

IMPORTANT

READ CAREFULLY BEFORE DOWNLOADING OR USING THIS SOFTWARE:

This End-User License Agreement ("EULA") is a legal agreement between you (either an individual or a single entity) and Her Interactive, Inc. for the software program "Nancy Drew: The Creature of Kapu Cave" ("SOFTWARE") downloaded from Her Interactive, Inc. The SOFTWARE includes computer software, the associated media, and all documentation in any format. By clicking ACCEPT, downloading, installing, copying or otherwise using the SOFTWARE, you agree to be bound by the terms of this EULA. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, CLICK CANCEL AND/OR DO NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE IN ANY MANNER.

THIS EULA APPLIES TO ALL VERSIONS OF THE SOFTWARE IDENTIFIED ABOVE, INCLUDING FREE VERSIONS AND PAID VERSIONS.

Any personal information (your name, age, email and postal address and other personal information) that you provide to Her Interactive, Inc. is subject to the Her Interactive Privacy Policy, www.herinteractive.com/corp/privacy/privacy.shtml.

SOFTWARE LICENSE

The SOFTWARE is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The SOFTWARE is licensed, not sold.

1. GRANT OF LICENSE. This EULA grants you the following non-exclusive rights in the SOFTWARE:

*Software. You may download, install and use one copy of the SOFTWARE on a single computer for your personal non-commercial use.

*Storage/Network Use. You may not store or install a copy of the computer software portion of the SOFTWARE over an internal network or distribute the SOFTWARE to your other computers over an internal network.

*Back-up Copy. You may make a single back-up copy of the SOFTWARE. You may use the back-up copy solely for archival purposes.

2. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS.

*Limitations on Reverse Engineering, Decompilation and Disassembly. You may not modify, reverse engineer, decompile, or disassemble the SOFTWARE (except and only to the extent that such restriction is expressly prohibited by applicable law) or create derivative works of the SOFTWARE, or any part thereof.

*Separation of Components. The SOFTWARE is licensed as a single product. Its component parts may not be separated for use on more than one computer.

*Rental. You may not rent or lease the SOFTWARE.

*Proprietary Notices. You may not remove or modify any proprietary notices on or in the SOFTWARE.

*Software Transfer. You may permanently transfer all of your rights under this EULA only as part of a sale or transfer of the SOFTWARE, provided you retain no copies, you transfer all of the SOFTWARE (including all component parts, the media and printed materials, any upgrades, per this EULA) and the recipient agrees to the terms of this EULA.

*You agree to comply with all applicable laws, statutes and regulations with respect to your use of the SOFTWARE, including all copyright and other intellectual property laws, and all trade regulations. The SOFTWARE may not be downloaded or exported (a) into (or to a national or resident of) Cuba, Iraq, Libya, Sudan, North Korea, Iran, Syria or any other country subject to a U.S. embargo; or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Denied Parties List or Entity List.

HER INTERACTIVE, INC. RETAINS ALL RIGHTS NOT EXPRESSLY GRANTED UNDER THIS EULA. Ogg sound compression is Copyright (c) 2001, Xiphophorus. Bink Video is Copyright © 1997-2006 by RAD Game Tools, Inc.

3. SUPPORT. Her Interactive, Inc. has no obligation to provide support or maintenance for the SOFTWARE. Her Interactive, Inc. may, in its sole discretion and subject to availability of Her Interactive, Inc.'s resources and personnel, respond to questions regarding the SOFTWARE from authorized end users.

4. LIMITED WARRANTY AND DISCLAIMER

Her Interactive, Inc. warrants to the original purchaser of the SOFTWARE that for a period of ninety (90) days from the date of acquisition (a) the SOFTWARE will substantially perform in accordance with the functionality described in the applicable documentation; and (b) the media on which the SOFTWARE is delivered, if provided by Her Interactive, Inc., will be free from defects in materials; provided that Her Interactive, Inc. does not warrant that the SOFTWARE will meet your requirements or that your use or operation of the SOFTWARE will be secure, uninterrupted or error-free. This limited warranty is void in the event the SOFTWARE or media have been subjected to misuse, damage, or excessive wear or if you have violated any provision of this EULA.

As your sole remedy and Her Interactive, Inc.'s sole liability for breach of this limited warranty, in Her Interactive Inc's sole discretion it will (a) replace without charge defective media returned by you during the ninety (90) day period; or (b) refund the amount you actually paid, if any, for the SOFTWARE. This limited warranty is void in the event the SOFTWARE or media have been subjected to misuse, damage, or excessive wear.

