

Welcome to the Midway Sports Online Tournament Network. Powered by GameSpy(tm).

In order to use the online features in NHL Hitz Pro we need for you to read the information below, as it describes the terms under which we are offering you this extended functionality, and the rules that we require you to abide by when using the Midway Sports Online Tournament Network.

When you have read the information below, please select the 'AGREE' button to continue if you agree to the terms and conditions stated. If you select 'DISAGREE' you will not be able to use the Midway Sports Online Tournament Network.

**Midway Home Entertainment Inc.  
NHL Hitz Pro Online Access Terms**

These NHL Hitz Pro Online Access Terms ("Access Terms") apply to your use of the online multiplayer and community services – such as online competitions, in-game public and private chats, voice conversations, online tournaments and gameplay – ("Service") brought to you by Midway Home Entertainment Inc. ("Midway") through its service provider, GameSpy Industries, Inc. ("GameSpy"). Midway and GameSpy are referred to collectively as "Service Providers." To access the Service, you must have purchased a copy of Midway's NFL Blitz Pro game for PlayStation®2, have a network adapter for PlayStation®2, and have broadband Internet access.

You should read these Access Terms carefully, as they contain the Rules of Conduct that apply to your use of the Service. As part of our efforts to bring you new and exciting features, we may update these Access Terms from time to time. It is your job to periodically review these Access Terms for applicable changes. Your use of the Services after we post any changes to these Access Terms constitutes your agreement to those changes.

**I. Your Registration; User Account; Privacy**

To access the Service, you will need to create a registration account ("Account"). By creating your Account, you will be asked to agree to comply with these Access Terms and the Rules of Conduct. To create your Account, you will be prompted to enter a nickname and password. During the registration process we may also collect your PlayStation®2 or NHL Hitz Pro identification number. These identification numbers are unique numbers assigned to your machine or your copy of the game, and do not contain any personally identifiable information. GameSpy may collect this information in order to assist Midway in providing services and features to you, such as verifying winners in any online tournaments Midway may offer. You will not be required to provide any personally identifiable information during the registration process. Your nickname will be your online identity when you use the Service. You may not select a nickname that is already in use by another user.

You acknowledge and agree that the Service provides you with access to other individuals, and that you have no expectation of privacy when using the Service. To protect your identity, the Service Providers' employ certain electronic filters to search and remove certain personally identifiable information from the content of postings, such as email addresses and phone numbers. You understand and acknowledge that these filters cannot serve as a complete protection of your personal identity, and that to the extent that you release personally identifiable information through use of the Service, you do so at your own risk. To protect your identity, we encourage you not to use your first or last name as your nickname, and not to disclose personally identifiable information to others on the Service. In the future, Midway may offer sweepstakes, contests, or other interactive features (such as email notifications). In order to receive or participate in those features, you may need to disclose some personally identifiable information to Midway. Any such information Midway collects will be subject to the terms of the Privacy Policy which you are given at the time you are asked for the personally identifiable information. Your participation in one of these additional Midway features may also be subject to a separate agreement or additional rules.

By creating an Account, you agree that use of your Account is expressly limited to you. Your Account may not be transferred or shared with any other party, temporarily or permanently, including any individual whose Account was terminated by Midway. You further agree to bear sole responsibility for all uses of your Account and for the confidentiality of your password.

## **II. Rules of Conduct**

YOU AGREE TO OBEY THE RULES OF CONDUCT AT ALL TIMES WHILE YOU ARE USING THE SERVICE. YOU UNDERSTAND THAT IGNORANCE OF THE LAW OR OF THE RULES OF CONDUCT IS NOT AN EXCUSE. Your compliance with the Rules of Conduct will be interpreted by Midway, and Midway's decisions regarding your compliance are final. By using the Service, you agree to submit to the interpretation and enforcement of the Rules of Conduct by Midway.

By accessing, participating in, or otherwise using the Service, you agree to the following Rules of Conduct:

1. You agree that you will not submit or otherwise post any content that:
  - a) Contains offensive, profane, harassing, defamatory, inappropriate, racist, threatening, infringing, obscene, or unlawful material, including content that contains excessive shouting (ALL CAPS) or flooding (the posting of repetitive text);
  - b) Contains slanderous or libelous comments about other users, the Service Providers' employees, or other individuals;
  - c) Contains personal information about any individual;
  - d) Violates the privacy of any other individual or entity;
  - e) Contains business solicitations of any type, including advertising a product, offering a product for sale, or directing readers to a location for more information about a product;
  - f) Contains viruses, corrupted files, or any other similar software or programs that may adversely affect the operation of the Service Providers' systems or a third party's computer;
  - g) Undermines the operation of the Service or a feature thereof; or
  - h) Contains unauthorized copies of third parties' works.

You understand and agree that Midway has the right to take any action it deems reasonable to end any offensive or otherwise objectionable activity, including the posting of material that violates the foregoing terms.

