

license to the correction patches as to the original Umbra Software under this Agreement and the correction patches shall be subject to the same terms and conditions as the original Umbra Software, excluding, however, warranty obligations under this Agreement.

- 7.6.3 The Support and Maintenance Services shall not cover the correction of errors and/or malfunctions attributable to (i) use which is contrary to the Agreement and/or written instructions given by Umbra, (ii) non-Umbra products, and/or (iii) alterations and/or corrections made by others than Umbra without the written approval of Umbra.
- 7.6.4 If the error and/or malfunction cannot be reproduced or where it is not reasonably practical to remedy the reported error and/or malfunction, Umbra will provide its best recommendations and/or an explanation, thus closing the issue. It is accepted by the Licensee that not all errors and/or malfunctions are necessarily capable of correction and/or rectification.
- 7.7 THE SUPPORT AND MAINTENANCE SERVICES DO NOT COVER DAMAGE ATTRIBUTABLE TO EXTERNAL FACTORS (E.G. FAILURE OR FLUCTUATION OF ELECTRICAL POWER OR AIR CONDITIONING, FIRE, FLOOD), ACCIDENTS, MISUSE, NEGLIGENCE OR FAILURE TO FOLLOW INSTRUCTIONS FOR PROPER USE AND CARE AND/OR NON-UMBRA PROGRAMS AND/OR SERVICES, OR ALTERATIONS.
- 7.8 UMBRA DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE NEW REVISIONS AND/OR NEW VERSIONS AND/OR CORRECTION PATCHES WILL MEET THE LICENSEE'S REQUIREMENTS AND/OR THAT THE THE NEW REVISIONS AND/OR NEW VERSIONS AND/OR CORRECTION PATCHES WILL OPERATE UNINTERRUPTED AND/OR ERROR- AND/OR BUG-FREE AND/OR IN ALL COMBINATIONS SELECTED FOR USE BY THE LICENSEE
- 7.9 EXCEPT AS REQUIRED BY MANDATORY RULES OF APPLICABLE LAW, THE UMBRA SOFTWARE, INCLUDING ITS NEW REVISIONS AND VERSIONS AND ALL OTHER CORRECTIONS CONTAINED THEREIN, ARE LICENSED "AS IS". UMBRA DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS AND/OR IMPLIED, BY OPERATION OF LAW AND/OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE.

## 8. PRICING, INVOICING AND TERMS OF PAYMENT

- 8.1 The fees and prices payable by the Licensee to Umbra under this Agreement are specified in Appendix 3. The fees and prices shall be due in accordance with Appendix 3.
- 8.2 Except as may be agreed otherwise in writing, the Licensee shall pay Umbra in euros (EUR) at a bank specified by Umbra for all amounts due for the Umbra Software, including, but not limited, to New Revisions, New Versions and their Documentation, the Support and Maintenance Services, and for all other products, services or materials provided under this Agreement. The Licensee shall pay all amounts so that the Licensee shall pay all bank charges for sending and receiving the payment.
- 8.3 All fees and prices are EXW (INCOTERMS 2000) Helsinki, Finland.
- 8.4 The prices are exclusive of, and the Licensee shall pay all license fees, duties, tariffs, sales, excise, value added or other taxes, including any withholding taxes on royalties paid, which may be assessed or levied by any government or any taxing body, against any of the Umbra Software, including, but not limited, to New Revisions, New Versions and their Documentation, the Support and Maintenance Services, and for all other products, services or materials provided under this Agreement and/or their use, or license after shipment by Umbra. The Licensee agrees to furnish any documents to taxing authorities if requested to do so by Umbra.
- 8.5 The Licensee shall ensure that payment of the fees and prices in full are received by Umbra on their due dates. Umbra may impose a late payment charge of twenty (20,00%) per cent per annum for any delayed payment and all expenses of collection.

## 9. TERM AND TERMINATION

- 9.1 This Agreement will become effective when signed by duly authorised representative(s) of both Parties.

- 9.2 Each Party shall have the right to terminate the Support and Maintenance Services upon expiry of the initial agreement period or renewal agreement period by providing three (3) months prior written notice to the other Party.
- 9.3 If an Event of Force Majeure continues for a period of three (3) months or more, either Party may, upon written notice to the other Party, cancel the affected order for the Umbra Software and/or the Support and Maintenance Services without any further liability on the part of either Party with respect to such a cancelled order.
- 9.4 Either Party may terminate this Agreement relating to the Support and Maintenance Services with immediate effect upon written notice in the event that: (i) the other Party is involved in any proceedings under any bankruptcy or other insolvency laws, or laws for the relief of debtors, or has a receiver or other court appointee named for its business or property, or makes an assignment for the benefit of creditors, or is liquidated, dissolved, or its existence is terminated, or otherwise ceases payments, or (ii) the other Party is in substantial breach of this Agreement and within thirty (30) days of written notice setting forth particulars of the alleged default has not corrected the breach.
- 9.5 Umbra may terminate this Agreement in whole or partly and/or suspend its performance under this Agreement with immediate effect upon written notice if any payment of the Licensee under this Agreement is more than forty-five (45) days past the due date for payment.
- 9.6 Cancellation, expiration or termination of this Agreement for any reason shall not relieve either Party from the obligation to make payments of any sum owing. Upon cancellation, expiration or termination of this Agreement all sums due from the Licensee to Umbra shall immediately become payable. In case of cancellation, expiration or termination of this Agreement, Umbra shall not be obligated to return any already paid fees and prices back to the Licensee.
- 9.7 The provisions of Sections 10, 12, 13, 17.12, and the provisions of Sections, which are meant to be in force after cancellation, expiration or termination of this Agreement, shall survive cancellation, expiration or termination of this Agreement.

## 10. CONFIDENTIAL INFORMATION AND NON-DISCLOSURE

- 10.1 Each Party shall keep all Confidential Information received from the other Party in whatever form as strictly confidential and shall not without the prior written consent of the disclosing Party disclose it to third parties without a prior written consent of the disclosing Party.
- 10.2 Both Parties shall use Confidential Information received from the other Party solely for the purposes of this Agreement and will take all reasonable precautions to safeguard any Confidential Information by handling such Confidential Information with at least the same degree of care as the receiving Party protects its own information of equivalent importance from unauthorised disclosure, publication, dissemination or use.
- 10.3 Neither Party shall make any copies of Confidential Information received from the other Party except as necessary for the purposes of this Agreement, and any copies which are made shall be treated as Confidential Information the same as the original.
- 10.4 Title or the right to possess Confidential Information as between the Parties shall remain in the Party, which furnished it to the other Party, unless otherwise agreed in this Agreement. Neither Party shall furnish to the other Party any Confidential Information, which it does not have the right to furnish and shall defend and indemnify the receiving Party against any claim or liability resulting from breach of such obligation.
- 10.5 Neither Party shall be restricted from disclosing Confidential Information of the other Party pursuant to a judicial or governmental order, but any such disclosure shall be made only to the extent so ordered and provided only that the Party receiving an order (i) shall timely notify the other Party so that it may intervene in response to such order, or (ii) if timely notice cannot be given, shall seek to obtain a protective order from the court or government for such information.
- 10.6 Each Party shall promptly cease using and shall return or destroy, and certify destruction of, (i) all Confidential Information which it receives from the other Party along with all tangible copies which it may have made, and (ii) all copies stored in any computer memory or storage medium when it no longer has need thereof for the purpose stated herein or upon request of the disclosing Party, whichever occurs first.

- 10.7 The obligations and limitations set forth herein regarding the Confidential Information shall not apply to information which is (i) at any time in the public domain other than by a breach of this Agreement on the part of the receiving Party, (ii) at any time rightfully received from a third party which has the right to transmit it to the receiving Party without any obligation of confidentiality, (iii) rightfully known to the receiving Party without any limitation on use and/or disclosure prior to receipt of the same from the disclosing Party, (iv) independently developed by personnel of the receiving Party who have not had access to Confidential Information received from the disclosing Party, and/or (v) generally made available to third parties by the disclosing Party without any restriction concerning use or disclosure.
- 10.8 Each Party will inform its employees of their obligations under this Section 10 and ensure that any and all obligations under this Section 10 are met by them.
- 10.9 This Section 10 shall survive cancellation, expiration or termination of the Agreement.

## 11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 All copyrights, trademarks and trade names and all other intellectual property rights related to the Umbra Software, New Revisions, New Versions and Documentation, translations, changes, corrections, modifications, and enhancements thereof are the exclusive property of Umbra and/or its licensors. No right or license under any patent, copyright, trademark, trade name or other proprietary right of Umbra is granted by, or is to be inferred from, any provision in this Agreement except as expressly provided herein.
- 11.2 The Licensee acknowledges and agrees that Umbra may freely without any restrictions, including, but not limited restrictions imposed by confidential undertaking, use technical and/or other proposals for improvement the Licensee provides to Umbra relating to the Umbra Software and/or any other products and/or services of Umbra for Umbra's business and/or any other purposes.
- 11.3 The Licensee will promptly report to Umbra in writing any apparent copyright and/or any other intellectual property rights infringement relating to the Umbra Software that comes to the attention of the Licensee.

## 12. INTELLECTUAL PROPERTY RIGHTS INDEMNIFICATION

- 12.1 Umbra shall, at its own expense, defend and indemnify the Licensee against claims where the Umbra Software furnished under this Agreement is claimed to infringe a patent and/or copyright, provided that he Licensee (i) gives Umbra prompt written notice of such claims pursuant to Section 17.3, (ii) permits Umbra to defend or settle the claims, (iii) has fulfilled its obligations under this Agreement, and (iv) provides all reasonable assistance to Umbra in defending or settling the claims.
- 12.2 As to any Umbra Software which is or, in the opinion of Umbra, may become subject to a claim of infringement or misappropriation, Umbra shall have the right at its sole option and expense to (i) obtain the right of continued use of such Umbra Software, (ii) modify such Umbra Software so that it becomes non-infringing, and/or (iii) terminate the appropriate license and, in the case of Umbra Software which is subject to a one time charge, Umbra will refund to the Licensee the license fee paid, prorated over the effective term of the use and in the case of other Umbra Software, the applicable license will be terminated and no further charges will accrue.
- 12.3 Umbra shall not defend or indemnify the Licensee if any claim of infringement and/or misappropriation (i) is asserted by a parent, subsidiary or affiliate of the Licensee, (ii) results from design and/or alteration of any Umbra Software by the Licensee, (iii) results from use of any Umbra Software in combination with any non-Umbra product, and/or (iv) could have been avoided by the use of a current, unaltered version of the Umbra Software that Umbra provides to the Licensee at no extra charge.
- 12.4 THIS SECTION 12 STATES THE ENTIRE LIABILITY OF UMBRA AND THE LICENSEE'S SOLE AND EXCLUSIVE REMEDIES FOR PATENT AND/OR COPYRIGHT INFRINGEMENT, TRADE SECRET MISAPPROPRIATION AND/OR ANY OTHER INTELLECTUAL PROPERTY RIGHT INFRINGEMENT.

## 13. LIMITATION OF LIABILITY

- 13.1 NEITHER PARTY SHALL BE LIABLE TO EACH OTHER IN CONTRACT, TORT AND/OR OTHERWISE, WHATEVER THE CAUSE THEREOF, FOR ANY LOSS OF REVENUE AND/OR OF PROFIT, BUSINESS AND/OR GOODWILL AND/OR ANY INDIRECT, SPECIAL,

CONSEQUENTIAL, INCIDENTAL AND/OR PUNITIVE COST, DAMAGES AND/OR EXPENSE OF ANY KIND, HOWSOEVER ARISING UNDER AND/OR IN CONNECTION WITH THIS AGREEMENT.

- 13.2 THE ENTIRE LIABILITY OF UMBRA UNDER ANY PROVISION OF THIS AGREEMENT AND THE LICENSEE'S EXCLUSIVE REMEDY SHALL BE LIMITED TO THE GREATER AMOUNT ACTUALLY PAID BY THE LICENSEE FOR THE UMBRA SOFTWARE OR TEN THOUSAND (10.000,00) EUROS (EUR). THE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS STATED IN THIS AGREEMENT WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY ABOVE STATED REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

#### 14. RECORDS AND ACCOUNTS

- 14.1 The Licensee shall at all times keep complete and accurate records to allow Umbra to examine and audit the Licensee's accounts containing such records with respect to the Licensee's compliance with licensing and other obligations under this Agreement. The Licensee agrees to permit a certified public/chartered accountant paid by Umbra to inspect such records at reasonable times during normal business hours. In the event such audit discloses the underpayment of fees and prices to Umbra or non-compliance with obligations of this Agreement as of the date of the audit, then the Licensee shall immediately pay to Umbra the difference and all expenses incurred by Umbra in performing the audit or remedy the default as the case may be. Umbra shall keep the Licensee's accounts and records confidential and shall not use such information for any purpose than set forth in this Agreement.

#### 15. APPENDICES

- 15.1 The following Appendices shall be appended to this Agreement, and they form an integral part of the Agreement:

Appendix 1	Umbra Software
Appendix 2	License
Appendix 3	Fees and Prices
Appendix 4	Contact Persons

- 15.2 In the event of any discrepancy between the content of this Agreement document on the one hand and any of the Appendices on the other hand, the content of this Agreement document shall prevail. In the event of any discrepancy between any of the Appendices, the Appendix with the smaller number shall prevail.

#### 16. RIGHT TO USE AS REFERENCE

- 16.1 Umbra shall have the right use the Licensee's company name, trademarks and trade names in order to advertise and/or otherwise indicate to the public that Umbra and the Licensee are acting in co-operation in accordance with this Agreement.

#### 17. MISCELLANEOUS

- 17.1 *Force Majeure.* Except for payment obligations, neither Party will be liable for failure to fulfil its obligation under this Agreement due to events of Force Majeure. The word "Force Majeure" shall mean any circumstances beyond the reasonable control of either Party which it cannot reasonably be deemed to have contemplated at the time of the conclusion of the Agreement and the consequences of which he could not reasonably have avoided or overcome, including but not limited to accident, explosion, fire, storm, earthquake, flood, drought, the elements, strikes, lockouts, labour disputes, riots, sabotage, terrorist acts, civil war or revolution, war, failure and/or delay of transportation, the bankruptcy of any supplier, acts of governments and their agencies, and governmental or their agencies' laws, regulations, rules, orders and decrees, and/or other legislative, administrative and/or judicial mandates. The Party whose performance is affected shall promptly advise the other Party in writing of any event of Force Majeure as well as of its termination.
- 17.2 *Subcontracting.* Umbra shall have the right to subcontract its obligations under this Agreement. Umbra shall ensure that its subcontractor shall comply with the confidentiality provisions of Section 10. The Licensee shall not have the right to subcontract its obligations under this Agreement, unless expressly agreed otherwise in this Agreement in which case the Licensee shall ensure that its subcontractor shall comply with the confidentiality provisions of Section 10.

- 17.3 *Notices, Language.* The controlling language of this Agreement and for future communications shall be English. Notices required under this Agreement shall be deemed sufficient if in writing and delivered personally (with an initialed dated receipt), by registered mail (with return receipt requested), or by fax or e-mail (provided that the receiving Party confirms the receipt of such e-mail) to the other Party at the address shown on this Agreement or later notified the Party's address. Any change of address shall be communicated in writing within fourteen (14) days.
- 17.4 *Independent Contractors.* The relationship of Umbra and the Licensee established by this Agreement is solely that of independent contractors and licensor and licensee of the Umbra Software and the seller and buyer of the Support and Maintenance Services. Nothing in this Agreement shall constitute either Party as the agent or legal representative of the other Party for any purpose whatsoever. Neither Party is not granted any right or authority to endorse the other Party's name on any contract of instrument, nor to assume or create any obligation or responsibility on behalf or in the name of the other Party, nor to otherwise affect the rights or obligations of the other Party.
- 17.5 *Assignment.* The Licensee shall have no right to assign, transfer and/or otherwise dispose of the rights and/or obligations created through this Agreement without prior written consent of Umbra. Notwithstanding anything to the contrary contained in this Agreement including any references to non-transferability, Licensee may, without the prior written consent of Umbra, assign its rights and obligations created through this Agreement to any party to which it has pledged the End-User Application as security for a loan ("Secured Party") and to any assignee, designee, transferee or licensee of a Secured Party and/or any entity which purchases the rights to the End User Application from a Secured Party. Umbra shall have the right to assign, transfer and/or otherwise dispose of the rights and/or obligations created through this Agreement without prior written consent of The Licensee.
- 17.6 *Severability.* Each paragraph and provision of this Agreement is severable, and if one or more paragraphs or provisions are declared invalid or unenforceable, the remaining provisions of this Agreement will remain in full force and effect, and if any provision is inapplicable to any person or circumstance it shall nevertheless remain applicable to all other persons and circumstances. The Parties undertake to negotiate in good faith for the replacement of such provision with a valid and enforceable provision. The failure of the Parties to reach an agreement on replacing provisions shall not affect the validity of the remaining part of this Agreement.
- 17.7 *Headings.* The clause headings are for convenience of reference only and do not form part of this Agreement for the purposes of its construction or interpretation.
- 17.8 *Entire Agreement.* This Agreement and its Appendixes, constitutes the entire Agreement between the Parties with respect to the subject matter hereof and supersedes all prior proposals and agreements, both written and oral, and all other written and oral understandings, representations and communications between the Parties.
- 17.9 *Waiver.* Any failure and/or delay by either Party in exercising any right or remedy will not constitute a waiver. No waiver of any term and/or condition of this Agreement or of any right and/or remedy arising in connection therewith shall constitute a continuing waiver. All claims relating or arising out of this Agreement must be presented in writing by the Licensee to Umbra within six (6) months after the cause of action first accrued at the risk of otherwise the Licensee loses its rights to such cause of action.
- 17.10 *Modifications.* No modification of this Agreement will be valid unless in writing and signed by a duly authorised representative(s) of both Parties.
- 17.11 *Export Control.* The Licensee will not provide any products and/or technical information obtained from Umbra to any person, firm, company or governmental entity when the Licensee knows, and/or has reason to believe, that the supply might indirectly or directly lead to a contravention of the laws or regulations of Finland, the United States of America and/or the country of origin of the product applicable to the export, supply and/or use of goods or technology.
- 17.12 *Governing Law and Dispute Resolution.* This Agreement and all matters arising out of this Agreement shall be construed and enforced exclusively in accordance with the laws of Finland without regard to its choice of law provisions. The United Nations Convention on Contracts for the International Sale of Goods done at Vienna April 11, 1980 is excluded. All disputes arising in connection with and/or out of this Agreement shall be finally settled under the rules of the Board of Arbitration of the Central Chamber of Commerce of Finland. The Arbitral Tribunal shall be composed of one (1) member. The place of arbitration shall be Helsinki, Finland. The arbitration shall be conducted in English and the arbitration award shall be given in English, unless otherwise

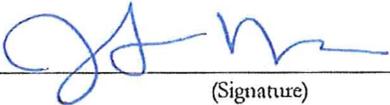
agreed by the Parties in writing during the proceedings. The award shall be final and binding on the Parties. Either Party may, before or during any legal proceedings, apply to a court having jurisdiction for a temporary restraining order or preliminary injunction where such relief is necessary to protect its interests pending completion of the legal proceedings. With respect to a violation by the Licensee of any intellectual property rights and/or Confidential Information of Umbra and/or payment obligations against Umbra under this Agreement, Umbra will have the right, at its discretion, to seek remedies in courts within any applicable territory.

