicated on such other agreement, will be governed by the laws of the State of California. This is the case regardless of whether you reside or transact business with Serious Mlerm, or any of its affiliates or agents, in the State of California or elsewhere. Unless a dispute would be governed by the terms of Section 17. below, you agree to submit to the personal and exclusive jurisdiction of the courts located within the city of San Francisco, California, USA.

**For EU users only:** In the event of a dispute relating to the interpretation, performance, or validity of this Agreement, an amicable solution can be sought before any legal action. You can file your complaint with Serious Mlerm by sending a message via email to not.the.boulder@gmail.com. In case of failure, you can, within one year of the failed request, have recourse to an Alternative Dispute Resolution procedure by filing an online complaint on the European Commission’s Online Dispute Resolution website: <https://webgate.ec.europa.eu/odr/main/index.cfm?event=main.home.chooseLanguage>. In the event that out-of-court dispute resolutions fail, the dispute may be brought before the competent courts.

1. Binding Arbitration

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| Any dispute or claim relating in any way to your use of the Service (each, a “Claim”) will be resolved by binding arbitration, rather than in court (except that you may assert claims in small-claims court if your claims qualify). You agree that each Claim must be brought individually.  YOU AND SERIOUS MLERM AGREE THAT (i) THERE IS NO RIGHT OR AUTHORITY FOR ANY DISPUTE TO BE ARBITRATED ON A CLASS ACTION BASIS OR TO UTILIZE CLASS ACTION PROCEDURES; (ii) THERE IS NO RIGHT OR AUTHORITY FOR ANY DISPUTE TO BE BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY OR AS A PRIVATE ATTORNEY GENERAL; AND (iii) NO ARBITRATION MAY BE JOINED WITH ANY OTHER ARBITRATION.  The Federal Arbitration Act and federal arbitration law apply to this Agreement and this binding arbitration clause.  Arbitration is a process with no judge or jury – an arbitrator will review the arguments in the dispute and award damages and other relief just like a court would. The arbitrator must follow this Agreement as a court otherwise would. Court review of the arbitration award is limited under the Federal Arbitration Act.  To start an arbitration, you must send an email to not.the.boulder@gmail.com describing your Claim and requesting arbitration, or we may do the same by sending a written notice requesting arbitration to your address. The proceedings will be conducted through JAMS, using their Streamlined Arbitration Rules and Procedures. You can view these rules at jamsadr.com or by calling 800-352-5267. The payment of the initial filing fees will be made by the party filing the Claim, and any other filing and other fees will be apportioned as directed by the JAMS rules. The arbitration will take place in San Francisco, California, USA, unless the Parties agree to video, phone, or internet connection appearances.  Except as otherwise set forth below, you may seek any remedies available to you under federal, state or local laws in an arbitration action. As part of the arbitration, both you and Serious Mlerm will have the opportunity for discovery of non-privileged information that is relevant to the Claim. The arbitrator will provide a written statement of the arbitrator’s decision regarding the Claim, the award given (including any attorneys’ fees and costs awarded), and the arbitrator’s findings and conclusions on which the arbitrator’s decision is based.  Notwithstanding the terms of this Section, either of us may bring a lawsuit in court for equitable relief, for any misuse or infringement of intellectual property rights, or for any Claim related to, or arising from, allegations of theft, piracy, invasion of privacy, or unauthorized use of the Service.  BY AGREEING TO THIS ARBITRATION PROVISION, YOU UNDERSTAND THAT YOU AND SERIOUS MLERM WAIVE THE RIGHT TO SUE IN COURT AND HAVE A JURY TRIAL.  You and Serious Mlerm agree that if any portion this Section is found illegal or unenforceable, that portion will be severed and the remainder of the Section will be given full force and effect. |

1. Miscellaneous Terms
   1. **Agreement Revisions.** This Agreement may only be revised in writing by Serious Mlerm, or by Serious Mlerm’s publication of a new version on the Service.
   2. **Force Majeure.** Serious Mlerm is not liable for any delay or failure to perform resulting from causes outside the reasonable control of Serious Mlerm, including without limitation any failure to perform hereunder due to unforeseen circumstances or cause beyond Serious Mlerm’s control such as acts of God, war, terrorism, riots, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, or shortages of transportation facilities, fuel, energy, labor, or materials.
   3. **No Partnership.** You agree that no joint venture, partnership, employment, or agency relationship exists between you and Serious Mlerm as a result of this Agreement or your use of the Service.
   4. **Assignment.** Serious Mlerm may assign this Agreement, in whole or in part, to any person or entity at any time with or without your consent. You may not assign the Agreement without Serious Mlerm’s prior written consent, and any unauthorized assignment by you will be null and void.
   5. **Severability.** If any part of this Agreement is determined to be void, invalid or unenforceable, then that portion will be severed, and the remainder of the Agreement will be given full force and effect.
   6. **Attorneys’ Fees.** In the event any litigation is brought by either party in connection with this Agreement, the prevailing party in such litigation will be entitled to recover from the other party all the reasonable costs, attorneys’ fees and other expenses incurred by such prevailing party in the litigation.
   7. **No Waiver.** Our failure to enforce any provision of this Agreement will in no way be construed to be a present or future waiver of such provision, nor in any way affect the right of any party to enforce every such provision thereafter. The express waiver by us of any provision, condition or requirement of this Agreement will not constitute a waiver of any future obligation to comply with such provision, condition or requirement.
   8. **Equitable Remedies.** You hereby agree that Serious Mlerm would be irreparably damaged if the terms of this Agreement were not specifically enforced, and therefore you agree that we will be entitled, without bond, other security, or proof of damages, to appropriate equitable remedies with respect to breaches of this Agreement, in addition to such other remedies as we may otherwise have available to us under applicable laws.
   9. **Entire Agreement.** This Agreement, including the documents expressly incorporated by reference, constitutes the entire agreement between you and Serious Mlerm with respect to the Service and supersedes all prior or contemporaneous communications, whether electronic, oral or written, between you and Serious Mlerm with respect to the Service.