2. You may not access the Service to collect information, including nicknames, to send mass electronic mailings to users of the Service.
3. You agree not to use the Service to offend, harass, defame, or threaten another individual, including agreeing not to use the Service to form groups or clubs that are based on or espouse racist, sexist or other hate-based philosophies. You further agree not to engage in any activity that interferes with the ability of other users to enjoy the free and unfettered use of the Service.
4. By participating in the Service, you agree not to impersonate any person or entity or falsely represent your affiliation with any person or entity, including any claim to be, or impersonation of,

an employee, authorized representative or member of Midway, GameSpy, the National Hockey League, National Hockey League Players' Association or any National Hockey League sports team. You further agree not to provide false or misleading information to any Midway employee or authorized representative.

5. You agree not to interfere with, hack, or decipher – or attempt to interfere with, hack or decipher – any transmissions to or from the servers on which the Service resides, or the servers of any other individuals or entities that have access to the Service. You further agree not to exploit the Service, including any hidden bug therein, to attempt to gain an unfair advantage in the play of the NHL Hitz Pro game.
6. The Service may not be used for unauthorized electronic commerce. Use of the Service or any of its features for the sale of products or services is prohibited. If, in the sole discretion of Midway, you are found to be using the Service for any inappropriate commercial purpose, Midway reserves the right to take any action it deems reasonable to end such activity.
7. By participating in the Service, you agree not to violate any local, state, federal, or international law, regulation, rule, or guideline, nor will you discuss any unlawful activities, such as hacking, pirating, phreaking, use or promotion of illegal drugs, the exchange or transfer of pirated software, contraband, or other materials that are in violation of U.S. or international copyright laws.
8. Unless Midway lets you know otherwise, you may not reproduce, duplicate, copy, sell, or otherwise transfer or commercially exploit any Content or any Third Party Content (in each case, as defined in Section IV below), which is accessible through the Service.

### **III. Enforcement of Rules of Conduct and Termination**

Your use of this site is subject to the Rules of Conduct and the Access Terms, any other terms applicable to the various features of our site, and all applicable laws, rules, and regulations. Midway may terminate your Account with or without notice to you if we believe, using our sole discretion, that you have violated any of the Rules of Conduct, these Access Terms, or any law.

Midway may also, in its sole discretion and at any time, discontinue the Service or any part thereof, with or without notice. You agree that you do not have any rights in the Service and that Midway will have no liability to you if the Service is discontinued or your ability to access it is terminated, and will not grant any refunds if your Account is terminated.

### **IV. Midway Content**

All content accessible through the Service, including art work, graphics, images, screen shots, text, music, digitally downloadable files, trademarks, logos, product and character names, slogans, and the compilation of the foregoing ("Content") is the property of Midway and its licensors and is protected in the U.S. and internationally under trademark, copyright, and other intellectual property laws. Third party content, including trademarks, trade names, characters, and trademarks and copyrights ("Third Party Content") is the property of the third parties that market or license that content, and is used by Midway subject to license, or subject to the fair use provisions of U.S. law. Users of the Service are expressly forbidden to misuse any Content or any Third Party Content that appears on the Service.

You agree not to display or use any Content or Third Party Content accessible through the Service, in any publications, in public performances, for any commercial purpose, in connection with products or services that are not those of Midway, in any other manner that is likely to cause confusion among consumers, that disparages or discredits Midway and/or its licensors (including GameSpy), that dilutes the strength of Midway's or its licensor's property, or that otherwise infringes Midway's or its licensors' intellectual

property rights. This includes your agreement that you will not distribute any utilities, tools, software, or other materials that could facilitate the Service or the NHL Hitz Pro game.

If you are a trademark or copyright owner and you believe that your trademark rights have been violated in any way, please complete and submit our Intellectual Property Infringement Notification Form to our designated agent, Michael Burke, at Midway Games Inc., 2704 West Roscoe Street, Chicago, Illinois 60618 or at [jp@midway.com](mailto:jp@midway.com). A copy of the form is available as a hyperlink from section V of the Terms of Service at our Midway.com Web site (<http://www.midway.com>). Our agent information is provided pursuant to the Digital Millennium Copyright Act, 17 U.S.C. § 512(c)(2). Our designated agent will respond only to these trademark or copyright issues, for general questions please contact Midway Customer Support at (903) 874-5092 between 10:00 a.m. and 6:30 p.m. CST Monday through Friday.

## **V. Indemnification**

You alone are responsible for your use of your Account, and agree to indemnify and hold Midway, GameSpy, and their respective parents, affiliates, subsidiaries, employees, officers, directors, and contractors harmless from any liability or damage, including reasonable attorney's fees, arising from your use of the Service including (i) for or related to your violation of these Access Terms or the Rules of Conduct, (ii) for content you post, (iii) for improper or illegal use of your nickname and password, or (iv) for the infringement of any intellectual property or privacy right of any person.