This License and Service Agreement has been executed in two (2) identical copies of which each Party has taken one (1) by their duly authorised representatives. The undersigned hereby acknowledge that they have read and understand fully the terms and conditions of this Agreement and, the terms and conditions of which are hereby incorporated and acknowledged by this document.

Umbra Software Oy

38 Studios LLC

By:   
(Signature)

By:   
(Signature)

Name Printed: Otso Makinen

Name Printed: Jen MacLean

Title: CTO

Title: CEO

Date: 20 Oct 2010

Date: 11-8-10

## APPENDIX 1

### Umbra Software

Umbra Software is a general purpose visibility optimization middleware product for computer games. The sole purpose of Umbra Software is to increase rendering performance in 3D games through visibility optimization. Umbra Software does this by determining a set of visible objects in a 3D scene from a certain point of view. Performance is gained when invisible (occluded) objects are not rendered. Umbra Software does visibility optimization on an object level.

Umbra Software has been designed to deal with highly dynamic environments. This means that all objects, both dynamic and static, can be used as occluders and occludees. Objects can move, change shape, objects can be added and removed on the fly. In addition to increase in rendering performance Umbra Software opens up a box full of level design choices that haven't been possible before.

For Umbra Software to work in its full capacity the systems running Umbra need to have support for hardware occlusion queries. Umbra can be integrated into any existing game engine.

## APPENDIX 2

### License

The Licensee has a license to use the Umbra Software only in the following title(s) in the listed platform(s) and with the listed game engine(s):

**Project currently titled:** "Copernicus".

1. Platforms
  - o Microsoft Windows for PC
2. Game engines
  - o Unreal Engine 3

### APPENDIX 3

#### Fees and Prices

##### LICENSE FEE

The CLIENT shall pay Umbra Software USD \$75,000 for an initial Three (3) year license of Umbra.

The First \$37,500 License Fee shall be due 14 days after the Effective Date;  
The second \$37,500 shall be due 90 days after effective date.

The License Fee includes the initial period of the Support and Maintenance Services and it is valid until April 22<sup>nd</sup>, 2012.

##### SUPPORT AND MAINTENANCE SERVICES FEE

For all additional license years, payments shall be USD 10,000 per year, and shall be payable on the Third (3) and every subsequent anniversary of the Effective Date.

## APPENDIX 4

## Contact Persons

The contact persons of the Parties at the time of signing this Agreement are as follows:

**Umbra:**

	Technical	Administrative:
Name	Otso Mäkinen	Otso Makinen
Telephone	+358 20 773 8440	+358 20 773 8440
Fax	+358 9 278 5478	+358 9 278 5478
Email	<a href="mailto:otso@umbrasoftware.com">otso@umbrasoftware.com</a>	<a href="mailto:marko@umbrasoftware.com">marko@umbrasoftware.com</a>

**The Licensee:**

	Technical	Administrative:
Name	Jon Laff	Jen MacLean
Telephone	978 314 6440	720 939 1518
Fax	978 461 9929	978 461 9929
Email	<a href="mailto:jlaff@38studios.com">jlaff@38studios.com</a>	<a href="mailto:jmaclea@38studios.com">jmaclea@38studios.com</a>

Any change of contact persons shall be communicated in writing within fourteen (14) days to the other Party.

ASSIGNMENT

WHEREAS, Microsoft Corporation, a Washington Corporation with an address of One Microsoft Way, Redmond, Washington 98052, has adopted, used and is the owner of the trademark applications and registrations including all common law rights and other nonregistered rights associated therewith (hereinafter "the MARKS") listed in Exhibits A and B; and

WHEREAS, Big Huge Games, Inc., a Delaware Corporation with an address of 1954 Greenspring Drive, Timonium, Delaware 21093, is desirous of acquiring the MARKS and the applications and registrations therefor.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Microsoft Corporation hereby assigns to Big Huge Games, Inc. all its rights, title and interest in and to the MARKS and the applications and registrations therefor, together with the goodwill of the business symbolized by the MARKS and the applications and registrations therefor and including all rights at common law and all rights to sue and recover for past infringement of the marks and the applications and registrations therefor.

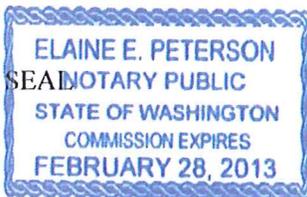
MICROSOFT CORPORATION

April 27, 2009  
Date

By: *Russell Pangborn*  
Name: Russell Pangborn  
Title: Assistant Secretary

STATE OF WA :  
COUNTY OF KING :

Subscribed to and sworn before me this 27<sup>th</sup> day of April, 2009.



*Elaine E Peterson*  
Notary Public  
My Commission Expires 2-28-2013

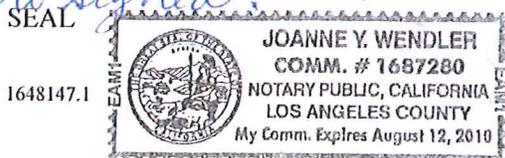
AL BIG HUGE GAMES, INC.

April 29, 2009  
Date

By: *James M. Kennedy*  
Name: James M. Kennedy  
Title: Secretary

STATE OF : California  
COUNTY OF : Los Angeles

Subscribed to and sworn before me this 29<sup>th</sup> day of April, 2009, by James M. Kennedy, who proved to me on the basis of satisfactory evidence to be the person who signed.



*Joanne Y. Wendler*  
Notary Public  
My Commission Expires 08/12/2010

**SCHEDULE A**

<b>Country</b>	<b>TradeMark</b>	<b>Filing Date</b>	<b>Appl Number</b>	<b>Reg Date</b>	<b>Reg Number</b>
United States of America	RISE OF LEGENDS	5/2/2005	78/621,501	6/10/2008	3,446,528
United States of America	RISE OF LEGENDS	5/2/2005	78/979,500	2/12/2008	3,383,443
United States of America	RISE OF LEGENDS	5/2/2005	78/979,508	2/12/2008	3,383,445
United States of America	RISE OF NATIONS	2/22/2002	78/975,981	7/26/2005	2,980,035
United States of America	RISE OF NATIONS	2/22/2002	78/110,604	9/16/2003	2,765,721

**SCHEDULE B**

Country	TradeMark	Filing Date	Appl Number	Reg Date	Reg Number
Argentina	RISE OF LEGENDS	5/5/2005	2,588,131	9/11/2006	2,112,649
Argentina	RISE OF LEGENDS	5/5/2005	2,588,132	9/11/2006	2,112,650
Argentina	RISE OF LEGENDS	5/5/2005	2,588,133	9/11/2006	2,112,651
Argentina	RISE OF LEGENDS	5/5/2005	2,588,134	9/11/2006	2,112,652
Argentina	RISE OF LEGENDS	5/5/2005	2,588,130	9/11/2006	2,112,648
Australia	RISE OF LEGENDS	5/3/2005	1,053,333	5/3/2005	1,053,333
Brazil	RISE OF LEGENDS	5/9/2005	827,386,486	1/22/2008	827,386,486
Brazil	RISE OF LEGENDS	5/9/2005	827,386,508	1/22/2008	827,386,508
Brazil	RISE OF LEGENDS	5/9/2005	827,386,532	1/22/2008	827,386,532
Brazil	RISE OF LEGENDS	5/9/2005	827,386,559	1/22/2008	827,386,559
Brazil	RISE OF LEGENDS	5/9/2005	827,386,478	3/11/2008	827,386,478
Canada	RISE OF LEGENDS	5/5/2005	1,256,506	1/13/2009	TMA732,157
European Community	RISE OF LEGENDS	5/3/2005	4,370,557	5/3/2005	4,370,557
Hong Kong	RISE OF LEGENDS	5/10/2005	300,417,906	5/10/2005	300,417,906
Japan	RISE OF LEGENDS	5/17/2005	2005-42,995	3/2/2007	5,030,244
Korea Republic of (KR)	RISE OF LEGENDS	5/3/2005	45-2005-1,973	10/10/2006	45-17,685
Mexico	RISE OF LEGENDS	5/12/2005	717,149	6/23/2005	887,807
Mexico	RISE OF LEGENDS	5/12/2005	717,150	6/23/2005	887,808
Mexico	RISE OF LEGENDS	5/12/2005	717,151	11/30/2005	911,191
Mexico	RISE OF LEGENDS	5/12/2005	717,152	6/23/2005	887,809
Mexico	RISE OF LEGENDS	5/12/2005	717,148	6/23/2005	887,806
New Zealand	RISE OF LEGENDS	5/3/2005	729,023	5/3/2005	729,023
Norway	RISE OF LEGENDS	5/10/2005	2005-4,302	3/10/2006	231,340
Singapore	RISE OF LEGENDS	5/3/2005	T05/7,287Z	3/5/2005	T05/07,287Z
Singapore	RISE OF LEGENDS	5/3/2005	T05/7,288H	5/3/2005	T05/7,288H
Singapore	RISE OF LEGENDS	5/3/2005	T05/7,289F	5/3/2005	T05/7,289F
Singapore	RISE OF LEGENDS	5/3/2005	T05/7,290Z	5/3/2005	T05/7,290Z
Singapore	RISE OF LEGENDS	5/3/2005	T05/7,286A	5/3/2005	T05/7,286A
Switzerland	RISE OF LEGENDS	5/3/2005	53,691/2005	10/19/2005	538,914
Taiwan	RISE OF LEGENDS	5/5/2005	94,021,331	1/16/2006	1,193,595
Argentina	RISE OF NATIONS	10/3/2002	2,392,916	6/27/2003	1,936,223
Argentina	RISE OF NATIONS	8/9/2002	2,385,361	6/2/2003	1,929,878
Argentina	RISE OF NATIONS	8/9/2002	2,385,360	2/4/2005	2,009,542
Australia	RISE OF NATIONS	8/7/2002	922,220	1/13/2003	922,220
Brazil	RISE OF NATIONS	8/13/2002	824,876,490		
Brazil	RISE OF NATIONS	8/13/2002	824,876,504	8/19/2008	824,876,504
Brazil	RISE OF NATIONS	8/13/2002	824,876,474		
European Community	RISE OF NATIONS	8/7/2002	2,800,043	12/15/2003	2,800,043
Japan	RISE OF NATIONS	8/19/2002	2002-70,019	7/11/2003	4,691,015
Korea Republic of (KR)	RISE OF NATIONS	8/22/2002	40-2002-38,290	4/13/2004	580,127
Mexico	RISE OF NATIONS	8/21/2002	562,234	4/23/2003	787,565
Mexico	RISE OF NATIONS	8/21/2002	562,232	11/26/2002	770,292
Mexico	RISE OF NATIONS	8/21/2002	562,231	11/26/2002	770,291
Switzerland	RISE OF NATIONS	8/9/2002	50,090/2002	10/24/2002	504,524
Taiwan	RISE OF NATIONS	8/9/2002	91,033,674	5/1/2003	1,042,118
Taiwan	RISE OF NATIONS	8/9/2002	91,033,675	9/16/2003	1,058,645
Taiwan	RISE OF NATIONS	8/9/2002	91,033,673	7/1/2003	1,048,803

## ELECTRONIC ARTS AND BIG HUGE GAMES

### CO-PUBLISHING AGREEMENT FOR "PROJECT MERCURY"

This Co-Publishing Agreement (this "*Agreement*") is made as of December 11, 2009 (the "*Effective Date*") by and between **Electronic Arts Inc.**, a Delaware corporation with offices at 209 Redwood Shores Parkway, Redwood City, California 94065 ("*EA*"), and 38 Studios Baltimore LLC d/b/a **Big Huge Games**, a Delaware Limited Liability Company with offices at 1954 Greenspring Drive, Suite 520, Timonium, Maryland 21093 ("*BHG*").

#### RECITALS

A. EA is in the business of creating, publishing, manufacturing, marketing and distributing interactive entertainment software products for a variety of game platforms. BHG is in the business of developing interactive entertainment software products.

B. EA desires to publish, market, manufacture, distribute and sell certain interactive entertainment software products that are designed for play on certain video game platforms and that are developed and published by BHG.

C. BHG desires to grant to EA, and EA desires to receive from BHG, the right to publish, market, manufacture and distribute such products.

D. BHG intends to obtain project financing for its development and production costs from Third Party Lender and to obtain a completion guaranty from Completion Guarantor (each as defined below) in favor of Third Party Lender.

*NOW, THEREFORE*, the parties hereby agree as follows:

#### 1. CERTAIN DEFINITIONS

The following terms will have the following meanings as used in this Agreement:

- 1.1 "**Product**" means (i) the software products described on Exhibit A hereto and to be developed hereunder (i.e., the Core Product and the Launch PDLC for the Platforms set forth in Exhibit A), all as further described in the PRD; (ii) any trial, demonstration or otherwise limited functionality versions of the Core Product or Launch PDLC, which may or may not be upgradeable/unlocked by end-users to fully-functioning versions thereof by use of an unlock code or similar mechanism; and (iii) any updates, add-ons, bug fixes, Program Error Corrections for, or enhanced versions of, the Core Product and Launch PDLC (which includes any DLC for the Core Product and Launch PDLC, but excludes Expansion Packs).
- 1.2 "**Product Materials**" means user manuals, packaging, marketing materials, advertisements and any other documentation related to the Product.
- 1.3 "**Product Requirements Document**" or "**PRD**" means, with respect to the Product, the document attached hereto as Exhibit C setting forth the fundamental product concept and description and technical requirements for the Product.
- 1.4 "**SKU**" means a version of the Product designed to operate with a particular hardware, software or other interactive media environment or adapted (either in software or

materials or both) for a particular language or languages. Examples of separate SKUs include versions of the Product designed to operate on (a) PCs running a Windows-based operating system, (b) the Sony PS3 or (c) the Microsoft Xbox 360. Also, for example, the German-language localized version of a Product is a different SKU from the English-language version, even if both versions operate on the same hardware platform.

- 1.5 “**Territory**” means the territory specified for the Product on Exhibit A hereto.
- 1.6 “**Term**” shall have the meaning set forth in Section 8.1 below.
- 1.7 “**Deliverable Items**” means the items specified on Exhibit B hereto, in the form and to the specifications specified herein, or otherwise delivered to EA by BHG pursuant to this Agreement, together with any other items mutually agreed upon by the parties and used by EA in the manufacture, marketing or promotion of the Product.
- 1.8 “**Program Errors**” means any case where a software product (a) abnormally ceases functioning, (b) produces incorrect or misleading information or erroneously interprets information given to it, (c) does not function in accordance with its specifications or (d) has bugs or other non-conformities with applicable platform licensor guidelines or requirements that are identified by an applicable platform licensor and for which the applicable platform licensor requires that a correction be made.
- 1.9 “**Program Error Correction**” means a modification of, addition to or deletion from a software product that corrects a Program Error in such product.
- 1.10 “**Gold Master**” means, for each SKU, a master copy of the object code of the SKU in Final Acceptable Form and from which multiple copies of such SKU may be reproduced.
- 1.11 “**Download Distribution**” means any online distribution system through which software products or incremental content or updates thereto may be distributed in electronic form by means of a telecommunications connection, so that they may be played on the user’s computer or game machine; provided that the telecommunications connection is used for the purpose of download only, and not for game play. A Download Distribution system may enable the product to launch while it is still downloading, so long as an open telecommunications connection is not required for the product to operate once the download is complete, and so long as during gameplay the product does not prompt the distribution system to download additional content.
- 1.12 “**Related Company**” of a party means any affiliated entity and/or individual or company which controls, is controlled by or is under common control with the party, where “**control**” means the power to control the composition of the board of directors of such party (whether by contract, corporate law or other means), the possession of more than half of the voting equity share capital of such party or the ability to consolidate such company’s financial statements with those of the party in accordance with generally accepted accounting principles.
- 1.13 “**Final Acceptable Form**” shall have the meaning set forth in Section 2.1(c)(i) below.
- 1.14 “**Online Functionality**” means any gameplay functionality or content enhancements (e.g., co-operative play and leaderboards) for any SKU which require that an appropriate version of the Product be concurrently operative on the end user’s device in order to

utilize such new functionality and/or content, and that may be accessed by consumer end-users through a telecommunications connection to an online network (such as the Internet), an on-line service, or any other game service implemented over cable television lines, telephone lines, microwave signals, radio waves, satellite, wireless or any other service or method now known or hereinafter invented for the transmission and use of such additional functionality and/or content enhancements. For the avoidance of doubt, Online Functionality does not include Download Distribution.

