

10. Royalty Agreement. Royalty agreements will be executed for each individual book you write or supervise whereby other authors write.

Please sign where indicated below to evidence your understanding and agreement of this letter agreement and the incentive compensation arrangements described herein.

Green Monster Games, LLC

By: Green Monster Games
Manager, LLC,
its manager

By: _____
Curt Schilling, President

I hereby agree to the terms of this letter of agreement set forth above.



R.A. Salvatore

Date: February 12, 2007

UNREAL® ENGINE 3

LICENSE AGREEMENT

This Agreement is entered into on February 21, 2008 (the "Effective Date") by and between Epic Games, Inc., a Maryland corporation with offices at 620 Crossroads Blvd., Cary, NC 27518 ("Epic"), and 38 Studios, LLC, a Massachusetts limited liability company with offices at 5 Clock Tower Place, Suite 140, Maynard, MA 01754 ("Licensee").

RECITALS

A. Epic has developed a proprietary computer program known as the Unreal Engine 3 (the "Unreal Engine") and grants to certain individuals and organizations nonexclusive licenses to use the Unreal Engine in object and source code form for the development of specific Games.

B. Licensee desires to enter into a license agreement with Epic pursuant to which Licensee will acquire the right to develop, market and sublicense a certain Game using the Unreal Engine and Third Party Software, subject to the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration and in consideration of the mutual covenants and conditions herein contained, Epic and Licensee agree as follows:

1. **DEFINITIONS.** For the purposes of this Agreement, the terms set forth below shall be defined as follows:

a. The term "Affiliate" shall mean any person or entity who, either directly or indirectly, controls, is under common control with, or who is controlled by a party, whether such control is exercised by voting rights or otherwise.

b. The term "Application" shall mean any executable software.

c. The term "Bug Fixes" shall mean modifications or additions to the Licensed Technology which are intended to correct errors or other unwanted and unintended conditions that cause the Licensed Technology to fail, malfunction or operate in a manner other than as anticipated, but does not include Enhancements.

d. The term "Demo Content" shall mean any textures, models, fonts, sound effects, levels/maps, particle emitters, icons, brushes, static meshes, animated meshes, or other graphics or audio that are provided with the binary versions of the Unreal Engine or, from time to time, with updates to the binary versions of the Unreal Engine. The sole purpose of Demo Content is to demonstrate development techniques using the Unreal Engine. Licensee does not have the right to release or publicly demonstrate any Demo Content in any version of their game without prior permission from Epic. Licensee acknowledges that Demo Content provided by Epic is strictly confidential and covered under the included non-disclosure agreement just as engine source code is.

e. The term "Derivative Technology" shall mean: (i) for copyrightable or copyrighted material, any translation (including translation into other computer languages), proration, modification, correction, addition, extension, upgrade, improvement compilation, abridgement, or other form in which an existing work may be recast, transformed, or adapted; (ii) for patentable or patented material, any

improvement thereon; and (iii) for material which is protected by trade secret, any new material derived from such existing trade secret material, including new material which may be protected by copyright patent and/or trade secret.

f. The term "Enhancements" shall mean any technology developed by Licensee, Third Party Developers, or Third Party Development Resources for use in conjunction with the Licensed Technology in the development of the Games, and which is not Derivative Technology of the Licensed Technology.

g. The term "Executing Level Pack" shall mean any set of levels produced to extend the original storyline of the Game that does not require the Game to be installed in order to function.

h. The term "Game" shall mean the game Licensee desires to develop using the Licensed Technology as listed on Exhibit A attached hereto. The Game is intended to be primarily a multi-player online game, the storyline of which will develop progressively over time.

i. The term "Initial License Fee" shall have the meaning as set forth in Section 3(a)

j. The term "Intellectual Property Rights" shall mean any and all tangible and intangible and now known or hereafter existing (i) rights associated with works of authorship throughout the world, including but not limited to copyrights, moral rights, and mask-works; (ii) trademark and trade name rights and similar rights; (iii) trade secret rights; (iv) patents, designs, algorithms and other industrial property rights; (v) all other intellectual and proprietary rights (of every kind and nature throughout the world and however designated) (including without limitation logos, character rights, "rental" rights and moral rights), whether arising by operation of law, contract, license or otherwise; and (vi) all registrations, applications, renewals, extensions, continuations, divisions or reissues thereof (including without limitation rights in any of the foregoing).

k. The term "License Fee Royalty" shall have the meaning as set forth in Section 3(b).

l. The term "Licensed Technology" means the proprietary computer software program known as the Unreal Engine 3 specifically for the Authorized Platforms indicated in Exhibit A and any Upgrades thereto. Licensed Technology shall include Third Party Software other than where expressly excluded in this Agreement

m. The term "Merchandise" means any tangible products or services based upon, utilizing or embodying the Game, the story or other unique elements thereof, including without limitation any unique names, likenesses or characteristics of any character portrayed therein, or any unique title, catch word, slogan, situation, design, equipment or event depicted therein, or any marks or trade names associated with the Game. Merchandise may include, without limitation, movies, animation, comic books, guidebooks, toys, action figures, dolls, character costumes, clothing and apparel, home accessories, posters, key chains, mobile phone straps, and school or office supplies and equipment

n. The term "Net Receipts" shall mean (a) the actual amount received by Licensee from sales of the Game, less console manufacturer (I.E. Sony, Microsoft, Nintendo, Sega, etc.) license and manufacturing fees, if any; and (b) any and all amounts received by Licensee from the sales of online game play or other virtual goods & services within the Game and in Game advertisements. Net Receipts exclude: (i) any credits for returns, bad debts, rebates, and price protection; shipping, transportation, insurance and handling charges; (ii) any amounts payable to any third party Game publisher; (iii) any sales, use and value added taxes, duties, withholding tax and other similar governmental and pass through charges; and (iv) any amounts received by Licensee on account of sales or licensing of Merchandise.

o. The term "Non-executing Level Pack" shall mean any set of levels produced to extend the original storyline of the Game that requires the Game to be installed in order to function.

p. The term "OEM" shall mean original equipment manufacturer.

q. The term "Sequel" shall mean a new product with an original storyline based on the Game's Intellectual Property.

r. The term "Territory" shall refer to a worldwide territory, unless otherwise specified.

s. The term "Third Party Developer" shall mean any of the contractors who are authorized (in accordance with Section 2(c)) to assist Licensee with the development of the Game and who will receive access to the Licensed Technology and/or any Epic Confidential Information related to the Licensed Technology.

t. The term "Third Party Developer Acknowledgement of License Terms" shall mean that document that a Third Party Developer is required to execute in accordance with Section 2(c), the form of which is attached hereto as Exhibit D.

u. The term "Third Party Development Resource" shall mean any of the contractors who are authorized (in accordance with Section 2(c)) to assist a Third Party Developer with the development of the Game and who will receive access to the Licensed Technology and/or any Epic Confidential Information related to the Licensed Technology. Employees of Third Party Developers are not Third Party Development Resources.