## **VI. Representations, Warranties, and Acknowledgement**

You participate in the Service and its features at your own risk. If you are dissatisfied with any feature, operability, content, the Access Terms (including Rules of Conduct), other agreements Midway imposes as a condition of usage, or any other component of the Service, your sole remedy is to discontinue use of the Service. Much of the content accessible through the Service is posted through third parties subject to these Access Terms and to the Rules of Conduct. Midway does not endorse and is not responsible or liable for any such third party content accessible at the Service. In addition, the Service Providers make no representations about the reliability of the features of the Service, and disclaim all liability in the event of any service failure. You acknowledge that any reliance on such material and/or systems will be at your own risk. The Service Providers make no representations regarding the amount of time that content accessible through the Service will be preserved.

By posting content through use of the Service, you will be deemed to have granted Midway a license for the perpetual, non-exclusive distribution of the information or materials worldwide in any form or forum without charge or liability.

THE SERVICE IS PROVIDED ON AN "AS IS, AS AVAILABLE" BASIS. NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE MADE BY THE SERVICE PROVIDERS WITH RESPECT TO THE SERVICE OR ANY INFORMATION OR SOFTWARE ACCESSIBLE THEREFROM. UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE, SHALL THE SERVICE PROVIDERS BE LIABLE FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF OR INABILITY TO USE THE SERVICE, NOR SHALL SERVICE PROVIDER BE RESPONSIBLE FOR ANY DAMAGES WHATSOEVER THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES, ERRORS, DEFECTS, DELAYS IN OPERATION OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE WHETHER OR NOT CAUSED BY EVENTS BEYOND THE SERVICE PROVIDERS' REASONABLE CONTROL, INCLUDING BUT NOT LIMITED TO ACTS OF GOD, COMMUNICATIONS LINE FAILURE, THEFT, DESTRUCTION, OR UNAUTHORIZED ACCESS TO RECORDS OR PROGRAMS ACCESSIBLE THROUGH THE SERVICE. IN NO EVENT SHALL THE COLLECTIVE AGGREGATE LIABILITY OF THE SERVICE PROVIDERS FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION EXCEED FIVE DOLLARS (\$5.00). SOME STATES DO NOT

ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES; AS A RESULT, THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

### **VII. Sony Computer Entertainment Inc.'s Dynamic Network Authentication System Disclaimer**

This Software uses "DNAS" (Dynamic Network Authentication System), a proprietary authentication system created by Sony Computer Entertainment Inc. ("SCEI"). "DNAS" retrieves information about a user's hardware and software for authentication, copy protection, account blocking, system, rules, or game management and other purposes. The information collected does not identify the user personally. **A Publisher can combine this information with personally identifying information from the Publisher's records if the user provides the personally identifying information. Before providing any personal information to a Publisher please be sure to review the Publisher's privacy policy and terms and conditions of use. Do not provide personally identifying information to a Publisher unless you accept the conditions of use and terms of their privacy policy.** SCEI, Sony Computer Entertainment America ("SCEA") and their affiliates cannot guarantee the continuous operation of the "DNAS" servers. SCEA shall not be liable for any delay or failure of the "DNAS" servers to perform. If you receive a message during login identifying a "DNAS" authentication error, please contact SCEA Consumer Services at 1-866-466- 5333. For additional information concerning "DNAS", visit [www.us.playstation.com/DNAS](http://www.us.playstation.com/DNAS). In the event of a systems incompatibility or inoperability with DNAS, the sole liability of SCEI, SCEA and their affiliates shall be limited to the repair or replacement of the user's affected, game software, console or peripherals at the option of SCEA. SCEA, its parents, affiliates, or licensed Publishers shall not be liable for any delays, system failures, authentication failures, or system outages, which may, from time to time, affect online game play or access thereto.

### **VIII. Miscellaneous**

You acknowledge that the Service Providers have the right to delete any messages, files, or any other content that you may have uploaded to any feature of the Service at Midway's sole discretion, including messages, files or any other content that has not been accessed for some period of time and is deemed by Midway, in its sole discretion, to be abandoned, or any materials that violate the terms of this or any other binding agreement.

Both you and the Service Providers acknowledge and agree that no partnership is formed between you and the Service Providers, and neither you nor the Service Providers has the power or the authority to obligate or bind the other.

This Agreement will be governed by and construed in accordance with the internal laws of the State of Illinois.

No personally identifiable information is collected in order for you to access the Service, and we thus do not knowingly obtain personally identifiable information from children during the provision of the Service. It is Midway's policy not to collect personally identifiable information from children under the age of 13. To the extent Midway becomes aware that a child has provided personally identifiable information to the Service Providers, the Service Providers will take measures to remove such information from its databases and from the Service. If you are a parent, we encourage you to discuss with your children web safety, and to educate your children not to provide personally identifiable information to strangers.

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