- 1.15 “**CQC Process**” means EA’s Customer Quality Care process, as further described in Section 2.3 below.
- 1.16 “**Platform**” means a hardware, software or other interactive media platform listed on Exhibit A hereto under the heading “Platform”.
- 1.17 “**Port**” means a version of the Product that is designed for play on a videogame or personal computer platform or other device, other than those listed on Exhibit A hereto.
- 1.18 “**Expansion Pack**” means an add-on software product designed to work with or otherwise be used in conjunction with an underlying interactive entertainment software product that (i) provides material additional or expanded functionality or game-play in relation to such underlying interactive entertainment software product (e.g., new gameplay levels, areas and missions) and (ii) requires prior installation of such underlying interactive entertainment software product in order to operate.
- 1.19 “**DLC**” means content that can be used in or in connection with an underlying interactive entertainment software product (e.g., characters, weapons, vehicles, articles of clothing, maps, avatar packs, game themes, music/audio/graphics files and/or other content) and that is made available to end users by Download Distribution.
- 1.20 “**Sequel**” means an entertainment software product other than the Product (or a Port or Expansion Pack thereof) that: (a) is developed for one or more console Platforms including at least one of the Xbox 360 or PS3 (or their respective successor platforms); (b) is not a Minor Title (as defined below); (c) is not a massively multiplayer online game (“**MMO**”) as such term is commonly understood in the entertainment software industry (and for the avoidance of doubt, the term “Sequel” as used herein specifically excludes the entertainment software product code-named “Copernicus” and all related DLC, Expansion Packs, and other add-ons or additional content therefor); and (d) meets at least one of the following criteria: (i) its storyline is a part of or derived from the storyline of the Product or any of the Parent IP (as defined below); (ii) its characters include (but are not necessarily limited to) one or more of the character(s) of the Product or any of the Parent IP; (iii) its title or subtitle refers back to the title of the Product, “Ages Immortal” or any work released or planned utilizing elements of the Parent IP or indicates that the product is included in the same series of games as the Product or any entertainment software product derived from the Parent IP; or (iv) it is otherwise marketed or promoted as a sequel, prequel or spin-off to a previous Product or any of the Parent IP.
- 1.21 “**Minor Title**” means an entertainment software product that is designed, marketed, and/or otherwise intended to be released at significantly less than the then-current premium retail price for games on the corresponding Platform(s). For example, at the time of execution the prevailing premium retail price for games on the Xbox 360 Platform is \$59.99; “Minor Title” as used herein includes an Xbox 360 game intended to

be released at a suggested retail price of \$39.99 (or its equivalent in "Microsoft Points" as offered on Microsoft's Xbox Live) or lower, but not an Xbox 360 game intended to be released at \$59.99 or \$49.99.

- 1.22 "**Parent IP**" means the body of intellectual property protectable under copyright law, including, without limitation, artwork, graphics, characters, characterizations, dialog, storyline, themes, scenes, titles, subtitles, events, fanciful places and plot and other copyrightable elements, originating from or otherwise relating to that certain universe of entertainment property currently known as "*Ages Immortal*" being developed by and on behalf of a Related Company of BHG. For clarification, the Parent IP, as such term is used herein, excludes artwork, graphics, characters, characterizations, dialog, storyline, themes, scenes, titles, subtitles, events, fanciful places and plot and other copyrightable elements developed by or on behalf of BHG for the Product that are specific and unique to the Product itself and not the body of "*Ages Immortal*" fiction.
- 1.23 "**Online Play**" means any service through which software products may be played by users through a telecommunications connection to an online network (such as the Internet), an on-line service, or any other game service implemented over cable television lines, telephone lines, microwave signals, radio waves, satellite, wireless or any other service or method now known or hereinafter invented for the transmission and/or play of such products. For the avoidance of doubt, Online Play will also include any matchmaking services through which consumers are matched with opponents for Online Play vis-à-vis one another, but Online Play does not include Download Distribution. Online Play will further include the online distribution of a software product in cases where an open telecommunications connection is required to operate the product, or in cases where the product is designed to prompt a server to download additional content through an open telecommunications connection during operation of the product.
- 1.24 "**OEM License**" refers to a license to allow fully-functional copies of a Product to be distributed with software and/or hardware of a third-party.
- 1.25 "**Recoupable Advances**" refers, collectively, to the Acceptance Advance, the Bonus Advance and any other amounts designated herein as a "Recoupable Advance" or otherwise agreed by the parties in writing as a "Recoupable Advance".
- 1.26 "**Third Party Lender**" means City National Bank, 400 North Roxbury Drive, Suite 400, Beverly Hills, CA 90210, USA.
- 1.27 "**Completion Guarantor**" means International Film Guarantors, LLC, 2828 Donald Douglas Loop North, 2<sup>nd</sup> Floor, Santa Monica, CA 90405, USA or such other third party completion guarantor that is acceptable to Third Party Lender and EA.
- 1.28 "**Interparty Agreement**" means the agreement between Completion Guarantor, Third Party Lender and EA in the form of Exhibit G hereto.
- 1.29 "**Completion Guaranty Agreement**" means that certain completion guaranty between Completion Guarantor and Third Party Lender, dated as of even date herewith, pursuant to which Completion Guarantor has guaranteed to Third Party Lender that the Product will be duly and timely completed and delivered to EA in accordance with the terms and conditions of the Completion Guaranty Agreement and the Interparty Agreement or that Completion Guarantor will repay Third Party Lender in the event of an abandonment of

the Product or a failure to complete and deliver the Product in accordance with the terms and conditions of the Completion Guaranty Agreement and the Interparty Agreement.

- 1.30 “*Loan Agreement*” means the Loan and Security Agreement between BHG and Third Party Lender dated as of even date herewith, pursuant to which Third Party Lender has agreed to lend funds to BHG for use in paying for the cost of development and production of the Product (the “*Loan*”).
- 1.31 “*Escrow Agreement*” means the “Software Escrow Agreement” between BHG, Third Party Lender, EA, Completion Guarantor, and NCC Escrow International Limited (or such other escrow agent as such parties agree), dated as of even date herewith, pursuant to which BHG has agreed to submit copies of the source code for the Product into escrow as security for its obligations to Completion Guarantor and Third Party Lender.
- 1.32 “*Development Completion Agreement*” means the “Development Completion Agreement” between Completion Guarantor and BHG, pursuant to which, among other things, BHG grants Completion Guarantor certain rights to monitor the development of the Approved Versions (as such term is defined therein) and, in certain circumstances, to take over the development of the Approved Versions and will grant Completion Guarantor a mortgage of copyright on and a security interest in all of Developer Rights (as such term is defined therein) and will deposit the source materials in respect of the Product in escrow pursuant to the Escrow Agreement.
- 1.33 “*Third Party Lender Repayment*” means the completion of both (a) EA’s payment of the Acceptance Advance in accordance with terms of this Agreement (as modified by the Interparty Agreement) and (b) timely repayment of the Bank Indebtedness (as defined in the Interparty Agreement) to Third Party Lender in full without offset of any kind or nature in accordance with the terms of the Loan Agreement.

## 2. DEVELOPMENT AND DELIVERY OF PRODUCT

### 2.1 Development and Delivery of Gold Master Candidates.

- (a) *Development and Delivery.* BHG will develop and deliver to EA a candidate for Gold Master incorporating a version of each of the Core Product and Launch PDL in each of the Gold Master Languages (as such term is defined in Section 4.1) for each of the Platforms (each, a “*Gold Master Candidate*”), and BHG will ensure that all Gold Master Candidates will be Gold Masters in Final Acceptable Form (as such term is defined in Section 2.1(c)(i)) not later than the Delivery Date set forth on Exhibit B hereto, subject to extension for Permitted Reasons (as described in 2.1(b) below) and further subject to the provisions set forth in Section 2.2(e) below. BHG will develop the Product in accordance with the development schedule attached hereto as Exhibit D, subject to extension for Permitted Reasons (“*Development Schedule*”), and, during the development process, BHG shall provide to EA all of the deliverables listed on the Development Schedule, subject to extension for Permitted Reasons.
- (b) *Permitted Reasons*
- (i) *Definition.* “*Permitted Reasons*” means the following circumstances under which the Development Schedule, the Interim Delivery Dates for each Interim Deliverable (as defined in Section 2.2(b) below), and the

Delivery Date (collectively, the “*Milestone Dates*”), but not the Final Acceptance Date (as set forth in Exhibit B hereto), shall be extended, which are:

- (A) EA’s review of the Interim Deliverables (each as defined in Section 2.2(a) below) occurring longer in duration than as expressly set forth in Sections 2.2(b) and 2.2(d) below;
- (B) EA’s CQC Process review of the Gold Master Candidate(s) occurring longer in duration than as expressly set forth in Section 2.3 below;
- (C) Any delay in EA delivering translated Product text and speech files to BHG within the timeframe provided in Section 4.1(d) below;
- (D) Applicable platform licensor(s) reviewing the Gold Master Candidates for approval for manufacture occurring longer in duration than as expressly set forth in Section 2.4 below;
- (E) The parties’ engagement in arbitration as set forth in Section 12.3 below, as described in Section 2.2(d)(iv) below; and
- (F) Force Majeure as set forth in Section 12.4 below.

The parties agree that the total number of days that the Milestone Dates can be extended due to the Permitted Reasons listed in Clauses 2.1(b)(i)(A), (B) and (C) above, and in Clause 2.1(b)(i)(D) above (but solely with respect to such delays directly caused by EA’s failure to comply with its obligations set forth in Section 2.4 below), shall not exceed forty-five (45) days in the aggregate, and any occurrence of the events described in Clauses 2.1(b)(i)(A), (B) and (C) above, and in Clause 2.1(b)(i)(D) above (but solely with respect to such delays directly caused by EA’s failure to comply with its obligations set forth in Section 2.4 below) that would otherwise cause such Milestone Date extension to exceed forty-five (45) days in the aggregate will automatically result in an EA Termination for Convenience (as defined in Section 2.7 below). Notwithstanding the foregoing, in no event shall the Delivery Date be extended due to the Permitted Reasons past the Final Acceptance Date.

(ii) *Incremental Interest*

- (A) “*Incremental Interest*” means any and all additional interest that accrues on the Loan, or additional currency-related costs, fees and/or expenses that are incurred, as a consequence of extension days for Permitted Reasons (as defined in Section 2.2(d)(iii)(B) below) and/or Gold Master Cure Days (as defined in Section 2.2(e) below).
- (B) EA shall be responsible to Third Party Lender for any Incremental Interest due to the Permitted Reasons listed in Clauses 2.1(b)(i)(A), (B) and (C) above, and in Clause 2.1(b)(i)(D) above, but solely with respect to such delays directly caused by

EA's failure to comply with its obligations set forth in Section 2.4 below.

- (C) If the arbitration as set forth in Section 12.3 below results in a finding that EA properly terminated the Agreement due to BHG's Failure then BHG or the Completion Guarantor, as applicable, shall be responsible to Third Party Lender for any Incremental Interest as a consequence of such Permitted Reason listed in Clause 2.1(b)(i)(E) above. If the arbitration as set forth in Section 12.3 below results in a finding that the applicable BHG delivery was improperly determined by EA to be a Failure (as defined in Section 2.2(d)(i) below), then EA shall be responsible to Third Party Lender for any Incremental Interest that accrues on the Loan as a consequence of such Permitted Reason listed in Clause 2.1(b)(i)(E) above.
- (D) EA shall be responsible to Third Party Lender for one hundred percent (100%) of any Incremental Interest that accrues on the Loan as a consequence of such extension of the Milestone Dates due to the Permitted Reasons listed in Clauses 2.1(b)(i)(F) above.
- (E) EA's payment of the Acceptance Advance shall include the full amount of Incremental Interest, but the portion of the Incremental Interest other than the Incremental Interest for which EA is responsible to Third Party Lender pursuant to Sections 2.1(b)(ii)(B) through (D) above shall be deemed a Recoupable Advance hereunder. The portion of such Incremental Interest for which EA is responsible to Third Party Lender pursuant to Sections 2.1(b)(ii)(B) through (D) above shall be calculated *pro rata* based on the number of days of delay that are attributable to EA (as described in Sections 2.1(b)(ii)(B) through (D) above), divided by the total number of days of delay (*i.e.*, from the initial Delivery Date to the date of Full Acceptance).

(c) *Final Acceptable Form*

- (i) *Definition.* Subject to extension for Permitted Reasons and the cure period set forth in Section 2.2(e) below, BHG will deliver to EA all Gold Master Candidates required hereunder, which Gold Master Candidates shall be in Final Acceptable Form by the Delivery Date set forth on Exhibit B hereto. "*Final Acceptable Form*" means that the Gold Master Candidate (A) complies with all of the requirements set forth in the Product Requirements Document (excluding the "Expected Ratings" criteria set forth therein), (B) complies with the ratings requirements set forth in Section 5.1(d) below, (C) is free of material Program Errors, (D) is technically suitable for manufacturing and distribution, (E) has passed EA's CQC Process (as further described in Section 2.3 below), and (F) is accepted for manufacturing by the applicable hardware platform licensor, with all modifications required by such licensor completed, if any.
- (ii) *Completion Guarantor Provisions.* To accommodate the requirements of

Completion Guarantor, (a) the foregoing definition of Final Acceptable Form does not include a requirement that the Gold Master Candidate comply with all of the Product requirements set forth in this Agreement (except as expressly set forth in Section 2.1(c)(i) above) and (b) EA agrees that if Completion Guarantor takes over development, production and delivery of the Product pursuant to its agreements with BHG ("**Completion Guarantor Takeover**"), EA will permit performance from Completion Guarantor for purposes of determining its obligation to pay the Acceptance Advance. Therefore, while the parties agree that EA shall pay the Acceptance Advance to BHG or to Third Party Lender pursuant to the irrevocable instructions of Section 12.8(c) below, when BHG delivers the Gold Master Candidate in Final Acceptable Form as set forth herein, acceptance by EA of the Gold Master Candidates in Final Acceptable Form shall not be deemed to be a waiver of any rights and/or remedies otherwise available to EA arising under the Gold Master Candidate's noncompliance with any other requirements set forth in this Agreement. The foregoing provisions do not relieve BHG of its obligation to deliver all other Deliverable Items set forth in Exhibit B hereof to EA by the Delivery Date.

- (d) *Completion Guarantor Takeover.* EA agrees that upon EA's receipt of a notice from Completion Guarantor of a Completion Guarantor Takeover, Completion Guarantor shall succeed to all of BHG's rights under this Agreement (which, for the avoidance of doubt, expressly excludes BHG's rights as specified in Sections 3.1, 3.3, and 10.2 [to which Completion Guarantor shall be added as an indemnified party in addition to BHG], and provided that Completion Guarantor elects to retain BHG for the development, completion and delivery of the Product, Sections 2.7, 4.6, 4.7, 4.8, 4.9, 4.12, 7 [subject to Section 12.8(c)], and 8), and EA shall deal with Completion Guarantor as if Completion Guarantor were a party to this Agreement; provided, however, that as between Completion Guarantor and BHG nothing in this Section 2.1(d) shall affect the rights of either Completion Guarantor or BHG under the Development Completion Agreement.

## 2.2 Interim Deliverable Review and Other Interim Builds

- (a) *Definitions.* For the purposes of this Agreement, "**Vertical Slice**", "**Pre-Alpha Version**" and "**Alpha Version**" shall have the meanings set forth on Exhibit D hereto. The Vertical Slice, Pre-Alpha Version, and Alpha Version shall be referred to, collectively and individually, as the "**Interim Deliverables**". "**Internal Deliverable Review Process**" means the review process described in this Section 2.2.
- (b) *Interim Deliverable Review.* BHG shall deliver to EA each of the Interim Deliverables for each of the Platforms upon the completion of their development in accordance with the applicable dates set forth on Exhibit D hereto, subject to extension for Permitted Reasons (the "**Interim Delivery Dates**") for review under the Interim Deliverable Review Process. The parties agree that all Interim Deliverables must be delivered to EA in an English language version. EA has the right to review and approve each Interim Deliverable received for its conformity with the applicable specifications set forth on Exhibit D hereto and the applicable portions of the Product Requirements Document (collectively, the "**Interim Deliverable Specifications**"). EA's acceptance of an Interim

Deliverable under this Section 2.2(b) shall be referred to herein as “*Acceptance*” of such Interim Deliverable. EA will conduct the Interim Deliverable Review Process in good faith. If EA approves the Interim Deliverable despite that Interim Deliverable’s failure to conform to one or more applicable Interim Deliverable Specifications for one or more of the Platforms, EA shall provide Completion Guarantor notice of all such non-conformities together with its approval. EA agrees that such initial review of each Interim Deliverable shall not exceed ten (10) business days, and the Development Schedule, the Interim Delivery Dates of each Deliverable, and the Delivery Date (but not the Final Acceptance Date) shall be extended by one (1) day for each day that such review exceeds ten (10) business days, and the parties deem the duration of such excessive review duration as a Permitted Reason hereunder.

(c) *Approval.* Once EA has given its approval of an Interim Deliverable for all Platforms under Section 2.2(b) above, such approved Interim Deliverable may not be subsequently deemed to be in Failure (as defined below) by EA hereunder. For the avoidance of doubt, the contents of the following documents to be delivered as part of the Vertical Slice are not Interim Deliverable Specifications, and no Interim Deliverable shall be deemed to be in Failure by EA hereunder solely on the basis that such Interim Deliverable does not comply with the criteria set forth in the following documents: Story; GDD; TDD; and Storyboard. EA must approve or reject an Interim Deliverable across all Platforms. For the avoidance of doubt, rejection of an Interim Deliverable on one Platform shall be deemed to be rejection of that Interim Deliverable on all Platforms.

(d) *Failure*

(i) *Failure Defined.* If any of the Interim Deliverables fails to materially conform with the applicable Interim Deliverable Specifications, or is not delivered for review by BHG to EA by the applicable date set forth in the Interim Deliverable Specifications, subject to extension hereunder for Permitted Reasons (each, a “*Failure*”), EA will notify BHG (with a copy to Completion Guarantor, Third Party Lender, and any other reasonably appropriate parties designated in writing by BHG) of such Failure, which notice shall provide a reasonably detailed analysis of such determination and suggestions for ways to correct the Failed Interim Deliverable so that it passes upon a resubmission. Only those items specifically listed as having been defects may be raised as objections to a resubmission of the Interim Deliverables, unless an item was materially changed from the prior submission in which case it may be raised as an objection to such resubmission.

(ii) [This section intentionally left blank.]