v. The term "Third Party Development Resource Acknowledgement of License Terms" shall mean that document that a Third Party Development Resource is required to execute in accordance with Section 2(c) (the form of which is attached as Attachment 1 to Exhibit D hereto) and Section 6 of the Third Party Developer Acknowledgement of License Terms.

w. The term "Third Party Software" shall refer to the software products described in Exhibit B and that have been integrated into the Licensed Technology. Epic reserves the right to modify the Third Party Software list from time to time. Licensees will find the most up to date version of this list at <https://udn.epicgames.com/Main/ThirdPartySoftware>.

x. The term "Unreal Engine" shall mean the Licensed Technology apart from the Third Party Software.

y. The term "Upgrades" shall mean any improvements, enhancements, updates, fixes and other changes to the Licensed Technology through the most current version of Unreal Engine 3 as may, from time to time, be developed by Epic and which may, from time to time, at Epic's sole option, be made available to Licensee and which are not marketed as separate stand-alone programs.

2. GRANT OF LICENSE; RESTRICTIONS; OBLIGATIONS.

a. Upon payment of the Initial License Fee and subject to the terms and conditions of this Agreement, Epic hereby grants to Licensee, and Licensee hereby accepts from Epic, a nonexclusive, nontransferable (except as set forth in Section 11.c) perpetual (but terminable solely as described in Section 9.a and 9.b) license within the Territory to (i) use the Licensed Technology (in source code and in object code) for the sole purpose of developing (alone or with the assistance of Third Party Developers, to whom Licensee may provide the Licensed Technology subject to Section 2(c)) the Game; (ii) use, copy

and distribute the Licensed Technology (in object code only) as an embedded component of the Game; (iii) develop Enhancements for use in the Game; (iv) duplicate the Licensed Technology in object code form only pursuant to the terms of this Agreement; (v) to copy, distribute and sub-license the Licensed Technology (in object code only) as an embedded component of a Game to end-user customers, and to appoint retail publishers, OEMs and other intermediaries, through multiple tiers (hereinafter collectively referred to as "Publishers") to sub-license the Licensed Technology (in object code only) as an embedded component of a Game to end user customers under terms not inconsistent with this Agreement (hereinafter these agreements collectively referred to as the "Customer Agreements"); (vi) to use, execute and operate the Licensed Technology and any Enhancements as part of the Game as an online game, to provide online access to the Game to end-user customers, and to appoint Publishers and game operators to exercise the foregoing rights on Licensee's behalf; (vii) to make and retain a reasonable number of back-up and archive copies of the Licensed Technology; and (viii) in the event that the Support Agreement is terminated, to use the Licensed Technology to self-maintain the Licensed Technology. The foregoing licenses are licenses of Intellectual Property Rights.

b. Nothing contained in this Agreement shall be construed to grant to Licensee the right to sell, disclose, distribute or sublicense the Licensed Technology apart from the Game. Licensee acknowledges and agrees that it has no rights or claims of any type to the Licensed Technology except such rights as are created by this Agreement, and Licensee irrevocably waives and releases any claim to title and ownership rights (including trade secret and copyright ownership) in the Licensed Technology.

c. Third Party Developers and Third Party Development Resources

i. Licensee is required to have each of its Third Party Developers execute a Third Party Developer Acknowledgement of License Terms in the form of Exhibit D attached hereto, prior to such Third Party Developer's receipt of the Licensed Technology and/or Epic Confidential Information. Licensee shall be solely responsible for gathering and keeping executed originals of each Third Party Developer Acknowledgement of License Terms, and upon Epic's request shall immediately deliver such executed originals to Epic. Subject to the foregoing, Licensee shall be solely responsible for providing the Licensed Technology and/or Epic Confidential Information to its Third Party Developers, and the Third Party Developers shall not be entitled to receive any Licensed Technology or Epic Confidential Information directly from Epic or any Epic computer networks.

ii. Subject to the terms and conditions in this Section 2(c)(i), Third Party Developers shall have the right to be assisted by Third Party Development Resources in the development of the Game. Epic must approve in writing each Third Party Development Resource engaged by a Third Party Developer that will receive access to the Licensed Technology and/or any Epic Confidential Information related to the Licensed Technology, prior to the Third Party Developer's use of such Third Party Development Resource. Third Party Developers are required to have each of their Third Party Development Resources execute a Third Party Development Resource Acknowledgement of License Terms in the form attached as Attachment 1 to Exhibit D hereto, prior to a Third Party Development Resource's receipt of the Licensed Technology and/or Epic Confidential Information. Licensee shall be solely responsible for gathering and keeping executed originals of each Third Party Development Resource Acknowledgement of License Terms, and upon Epic's request shall immediately deliver such executed originals to Epic. Subject to the foregoing, Licensee and/or the Third Party Developer shall be solely responsible for providing the Licensed Technology and/or Epic Confidential Information to Third Party Development Resources, and the Third Party Development Resources shall not be entitled to receive any Licensed Technology or Epic Confidential Information directly from Epic or any Epic computer networks.

iii Epic must approve in writing all Third-Party Developers and Third Party Development Resources as a signatory to the forms attached as Exhibit D and Attachment 1 to Exhibit D prior to Licensee's use of such Third Party Developer or Third Party Development Resource. Epic shall give or withhold consent within seven (7) days after written request from Licensee.

d. This license specifically excludes the right to develop Sequel(s) using the Licensed Technology. Any Sequel that uses the Licensed Technology will require Licensee to enter into a separate license agreement with Epic.

e. Epic hereby reserves all rights not expressly granted to Licensee in this Agreement. Licensee further acknowledges that Epic claims and reserves all rights and benefits afforded under federal and international copyright law in the Licensed Technology and program documentation, as unpublished works. Any copying, modification, or distribution of such copyrighted works not expressly authorized by this Agreement is strictly forbidden.

f. License Restrictions.

i. Licensee shall not, except as expressly permitted in this Agreement: (A) copy, modify, display or distribute to any person all or any part of the Licensed Technology, except as provided for herein; (B) disassemble, de-compile, or reverse engineer the Licensed Technology or any part thereof; (C) use or distribute the Licensed Technology in any manner on or in any stand-alone, on-line service, or to provide service bureaus, time sharing or other computer services to third parties; (D) distribute or otherwise make the Licensed Technology, or any executables derived or produced from such source code, available for coin-operated machines; or (E) license, sub-license, distribute, make available or disclose the Licensed Technology to any third party except as authorized in this Agreement.

ii. As a condition of the license granted by Epic under this Agreement, Licensee agrees not to remove or destroy any copyright notices, trademarks or other proprietary or confidential legends or markings placed upon or contained within the Licensed Technology or on any other documentation or materials related to the Licensed Technology. Licensee further agrees to place such copyright and trademark notices as are set forth in Exhibit A on and within the Licensed Technology, the Game and on any documentation or materials related to the Licensed Technology, and to use Epic's Trademarks (as defined below) in accordance with such guidelines as may be provided by Epic to Licensee from time to time.