EXCEPT FOR THE LIMITED WARRANTY PROVIDED ABOVE, THE SOFTWARE, DOCUMENTATION AND ALL COMPONENT PARTS ARE PROVIDED "AS IS". TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, HER INTERACTIVE, INC. AND ITS LICENSORS AND SUPPLIERS DISCLAIM ALL OTHER WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE SOFTWARE, DOCUMENTATION AND ALL OTHER MATERIALS. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS; YOU MAY HAVE OTHER RIGHTS THAT VARY FROM STATE/JURISDICTION TO STATE/JURISDICTION.

5. LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY WHETHER IN TORT CONTRACT OR OTHERWISE SHALL HER INTERACTIVE, INC. OR ITS SUPPLIERS, LICENSORS OR RESELLERS BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, EVEN IF HER INTERACTIVE, INC. HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING ELSE HEREIN, HER INTERACTIVE, INC.'S LIABILITY UNDER OR IN RELATION TO THIS EULA AND/OR THE SOFTWARE SHALL NOT EXCEED THE LICENSE FEE YOU ACTUALLY PAID FOR THE SOFTWARE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

6. INDEMNIFICATION. You agree to hold indemnify, defend and hold harmless Her Interactive, Inc., its licensors and suppliers, and each of their officers, directors and employees, from and against any losses, damages, fines and expenses (including attorneys' fees and costs) arising out of or relating to your breach of this EULA. If you are importing the SOFTWARE from the United States, you are solely responsible and shall indemnify and hold Her Interactive, Inc. harmless from and against any import/export duties or other claims relating to such importation.

7. TERMINATION. Without prejudice to any other rights or remedies of Her Interactive, Inc., this EULA and the rights granted to you shall terminate immediately and without further notice if you fail to comply with any term or condition of this EULA. You may terminate this EULA upon written notice to Her Interactive, Inc. Upon termination of this EULA for any reason, you must immediately discontinue all use of the SOFTWARE and destroy all copies of the SOFTWARE and all of its component parts. Your payment obligations and the provisions of Sections 4 – 11 shall survive termination of this EULA for any reason.

8. DISPUTES. You agree that any dispute or claim under or in relation to this EULA and/or the SOFTWARE shall be submitted to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), including the AAA Rules for Emergency Measures of Protection, before a single arbitrator in Seattle, Washington. The decision of the arbitrator may be entered and enforced in any court of competent jurisdiction. Any demand for arbitration must be filed within one (1) year of the date the party asserting the claim knows or reasonably should know of the act, omission or default giving rise to the claim, and there shall be no right or remedy for any claim not asserted within such period (or the shortest period in excess of one year permitted under applicable law, if such law prohibits a one-year limitations period.)

9. INJUNCTIVE RELIEF. Notwithstanding anything else herein, you agree that Her Interactive, Inc. may seek and obtain injunctive relief in any court of competent jurisdiction and without requirement to post bond for any breach of Her Interactive, Inc.'s or its suppliers' or licensors' intellectual property rights, because such injury could not be adequately compensated by money damages.

10. RESTRICTED RIGHTS. The SOFTWARE is provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the Government is subject to restrictions set forth in subparagraphs (a) through (d) of the Commercial Computer Software--Restricted Rights at FAR 52.227-19 when applicable, or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-

7013, and in similar clauses in the NASA FAR supplement, as applicable. The manufacturer of the SOFTWARE is Her Interactive, Inc., 1150 - 114th Ave S.E., Suite 200 Bellevue, WA 98004.

11. MISCELLANEOUS. This EULA constitutes the complete agreement between you and Her Interactive, Inc. with respect to its subject matter, notwithstanding any purchase order or other writing. This EULA may only be modified by a writing signed by you and Her Interactive, Inc.'s authorized representative. If any provision of this EULA is held by a court of competent jurisdiction to be unenforceable, such provision shall be reformed only to the extent necessary to make it enforceable, and such decision shall not affect the enforceability of such provision under other circumstances, or of the remaining provisions hereof under all circumstances. Waiver of any breach of any provision of this EULA shall not be deemed a waiver of any subsequent or continuing breach. This EULA shall be governed by the laws of the State of Washington, without regard to conflicts of law provisions, and you hereby irrevocably consent to the exclusive jurisdiction of the state and federal courts sitting in the State of Washington (subject to the arbitration provisions of this EULA.)

For further information regarding our products, or to register your product online, visit our web site at www.herinteractive.com