(iii) *Cure Period*

(A) *Termination Requirements.* Upon Failure of an Interim Deliverable EA shall have the right to either (I) waive the requirement for such Interim Deliverable to pass the Interim Deliverable Review Process or (II) terminate this Agreement immediately upon written notice to BHG (an “*Interim Deliverable Failure Termination*”), subject to the dispute

resolution provisions of Section 2.2(d)(iv) below and the cure period set forth in the following sentence. EA may not terminate this Agreement by reason that a SKU has failed the Interim Deliverable Review Process unless it shall have given five (5) business days' written notice of its intent to do so to Completion Guarantor and Completion Guarantor or BHG shall have failed within a cure period as described in Section 2.2(d)(iii)(B) below (the "*Cure Period*") to have resubmitted the Interim Deliverables that failed the prior review and such deliverables shall have failed the Interim Deliverable Review Process.

- (B) *Cure Period.* The Cure Period shall be ninety (90) days in the case of the Vertical Slice, one hundred twenty (120) days in the case of the Pre-Alpha Version, and one hundred and fifty days (150) days in the case of the Alpha Version.
- (C) *Cure Period Resubmission.* During any such Cure Period, Completion Guarantor (or BHG) shall have the repeatable ability to correct and resubmit any such Interim Deliverable. Completion Guarantor (or BHG) shall be entitled to use any portion of such Cure Period not used by it making additional or subsequent resubmissions, to make multiple additional submissions. EA agrees that each such EA review of each resubmitted Interim Deliverable during any such Cure Period shall not exceed five (5) business days, and the Development Schedule, the Interim Delivery Dates for each Interim Deliverable, and the Delivery Date (but not the Final Acceptance Date) shall be extended by one (1) day for each day that such review exceeds five (5) business days, and the parties deem the duration of such excessive review as a Permitted Reason hereunder.
- (iv) *Dispute Resolution.* The parties agree that if EA exercises an Interim Deliverable Failure Termination and the Completion Guarantor or BHG disputes the applicable Interim Deliverable Failure, or if the parties dispute whether a Gold Master Candidate is in Final Acceptable Form, then the following procedure shall occur (the provisions of which shall survive such termination): The parties shall submit their dispute regarding the Failure of such Interim Deliverable or Gold Master Candidate to the arbitration process set forth in Section 12.3 below ("*Deliverable Arbitration*"). The parties agree that if the result of the Deliverable Arbitration is that the applicable Interim Deliverable is ultimately determined not to be a Failure or the Gold Master Candidate is in Final Acceptable Form, as applicable, then (A) EA shall be deemed to have exercised an EA Termination for Convenience (as defined in Section 2.7(a) below) effective as of the date that BHG received notice of EA's exercise of the Interim Deliverable Failure Termination pursuant to Section 2.3(d)(iii)(A)(II) above, (B) EA shall fulfill the payment and repayment obligations set forth in Section 2.7(b) below, and (C) EA shall be responsible for any additional interest that accrues on BHG's loan from Third Party Lender as a consequence of such Deliverable

Arbitration. However, the parties agree that if the result of the Deliverable Arbitration is that the applicable Interim Deliverable is ultimately determined to be a Failure or the Gold Master Candidate in dispute is not in Final Acceptable Form, then EA shall have no further liability to BHG, Third Party Lender or Completion Guarantor arising under or related to the termination of this Agreement, and Completion Guarantor shall fulfill its obligations set forth in Section 7.3.1 of the Interparty Agreement, and either BHG or Completion Guarantor (*i.e.*, not EA) shall be responsible for any additional interest that accrues on BHG's loan from Third Party Lender as a consequence of such arbitration.

- (e) *Full Acceptance.* "**Full Acceptance**" means EA's acceptance that the Gold Masters for all Gold Master Languages are in Final Acceptable Form. If Full Acceptance has not occurred by the Delivery Date subject to extension for Permitted Reasons, then EA shall have the right to terminate this Agreement immediately upon written notice to BHG ("**Gold Master Failure Termination**"), subject to the dispute resolution provisions of Section 2.2(d)(iv) above and the cure period set forth in the following sentence. EA may not undertake a Gold Master Failure Termination unless it shall have given five (5) business days' written notice of its intent to do so to Completion Guarantor, and Completion Guarantor or BHG shall have failed within a cure period of one hundred eighty (180) days to achieve Full Acceptance. For the avoidance of doubt, EA shall be free to exercise a Gold Master Failure Termination if Full Acceptance has not occurred by the Final Acceptance Date for any reason. The actual number of such cure days used shall be referred to herein as "**Gold Master Cure Days**".
- (f) *Interim Builds.* Beginning five (5) months after the Effective Date, from time to time, but no less frequently than once every month prior to BHG's delivery of the Vertical Slice to EA and once every two (2) weeks after BHG's delivery of the Vertical Slice and prior to BHG's delivery of the Alpha Version to EA and weekly thereafter, BHG will provide EA with an interim build of all of the then-current SKUs in development ("**Interim Builds**") and, subject to the terms and conditions set forth herein, EA is permitted to provide the Interim Builds to the applicable platform licensors for the Platforms. The parties agree that during the process of developing the Product, BHG will be expected to meet with EA on a regular basis as mutually convenient to discuss progress on the Product and receive feedback and suggested input on changes that EA and/or the applicable platform licensors would like to see made to the Product; EA will reimburse BHG for its actual and reasonable out-of-pocket costs for travel and accommodations required to attend any such meetings held outside of the Baltimore, Maryland or Boston, Massachusetts areas, with any such costs in excess of \$1,000 requiring prior written approval of EA (not to be unreasonably withheld). EA will provide to BHG as soon as practicable all feedback, and other information regarding changes or suggestions applicable to the Product, received from any Platform licensor; provided, however, that design responsibility with respect to the Product will remain solely and exclusively with BHG. BHG will use commercially reasonable efforts to address the applicable platform licensors' concerns (as conveyed by such licensors to EA) as may be necessary to obtain such platform licensors' approvals for the Product. BHG will in good faith consider incorporating EA's feedback and addressing EA's concerns (if any)

regarding the Product.

- (g) *Obligation to Permit Performance By Completion Guarantor.* For avoidance of doubt, EA specifically acknowledges that all action to be taken by BHG pursuant to Section 2.1, this Section 2.2, or otherwise with regard to the development, production and delivery of the Product may be taken by Completion Guarantor and that EA will accept performance by Completion Guarantor.

### 2.3 CQC Process Procedure

- (a) *CQC Process.* After BHG submits each Gold Master Candidate to EA, EA will examine and test such Gold Master Candidate through its CQC Process. The CQC Process is EA's independent review of final software and documents to verify that products meet all first-party requirements and EA customer quality standards and to further check against crash bugs in the game's critical path. EA will perform the CQC Process review of the Gold Master Candidates in good faith. EA may not add to the scope of the Product features or content unless a violation of a platform licensor requirement is identified during the CQC Process and such addition is required to remedy such violation. EA will notify BHG of EA's determination of whether such Gold Master Candidate has passed the CQC Process and, in the case of rejection, will provide BHG with a reasonably detailed list of deficiencies in such Gold Master Candidate.
- (b) *CQC Review Days.* Until the Final Acceptance Date, BHG will have the repeatable opportunity to cure any such deficiencies and will thereafter have the right to submit the corrected Gold Master Candidate to EA for CQC Process review, and all such corrected Gold Master Candidates shall be subject to the CQC Process as set forth in this Section 2.3. "*CQC Review Days*" shall mean the number of days in duration beginning with the day EA receives all of the Gold Master Candidates for CQC Process review, and ending with the day that EA has issued its approval of all Gold Master Candidates for submission to the platform licensor; provided, however, that CQC Review Days for the Gold Master Candidates shall not include any days which occur in between (i) EA's notice to BHG during the CQC Process that EA requires a modification to such Gold Master Candidate prior to approval for sending to the platform licensor and (ii) EA's receipt of such resubmitted Gold Master Candidates after modification by BHG. The parties acknowledge and agree that the Development Schedule and Delivery Date set forth hereunder contemplate that the CQC Review Days for the Gold Master Candidates hereunder shall not exceed fifteen (15) calendar days. Therefore, the Delivery Date (but not the Final Acceptance Date) shall be extended by one (1) day for each day that the total CQC Review Days for the Gold Master Candidates exceeds fifteen (15) calendar days, and the parties deem the duration of such excessive review as a Permitted Reason hereunder.

### 2.4 Platform Licensor Approval

- (a) *Platform Licensor Approval Procedure.* After a Gold Master Candidate for a particular SKU has passed the CQC Process, EA will submit such Gold Master Candidate to the applicable platform licensor for its approval. EA shall cooperate in good faith with such submission and correction process, and make EA personnel reasonably available to assist BHG with such process, and EA agrees to act in a diligent and reasonable manner with respect to such process.

Upon such applicable platform licensor's approval of the Gold Master Candidates, such Gold Master Candidates shall be deemed to be Gold Masters in Final Acceptable Form, subject to the satisfaction of the other criteria set forth in the definition of Final Acceptable Form as defined in Section 2.1(c)(i) above. If an applicable platform licensor rejects such Gold Master Candidates and/or suspends review of such Gold Master Candidates while suggesting changes necessary to be made prior to approval, EA will provide BHG with notice of such rejection or suspension and provide BHG with all feedback provided by the applicable platform licensor with respect to the rejected or suspended Gold Master Candidates, and BHG will have the opportunity to modify and resubmit such Gold Master Candidates to EA, which EA will review through its CQC Process prior to resubmitting to the applicable platform licensor. If a platform licensor expresses any concern with the Product (as contemplated above) or fails to approve the Product or requests changes as a condition to its approval, EA will, if requested by BHG, take reasonable action to allow BHG to deal directly with the applicable platform licensor.

- (b) *First Party Review Days.* "**First Party Review Days**" means the number of days in duration beginning with the day a platform licensor first receives the applicable Gold Master Candidates for its approval, and ending with the day such platform licensor has issued its approval of such Gold Master Candidates for manufacturing; provided, however, that First Party Review Days for the particular Gold Master Candidates shall not include any days which occur in between (i) EA's notice to BHG that the applicable platform licensor requires a modification to the Gold Master Candidates prior to approval for manufacture and (ii) EA's approval of the Gold Master Candidates after modification by BHG through its CQC Process. The parties acknowledge and agree that the Development Schedule and Final Acceptance Dates set forth hereunder contemplate that the First Party Review Days for the Gold Master Candidates hereunder shall not exceed thirty (30) calendar days. Therefore, the Delivery Date (but not the Final Acceptance Date) shall be extended by one (1) day for each day that the total First Party Review Days for the Gold Master Candidates exceeds thirty (30) calendar days, and the parties deem the duration of such excessive review as a Permitted Reason hereunder.

## 2.5 Program Errors and Technical Support

- (a) *Program Errors During Development.* BHG will use diligent good faith efforts to deliver each Gold Master Candidate free of Program Errors, and to provide Program Error Corrections for any Program Errors identified by EA during EA's testing of any Gold Master Candidate. During development, BHG will track and report Program Errors using a bug database product to be mutually agreed upon by the parties (the "**EA Database**"). EA will furnish the EA Database to BHG at no cost for BHG's use hereunder, no later than delivery of the Alpha Version. BHG understands and agrees that the EA Database will be the determinative "bug database" for all purposes in connection with this Agreement, including, without limitation, for purposes of meeting third party submission requirements.
- (b) *Program Errors In the Final Version.* For a six (6) month period after commercial release of a SKU (the "**Correction Period**"), BHG will promptly

notify EA of, and investigate and use best efforts to correct, all significant Program Errors identified by EA in relation to such SKU and (i) deliver to EA, as soon as practicable and at no cost to EA, an avoidance procedure or work-around to solve or avoid any such significant Program Error until a correction is achieved and (ii) continue to use its best efforts to develop a Program Error Correction at no cost to EA for any such significant Program Error and, when a correction is achieved, deliver to EA all modifications necessary to implement the correction for the affected SKU.

- (c) *Technical Support.* BHG shall provide reasonable technical support for each SKU for a period of 6 months from the commercial release thereof as may be reasonably required by EA, at no cost to EA in, a timely and professional manner ("*Technical Support Period*"). The term "technical support" as used herein shall mean technical support information, and phone and email support to be provided by BHG via a designated telephone number and email address that EA may contact during BHG's normal business hours to have technical and application questions about the Product answered. During the Technical Support Period, BHG will ensure that BHG personnel who are knowledgeable of the technical and application aspects of the Product are available to answer EA's support questions upon reasonable notice, and shall either contractually require that those employed by any third-party developers of the Product who are knowledgeable of the technical and application aspects of the Product are available to answer EA's support questions relating to any materials developed by such third party developer upon reasonable notice (and upon notification by EA, BHG will use diligent efforts to enforce such contractual obligations with such third-party developers) or Developer will be available as required above to answer EA's support questions with respect to materials developed by such third party developers.

- 2.6 *Key Development Personnel.* The following employees of BHG (each a "*Key Employee*") will be employed in the performance of BHG's obligations hereunder in the positions indicated.

Position	Key Employee Name
President	Timothy Train
Chief Technical Officer	Jason Coleman
Project Lead	Mike Ellis
Senior Producer	Michael Fridley
Lead Designer	Ken Rolston

BHG agrees to allocate these persons' working time in the performance of BHG's obligations hereunder. If any Key Employee leaves BHG prior to Full Acceptance, BHG will immediately inform EA and will use diligent good faith efforts to promptly replace that Key Employee with another equally qualified employee that is acceptable to EA and the replacement employee will be deemed a Key Employee.

- 2.7 *Termination for Convenience*

- (a) *Termination.* At any time during the development of the Product, EA may terminate this Agreement immediately upon written notice to BHG (an "*EA*

***Termination for Convenience***”).

- (b) ***Repayment.*** After an EA Termination for Convenience and within thirty (30) days after EA’s receipt of a written accounting of all sums advanced, incurred and/or and expended by Third Party Lender and Completion Guarantor to BHG in respect of the Product until such time as notice of such EA Termination for Convenience is received by Third Party Lender and Completion Guarantor, respectively, EA shall:
- (i) Repay the EA Termination Bank Indebtedness (as defined and in the manner set forth in the Interparty Agreement) to Third Party Lender in full without offset of any kind or nature in accordance with the terms of the Loan Agreement (as such term is defined in the Interparty Agreement), but in respect of accelerated payments made by Third Party Lender pursuant to its obligations under the Completion Guaranty Agreement only to the extent that Completion Guarantor provided EA with five (5) business days’ prior written notice of such accelerated payments;
  - (ii) Pay to Completion Guarantor any Completion Sums (as such term is defined in the Completion Guaranty Agreement) actually advanced, expended, incurred or accrued by Completion Guarantor in respect of the Product prior to Completion Guarantor’s receipt of written notice of such termination, only to the extent that Completion Guarantor provided EA with five (5) business days’ prior written notice of its advancing or expending of the principal amounts of those Completion Sums (“***Completion Guarantor Repayment***”); and
  - (iii) Pay to BHG Two Million Seven Hundred Thousand Dollars (\$2,700,000) (“***BHG Termination Payment***”).

The parties agree that, as to EA, the payments set forth in this Section 2.7(b) shall be the sole remedy of BHG, Completion Guarantor and Third Party Lender and EA’s sole liability with respect to the EA Termination for Convenience. EA’s exercise of an EA Termination of Convenience and satisfaction of its payment obligations under Sections 2.7(b)(i), (ii) and (iii) shall be referred to herein as “***EA Termination For Convenience Repayment***”.

- (c) ***New Publishing Agreement.*** After an EA Termination For Convenience Repayment, if BHG enters into an agreement with a third party to publish, market, and/or distribute the Product, then BHG shall refund the total amount of any direct payments to BHG actually paid under the Loan Agreement (“***Direct Development Spend***”), within ninety (90) days of the date BHG enters into such written agreement.
- (d) ***Sole Manner of EA Termination After Takeover.*** EA agrees that if Completion Guarantor gives EA notice that Completion Guarantor has taken over the development, production and delivery of the Product, then Interim Deliverable Failure Termination, Gold Master Failure Termination (as defined in Section 2.2(e) above) and EA Termination for Convenience are the only manners by which EA may terminate this Agreement prior to the Final Acceptance Date.

- 2.8 [This section intentionally left blank.]
- 2.9 Deemed CQC Rejection. Upon the occurrence of the aggregate number of CQC Review Days exceeding one hundred twenty (120) days with respect to any Gold Master Candidate, EA shall be deemed to have rejected such Gold Master Candidate from the CQC Process and such rejection shall be subject to BHG's right to arbitrate pursuant to Section 2.2(d)(iv), whether or not EA performed the CQC Review Process as required by Section 2.3 above.
- 2.10 EA-Provided Services. From time to time, BHG may request certain development-related services from EA with respect to the Product, other than the services expressly set forth within this Agreement as EA's obligations. To the extent mutually agreed upon by the parties in writing, EA shall perform such mutually agreed-upon services and shall provide BHG with an invoice for such services at the agreed upon compensation, and BHG shall pay such invoice within forty-five (45) days after its receipt thereof. Such payment obligation shall not offset or otherwise affect or reduce any other payment obligation of EA set forth in this Agreement.

### 3. INTELLECTUAL PROPERTY RIGHTS

- 3.1 Ownership of Intellectual Property. Except for the express license and rights granted to EA in Section 3.2, 3.3, 4.1(f) hereof and except with respect to any portion of the EA Materials (as defined in Section 9.2(b)), BHG (or the entity from which it licenses the applicable material) retains all right, title and interest (including, without limitation, copyright, trademark and patent) in and to the intellectual property embodied in the Product, including, without limitation, all visual, audio and story elements, game design and game play functionality, all source code and object code, inventions, methods, processes, technology, know how, materials and development tools, Product Marks (defined below), BHG Marks (defined below), Product Materials and the Deliverable Items (collectively, "**BHG Intellectual Property**"). Notwithstanding the foregoing, EA will have title to all inventory of Product units, and EA will retain title and intellectual property rights to trademarks and trade names of EA that are owned by EA and are used in connection with the packaging, marketing and distribution of the Product (collectively, the "**EA Marks**"). EA Marks expressly exclude the Product Marks and BHG Marks. EA may not copy, distribute, reproduce, use or authorize access to the BHG Intellectual Property except as explicitly permitted under this Agreement, and EA will not, nor will it authorize any third party to, modify, adapt, translate, prepare derivative works from, decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the BHG Intellectual Property, except as explicitly permitted under this Agreement. Unless otherwise approved in writing by BHG, EA shall not remove, obscure, or alter BHG's copyright notices, trademarks or other proprietary rights notices affixed to or contained within the BHG Intellectual Property.