g. Licensee's Obligations and Representations. Licensee agrees, as regards the conduct of that portion of its business that relates to the Game: (i) to conduct such business without causing adverse publicity for Epic or the Licensed Technology; (ii) to avoid deceptive, misleading or unethical practices that are detrimental to Epic, the Licensed Technology, the Publishers or the public, including but not limited to the disparagement of Epic or the Licensed Technology; (iii) not to make false or misleading representations with regard to Epic or the Licensed Technology; (iv) not to publish or employ or cooperate in the publication or employment of any misleading or deceptive advertising material; (v) not to make representations, warranties or guarantees to customers, or to the trade, with respect to the specifications, features or capabilities of the Licensed Technology which are inconsistent with the literature distributed by Epic; and (vi) not to provide the Licensed Technology to any of the third party developers or resources listed on Exhibit E and those that are added to Exhibit E by Epic from time to time.

h. Delivery of Technology to Licensee. Upon confirmation by Epic of the receipt of the Initial License Fee payment, Epic will provide Licensee a single point of access to the Licensed Technology, in source code.

3. PAYMENTS; TAXES; RECORDS

a. Non-Recoupable, Non-Refundable License Fee. Licensee shall pay Epic the non-recoupable, non-refundable license fee payment specified in Exhibit A for rights to the Licensed Technology for the Game (the "Initial License Fee"). For purposes of determining whether an Initial License Fee is due for a particular game title, a Sequel shall be considered to be a new Game for which a separate Initial License Fee is due, and Non-executing Level Packs and Executing Level Packs for an Authorized Game (as defined in Exhibit A) shall not be considered to be new Games.

b. License Fee Royalty Payments. License fee royalty payments shall be made by Licensee to Epic in accordance with this Section 3 and Exhibit A (the "License Fee Royalty"). Within forty-five (45) days after the close of each calendar quarter, Licensee shall remit the full amount of all License Fee Royalties due for such quarter and the report required in this Section. The Licensee Fee Royalties paid by Licensee to Epic shall be non-refundable.

c. Taxes. Except for income taxes and withholding taxes where required by the laws of territories outside the United States, Licensee: (i) shall pay or reimburse Epic for all national, federal, state, local or other taxes and assessments of any jurisdiction, including Value Added Taxes, customs or other import or export taxes, and amounts levied in lieu thereof based on amounts payable by Licensee to Epic hereunder, as are now or hereafter may be imposed under the authority of any national, state, local or any other taxing jurisdiction; and (ii) shall not be entitled to deduct the amount of any such taxes, duties or assessments from payments made to Epic under this Agreement. The purpose of this subsection is to preserve the payments to Epic from being reduced because of withholding taxes, duties and other taxes and assessments which may be imposed by a jurisdiction in which Licensee or its Publishers operate or are subject to taxation, payment of duties or assessments. Within thirty (30) days of the withholding event, Licensee shall be required to pay Epic the entire payment due except to the extent Licensee provides Epic with full documentation, sufficient to allow Epic to receive a full credit against its U.S. tax obligations, of the amounts legally required to be withheld by a foreign jurisdiction. In the event Epic is unable to obtain a complete credit for such withholding taxes against its U.S. taxes, Licensee shall reimburse Epic for the difference upon 30 days notice by Epic.

d. Records. Licensee shall keep records relevant to the calculation of Net Receipts in reasonable detail and supporting documentation consistent with normal industry practice and Epic may, once per calendar year, during normal business hours and on not less than fourteen (14) days' notice, inspect such records and documentation for the purposes of verifying the calculation of royalty payments hereunder. In addition to the above, Licensee agrees to furnish, along with the License Fee Royalty payment described above, within forty-five (45) days after the end of each calendar quarter, a record of the calculation of the royalties (including the calculation of the Net Receipts), for that calendar quarter due to Epic. Epic may cause such records to be audited at Epic's expense, to verify information regarding amounts payable to Epic pursuant to this Agreement; provided that Licensee shall reimburse Epic on a prompt basis for the reasonable cost of such audit in the event such audit reveals that the amount paid to Epic during the period covered by such audit is less than the amount actually due for such period by an amount greater than five percent (5%) of such amount actually due for such period. Licensee shall immediately pay any such unpaid amount actually due.

4. WARRANTIES; INDEMNITY.

a. Epic's Warranties. Epic represents and warrants that (i) it has the power and authority to enter into this Agreement, to grant the licenses granted by Epic hereunder, and to fully perform its respective obligations hereunder; (ii) this Agreement has been executed by its duly authorized representative; (iii) it is under no contractual or other legal obligation which would interfere in any way

with the full, prompt, and complete performance of its obligations pursuant to this Agreement; and (iv) the Epic software product evaluated by Licensee in advance of this Agreement pursuant to that certain Nondisclosure Agreement between the parties dated January 15, 2007 constituted the Licensed Technology as of January 15, 2007.

b. Warranty Limitations. Epic's warranties do not include any warranty (i) that the functions performed by the Unreal Engine or Third Party Software will meet Licensee's requirements, nor (ii) that the operation of the Unreal Engine or Third Party Software will be bug free or error free in all circumstances, nor (iii) that any defects in the Unreal Engine or Third Party Software can or will be corrected. Epic's warranties shall not apply if Licensee has breached this Agreement or to the extent the Licensed Technology has been modified without Epic's written consent.

c. Special Warranty as to Non-infringement. Epic represents and warrants that (i) the Unreal Engine is the original creation of Epic, (ii) the Unreal Engine does not infringe any United States patent, United States copyright, or United States trademark rights of any third party, (iii) to its knowledge, the Third Party Software does not infringe any United States patent, United States copyright or United States trademark rights of any third party, and (iv) to its knowledge, Licensee's exercise of the license rights granted by Epic pursuant to this Agreement does not infringe any valid and subsisting United States patent, United States copyright, or United States trademark rights owned by persons other than Licensee.

i. Covenant to Defend. Epic, at its own expense and subject to the terms and conditions of this Section 4, will defend Licensee against any claims, actions or proceedings brought against any Licensee by third parties arising out of or in connection with any claim, which, taking the claimant's allegations to be true, would result in a breach by Epic of Epic's warranties set forth in Section 4(c), EXCEPT to the extent such claim: (A) is based upon or arises out of (I) any alteration or modification of the Unreal Engine or Third Party Software created by any person other than Epic, (II) the operation or use of the Unreal Engine or Third Party Software in combination with any other software or device, (III) any failure by Licensee, or others acting under Licensee's authority or control, to comply with Licensee's obligations under this Agreement, or (IV) any customizations to the Licensed Technology requested by Licensee, where the infringement necessarily arose from the customization requested by Licensee; or (B) is in response to (e.g. is part of a counterclaim by a third party in response to) any suit, action or claim made by Licensee against a third party for patent infringement which is unrelated to the Licensed Technology, in whole or in part.