#### 3.2 Licenses Granted to EA

- (a) Manufacturing. Subject to Section 3.5, BHG hereby grants to EA, and EA hereby accepts from BHG, the exclusive right and license to make, reproduce and manufacture tangible copies of any SKU of the Product, in such quantities as EA may determine in its sole discretion. In addition, EA shall have the right to authorize third parties to exercise the foregoing rights on its behalf in a manner

consistent with EA's general business practice in connection with its own games and the games of other parties that EA publishes and/or distributes.

(b) *Distribution.*

(i) *Tangible Products.* Subject to Section 3.5, BHG hereby grants to EA, and EA hereby accepts from BHG, the exclusive right and license, with the right to sublicense to others, to market, distribute and sell tangible copies of any SKU of the Product throughout the Territory, as stand-alone packaged games, in combination or bundled with other software or hardware (which combinations and bundles shall be subject to BHG's prior written approval).

(ii) *Download Distribution/Online Play.* Subject to Section 3.5, BHG hereby grants to EA, and EA hereby accepts from BHG, the exclusive right and license, with the right to sublicense to others, to:

(a) reproduce, market, distribute and sell throughout the Territory copies of any SKU of the Product (including, for avoidance of doubt, demonstration/trial and limited functionality versions of the Product), as stand-alone products and in combination or bundled with other software (which combinations and bundles shall be subject to BHG's prior written approval) via Download Distribution (including, without limitation via Download Distribution of unlock codes or similar mechanisms provided to end-user customers that allow end users to unlock or upgrade trial, demonstration or otherwise limited-functionality versions of any SKU of the Product to fully-functional/enhanced-functionality versions); and

(b) reproduce, distribute, transmit, broadcast, stream, publicly perform and display, and sell and license, throughout the Territory, DLC, Online Play and Online Functionality of and for any of the Product.

(c) *Marketing*

(i) *Marketing License.* Subject to Section 3.5 below and Section 4.6 below, BHG's approval rights set forth in Section 3.2(c)(iii) below and the last sentence in this paragraph, BHG grants to EA, and EA hereby accepts from BHG, the exclusive, royalty-free, right and license in the Territory, with the right to sublicense to others, to use, reproduce, perform and display all copyrighted/copyrightable materials relating to the Product (including, without limitation, screen shots, video clips, sound bites, summaries of and excerpts from the Product) in any reasonable manner in connection with the design and creation of packaging of the Product and in connection with EA's marketing and distribution of the Product (the "*Marketing License*"), provided that EA shall include such trademark and other notices as are reasonably designated by BHG or third party licensors. The foregoing is subject to any limitations imposed by third party licensors of Third Party Technology as set forth in the

Product Requirements Document, applicable hardware platform licensors, or as otherwise approved in writing by EA.

- (ii) *Trademark License.* Subject to BHG's approval rights set forth in Section 3.2(c)(iii) below, BHG grants to EA, and EA hereby accepts from BHG, the non-exclusive and royalty-free right and license, with the right to sublicense to others to use, reproduce and display the names and logos, including any successors thereto, of BHG (the "**BHG Marks**") and all trademarks and trade names associated with the Product that are owned or licensed by BHG, which are to include the product title/name for any of the Product (the "**Product Marks**") in any reasonable manner in connection with the design and creation of packaging of the Product and in connection with EA's marketing and distribution of the Product, provided that EA shall include such trademark and other notices as are reasonably designated by BHG or third party licensors. The foregoing is subject to BHG's trademark usage quality control approval (to the extent that a description of such approval procedure is provided to EA) and trademark usage guidelines as set forth in the Product Requirements Document or as otherwise provided in writing to EA by BHG and to BHG's approval rights set forth in Section 3.2(c)(iii) below.
- (iii) *Approval.* EA will submit all intended uses of the BHG Trademarks to BHG for its approval prior to any dissemination or publication by or for EA, which approvals shall not be unreasonably withheld or delayed by BHG. If BHG does not inform EA of its acceptance or rejection of any submission under this Section 3.2(c)(iii) within five (5) business days after BHG's actual receipt of such submission, such submission shall be deemed approved by BHG.
- (d) *Localization of Product Materials.* Subject to Section 3.5, BHG grants EA the exclusive right and license, with right to sublicense, to reproduce, modify and otherwise create derivative works of the Product Materials solely for the purpose of translating and localizing such Product Materials for any language (collectively, "**Localized Product Materials**"). EA hereby assigns to BHG all right, title and interest in all Localized Product Materials, subject to EA's rights to use and reproduce the same as authorized herein.

### 3.3 Right to Publish Additional Products.

- (a) *Rights to Additional Products Generally.* Subject to the provisions of this Section 3.3 and Section 3.5, and further subject to the condition precedent that EA in fact commercially releases the Product, EA shall have the exclusive right to publish, market and distribute all Ports and Expansion Packs of the Product, and the first two (2) Sequels, (each an "**Additional Product**") on substantially the same terms as this Agreement, including the same royalty percentages (and corresponding revenue thresholds for any of the Sequels) and that all advances for such Additional Product shall be fully recoupable from royalties payable for such Additional Product on the same basis as set forth herein (the amounts and timing of any advance payments to be negotiated in good faith).
- (b) *Rights to Second Sequel.* If EA publishes a first Sequel and if the number of units of the first Sequel distributed by (or on behalf) of EA is less than fifty

percent (50%) of the number of units of the initial Product distributed by (or on behalf of) EA or if EA fails to publish the first Sequel and it is thereafter self-published by BHG or another publisher, then the rights set forth in this Section 3.3 shall terminate as to the second Sequel.

(c) *BHG Proposal of Additional Products.* If BHG desires to develop an Additional Product, BHG shall propose an Additional Product by notifying EA Partners' General Manager (currently, David DeMartini) or Vice President of Business Development (currently, Sinjin Bain) in writing (email is sufficient), (i) which notice shall prominently indicate (*e.g.*, in the subject line) "RESPONSE REQUIRED WITHIN 30 DAYS" and by providing (ii) a reasonably complete Additional Product Proposal to EA and (iii) any other information that is requested by EA within thirty (30) days of EA's receipt of such Additional Product Proposal (such thirty (30) day period, the "*Additional Information Period*") and that is necessary, in EA's commercially reasonable judgment, for EA to make a meaningful evaluation of the scope, cost of development and market potential for the applicable Additional Product ("*Option Review Period Start Date*" means the date upon which the Additional Product Proposal and all such other information requested under subclause (iii) if any is received by EA). If, within thirty (30) days from the beginning of the Option Review Period Start Date (the "*Option Review Period*"), EA notifies BHG that EA desires to publish the Additional Product, then the parties shall for a period of forty-five (45) days from BHG's receipt of such notice (the "*Option Negotiation Period*") negotiate a definitive development budget and schedule of key milestones and corresponding advance payments; upon agreement to the foregoing the parties will then proceed to execute and deliver a new long-form agreement for the Additional Product containing such agreed upon terms and otherwise having substantially the same terms as this Agreement as described in 3.3(a) above. If EA declines to publish the Additional Product, fails to respond as required before the end of the Additional Information Period or the Option Review Period, as applicable, or if the parties are unable to negotiate a definitive development budget and schedule of key milestones and corresponding advance payments within the Option Negotiation Period, then EA's rights set forth in this Section 3.3 shall terminate as to that Additional Product and BHG may then enter into discussions with any third party for the publishing, marketing, and/or distribution of the Additional Product; provided, however, BHG may not offer any third party terms for publishing an Additional Product that are more financially favorable to BHG than those last offered by EA hereunder without first offering such terms to EA and then providing EA thirty (30) days from EA's receipt of such terms in writing to determine whether EA will publish the applicable Additional Product pursuant to such terms.

(i) "*Additional Product Proposal*" means (a) a Game Design Document and (b) a development budget including a schedule of key milestones and corresponding advance payments.

(ii) "*Game Design Document*" means a document containing: (a) a narrative and high-level overview of the storyline, themes, environment, characters, and core game play elements of the applicable Additional Product; (b) a textual description of the high-level technical specifications of the of the applicable Additional Product; and (c) a high-

level technical description of the software architecture and methodologies that will be used in the creation of the of the applicable Additional Product.

- (d) *EA Proposal of Ports.* From time to time, EA may notify BHG that it wishes to have developed a Port of the Product for a particular video game or personal computer platform and will provide to BHG the Platform for the Port, a proposed development budget for the Port, a high-level summary of the technical and design challenges involved in the development of such Port and a high-level summary of any material differences expected between the Port and the Platform-version of the Product from which the Port is being developed (“*EA Proposal*”). If, within (30) days from BHG’s receipt of the EA Proposal, BHG notifies EA that BHG desires to develop the Port, then the parties shall execute a new agreement for the Port having substantially the same terms as this Agreement as described above.
- (e) *EA Developed Port.* If BHG declines to develop a Port proposed by EA or fails to respond within thirty (30) days from BHG’s receipt of an EA Proposal (“*BHG Rejection*”), then EA shall be free to develop such Port itself and/or have such Port developed by one or more third party developers at EA’s discretion (each such Port an “*EA Developed Port*”).
  - (i) *Delivery.* After a BHG Rejection, then to the extent permissible under BHG’s obligations to third-parties and subject to any restrictions arising therefrom (the “*Source Code Restrictions*”), upon EA’s request BHG shall promptly deliver to EA a complete copy of the source code, all asset files (including game assets and original source assets used to create the game assets), and a complete build environment for the Product (including libraries, middleware, tools, scripts, and any other software used to compile the Product into final executable form) (collectively, the “*Development Source Code*”). If BHG is prohibited from delivering certain Development Source Code to EA by reason of third-party obligations (“*Affected Source Code*”), BHG shall not be obligated to deliver the Affected Source Code to EA but instead shall provide EA with a written document identifying the files so withheld and describing the functionality implemented therein. If EA subsequently obtains from the applicable third party licensor(s) a release or other permission in writing for BHG to deliver the Affected Source Code to EA, BHG shall then deliver such Affected Source Code to EA.
  - (ii) *License.* Subject to Section 3.5 below, in the event of BHG Rejection BHG hereby grants to EA a nonexclusive, sublicensable right to use and modify the Development Source Code (subject to the Source Code Restrictions, if any) solely to develop, have developed, and fix Program Errors in each EA Developed Port, and a perpetual, exclusive, sublicensable right and license solely to manufacture, reproduce, distribute, market and sell copies of, and otherwise exploit, each EA Developed Port containing the Development Source Code and/or derivatives of such Development Source Code (in executable code only) (“*EA Development License*”), all to the same extent as EA is authorized to do so herein in respect of the Product. Subject to the EA Development

License, BHG will own all right, title and interest in, and EA hereby assigns to BHG all right title and interest in, each Port, including, without limitation, and all modifications made to any of the Development Source Code, but excluding any portions thereof consisting of EA Materials or preexisting proprietary technology (and its derivatives) of any third party developer or licensor to EA.

- (iii) *Restrictions.* The Development Source Code (to the extent rendered in any form other than inclusion in executable code versions of EA Developed Ports) will be BHG Confidential Information. EA may not disclose, transfer or sublicense any of Development Source Code except for sublicenses to subcontractors solely to the extent necessary to exercise the EA Development License in connection with developing, and/or fixing Program Errors in, an EA Developed Port, provided that such subcontractors are subject to contractual restrictions at least as protective of BHG's rights as this Agreement.
- (iv) *Royalties.* For any EA Developed Port, EA shall pay to BHG the Passive Royalties instead of the Primary Royalties (as such terms are defined in Exhibit A hereto), in consideration of the EA Development License.

#### 3.4 EA Development Aids and other Assistance

- (a) *Provision By EA.* From time to time, EA may provide BHG with copies of certain EA Development Aids (as defined below), including EA Sony Aids and EA Microsoft Aids, when and in the form EA and BHG mutually deem appropriate to help BHG develop the Product. EA Development Aids provided for use by BHG will be described in Exhibit E to this Agreement.
- (b) *License.* Subject to the terms and conditions hereof and subject to any EA Development Aid Restrictions (as defined in 3.4(b) below), EA hereby grants BHG a nonexclusive and nontransferable license to use any delivered EA Development Aid solely for the purpose of developing the Product; if any EA Development Aid is provided in the form of modifiable source code, then BHG may modify and make additions to such source code as needed to develop the Product. BHG agrees that it shall return to EA all EA Development Aids provided hereunder, including any copies thereof, immediately upon the request of EA. BHG may not sublicense the use of any EA Development Aids without prior written approval of EA. BHG covenants it will not, nor will it authorize any third party to, modify, adapt, translate, prepare derivative works from, decompile, reverse engineer, disassemble or otherwise attempt to derive source code from any EA Development Aid, except as explicitly permitted under this Section 3.4.
- (c) *Definitions.* "**EA Development Aids**" means equipment, assistance, development tools, utilities or other software, hardware, materials or services, that are provided by EA to BHG for BHG's use in the development of the Product, including, without limitation, EA Sony Aids and EA Microsoft Aids provided to BHG by EA. "**EA Sony Aids**" means certain EA Development Aids which are related to development of the Product for use on any machine or device, including without limitation hand-held machines, manufactured or marketed by

or on behalf of Sony Computer Entertainment of America or its Related Companies (“*Sony*”). “*EA Microsoft Aids*” means certain EA Development Aids which are related to development of the Product for use on any machine or device, including without limitation hand-held machines, manufactured or marketed by or on behalf of Microsoft Corporation or its Related Companies (“*Microsoft*”). “*EA Development Aid Restrictions*” means any restrictions imposed on EA by a third party technology licensor of any applicable portion of any EA Development Aid that are communicated to BHG in writing.

- (d) *Limitations: EA Sony Aids and EA Microsoft Aids.* Without limiting the foregoing provisions of Section 3.4(a) above, BHG agrees and understands that it shall obtain no rights whatsoever to any EA Sony Aids or EA Microsoft Aids supplied hereunder, except for the limited right to use the same described above in this Section 3.4. **BHG SHALL HAVE NO RIGHT IN ANY EVENT TO PUBLISH OR DISTRIBUTE ANY PRODUCT DEVELOPED IN WHOLE OR IN PART WITH ANY EA SONY AIDS OR EA MICROSOFT AIDS OR TO USE EA SONY AIDS OR EA MICROSOFT AIDS FOR ANY PURPOSE, OTHER THAN FOR THE DEVELOPMENT OF THE PRODUCT DURING THE TERM OF THIS AGREEMENT, BHG ACKNOWLEDGES AND AGREES THAT EACH OF SONY AND MICROSOFT ARE THIRD PARTY BENEFICIARIES OF THIS AGREEMENT WITH RESPECT TO THE TERMS RELATING TO EA SONY AIDS AND EA MICROSOFT AIDS, RESPECTIVELY, AND EACH HAS FULL RIGHT TO BRING ANY ACTION AGAINST BHG, INCLUDING INJUNCTIVE ACTION, TO ENFORCE SUCH TERMS.**
- (e) *Cost of EA Development Aids.* The cost of the EA Development Aids (as specified in Exhibit E hereto) that are provided to BHG (“*EA Development Aids Costs*”) shall be deemed a Recoupable Advance hereunder. The provision of EA Development Aids is at EA’s sole discretion, and the grant of rights to EA Development Aids under Section 3.4(a) above may be terminated at the discretion of EA’s third party licensors.

- 3.5 *Grants Subject to Payment of Acceptance Advance.* Notwithstanding anything to the contrary set forth herein, the occurrence of Third Party Lender Repayment is a condition precedent to the grants of rights and licenses to EA pursuant to this Section 3 (except for the grants under Section 3.2(c) above) and such grants shall not take effect unless and until EA has paid the Acceptance Advance in full to BHG when EA is required to do so under this Agreement. If (i) BHG fails to achieve Full Acceptance by the Delivery Date (subject to extension for Permitted Reasons and the cure period set forth in Section 2.2(e) above) and EA does not otherwise fulfill Third Party Lender Repayment, or if (ii) this Agreement is terminated pursuant to Section 8.2 of this Agreement, then all rights granted to EA pursuant to this Section 3 shall terminate. To the extent that the rights granted to EA pursuant to this Section 3 have terminated under any of the scenarios above, then upon the written request of BHG (or Completion Guarantor or Third Party Lender, as appropriate) EA shall acknowledge that EA has no rights pursuant to this Section 3 (including, without limitation, under Paragraph 3.2(c) above), in such form as BHG (or Completion Guarantor or Third Party Lender, as appropriate) shall reasonably request.

#### 4. OBLIGATIONS OF EA

4.1 Localization

- (a) *Translation and Delivery.* From time to time, BHG shall deliver original English-language text and speech files from the Product to EA in a timely manner in accordance with the Development Schedule. EA shall translate or have translated the text and speech files of the Product into French and German for full-voice translation; and Italian and Spanish for text-only translation (the “*Localization Languages*”).
- (b) *Translation Periods.* For each delivery of text files from BHG to EA, EA shall deliver the corresponding translated text files to BHG as soon as is commercially feasible but no later than within two (2) weeks plus one (1) week for every forty thousand (40,000) words of text delivered (“**Text Translation Period**”). For each delivery of Product recorded speech files from BHG to EA, EA shall deliver the corresponding translated Product recorded speech files to BHG as soon as is commercially feasible but not later than within four (4) weeks plus one (1) week for every two thousand (2,000) lines of speech delivered (“**Voice Translation Period**”).
- (c) [This section intentionally left blank.]
- (d) *Localization Languages.* BHG will assume all costs associated with the integration of the Localization Languages into the Product; provided, however, that to the extent that EA’s delay in providing such translated files to BHG in accordance with the above applicable deadline directly causes additional expedition costs to maintain development within the Development Schedule, then EA shall be responsible for such costs and shall fully reimburse BHG for such costs upon receipt of written invoice. The Development Schedule, the Interim Delivery Dates for each Interim Deliverable, and the Delivery Date (but not the Final Acceptance Date) shall be extended by one (1) day for each day of delay by EA in delivering the required text and speech files to BHG in accordance with the above applicable deadline, and the parties deem the duration of such excess time as a Permitted Reason hereunder. Subject to approval by Completion Guarantor pursuant to the Interparty Agreement, EA may identify additional languages other than the Localization Languages to be incorporated into the Product and BHG will incorporate the translated language files provided by EA in such additional language into the Product for an amount to be negotiated in good faith between BHG and EA; provided that EA shall identify such additional languages at a time during development of the Product that will not impact the delivery timing of the Product, and upon identification of such languages and agreement on an amount for incorporation, such languages shall be deemed to be Gold Master Languages.
- (e) *Localization Expenses.* EA costs for localization services to be performed by or on behalf of EA pursuant to Section 4.1(a) (“*Localization Expenses*”) will be calculated on the same basis that EA charges EA’s own internal studios for the same services in the same fiscal period, and in accordance with EA’s reported non-GAAP accounting; provided, however, in cases where EA contracts for localization services to be performed by a third-party specifically for the benefit of its EA Partners business unit or the Product (as opposed to EA as a whole or groups of EA studios), Localization Expenses for the localization work performed by such third party will be equal to the actual amounts paid by EA for

such services. Subject to application of Section 4.13, the total amount of Localization Expenses shall be deemed a Recoupable Advance hereunder.

- (f) *Localized Game Materials.* Subject to Section 3.5, BHG grants EA the right and license, with right to sublicense, to reproduce, modify and otherwise create derivative works of the English-language text and speech files from the Product solely for the purpose of translating and localizing such files as authorized under this Section 4.1 (such translated files deliver to BHG, “*Localized Game Materials*”). EA hereby assigns to BHG all right, title and interest in all Localized Game Materials, subject to EA’s rights to use and reproduce the same as authorized herein as part of the Products.

4.2 *Testing Obligations.* Subject to the terms and conditions herein, EA will perform (and/or make appropriate arrangements for third parties to perform) regular testing of the Product (“*EA Product Testing*”) during the development thereof. During such development, EA will assign a team of at least one (1) tester from its personnel to review the Interim Builds. EA will provide to BHG all test results related to the Product. After the development of the Alpha Version, EA will commit its testing resources to complete all necessary testing in a manner reasonably consistent with its testing of similar internally developed products, but such testing shall not obviate BHG’s obligation to deliver all versions of the Product in accordance with the provisions of Section 2 above. EA shall conduct testing in reasonable and timely manner and provide all the results of the testing to BHG. EA shall provide to BHG monthly reports of actual testing hours incurred and non-binding rolling monthly forecasts of projected testing hours in the form of the template provided by EA to BHG, as amended by EA from time to time.

- (a) *Testing Expenses.* EA costs for testing services to be performed by or on behalf of EA pursuant to this Section 4.2 (“*Testing Expenses*”) will be calculated on the same basis that EA charges EA’s own internal studios for the same services in the same fiscal period, and in accordance with EA’s reported non-GAAP accounting (but, not to exceed a rate of Twenty-Five Dollars (\$25) per hour); provided, however, in cases where EA contracts for product testing services to be performed by a third-party specifically for the benefit of its EA Partners business unit or the Product (as opposed to EA as a whole or groups of EA studios), Testing Expenses for the testing services performed by such third party will be equal to the actual amounts paid by EA for such services (but, not to exceed a rate of Twenty-Five Dollars (\$25) per hour). Subject to application of Section 4.13 below, the total amount of Testing Expenses shall be deemed a Recoupable Advance hereunder.

4.3 *Certification Services.* EA will perform “*Certification Services*” for the Product, which consists of review all SKUs of the Product through EA’s CQC Process and submission and review of each SKU that is subject to Platform licensor requirements through each such Platform licensor’s product review and lot check processes (all as described in Section 2.4).

- (a) *Certification Expenses.* EA costs for certification services to be performed by or on behalf of EA pursuant to this Section 4.3 (“*Certification Expenses*”) shall be calculated on the same basis that EA charges EA’s own internal studios for the same services in the same fiscal period, and in accordance with EA’s reported non-GAAP accounting. Subject to application of Section 4.13 below, the total

amount of Certification Expenses shall be deemed a Recoupable Advance hereunder.

- 4.4 Manufacturing. EA will manufacture, or cause to be manufactured, tangible copies of the Product with the packaging, warranties and disclaimers determined by EA, subject in all cases to the applicable guidelines and requirements of any applicable third-party platform licensing companies.
- 4.5 Distribution. EA agrees that it will use reasonable, good faith efforts to distribute the Product reasonably consistent with efforts employed by EA to distribute other products of a similar genre and similar market potential developed by third parties and published and distributed by EA. As between EA and BHG, EA shall be free to establish its own prices and license fees for any copies of the Product or any Online Play/Functionality offered by or on behalf of EA. As between EA and BHG, all aspects of the distribution of the Product and terms for the provision of Online Play/Functionality will be in EA's sole control using its reasonable discretion, including, without limitation, determining the pricing and terms and conditions of sale or license. Without limiting the foregoing, the parties agree that EA will have the right to provide price protection, promotional discounts, markdowns and other forms of price-based marketing to EA's customers with respect to the Product, in EA's reasonable discretion.
- 4.6 Marketing. EA will develop and provide to BHG for BHG's collaborative evaluation and meaningful input prior to implementation a formal marketing plan for each major region (e.g., North America, Europe and Asia) in which the Product will be distributed (the "Marketing Plan"). EA agrees it will use commercially reasonable good-faith efforts to market each Product substantially in accordance with the Marketing Plan, which efforts will be substantially similar to those employed by EA to market products published by EA with similar demographics and market potential as the Product. Subject to BHG's approval rights set forth herein regarding EA's use of BHG's trademarks and the two immediately preceding sentences, all aspects of the distribution and marketing of the Product will be in EA's sole control, including but not limited to determining the methods of marketing, pricing, packaging, labeling and identification, protection, advertising, terms and conditions of sale or license, collection of customers' names and use of warranty or user registration procedures. Without limiting the foregoing, the parties agree that EA will have the right to provide price protection, promotional discounts, markdowns and other forms of price-based marketing to EA's customers with respect to the Product, in EA's reasonable discretion. BHG acknowledges that EA does not guarantee any level of sales (either on a unit or revenue basis) with respect to the Product or any SKU, and no representations made by EA to the contrary will be binding on EA. EA may distribute on a *gratis* basis (i) up to the number of copies of each SKU that is indicated on Exhibit A hereto under the heading "Sales, PR and Promotions Product Units That EA May Distribute Royalty-Free" and (ii) an unlimited number of limited functionality trial or demonstration versions of the Product, for demonstration and promotional purposes, without paying BHG any Royalties for such units.
- 4.7 Press Relations. EA will attempt to secure press coverage for the Product on a basis reasonably consistent with other products published by EA of similar quality and market potential as the Product. EA will credit each of "Big Huge Games" and "38 Studios" as the developer of the Product (or such other designation as mutually agreed to by the parties, EA's agreement not to be unreasonably withheld) in all press releases and press messaging concerning the Product.

- 4.8 Packaging, Logos. EA agrees to place each of the “Big Huge Games” and “38 Studios” logo on the front of the package in which each tangible copy of any Product is distributed and on a splash-screen/screens on the start up of the Product (if applicable), provided that such placement is permitted by all relevant third-party licensors who have approval rights with respect to the Product. In addition EA agrees to place the “Big Huge Games” and “38 Studios” logo on marketing materials where EA’s logo is also present; provided: (i) such placement is permitted by all relevant third-party licensors who have approval rights with respect to the Product or, as applicable, advertisements placed by retailers; and (ii) an inadvertent failure on the part of EA to comply with the foregoing requirement shall not be deemed a breach of the agreement (so long as EA undertakes commercially reasonable efforts to cure such failure on a prospective basis). When used on the front of the package, each of the “Big Huge Games” and “38 Studios” logo will be of a similar size, quality and position as the EA logo. EA will also have the right to use and publish and permit others to use and publish BHG’s name and the “38 Studios” name in connection with the marketing of a Product. If EA reasonably requests that BHG participate in certain aspects of the marketing and promotion of a Product, BHG will cooperate with such reasonable requests provided that EA will pay any reasonable out-of-pocket expenses incurred by BHG in providing such cooperation. EA will consult with BHG in connection with, and BHG will have the right reasonably to approve in a timely fashion, all corporate information concerning BHG or 38 Studios that is not furnished by BHG. BHG covenants that neither it, nor any of its Related Companies, will carry out any public relations or promotional activities for the Product, unless pre-agreed with EA, and that such rights are vested exclusively in EA; provided, however, EA acknowledges and agrees that once an initial press release regarding the Product and EA’s involvement in the co-publishing thereof has been mutually agreed to by the parties and released, BHG and its Related Company, 38 Studios, LLC, shall be free to publicly disclose: that the Product is being developed; incidental and general references regarding the relationship of the Product to other entertainment properties being developed by BHG and/or 38 Studios and related to the Parent IP (for avoidance of doubt, disclosures about detailed Product features, concepts, concept art, characters, development milestones, storylines, script elements, release dates, distribution plans must all be pre-agreed with EA as provided above).
- 4.9 Online Operations. As between EA and BHG, EA will be responsible for providing hosting and other services incident to provision of Online Play and Online Functionality of the Product, and for providing end users of the Product with technical support related thereto, as applicable; provided, however, that all design implementations related Online Functionality and Online Play incorporated into the Product must be approved in advance and in writing by EA. EA agrees to provide such hosting services and technical support during the Term so long as the Net Online Revenues therefrom and potential future sales of the Product make the cost of providing such services and support economically reasonable in EA’s good faith determination. EA will provide BHG with a minimum of ninety (90) days notice prior to discontinuing such services and support and BHG shall upon any such discontinuance have the right to assume responsibility for the provision of such services and support on its own accord. EA agrees to reasonably cooperate with BHG in transitioning any such services and support to BHG.
- 4.10 Customer Support Services. EA will provide end-user consumer warranty and product support for the Product (as further described below, “*Customer Support Services*”), which shall be reasonably consistent with efforts employed by EA to support other products published by EA and will include warranty service and customer support via

telephone and email during EA's normal business hours. Customer Support Services may be made available in each region of the Territory at the times of day, days of the week and in the languages in which EA's own products are supported. EA shall ensure that there are adequate numbers of trained support personnel for applicable Customer Support Services, that the Customer Support Services are of high quality, and that there is no undue "hold time" or other delay in reaching support staff. EA will provide Customer Support Services to end users pursuant hereto in accordance with EA's standard procedures, which shall be at least in the same professional and workmanlike manner as EA performs technical services and support for games EA develops internally of a similar quality and market potential as the applicable Product. EA may outsource any of its Customer Support Services obligations hereunder to a reliable vendor of such services. Following the expiration of the Technical Support Period, BHG also agrees to provide EA with all technical assistance reasonably necessary for EA to perform its Customer Support Services obligations hereunder; provided that such obligation shall be limited to the extent that BHG has development or customer support personnel with knowledge of applicable Product issues on staff and the provision of such assistance does not materially detract from product development obligations of such personnel; BHG acknowledges and agrees that EA's ability to provide resolution to Customer Support Issues for the Products will be affected by the degree and quality of technical assistance provided by BHG as contemplated in Section 2.5 and this Section 4.10.

- 4.11 Compliance with Laws. EA will comply in all material respects with all applicable international, national, state, regional and local statutes and regulations in manufacturing, marketing and distributing the Product and in performing its obligations hereunder. BHG understands and agrees that, notwithstanding anything else in this Agreement, EA will have no obligation to market or distribute the Product in any country in which doing so would, in EA's good faith judgment, violate any applicable law or regulation.
- 4.12 Complimentary Copies. BHG will be entitled to three hundred (300) free copies of each of the Product per platform. BHG shall be permitted to purchase a reasonable number of not-for-sale sample copies from EA at EA's standard wholesale prices solely to provide them to third parties in order to promote BHG's business. In no circumstance shall BHG resell any copies. No royalties shall accrue with respect to samples acquired by BHG hereunder.
- 4.13 Cap on Certification, Testing and Localization Expenses. EA may recoup from Royalties all Certification, Testing and Localization Expenses accrued hereunder up to an aggregate of Two Million Three Hundred Thousand Dollars (\$2,300,000) (the "**Services Costs Maximum**"), based in part on an estimated word count of seven hundred thousand (700,000) words of text, of which four hundred thousand (400,000) words are speech ("**Word Count Estimate**"); provided, however, if the Word Count Estimate is materially exceeded, then the Services Cost Maximum will not apply and, for avoidance of doubt, all Certification, Testing and Localization Expenses accrued hereunder in excess of Two Million Three Hundred Thousand Dollars (\$2,300,000) would also then be recoupable from Royalties.
- 4.14 Subcontractors. EA shall be primarily liable for any failure on the part of EA contractors retained to provide services to BHG hereunder to comply with the terms and conditions of this Agreement.

4.15 Certain Customer Information. Upon BHG's request, EA shall provide to BHG customer-specific contact information (i.e., name and email) for customers who have registered Products with EA and have "opted-in" to receive information from BHG, to the extent permitted by EA's privacy policy and applicable Platform licensors and subject to the terms and conditions of EA's standard customer data transfer agreement. Upon BHG's request, EA shall also provide aggregated information regarding customers who have registered Products with EA that does not contain any personally identifiable information (i.e., aggregated data regarding customers by geographies, Platforms) to the extent that such information can be readily compiled from applicable EA customer databases.

## 5. OBLIGATIONS OF BHG

BHG represents and warrants to EA that it is capable of and intends to be the developer of the Product, and that BHG is solely responsible for all obligations attendant upon such roles. Without limiting the generality of the preceding sentence, BHG represents, warrants, covenants and agrees as follows:

5.1 Product Quality. The Product: (a) is marketable and has been prepared and developed with reasonable diligence and skill; (b) will comply in all material respects to the Product Requirements Document and other material specifications and descriptions contained in the written materials accompanying them provided by BHG to EA hereunder; (c) the Final Version (as defined in the PRD) of the Product will be free from significant Program Errors; and (d) will not receive a rating of "AO" when submitted to the Entertainment Software Rating Board for evaluation and rating (it being understood that EA shall submit the Product to the ESRB as provided herein).

5.2 Marketing Support. BHG will provide EA with reasonable cooperation and support in EA's efforts to market, advertise and distribute the Product. Such support will include, without limitation:

- (a) Web Site Promotion. With respect to each Product, as long as the Product is being actively marketed by EA, BHG will include a permanent, promotional placement on each relevant BHG web site, if any, which placement shall be a direct link to EA's marketing site for the Product(s), if any, and with a level of prominence similar to other products developed by BHG and promoted on BHG's site.
- (b) Assets. BHG will provide assets, such as product information, screen shots, company/employee bios and other similar assets, as reasonably requested by EA, for use by EA in support of EA's sales, marketing and public relations efforts related to the Product.
- (c) Celebrity Promotion. Todd McFarlane and R.A. Salvatore ("Celebrity Contractors") have been engaged by a Related Company of BHG to perform certain services in connection with enhancing the Parent IP and assisting in the promotion thereof. BHG agrees that such Related Company will allocate the working time of each Celebrity Contractor for such Related Company to the completion of such Celebrity Contractor's obligations in connection with the Parent IP. If the engagement of either Celebrity Contractor is terminated prior to the completion of such engagement, BHG will immediately inform EA and such Related Company will use diligent good faith efforts to promptly replace that

Celebrity Contractor with another equally qualified contractor that is acceptable to EA and the replacement contractor will be deemed a Celebrity Contractor.

- 5.3 Insurance. Prior to the commercial release of the Product and all times thereafter until two (2) years after the commercial release of the Product, BHG will maintain at least Two Million Dollars (\$2,000,000) of general liability insurance coverage and Two Million Dollars (\$2,000,000) of errors and omissions/media liability insurance available to cover claims against BHG with respect to the Product, the policy terms of which errors and omissions/media liability insurance to be subject to EA's prior written approval. BHG will furnish to EA certificates of insurance evidencing such insurance coverage upon EA's request. BHG agrees to indemnify, defend and hold harmless EA from any and all claims, actions, damages, liabilities, costs and expenses arising out of any breach by BHG of this Section 5.3, including, without limitation, the value of claims paid by EA that would not have been paid by EA if BHG had obtained and maintained the required amount of insurance.
- 5.4 Copy Protection. BHG will incorporate into each Product such copy protection technology consistent with other EA copy protection technology implementations as EA may reasonably designate and provide to BHG for use in such Product. Such copy protection technology shall be "SecuROM" unless the parties mutually agree in writing on a different copy protection technology.
- 5.5 Delivering Product Versions, Assets and Documentation. All Product versions, assets or documentation that are to be delivered to EA as described in this Agreement are electronic data and must be sent through a secure Internet connection. This Internet connection will be provided by EA. In case the data is transferred incorrectly or incompletely EA shall notify Big Huge Games of such transfer failure, and in this case BHG has to repeat the data transfer.
- 5.6 Testing By BHG. BHG is expected to reasonably test each Deliverable Item before delivering it to EA. With each delivery of a Deliverable Item for EA testing and evaluation, BHG will provide EA with a written report of any "bugs" found during testing and features known to be missing or inoperative from such deliverable item plus a report of the number of hours spent testing the deliverable item.
- 5.7 Anti-Piracy Efforts. BHG will cooperate at EA's expense in all reasonable ways with EA in EA's anti-piracy and anti-counterfeiting efforts with respect to the Product. Without limiting the generality of the preceding sentence, BHG agrees as follows:
- (a) Enforcement Actions. BHG authorizes EA to take such efforts, including, without limitation, legal efforts in its own name and/or the name of BHG, as EA deems necessary or desirable to enforce or protect EA's and/or BHG's intellectual property rights in the Product(s). EA agrees that it will, subject to the demands of its anti-piracy and anti-counterfeiting activities, keep BHG reasonably informed about such efforts with respect to the Product.
  - (b) Cooperation. BHG agrees to cooperate with EA's anti-piracy and anti-counterfeiting efforts by: (i) after EA's payment of the Acceptance Advance, furnishing to EA a signed power of attorney in the form of the Power of Attorney attached as Exhibit J hereto and incorporated herein by this reference; (ii) after EA's payment of the Acceptance Advance, furnishing to EA a signed Memorialization of Agreement in the form attached hereto as Exhibit K and

incorporated herein by this reference; (iii) obtaining intellectual property registrations relating to the Product as reasonably requested by EA and in accordance with any reasonable schedule provided by EA and at EA's expense; (iv) providing to EA the name of an officer of BHG who will serve as BHG's primary point of contact for cooperating with EA in such efforts; and (v) causing such officer of BHG to promptly execute such additional documents consistent herewith as may be reasonably requested by EA from time to time in connection with such efforts. BHG shall not be required to do any of the acts set out in this Section 5.7(b) if and to the extent that doing so would conflict with any of BHG's obligations to Third Party Lender and/or Completion Guarantor or would have a material negative commercial impact on BHG.