ii. Conditions for Epic Defense. To be entitled to defense by Epic against a third-party infringement claim: (A) Licensee shall advise Epic promptly of the existence of the claim, upon learning of the assertion of the claim against Licensee (whether or not litigation or other proceeding has been filed or served), provided that delay in notice to Epic shall not deprive Licensee of defense or indemnity to the extent that Epic is not prejudiced thereby; and (B) Licensee shall permit Epic to have the sole right to control the defense and/or settlement of all such claims, in litigation or otherwise, so long as no such settlement admits to any wrong doing by Licensee, provides Licensee with a complete release of all claims, and does not impair any right or modify any obligation of Licensee under this Agreement. Licensee will have the right to participate in the defense of the claim with separate counsel of its own choice, which shall be at its own expense.

iii. Infringement Injunctions Obtained by Third Parties. If a third-party infringement claim, of which Epic was notified in accordance with this Section 4 is sustained in a final judgment from which no further appeal is taken or possible, and such final judgment includes an injunction prohibiting Licensee from continued use of the Unreal Engine or portions thereof or Third Party Software or portions thereof, then Epic shall, by its sole election and at its expense, either: (A) procure the right to continue to use the Unreal Engine or Third Party Software pursuant to this Agreement; or (B) replace or modify the Unreal

Engine or Third Party Software to make it noninfringing; or if neither of the foregoing is commercially reasonable; (C) direct Licensee to cease use of the Unreal Engine or Third Party Software or of the specific function(s) of the Unreal Engine or Third Party Software that resulted in the final judgment. If Epic directs Licensee to cease use of the Unreal Engine or Third Party Software pursuant to this Section 4(c)(iii), then Licensee will have the option to terminate this Agreement.

iv. Epic's Responsibility for Infringement Monetary Awards. If a claim defended by Epic under this Section 4(c) is sustained in a final judgment of a court of competent jurisdiction from which no further appeal is taken, or reaches a bona fide and final compromise or settlement, then Epic will pay or otherwise satisfy any monetary award entered against Licensee as part of such final judgment or pursuant to such compromise or settlement, subject to the extent that such award is adjudged in such final judgment, or under such compromise or settlement, to arise from Epic's infringement in breach of Section 4(c); provided, however, any such monetary award is subject to the limitations of liability set forth in Section 6.

d. Disclaimer Of All Other Warranties And Representations. EXCEPT AS EXPRESSLY SET FORTH ELSEWHERE IN THIS AGREEMENT OR ANY EXHIBIT HERETO, THE EXPRESS WARRANTIES AND EXPRESS REPRESENTATIONS SET FORTH IN THIS SECTION 4 ARE IN LIEU OF, AND EACH PARTY DISCLAIMS, ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE GAME, THE LICENSED TECHNOLOGY OR ANY PART THEREOF OR THIRD PARTY SOFTWARE OR ANY PART THEREOF OR IN CONNECTION WITH TECHNICAL SUPPORT PROVIDED UNDER THIS AGREEMENT, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT SUCH PARTY KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. EACH PARTY ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES IN THIS AGREEMENT. LICENSEE MAKES NO REPRESENTATION OR WARRANTY THAT THE GAME WILL GENERATE ANY PARTICULAR LEVEL OF NET RECEIPTS, OR ANY NET RECEIPTS.

e. Licensee's Warranties and Indemnity. Licensee represents and warrants (i) that it has the power and authority to enter into this Agreement and to fully perform its obligations hereunder, (ii) that this Agreement has been executed by its duly authorized representative; and (iii) that it is under no contractual or other legal obligation which would interfere in any way with the full, prompt, and complete performance of its obligations pursuant to this Agreement. Licensee agrees to indemnify and hold harmless Epic and the owner(s) of the Third Party Software from and against any expenses (including court costs and reasonable fees of attorneys, accountants and expert witnesses), claim, costs, action, demand, proceeding, award, liability, loss and damages suffered by Epic or the owner(s) of the Third Party Software in connection with any failure by: (i) Licensee, its officers, directors, employees, subcontractors, agents, or publishers to satisfy or abide by any of their obligations, responsibilities, representations or warranties under this Agreement (including, without limitation, the responsibilities and obligations set forth in Sections 2 and 7); (ii) any Third Party Developer or Third Party Development Resource to satisfy or abide by any of their obligations, responsibilities, representations or warranties under this Agreement or any Third Party Developer Acknowledgment of License Terms or Third Party Development Resource Acknowledgment of License Terms; or (iii) Licensee to undertake whatever action is necessary to remedy any such failures.

5. INTELLECTUAL PROPERTY RIGHTS.

a. Epic shall retain all right, title, and interest in, and shall be the owner of all Intellectual Property Rights in and to, the Licensed Technology (specifically excluding the Intellectual Property Rights of Third Party Software that shall remain the property of the owner(s) specified in Exhibit B), the Demo Content, and the Derivative Technology of the Licensed Technology. The parties agree that the term "Derivative Technology of the Licensed Technology" is intended to refer to software that can be used to develop games and other software applications. Epic acknowledges that Licensee will be the owner, or authorized licensee, of all Intellectual Property Rights in and to the Game, apart from the Licensed Technology and the Derivative Technology of the Licensed Technology. Except as expressly licensed to Licensee herein, Epic retains all right, title and interest in and to: (i) the Licensed Technology (specifically excluding Third Party Software whose right, title and interest shall be retained by the owner(s) specified in Exhibit B), as modified from time to time by Epic, and to any translations, modifications, corrections, additions, extensions, upgrades, improvements, adaptations or abridgments to the Licensed Technology (specifically excluding Third Party Software) created by Epic or by Epic's third party contractors on behalf of Epic; and (ii) Derivative Technology of the Licensed Technology. Licensee agrees to execute any necessary documents to effectuate the terms of this paragraph. Epic acknowledges that Licensee may retain an ownership interest in and to any Enhancements, apart from the Licensed Technology. Licensee will not obtain any ownership rights in the Licensed Technology or the Derivative Technology of the Licensed Technology as a result of its responsibilities hereunder.

b. Licensee acknowledges and agrees that the Licensed Technology and the Derivative Technology of the Licensed Technology and all other items licensed hereunder and all copies thereof constitute or contain valuable trade secrets or proprietary and Confidential Information (as defined below) of Epic or its licensors; that title thereto is and shall remain with Epic or its licensors; and that all applicable copyright, trademark, patent and other Intellectual Property Rights in the product and all items licensed hereunder are and shall remain the property of the Epic or its licensors, as such rights may exist.

c. Licensee acknowledges that Epic is the sole and exclusive owner of the trademarks and service marks associated with Epic and the Licensed Technology ("Epic Trademarks"). Licensee agrees to use the Epic Trademarks only in the form and manner reasonably prescribed by Epic from time to time. All use of the Epic Trademarks shall inure to the benefit of Epic.

d. During the term of this Agreement, Licensee is authorized by Epic to use the Epic Trademarks identified on Exhibit A as "Permitted Trademarks" in connection with Licensee's sub-licensing, advertisement and promotion of the Licensed Technology (as embedded in the Game). Licensee's use of any such trademarks shall be in accordance with Epic's policies that are provided by Epic in writing to Licensee (including via an Internet site, as described in Exhibit A) from time to time including, but not limited to, trademark usage and cooperative advertising policies. Nothing contained in this Agreement shall give Licensee any interest in such trademarks. Licensee agrees that it will not at any time during or after this Agreement assert or claim any interest in or do anything which may adversely affect the validity or enforceability of any Epic Trademarks or trade name(s) belonging to Epic, whether or not licensed to Licensee. Licensee will not register, seek to register, or cause to be registered any of Epic's trademarks or trade designations to any Licensed Technology without Epic's prior written consent. Licensee will not register, seek to register, obtain any ownership in, or otherwise utilize any website, domain name, URL, Internet presence or other electronic communications portal which contains, incorporates, or consists of any of Epic Trademarks or trade designations without Epic's prior written consent. Licensee agrees not to attach any additional trademarks or trade designations to any Licensed Technology. Licensee further agrees not to affix any Epic Trademark or trade name to products other than the Licensed Technology (as embedded in the Game). In the event that Licensee registers any Epic Trademarks or trade designations to any Applications or otherwise or registers, attempts to register,

obtains any ownership in, or otherwise utilizes any website, domain name, URL, Internet presence or other electronic communications portal in violation of this section, in addition to any rights Epic may have, Licensee hereby acknowledges and agrees that any such trademark registration or website, domain name, URL, Internet presence or other electronic communications portal, including any copyrights therein, shall be deemed to be property of Epic.

e. Licensee grants to Epic the right and license to use, during the term of this Agreement, to use the Licensee trademarks, service marks, trade names, and logos listed on Exhibit A under "Permitted Licensee Trademarks", and screen shots from the Authorized Games, in connection with Epic's advertisement and promotion of the Licensed Technology in any and all media without restriction any trademark, trade name, service mark, logo, domain name, or designation of origin used by Licensee for the Game ("Game Trademarks"). Epic agrees that it will not at any time during or after this Agreement assert or claim any interest in or do anything which may adversely affect the validity or enforceability of any Game Trademarks or trade name(s) belonging to Licensee. Epic will not register, seek to register, or cause to be registered any of the Game Trademarks. Epic will not register, seek to register, obtain any ownership in, or otherwise utilize any website, domain name, URL, Internet presence or other electronic communications portal which contains, incorporates, or consists of any of Game Trademarks or trade designations without Licensee's prior written consent.

f. Licensee hereby: (i) assigns to Epic in perpetuity all right, title and interest in, and (ii) grants to Epic a non-exclusive, fully-paid, royalty-free, worldwide, perpetual, irrevocable, sublicensable, non-terminable, transferable, assignable license to reproduce, distribute, publicly perform, publicly display, make, sell, import, modify and make derivative works based on, and otherwise use and exploit: (A) any and all information Licensee, a Third Party Developer, and/or a Third Party Development Resource, or their employees, assignees, sub-licensees, agents, or representatives post to Epic's Unreal Developers Network or any other of Epic's Unreal Engine related mailing lists or networks, including, without limitation software or code, and (B) any Bug Fixes to the Licensed Technology that Licensee, their employees, assignees, sub-licensees, or representatives provide to Epic.

g. Each of the parties agrees to execute any documents reasonably requested by the other party in order to affect any of the provisions of this Section 5.

6. LIMITATION OF LIABILITY. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, EPIC SHALL NOT BE LIABLE TO LICENSEE, OR LICENSEE'S PUBLISHERS, SUB-LICENSEES, OR THIRD PARTY DEVELOPERS OR THIRD PARTY DEVELOPMENT RESOURCES, FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS) ARISING OUT OF THE PERFORMANCE, NON-PERFORMANCE, OR BREACH OF THIS AGREEMENT, OR ARISING OUT OF OR IN ANY WAY RELATED TO THE USE, INABILITY TO USE, POSSESSION, LICENSE, DELIVERY, INSTALLATION, OPERATION, MAINTENANCE OR SUPPORT OF THE LICENSED TECHNOLOGY OR THIRD PARTY SOFTWARE, WHETHER SUCH CLAIM ARISES IN TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE, EVEN IF EPIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN WHEN OTHER REMEDIES ARE IMPOSSIBLE, INEFFECTIVE, OR FAIL OF THEIR ESSENTIAL PURPOSE. THE MAXIMUM AGGREGATE LIABILITY OF EPIC FOR ANY DAMAGES, LOSSES OR INJURIES TO LICENSEE, OR THOSE CLAIMING BY OR THROUGH LICENSEE, ARISING UNDER THIS AGREEMENT SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LESSER OF: (I) THE TOTAL AMOUNT OF MONIES ACTUALLY RECEIVED BY EPIC FROM LICENSEE PURSUANT TO THIS AGREEMENT; OR (II) FOUR HUNDRED AND FIFTY THOUSAND (\$450,000) DOLLARS. THE

LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION SHALL APPLY TO THE FULLEST EXTENT PERMISSIBLE AT LAW.

7. CONFIDENTIALITY; NONDISCLOSURE.

a. Licensee hereby agrees that: (i) this Agreement, and the Licensed Technology, related expertise, documentation or other material or information provided to Licensee by Epic and any marketing or business information (collectively referred to as the "Confidential Information") received by Licensee from Epic under this Agreement, whether for Licensee's own internal use or otherwise, and whether provided orally, in writing or in any other medium, is and shall be treated as the confidential property of Epic or the owner(s) of the Third Party Software as applicable; (ii) Licensee shall hold such Confidential Information in strictest confidence; and (iii) except as provided in this Agreement, the Confidential Information shall not be duplicated or in any way disclosed to others in whole or in part without the prior express written permission of Epic.

b. It is expressly understood and agreed by Licensee that the obligations of this Section 7 shall survive the expiration, termination or rescission of this Agreement, or any part hereof, provided, however, that this Section 7 shall not apply to information received from Epic which: (i) is or becomes publicly available, (ii) is received by Licensee from a third party without violation of any obligation of confidentiality to Epic; or (iii) is declared not confidential by Epic in writing. Nothing contained herein shall be construed to prevent Licensee from independently developing software of its own, provided it does not use in any way the Confidential Information.