- (c) *Splash Screen.* BHG will include EA's logos and trademarks (as determined in cooperation with EA) on the initial splash screen for the Product (if applicable) and will use customary and reasonable efforts to keep users from bypassing such screen.
- (d) *First U.S. Publication.* After EA's payment of the Acceptance Advance in full, BHG will cooperate to ensure that EA is the publisher of record of the first publication in the United States of the Product.

5.8 *In-Game Advertising.* The inclusion of in-game static and/or dynamic advertising within the Product shall be subject to mutual written agreement of the parties, which shall be negotiated in good faith.

## 6. RATINGS BOARDS REQUIREMENTS

6.1 *Pertinent Content.* "**Pertinent Content**" means all content within the Product that could be classified as "pertinent content" as that term is defined within the rules and regulations of the Entertainment Software Review Board ("**ESRB**"). BHG acknowledges and agrees that, prior to submission of the Product to the ESRB, BHG shall have disclosed to EA and the ESRB all Pertinent Content contained in the Product, and shall provide to EA for the ESRB all materials and/or information necessary to submit the Product to the ESRB. BHG also acknowledges and agrees that, to the extent that EA informs BHG of the pertinent content guidelines for other Ratings Boards, prior to submission of the Product to other content ratings boards within the Territory ("**Ratings Boards**"), BHG shall have disclosed to EA and the ESRB all such pertinent content contained in the Product, and shall provide to EA for such Ratings Boards all materials and/or information necessary to submit the Product to the such Ratings Boards. BHG acknowledges and agrees that once it has so disclosed such Pertinent Content and any such related materials and information to EA and the ESRB (or any other applicable Ratings Boards), it will not incorporate any more Pertinent Content into the Product without the prior written consent of EA (which shall not be unreasonably withheld or delayed).

6.2 *Submissions Document.* BHG represents and warrants that it will comply with all of the terms and conditions applicable to BHG that are set forth on the ESRB submissions documentation for the Product (and the submissions documentation of the applicable Ratings Boards for the Product), including, without limitation, the Principles and Guidelines for Responsible Advertising Practices adopted by the ESRB's Advertising Review Council and the Advertising Code of Conduct for the interactive entertainment software industry.

6.3 Corrective Actions. If the ESRB or any other equivalent Ratings Board within the Territory expressly requires that specific corrective actions be taken with respect to any of the Product that arise as a result of (i) BHG's failure to disclose to EA all Pertinent Content contained within the applicable Product prior to the submission of such Product to the ESRB or equivalent Ratings Board or (ii) BHG's breach of any of its representations and warranties under this Section 6, then (A) BHG shall undertake (or cause to be undertaken) such actions as required by the ESRB or applicable Ratings Board to remedy the applicable ESRB or applicable Ratings Board violation to the extent practicable and (B) in the event and to the extent that EA itself undertakes such specific corrective action, after BHG fails to do so (if applicable), as is required by the ESRB or the applicable Ratings Board arising as a result of clauses (i) or (ii) of this Section, BHG shall reimburse EA for the reasonable and documented third party costs or credits it necessarily and actually incurs to undertake such action within thirty (30) days after BHG's receipt of EA's invoice and all supporting documentation for such costs. In the event any such corrective action required by the ESRB or other applicable Ratings Board is attributable to any translation defect or supplementary text/dialogue (i.e., added to preexisting dialogue/speech provide by BHG) in any Localized Game Assets provided by EA to BHG or a malfunction of any EA Development Aid (an "*EA Localized Content Error*"), then EA shall assume responsibility for any corrective action(s) required by the ESRB or other applicable Ratings Board and BHG shall assist EA, as reasonably needed by EA, to implement such corrective action.

6.4 Indemnification. BHG agrees to indemnify, defend and hold EA harmless from any penalties or fines imposed by the ESRB (or any equivalent Ratings Board) arising as a result of BHG's breach of the foregoing representations and warranties or obligations set forth in this Sections 6 (but not for (i) any penalties or fines as a result of Pertinent Content incorporated in the Product known by EA prior to submission to the ESRB (or the applicable Ratings Board) that EA fails to disclose in its submission to the ESRB (or the applicable Ratings Board) or (ii) any penalties or fines attributable to any EA Localized Content Error. Subject to the foregoing, EA similarly agrees to indemnify, defend and hold BHG harmless from any penalties or fines imposed by the ESRB or any Ratings Board that relate to the manufacturing, marketing and/or distribution of the Product by or for EA or any of its Related Companies, including, without limitation, penalties and fines attributable to any EA Localized Content Error, but not for any such penalties or fines caused by (i) BHG's failure to disclose to EA all Pertinent Content contained within the Product prior to the submission of the Product to the ESRB or equivalent Ratings Board, or (ii) BHG's breach of any of its representations and warranties under this Section 6.2 above. As a condition to indemnification, each party shall promptly inform the other party in writing of the assertion of any such claim, penalties or fines with respect to which the other party has an indemnity obligation hereunder, and the parties will cooperate with and assist one another with respect to the defense and/or settlement of such matter (in a manner consistent with their respective confidentiality obligations and preservation of attorney/client, work product and other privileges).

## 7. PAYMENT TO BHG

### 7.1 Recoupable Advances

- (a) *Payment.* EA shall pay BHG the Acceptance Advance and the Bonus Advance in the amounts and on the dates specified on Exhibit B hereto. EA agrees that the

amount of the Acceptance Advance payable hereunder shall be paid to BHG (or Third Party Lender pursuant to the irrevocable instructions of Section 12.8(c) below) without set-off, counterclaim, reserve, or cross-collateralization.

- (b) *Cross-Collateralization.* All Recoupable Advances shall be cross-collateralized and be recoupable against all Royalties (other than Passive Royalties) accruing hereunder.

## 7.2 Definitions

- (a) *Net Packaged Goods Revenue.* “*Net Packaged Goods Revenue*” means, with respect to a Product, all amounts recognized and received by EA from the sale or other exploitation of tangible copies of Product or any other copies of the Product by EA to unaffiliated third parties except for those for which a separate royalty is calculated below (“*Gross Packaged Goods Revenue*”), less only the deductions listed below in this Section 7.2(a) (“*Packaged Goods Revenue Deductions*”):

- (i) *Taxes.* Any applicable taxes such as withholding taxes, sales and use taxes, goods and services taxes, value added taxes, consumption taxes, excise taxes, customs duties, levies, import taxes, tariffs or other similar items (“*Taxes*”) required to be paid by EA or withheld from amounts otherwise payable to EA in connection with any sales of tangible copies of such Product (excluding any taxes based on the income of EA or BHG);

- (ii) *Returns and Price Protection.* Any credits/refunds issued by EA to customers for returns, defective products, price protection and markdowns relating to tangible Product units (for avoidance of doubt EA shall determine the extent of any such credits/refunds extended to any customer);

- (iii) *Customary Discounts.* One hundred percent (100%) of credits or cash rebates given to retailers and distributors in the normal course of business for achieving a variety of commitments, including, without limitation: (A) sales, purchasing and returns volumes and caps, (B) co-operative management information programs/processes, such as sales and inventory detail, (C) various freight and payment discounts, such as central warehouse deliveries, stock balancing programs, collections and timely payment, (D) logistics-supply chain efficiency incentives, (E) rebates or allowances for defective products and (F) deductions common to local practice. For the avoidance of doubt co-operative marketing and promotion expenditures/credits do not constitute a Packaged Goods Revenue Deduction. Such credits or cash rebates are often calculated on an EA fiscal month-, quarter- or year-basis, based on total revenues of EA products sold to applicable retailers and distributors in the applicable EA fiscal period; therefore, the amount of the deduction for such credits or cash rebates attributable to a retailer/distributor allowable in the calculation of Royalties hereunder will be a pro-rata portion of such credits and cash rebates granted to any such retailer/distributor equal to the proportion of (I) revenues from sales of tangible Product units to such retailer or distributor to (II) total revenues from all sales of all products to such retailer/distributor

to which the credit or cash rebate applies, all as applicable to the relevant EA fiscal period. For the avoidance of doubt such deductions may be calculated on an accruals basis solely to the extent that the terms of such discounts are known at the time of invoicing and the size of such discount is normal for similar EA products in the geographical area in question and is based on the best good faith estimate of the total credits and rebates as a proportion of revenues for, as applicable, the EA fiscal month, quarter or year for the relevant geographical area and will be subject to adjustment based on actual figures.

- (iv) *Freight Discount on Invoice.* EA may deduct an amount equal to the Freight Discount on Invoice actually provided to EA's customers in connection with the distribution or sale of the tangible Product units. "**Freight Discount on Invoice**" means a discount provided by EA to certain customers on sales of tangible Product units accepted for delivery by such customer directly at EA's distribution centers.
  - (v) *Distress Sales.* EA may deduct any amounts invoiced in any "**Distress Sale**" (as defined below) of a Product, which is a sale for the primary purpose of reducing inventory and which sale is made at a price less than or equal to the cost of goods plus any license fees paid to Platform licensors for affected Product units.
- (b) *Net Download Distribution Revenue.* "**Net Download Distribution Revenue**" means all amounts received and recognized by EA from the sale or license or other exploitation of copies of the Product via Download Distribution (by EA or licensees thereof) ("**Gross Download Distribution Revenue**"), less only the deductions listed below in this Section 7.2(b) ("**Download Distribution Revenue Deductions**"):
- (i) *Taxes.* Any Taxes required to be paid by EA, or withheld from amounts otherwise payable to EA, in connection with any Gross/Net Download Distribution Revenue (excluding any taxes based on the income of EA or BHG);
  - (ii) *Returns and Price Protection.* Any credits/refunds issued by EA to customers for returns, defective products, price protection and markdowns relating to Product distributed via Download Distribution (for avoidance of doubt EA shall determine the extent of any such credits/refunds extended to any customer);
  - (iii) *Customary Discounts.* Credits or cash rebates given to licensees of EA distributing Product via Download Distribution in the normal course of business for achieving a variety of commitments including, without limitation (A) sales, purchasing and returns volumes and caps, (B) cooperative management information such as sales and inventory detail, (C) various payment discounts such as timely payment, and (D) deductions common to local practice. For the avoidance of doubt cooperative marketing and promotion expenditure do not constitute a discount. Such credits or cash rebates are often calculated on an EA fiscal month-, quarter- or year-basis, based on total revenues of EA

products from applicable licenses in the applicable EA fiscal period; therefore, the amount of the deduction for such credits or cash rebates attributable to a respective licensee allowable in the calculation of Royalties hereunder will be a pro-rata portion of such credits and cash rebates equal to the proportion of (I) revenues from Download Distribution of the Product attributable to such licensee to (II) total revenues from all Download Distribution of EA products attributable to such licensee to which the credit or cash rebate applies, all as applicable to the relevant EA fiscal period. For the avoidance of doubt such deductions will be calculated on an accruals basis solely to the extent that the terms of such discounts are known at the time of invoicing and the size of such discount is normal for similar EA products and is based on the best good faith estimate of the total credits and rebates as a proportion of revenues for, as applicable, the EA fiscal month, quarter or year (as the case may be) and will be subject to adjustment based on actual figures ("**Download Distribution Discounts**"); and

- (iv) *Online Provider Costs.* Any out-of-pocket third-party costs incurred by EA with respect to Download Distribution of Product, including, but not limited to: (A) markups, revenue share amounts, commissions, royalties or license or other fees payable to communications service providers, Platform licensors, original equipment manufacturers and any other party in connection with the license, sale and distribution of Product via Download Distribution or any distribution partners in connection with the license, sale and/or distribution of the Product via Download Distribution; (B) any royalties, revenue share amounts, commissions or license or other fees payable to wireless or other platform proprietary technology providers related to Download Distribution; and (C) hosting, bandwidth, server and network operations costs, credit card fees, payment processor/processing fees, data delivery costs, carriage fees, costs of and associated with fraud, charge backs, refunds and telephone or cable transmission charges (collectively, "**Online Provider Costs**").
- (c) *Net Online Revenue.* "**Net Online Revenue**" means all amounts received and recognized by EA attributable to Online Play or Online Functionality of Product ("**Gross Online Revenue**"), less only the deductions listed below in this Section 7.2(c) ("**Online Revenue Deductions**")
  - (i) *Taxes.* Any Taxes required to be paid by EA, or withheld from amounts otherwise payable to EA, in connection with any Net/Gross Online Revenue (excluding any taxes based on the income of EA or BHG);
  - (ii) *Online Service Provider Costs.* Online Provider Costs related to Online Play and Online Functionality for the Product; and
  - (iii) *Online Directly-Related Costs.* Online Directly-Related Costs related to Online Play and Online Functionality for the Product.
- (d) *Net OEM Revenue.* "**Net OEM Revenue**" means all amounts actually received and recognized by EA from OEM Licenses related to the Product, less only any Taxes (excluding any taxes based on the income of EA or BHG), and EA's cost of goods for the purchase or manufacture, as applicable, of disks/recording media and/or

printed documentation or other materials/products pursuant to an OEM License that EA is responsible for providing), allocated pro-rata by Product, based on the methodology set out in Section 7.3 below, across all of the EA products that are included in such OEM License.

- (e) *Net In-Game Advertising Revenue.* “*Net In-Game Advertising Revenue*” means all amounts received and recognized by EA from third-parties (or credited to EA’s benefit, as applicable) in connection with in-game advertising for the Product, less any Taxes.
- (f) *Net Ancillary Revenue.* “*Net Ancillary Revenue*” means all amounts received by BHG or any BHG-Related Company from sales, licensing or other exploitation of any Ancillary Goods and Ancillary Services, less (i) any applicable Taxes (excluding any taxes based on the income of BHG or any BHG-Related Company), (ii) all amounts paid or incurred by BHG or any BHG-Related Company relating to the development, licensing, production, sale and/or exploitation of any such Ancillary Goods; and (iii) returns, price protections and customary discounts. Net Ancillary Revenue expressly excludes any revenue received by BHG from EA.
  - (i) *Ancillary Goods.* “*Ancillary Goods*” means any and all derivative products derived from or for the Product (other than Online Functionality and Online Play), including, without limitation, strategy guides, PC screen savers, soundtracks, toys, collectibles, comic books, novels, apparel, motion pictures, films, television programs and other non-software video content. Ancillary Goods expressly exclude any entertainment software products, any goods derived from or for any entertainment software product and not predominately based upon or using content from the Product, and any goods or services derived from the Parent IP and not derived predominately from content contained in the Product.

7.3 *Calculation Methodologies.* In addition, in calculating Net Packaged Goods Revenue, Net Download Distribution Revenue, Net Online Revenues, Net OEM Revenues and Net In-Game Advertising Revenue, the following will apply:

- (a) *Combination/Bundled Product.* If a Product is marketed or bundled with other hardware or software in a package/bundle for a single price the Net Packaged Goods Revenue, Net Online Revenue, Net Download Distribution Revenue or Net OEM Revenues, as applicable, attributable to the Product will be determined by prorating the net sales for the package/bundle according to the suggested retail prices for all hardware and software in the bundle, or, if none, values established by EA for the separate software or hardware products contained in the package/bundle, whether or not such products are marketed separately, provided that such prices or values are reasonably related to the values, marketing potentials or costs of the separate products and are consistent with prices customarily charged in the industry.
- (b) *Foreign Exchange.* Amounts invoiced, received or deducted by EA in foreign currencies will be deemed converted into United States dollars at the exchange rates used by EA, or applicable EA Related Company, in its respective financial statements for the month of invoice, receipt, or deduction, as appropriate.

- (c) *Deductions.* To the extent any charge, cost, expense or other amount deductible in the calculation of any of the Net Packaged Goods Revenue, Net Download Distribution Revenue, Net Online Revenues, Net OEM Revenues and Net In-Game Advertising Revenue cannot be measured specifically with respect to the Product depending on EA's normal accounting practices, those deductions may be allocated from the total of the applicable charge, cost, expense or other deductible amount, as applicable, for EA across all applicable products. Otherwise, such deductions shall be taken as measured specifically with respect to the Product(s).
- (d) *EA and EA Related Companies.* All references to EA in respect of any sales, revenues recognized and received and deductions involved in the calculation of Net Packaged Goods Revenue, Net Download Distribution Revenue, Net Online Revenues, Net OEM Revenues and Net In-Game Advertising Revenue hereunder are deemed to include sales made by, revenues recognized and received by, and deductions applicable to both EA and all EA Related Companies, without allowing for any double deductions or duplicate attribution of a single source of sales/revenues.