c. Epic hereby agrees that: (i) the existence and terms and conditions of this Agreement, any information relating to the Game, the development of the Game, the identities of Licensee's employees and Third Party Developers and Third Party Development Resources, Licensee's business plans and strategies, any information provided to Epic pursuant to Section 3.d, and any other material or information provided by Licensee to Epic that has not been made generally publicly available by Licensee (collectively referred to as the "Licensee Confidential Information") received by Epic from Licensee under this Agreement, whether for Epic's own internal use or otherwise, and whether provided orally, in writing or in any other medium, is and shall be treated as the confidential property of Licensee; (ii) Epic shall hold such Licensee Confidential Information in strictest confidence; and (iii) except as provided in this Agreement, the Licensee Confidential Information shall not be duplicated or in any way disclosed to others in whole or in part without the prior express written permission of Licensee, nor used except in connection with performance of this Agreement or the related Support Agreement between the parties.

d. It is expressly understood and agreed by the parties that the obligations of this Section 7 shall survive the expiration, termination or rescission of this Agreement, or any part hereof, provided, however, that this Section 7 shall not apply to information received from a disclosing party which: (i) is or becomes publicly available (ii) is received by a party from a third party without violation of any obligation of confidentiality to the other party; or (iii) is declared by a disclosing party not confidential by such party in writing. Nothing contained herein shall be construed to prevent Licensee from independently developing software of its own outside of the terms and conditions of this Agreement, provided it does not use in any way the Confidential Information, the Licensed Technology, the Derivative Technology of the Licensed Technology, or any Intellectual Property Rights therein. Nothing contained herein shall prevent a party from disclosing any information to the extent required by law or regulation, or by order or subpoena of any court, tribunal or governmental authority.

e. Notwithstanding the foregoing provisions of Section 7, either party may disclose the terms of this Agreement to any actual or potential merger partner or acquirer to whom assignment would

be permitted by Section 11.c, and the professional advisors of such party, subject to binding obligations of confidentiality.

8. **TERM.** The term of this Agreement shall commence upon the Effective Date first set forth above and continue in perpetuity, unless sooner terminated in accordance with the provisions of this Agreement.

9. **TERMINATION; DISPOSITION AT TERMINATION.**

a. **Basis for Termination by Epic.** Epic shall have the right immediately to terminate this Agreement on written notice to Licensee if: (i) Licensee is delinquent in making payment of any sum due under this Agreement and continues to be delinquent (A) in the case of the Initial License Fee, for a period of ten (10) days after the last day on which such payment is due, or (B) in the case of all other payments, for a period of thirty (30) days after the last day on which such payment is due; or (iii) Licensee shall commit any other breach of this Agreement and shall fail to remedy such breach within thirty (30) days after written notice of such breach is given by Epic. Licensee may cure a breach of Article 2.g.(i) by publishing a full retraction within the thirty (30) day cure period.

b. **Basis for Termination by Licensee.** Licensee shall have the right immediately to terminate this Agreement on written notice to Epic as to any Licensed Technology if: (i) Epic shall commit a material breach of any of the provisions of this Agreement and shall fail to remedy such breach within thirty (30) days of notice of such breach by Licensee; or (ii) Epic or any third party owning an equity interest of more than fifty percent (50%) of Epic shall petition for reorganization, readjustment or rearrangement of its business or affairs under any laws or governmental regulations relating to bankruptcy or insolvency, or is adjudicated bankrupt, or if Epic or such third party makes or attempts an assignment for the benefit of creditors, or is unable to meet its or their obligations in the normal course of business as they fall due.

c. **Disposition on Termination.**

i. Upon termination of this Agreement for any reason: (A) except for the purpose of filling any orders outstanding as of the date of termination, and any binding subscription commitments of up to 90 days after termination, all rights under the license granted to Licensee under Section 2 herein shall immediately cease and terminate and Licensee, at Licensee's expense, shall immediately return to Epic all copies of the Licensed Technology, or portions thereof, in its possession; (B) except for copies necessary for providing maintenance and support, Licensee shall immediately purge, or cause to be purged, all copies of the Licensed Technology or any portion thereof (whether modified or not) in its possession, including from any computer storage device or medium on which Licensee has placed the Licensed Technology; (C) Licensee shall give Epic a written certification that it has complied with all of its obligations under this subsection; and (D) Licensee shall forthwith cease all display, advertising and use of all such tradenames and marks, and shall not thereafter use, advertise or display any name or mark which is, or any part of which is, similar to or confusing with any such designation associated with any of the Licensed Technology or of Epic's Trademarks.

ii. In the event Licensee fails to satisfy each of its obligations as set forth in Section 9(c)(i) above within thirty (30) days from the date of termination, then Epic may, upon forty-eight (48) hours notice to Licensee, enter upon Licensee's premises and repossess all copies of the Licensed Technology and purge all copies from any Licensee computer for the purpose of facilitating the foregoing remedy and Licensee shall provide Epic with any and all assistance necessary to accomplish the same. Licensee agrees to indemnify and hold harmless Epic from and against any expenses (including court costs and reasonable fees of attorneys, accountants and expert witnesses), claim, costs, action, demand, proceeding,

award, liability, loss and damages suffered by Epic as a result of Licensee's failure to perform its obligations pursuant to this subsection.

d. No Residual Rights. In the event this Agreement expires or is terminated in accordance with the provisions hereof, neither Epic nor Licensee shall be liable to the other, because of such expiration, termination or failure to renew or extend this Agreement, for any compensation, damages, reimbursements, loss of prospective or anticipated profits based upon any expenditure, investments of capital, leases, licenses or commitments made by either Epic or Licensee. Licensee has no expectation that its business relationship with Epic will continue beyond the expiration of this Agreement or its earlier termination as herein provided, or that Licensee shall obtain any anticipated amount of profits by virtue of this Agreement. EPIC SHALL NOT BE LIABLE TO LICENSEE FOR DAMAGES OF ANY KIND INCLUDING INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ON ACCOUNT OF TERMINATION OF THIS AGREEMENT FOR ANY REASON WHATSOEVER EVEN IF EPIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

e. No Election of Remedies. The parties' termination rights set forth in this Agreement, and either party's exercise of such rights, shall be without prejudice to any other rights or remedies that such party may have available at law or in equity.

f. Removal of Third Party Developer.

i. Upon receipt of notice from Epic, Licensee shall cease using a Third Party Developer to develop any Games for Licensee utilizing the Licensed Technology if: (A) the Third Party Developer has committed or permitted a breach of any of the provisions of a Third Party Developer Acknowledgement of License Terms that it has executed and fails to remedy such breach, to Epic's reasonable satisfaction, within thirty (30) days of notice of such breach; or (B) the Third Party Developer has committed or permitted a breach of any provision of any agreement that gives such Third Party Developer the right to use the Unreal Engine for software development purposes. In the event that, in accordance with this Section 9(f)(i), Licensee is required by Epic to cease using a Third Party Developer, Licensee shall be entitled to use a different Third Party Developer to complete the removed Third Party Developer's Game(s), provided, however, that Licensee shall not use a development team that consists of substantially the same members that made up the removed Third Party Developer.

ii. Licensee agrees that it will immediately notify Epic of any actual, or likely material breach or violation, of which Licensee becomes aware: (A) by a Third Party Developer of a Third Party Developer Acknowledgement of License Terms; (B) by a Third Party Development Resource of a Third Party Development Resource Acknowledgment of License Terms; or (C) any agreement that gives a Third Party Developer or a Third Party Development Resource the right to use the Unreal Engine for software development purposes.

iii. Epic agrees that it will copy Licensee on any breach notification correspondence it sends to a Third Party Developer under this Section 9(f).

iv. Third Party Developers shall cease using Third Party Development Resources pursuant to and in accordance with the terms and conditions of a Third Party Developer Acknowledgment of License Terms.

g. Section 365(n). All rights and licenses granted under or pursuant to this Agreement by Epic to Licensee are, and shall otherwise be deemed to be, for purposes of Section 365(n) of Title 11, U.S. Code (the "Bankruptcy Code"), licenses of rights to "intellectual property" as defined in the Bankruptcy Code. The parties agree that Licensee shall retain and may fully exercise all of its rights and

elections under the Bankruptcy Code. All rights, powers and remedies of Licensee provided under this Section 9.f are in addition to and not in substitution for any and all other rights, powers and remedies now or hereafter existing at law or in equity in the event of any such commencement of a bankruptcy proceeding by or against Epic.

10. COMPLIANCE WITH LAW. In connection with its obligations hereunder, each party agrees to comply with all laws, rules, regulations, orders, decrees, judgments and other governmental acts of the United States of America, and of the Territory in which the Licensed Technology may be licensed, and their political subdivisions, agencies and instrumentalities, that may be applicable to the Licensee, its activities hereunder, or to the Licensed Technology. Epic and Licensee agree to take all such further acts and execute all such further documents as the other party reasonably may request to assist either party in complying with the laws, rules and regulations of the United States of America, the Territory and other countries applicable to either party's business and its activities hereunder.

11. GENERAL PROVISIONS.

a. Amendment. The terms of this Agreement can only be amended or changed in a writing executed by both parties that expressly references this Agreement and expressly states a desire to amend or change it.

b. Notices. Any notice or other communication required or permitted hereunder shall be in writing, shall be deemed to have been given or made and shall be deemed sufficient in all respects when delivered personally or when placed in the mail, air mail postage prepaid, or sent by international courier, addressed to the respective party's address as set forth in this Agreement. A party may change its address for service to another address provided it is within the same jurisdiction and that it gives not less than twenty-eight (28) days prior notice in writing to the other party. Until the end of the notice period, service on the former address shall remain effective.

c. Assignment. This Agreement may not be assigned or sublicensed by either party in whole or in part (by contract, operation of law or otherwise) (except as to sublicensing expressly permitted under this Agreement), except that it may be assigned by either party, without the requirement to consult the other party, to an affiliate or in connection with any merger, acquisition or reorganization involving substantially all of the assets or capital stock of such assigning party, (when Licensee is the assigning party) the sale of the Game and all or substantially all of Licensee's Intellectual Property Rights therein, or (when Epic is the assigning party) the sale by Epic of the Intellectual Property Rights licensed under the terms of this Agreement. Subject to the foregoing, this Agreement and all of its terms and provisions shall be binding upon and inure for the benefit of the successors in title of the parties hereto.

d. Force Majeure. A party shall not be liable for non-performance or delay in performance (other than of obligations regarding payment of money confidentiality) to the extent caused by any event reasonably beyond the control of such party including, but not limited to, wars, hostilities, revolutions, acts of terrorism, riots, civil commotion, national emergency, epidemics, fire, flood, earthquake, force of nature, explosion, embargo, or any Act of God.

e. Independent Contractors. The parties hereto are independent contractors and shall have no power, nor will either of the parties represent that either has any power, to bind the other party or to assume or to create any obligation or responsibility, express or implied, on behalf of the other party or in the other party's name.

f. Beneficiaries. No provision of this Agreement is intended nor shall be interpreted to provide or create any third party beneficiary rights or any other rights of any kind in any sub-license.

g. Governing Law. The validity, construction and performance of this Agreement, and the legal relations among the parties to this Agreement shall not be governed by the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods or the United Nations Convention on the Limitation Period in the International Sale of Goods, as amended; rather, the validity, construction and performance of this Agreement, and the legal relations among the parties to this Agreement shall be governed in all respects by the laws of the State of New York exclusively, as such laws apply to contracts between New York residents performed entirely within New York. Either the federal court in the Eastern District of New York or state court in Manhattan, New York shall have exclusive jurisdiction over any claim, dispute or difference which may arise out of, or in connection with, this agreement (including, without limitation, claims for set-off or counterclaim)- Each party agrees to promptly comply with any injunction obtained by the other party with respect to the subject matter of this Agreement.

h. Governing Language. The original of this Agreement has been written in English. Licensee waives any right it may have under the law of Licensee's country to have this Agreement either written in the language of Licensee's country or in the language of any country in the Territory.

i. Section Headings. Section headings are included solely for convenience, are not to be considered a part of this Agreement and are not intended to be full and accurate descriptions of the contents thereof.

j. Entire Agreement. This Agreement, including the Exhibits hereto that are incorporated herein by reference, represents the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior representations and agreements, whether oral or written, with respect to the same subject matter.

k. Waiver. The waiver, amendment or modification of any provision of this Agreement or any right, power or remedy hereunder shall not be effective unless in writing and signed by the party against whom enforcement of such waiver, amendment or modification is sought.

l. Severability. If any provision of this Agreement is unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement with otherwise remain in full force and effect and enforceable.

m. Press Release. The parties agree to cooperate to jointly draft a press release regarding the existence of their relationship as described in this Agreement and to jointly issue such press release within twenty-one (21) days following the Effective Date of the Agreement. Each party must approve the press release before it is issued.

n. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. If this Agreement is executed in counterparts, no signatory shall be bound until all of the parties named below have duly executed or cause to be duly executed a counterpart of this Agreement. Signatures by facsimile or scanned PDF documents shall be deemed original signatures.

o. Survival. The following Sections of this Agreement shall survive its expiration, termination: 4, 5, 6, 7, 9, 11(g), 11(h), 11(o), 12.

12. RIGHTS OF THIRD PARTIES. Without prejudice to anything to the contrary contained herein, Licensee agrees that all terms and provisions of this Agreement shall be enforceable by the owner(s) of the Third Party Software as a third party beneficiary directly against Licensee solely in

relation to the Licensee's uses of Third Party Software. For the avoidance of doubt, the owner(s) of the Third Party Software shall not claim any right in the payment of the license fee or royalties hereunder. The same shall be due and payable only to Epic. The Licensed Technology includes certain software of Ageia Technologies, Inc. as Third Party Software. The Ageia License Agreement attached at Exhibit C is incorporated herein by reference and by signing this Agreement, Licensee agrees to all the terms thereof.