7.4 Royalty Payments to BHG

- (a) *Royalties.* "Royalties" as used herein means collectively the following royalties that accrue hereunder in favor of BHG:
  - (i) All Primary Royalties (as such term is defined in Exhibit A hereto); and
  - (ii) All Passive Royalties (as such term is defined in Exhibit A hereto).
- (b) *Recoupment.* After setting aside the applicable amounts in the General Reserve (as provided in Section 7.7 below), all remaining Royalties accrued hereunder will be first retained by EA to offset the amount of all Recoupable Advances until such amounts have been fully recouped by EA, and thereafter paid to BHG.
- (c) *Schedule.* Calculation and (if applicable) payment of all Royalties will be made by EA to BHG on an EA fiscal-quarter basis within forty-five (45) days after the close of each of EA's fiscal quarters, along with EA's standard royalty statement (each, a "Royalty Statement"), as applicable, except to the extent that Royalties accrued hereunder for the applicable EA fiscal quarter is less than Ten Dollars (\$10). Each Royalty Statement shall reflect the calculation used by EA to arrive at the applicable Royalty payment, and shall reflect any Recoupable Advance recoupment, all offsets made and deductions taken, and all other calculations made by EA.

7.5 Royalty Payments from BHG

- (a) *Royalties to EA.* "EA Royalties" as used herein means the Ancillary Royalties that accrue hereunder in favor of EA based on Net Ancillary Revenue received by BHG, as set forth in Exhibit A-1.
- (b) *Deferral of Ancillary Revenue.* To the extent that BHG receives any Net Ancillary Revenue prior to Third Party Lender Repayment, no royalties will accrue to EA from such revenue ("Deferred Ancillary Revenue") until Third

Party Lender Repayment occurs. Upon Third Party Lender Repayment, royalties on Deferred Ancillary Revenue shall immediately accrue and become payable to EA within 45 days after the end of the calendar quarter in which such Third Party Lender Repayment occurs.

- (c) *Offset.* In any quarter in which a payment is due from BHG to EA under this Section 7.5, in lieu of cash payment the parties may instead agree to offset the amount of EA Royalties payable from BHG to EA against Royalties otherwise payable from EA to BHG.
- (d) *Schedule.* Calculation and (if applicable) payment of all EA Royalties will be made by BHG to EA within forty-five (45) days after the close of each calendar quarter, along with a statement setting forth in reasonable detail the calculation of all such EA Royalties and the Net Ancillary Revenue related thereto (each, a "**BHG Royalty Statement**"), except if the EA Royalties accrued hereunder for the applicable calendar quarter is less than Ten Dollars (\$10). Each BHG Royalty Statement shall reflect the calculation used by BHG to arrive at the applicable EA Royalty payment, and shall reflect any deductions, offsets or recoupment taken, and all other calculations made by BHG.
- (e) *Books & Records; Audit Rights* The parties agree that all of the provisions of the last sentence of Section 7.6, 7.7, 7.8, 7.9, 7.10 and 7.11 that apply to the parties' rights and obligations with respect to payment terms, reserves, offset, tax withholdings, VAT, the records relating to the Product, and audit rights, shall apply with respect to EA Royalties, which provisions shall be deemed to have been modified and amended *mutatis mutandis* as appropriate for such purposes.

7.6 *Payment Terms.* All payments payable to BHG hereunder will be made by ACH automated clearing house processing to a U.S. bank account designated by BHG by written notice to EA. All payments of Recoupable Advances, Royalties and all other payments required hereunder shall be payable in US Dollars. For a period of twenty-four (24) months from the date of each payment made to BHG, if EA later identifies that such payment was overpaid then EA shall have the right to offset future payment(s) in the amount of such overpayment.

7.7 *General Reserve.* EA will maintain a General Reserve throughout the Term of this Agreement and for one (1) year thereafter as set forth herein. "**General Reserve**" means an account consisting of amounts equal to fifteen percent (15%) of all Royalties accrued hereunder in an EA fiscal-quarter hereunder, which amounts are to be set aside by EA and applied against Product returns, price protection, markdowns and any other credits or refunds related to sales/licenses of the Product and other amounts owed to EA under this Agreement (collectively, "**Reserve Claims**") made in such quarter (each such Royalty-accruing quarter to be referred to herein as a "**Royalty-accruing Quarter**"). During each EA-fiscal quarter during the Term and the one (1) year period following the end of the Term, beginning with the fourth EA-fiscal quarter after the first Royalty-accruing Quarter (each, a "**Reviewing Quarter**"), EA will assess the amounts held in the General Reserve. As of the end of each Reviewing Quarter, if the amount held in the General Reserve for such Reviewing Quarter is above the amount needed to adequately cover Reserve Claims with respect to the Product for that Royalty Quarter (as reasonably estimated by EA, in a manner consistent with that used to estimate potential reserve claims for other EA-published products for financial statement purposes), EA will refund to BHG any such

excess amount within forty-five (45) days of the end of such Reviewing Quarter. Within one (1) year following the expiration or earlier termination of this Agreement, EA will pay to BHG the amount that remains in General Reserve. By way of clarification, the General Reserve will not be a cap on the amounts that may be deducted in the calculation of Royalties. Notwithstanding anything else herein contained, if the amounts held in the General Reserve are not adequate to compensate EA for all credits, refunds or other amounts owed to EA under this Agreement, then EA shall have the right to invoice BHG for the outstanding amount owed to EA, and BHG shall pay such invoice within forty-five (45) days of its receipt of such invoice.

- 7.8 Offset Rights. Notwithstanding any other provision of this Agreement, at any time during the term of this Agreement and after termination or expiration of this Agreement as provided in Section 8 below, EA has the right to offset any and all amounts which EA owes to BHG hereunder (including the amount held in the General Reserve) against any and all amounts which BHG owes EA hereunder, except that EA shall not have any right to offset any amounts against the Acceptance Advance.
- 7.9 Tax Withholdings. Notwithstanding any other provision of this Agreement, EA shall have the right to withhold all amounts that EA is required by law to withhold from payments made to BHG hereunder for any foreign, national, state or local sales, use, value added, withholding or other taxes, customs duties or similar tariffs and fees and such amounts may be deducted from amounts due and payable to BHG under this Agreement. EA shall remit such payment together with any tax receipts, certificates or vouchers from the tax authorities evidencing payment of such taxes. BHG agrees to comply with EA's reasonable requests for certification, information, documentation, or other reporting requirement necessary to obtain reduced rates under applicable income tax treaties, including but not limited to completion of a W8-BEN or W-9 form to be delivered upon the execution of this Agreement. EA agrees to notify BHG of any such potential taxes and to reasonably cooperate with BHG in its efforts to obtain such reduced tax rates or eliminate such taxes.
- 7.10 VAT. The parties agree that VAT is not chargeable on the services provided in accordance with Article 56 of the Revised EC 6<sup>th</sup> Directive (2006/112/EC). In the event of any change to the prevailing law, the parties agree that all amounts quoted for services under this Agreement shall be exclusive of VAT. If VAT becomes chargeable in respect of the services under this Agreement, BHG shall issue valid VAT invoices to EA.
- 7.11 Books & Records; Audit Rights. Throughout the Term and for at least twenty-four (24) months thereafter, EA shall keep detailed and accurate books and record relating to the calculation of all Royalties payable hereunder. With at least thirty (30) days' written notice to EA, a certified public accounting firm, retained by BHG on other than a contingency fee basis, may, no more often than once for each calendar year and at BHG's expense (except as provided below), inspect at EA's headquarters the records of EA or its Related Companies on which EA's reports are based, provided that such accounting firm will hold such records in strict confidence, except as necessary to report to BHG and BHG's representatives that have entered into a nondisclosure agreement meeting the requirements of Section 11, and EA on the accuracy of such reports. Any inspection of EA's books and records cannot exceed ten (10) business days and no inspection may address transactions, books or records underlying any statement covered by a previous inspection. EA's determination of the payments due BHG and amounts reported under each statement will be deemed conclusive unless, within twenty-four (24) months after

the date of payment (or the receipt of a statement if no payment is due), BHG notifies EA in writing of any error in such payments or statements disclosed by EA's reports, by an inspection by such accounting firm or otherwise. At least thirty (30) days prior to each inspection, BHG must provide EA with a list of documents and records ("LRD") to be provided by EA. Within one (1) week of receipt of the LRD, EA will work with BHG to produce a final LRD acceptable to both parties ("*Final LRD*"). EA will deliver to BHG all documentation and records requested in the Final LRD on the first day of the inspection. EA will provide reasonable assistance to BHG during the inspection as it pertains to the documents and records requested in the Final LRD. Any additional reasonable request(s) by BHG for further documentation during the inspection that are outside of the scope of the Final LRD will be accommodated at EA's reasonable discretion. BHG or BHG's independent accountant shall deliver to EA a copy of its audit report within sixty (60) days of the end of field work for such audit. Any notice of deficiency or default arising from an audit shall be delivered simultaneously with the audit report. If such an inspection shows that EA has understated the amount due BHG by more than five percent (5%) for any calendar year, EA will pay within ten (10) business days, in addition to the amount due, the accounting firm's reasonable fees up to an amount equal to the understatement. EA will pay, in addition to the understated Royalties due, interest thereon at a simple per annum rate equal to the Index Rate plus two percent (2%). The "Index Rate" shall be the "LIBOR U.S. Dollar six month" rate as published by the British Banking Association; if the "LIBOR U.S. Dollar six month" rate is no longer published by the British Banking Association, then the parties will choose a reasonable substitute Index Rate which is based upon comparable information. The applicable interest rate will be determined and take effect on the first day of each calendar month. Notwithstanding the foregoing provisions of this Section 7.11, during the period that EA is obligated to make payments to Third Party Lender or Completion Guarantor as contemplated by Section 12.8 hereof, Third Party Lender or Completion Guarantor, as applicable, shall be entitled to exercise BHG's inspection rights under this Section 7.11 subject to Third Party Lender or Completion Guarantor, as applicable, entering into a confidentiality agreement with EA in the form of Exhibit F.

7.12 *Bad Debts.* EA shall be solely responsible for the extension of any credit to its customers. EA will be responsible for any and all related credit risk of non-payment and collection costs.

## 8. TERM AND TERMINATION

8.1 *Term.* Unless otherwise sooner terminated as permitted hereunder, the term of this Agreement shall commence on the Effective Date, remain effective until the Product are commercially released and continue throughout the commercial life of the Product ("*Term*"). EA will provide BHG with prompt written notice of the expiration of the Term.

8.2 *Termination by EA.* Prior to BHG's delivery of the Gold Master in Final Acceptable Form, EA may terminate this Agreement only (a) by EA Termination for Convenience pursuant to Section 2.7(a) above, (b) by Interim Deliverable Failure Termination pursuant to Section 2.2(d)(iii) above subject to the cure period set forth in that section, or (c) by Gold Master Failure Termination pursuant to Section 2.2(e) above subject to the cure period set forth in that section, with Clauses 8.2(b) and (c) above each subject to the dispute resolution and arbitration provisions set forth under Section 12.3 below. Additionally, if after commercial release of the Product, the average monthly sales for all

SKUs falls below one thousand (1,000) units for three (3) consecutive months, EA or BHG may, at its option, terminate this Agreement upon written notice to the other party.

8.3 Termination for Breach. Following BHG's delivery of the Gold Master in Final Acceptable Form and EA's payment to BHG of the Acceptance Advance, either party may terminate this Agreement at any time after thirty (30) days prior written notice to the other party if:

- (a) the other party is in breach or default of any provision of this Agreement; and such breach or default has a material adverse effect on the rights or obligations of the other party; and
- (b) the breach or default is not cured within the thirty (30)-day notice period.

In addition to its rights to terminate this Agreement according to the provisions above, the non-breaching party will have the right to pursue any remedies it may have at law or in equity, and the non-breaching party may from the date of notice of breach pay into an interest bearing escrow account with a commercial bank any cash payments due to the breaching party hereunder as security for payment of any damages arising from any breach of this Agreement by the breaching party; provided however that nothing in this sentence shall give EA any right to offset, withhold or reserve any portion of the Acceptance Advance, all of which shall be payable unless EA exercises its right to terminate.

8.4 Effect of Termination. Upon any termination or expiration of this Agreement:

- (a) EA's obligation to pay the BHG any Royalty amounts or any other amounts payable under this Agreement will continue, except that if EA determines that, based upon its experience with the Product and EA's customers, due to the termination of this Agreement EA is likely to receive claims for returns, price protection, markdowns or refunds from EA's customers of Product in excess of the amount held in the General Reserve, EA may place all Royalty payments owed to BHG (up to the amount EA determines is likely to be returned during the subsequent twelve (12) months) in the General Reserve;
- (b) Subject to EA's obligations to pay Royalties hereunder, (i) EA and EA's customers will retain the right to continue to sell and distribute all of their inventory of the Product (including purchased inventory of keys/codes for Download Distribution of Products) and (ii) EA will retain all necessary rights to fulfill all contractual obligations relating to provision of Online Play, Online Functionality, OEM Licenses and DLC, to the extent otherwise permitted under the Agreement and entered into prior to the effective date of termination or expiration (provided none of the foregoing of this Section 8.4 shall in any way impair BHG's ability to exploit the Product after the expiration or termination of this Agreement; and, provided, further, EA shall not grant any third party rights to provide Online Play or Online Functionality that would extend beyond eighteen (18) months following the expiration or termination of this Agreement);
- (c) EA may retain and apply any and all amounts remaining in the General Reserve against any amounts due EA under this Agreement pursuant to Section 7.5 above but will pay the balance of the General Reserve, if any, to BHG within one (1) year of the effective date of termination or expiration; and

- (d) The rights and obligations of the parties under Sections 2.7(b), 2.7(c), 3.1, 3.3, 3.4(c), 6.4, 7.2 through 7.12, 8.4, 8.5 and 9 through 12 will survive in full force and effect, all other rights and obligations (save as otherwise expressly provided to the contrary in this Section 8) shall terminate with immediate effect.

8.5 ***No Damages For Termination.*** **WITHOUT LIMITING THE GENERALITY OF SECTION 12.1 BELOW, A PARTY THAT TERMINATES THIS AGREEMENT (IN ITS ENTIRETY OR WITH RESPECT TO ANY PRODUCT(S)) IN ACCORDANCE WITH THE EXPRESS PROVISIONS HEREOF SHALL NOT BE LIABLE TO THE OTHER FOR DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, ON ACCOUNT OF SUCH TERMINATION OR NON-RENEWAL OF THIS AGREEMENT.**

8.6 ***Bankruptcy Code.*** The parties acknowledge and agree that this Agreement includes a “license of intellectual property” and is and shall be subject to Section 365(n) of the United States Bankruptcy Code, and that EA shall be entitled to all rights and benefits of such §365(n) in accordance with its terms and conditions.

## 9. WARRANTIES AND COVENANTS

9.1 ***Representations and Warranties of BHG.*** BHG makes the following continuing representations, warranties and covenants to EA:

- (a) ***Power and Authority.*** BHG is a limited liability company validly existing and in good standing under the laws of Delaware and has the full right, power, legal capacity and authority to enter into this Agreement, to grant the licenses and rights granted by BHG hereunder, and to perform BHG’s obligations hereunder in accordance with the terms and conditions hereof.
- (b) ***Rights.*** Other than with respect to any EA Materials (as defined in 9.4(d) below) incorporated therein (as to which BHG makes no representation or warranty), BHG has (and throughout the Term will have) all necessary rights, title, and interest in and to the Product, the Product Materials, the Product Marks, the BHG Marks and the Deliverable Items to grant to EA the rights and licenses granted to EA herein, and has not, and will not at any time during the Term, grant any third party any rights that are inconsistent with or conflict with those granted to EA herein.
- (c) ***Noninfringement.*** Other than with respect to any EA Materials (as to which BHG makes no representation or warranty), the Product, the Product Materials, the Product Marks, the BHG Marks and the Deliverable Items do not and will not infringe upon, or misappropriate (i) any copyright, trademark, trade secret, moral right, privacy right or right of publicity, and (ii) to the best of BHG’s knowledge any patent rights or other proprietary rights of any third party.
- (d) ***Disclaimer.*** EXCEPT FOR THOSE WARRANTIES SPECIFIED HEREIN, BHG DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTY ARISING FROM THE PRODUCT, OR

COURSE OF PERFORMANCE PRODUCT MATERIALS OR  
DELIVERABLE ITEMS.

9.2 Representations and Warranties of EA. EA makes the following continuing representations, warranties and covenants to BHG:

- (a) *Power and Authority*. EA is a corporation validly existing and in good standing under the laws of the jurisdiction in which it is incorporated and has the full right, power, legal capacity and authority to enter into this Agreement, to grant the licenses and rights granted by EA hereunder, and to perform EA's obligations hereunder in accordance with the terms and conditions hereof.
- (b) *Rights*. EA has (and throughout the Term will have) all necessary rights, title and interest in and to the EA Marks, the Development Aids, the Product Materials and the Localized Game Assets (collectively, "*EA Materials*") to grant to BHG the rights and licenses granted by EA herein in respect thereof.
- (c) *Noninfringement*. Any EA Materials, when used as authorized hereunder, do not and will not infringe upon, or misappropriate any copyright, trademark, trade secret or other proprietary rights of any third party. Any EA Materials (other than EA Development Aids) will not infringe upon, to the best of EA's knowledge, any patent rights of any third party. Any EA Development Aids will not infringe upon, to EA's actual knowledge, any patent right of any third party.
- (d) *EA Materials*. All representations and warranties made herein by EA in relation to any of the Localized Game Assets, the Product Materials and EA Development Aids constituting a part of the EA Materials are qualified as follows:
  - (i) Product Materials: EA representations and warranties under Section 9(b) and 9(c) do not apply to the extent that materials supplied by BHG as, or for inclusion in any, Product Materials, or otherwise taken from the Product (and not otherwise EA Materials) and used as authorized pursuant to Section 3.2(c) in Product Materials, infringe or misappropriate any intellectual property or propriety rights of any third party, and such affected Product Materials will not be included within the term "EA Materials" as such term is used in Section 9.1 or 10.1 hereof).
  - (ii) Localization Assets: EA representations and warranties under Section 9(b) and 9(c) do not apply to the extent that any portion of the English-language text and speech files supplied by BHG to EA infringe or misappropriate any intellectual property or propriety rights of any third party, and such affected Localized Game Assets will not be included within the term "EA Materials" as such term is used in Section 9.1 or 10.1 hereof).
  - (iii) EA Development Aids: EA's representations and warranties under Section 9(b) and 9(c) do not apply to the extent that any claim of infringement or violation of third party rights is attributable to any modifications or additions made to applicable EA Development Aids.