IN WITNESS WHEREOF, each of the parties hereto has duly executed this Agreement effective as of the Effective Date.

38 STUDIOS, LLC ("LICENSEE")

By: 

Name: Brett Close

Title: CEO

Date: 02/21/08

EPIC GAMES, INC.

By: 

Name: J. Wilbur

Title: UP

Date: 21-FEB-08

EXHIBIT A

To the UNREAL ENGINE 3 License Agreement entered into on February 21, 2008 by and between Epic Games, Inc., ("Epic"), and 38 Studios, LLC ("Licensee").

LICENSED TECHNOLOGY:	UNREAL® ENGINE 3
TERRITORY:	Worldwide
AUTHORIZED GAME:	TBD
AUTHORIZED PLATFORMS:	[X] PC [X] Xbox 360 [X] PlayStation 3

LICENSEE WARRANTS AND REPRESENTS THAT IT HAS EXECUTED ALL APPROPRIATE AND NECESSARY LICENSES WITH THE VARIOUS CONSOLE HARDWARE MANUFACTURERS OR OTHER ENTITIES AND IS A PROPERLY LICENSED DEVELOPER FOR THE PLATFORMS SELECTED ABOVE.

PERMITTED TRADEMARKS	"Unreal Engine" <input type="checkbox"/>
REQUIRED TRADEMARK NOTICE:	"Unreal® is a registered trademark of Epic Games, Inc."
REQUIRED COPYRIGHT NOTICE:	"Unreal® Engine, Copyright 1998 – 20xx, Epic Games, Inc. All rights reserved." 20xx = year you release the Authorized Game
REQUIRED LOGO PLACEMENT:	Licensee agrees to display the "Powered by Unreal Engine" logo on the physical packaging of the Game. Licensee also agrees to display the "Powered by Unreal Engine" logo within the opening sequence or splash screen of the Game. Licensee agrees that any display of the "Powered by Unreal Engine" logo will comply with the logo usage guidelines and logo image files that can normally be found at https://udn.epicgames.com/bin/view/Two/EpicTrademarksLogos or by searching UDN or contacting udn@epicgames.com for direct assistance.
TERM OF LICENSE & LICENSE FEES - SINGLE PROJECT/SINGLE PLATFORM:	The term of the license granted hereunder shall be perpetual, effective upon the payment of a \$390,000.00 non-recoupable, non-refundable Initial License Fee, payable by the Licensee to Epic within five (5) days following execution of this Agreement, subject to the termination provisions of Section 9 hereof, plus License Fee Royalties at a rate of 2% of the Net Receipts of the Game.

Licensee Business Contact: Name: Curt Schilling Title: Founder Phone: 978-793-1115 E-mail: cschilling@38studios.com	Licensee Technical Contact: Name: Scott Cuthbertson Title: VP of Creative Development Phone: 978-310-5100 E-mail: scuthbertson@38studios.com
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Payment Terms. All amounts due or payable to either party under this Agreement shall be remitted without issuance of an invoice. Interest shall accrue on all amounts not paid at a rate, calculated upon the unpaid balance, of the lesser of: (i) 1.5% per month; or (ii) the highest rate allowed by law. All payments made hereunder shall be payable in United States Dollars. All payments made by Licensee to Epic under this agreement will be sent by wire transfer to the account of Epic's choosing as indicated below which account may be changed from time to time on written notice from Epic to Licensee.

Bank Name: Wachovia Bank, N.A.
ABA Routing #: 053000219
IBAN/SWIFT Code: PNBPUS33 (for international wire transfers)
Beneficiary Name: Epic Games, Inc.
Credit Account #20-6266128251-7

EXHIBIT B

THIRD PARTY SOFTWARE

If any third party software lists a credit required, that credit is required as part of the documentation (whether hard or electronic copy) wherever Licensee normally provides such credits for other software contributions, unless otherwise noted below.

NVIDIA:

nvDXT

nvTriStrip

Platforms: PC

Credit Required: "This product includes code licensed from NVIDIA."

Speex

Platforms: PC, PS3, Linux

Credit Required: "Speex Copyright 2002-2003, Jean-Marc Valin/Xiph.Org Foundation"

zlib

Platforms: PC, Xbox 360, PS3, Mac, Linux

Credit Required: "Copyright © 1995-2004 Jean-loup Gailly and Mark Adler"

License Terms: http://www.gzip.org/zlib/zlib_license.html

OpenAL

Platforms: PC, Mac, Linux

License Terms: Under license from Creative Labs license (license is set forth directly below)

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wxWidgets: [obj]

Platforms: PC, Mac, Linux

License Terms: <http://www.wxwindows.org/newlicen.htm>

wxDockit:

Platforms: PC, Mac, Linux

License Terms: <http://www.wxwindows.org/newlicen.htm>

libPNG

Platforms: PC, Mac, Linux

License Terms: <http://www.libpng.org/pub/png/src/libpng-LICENSE.txt>

PhysX SDK (Subject to Exhibit C)

Platforms: PC, Xbox 360, PS3, Mac, Linux

License Terms: set forth below

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AGEIA PhysX Driver License Agreement

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Ogg Vorbis libs

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Platforms: PC, Xbox 360, PS3, Mac, Linux

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libxml2 (used by Collada)

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LZO

Platforms: PC, Xbox 360, PS3, Mac, Linux

CSHA 1

Platforms: PC, Xbox 360, PS3, Mac, Linux

TinyXML

Platforms: Xbox 360

Convex Decomposition

Platforms: PC, Mac, Linux

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AMD CPU drivers

Platforms: PC

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SDL 1.2

Platforms: PC, Mac, Linux

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Platforms: PC

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Platforms: PC

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B. **TERM OF WARRANTY; WARRANTY RECIPIENT; LENGTH OF ANY IMPLIED WARRANTIES.** THE LIMITED WARRANTY COVERS THE SOFTWARE FOR ONE YEAR AFTER ACQUIRED BY THE FIRST USER. IF YOU RECEIVE SUPPLEMENTS, UPDATES, OR REPLACEMENT SOFTWARE DURING THAT YEAR, THEY WILL BE COVERED FOR THE REMAINDER OF THE WARRANTY OR 30 DAYS, WHICHEVER IS LONGER. If the first user transfers the software, the remainder of the warranty will apply to the recipient.

TO THE EXTENT PERMITTED BY LAW, ANY IMPLIED WARRANTIES, GUARANTEES OR CONDITIONS LAST ONLY DURING THE TERM OF THE LIMITED WARRANTY. Some states do not allow limitations on how long an implied warranty lasts, so these limitations may not apply to you. They also might not apply to you because some countries may not allow limitations on how long an implied warranty, guarantee or condition lasts.

C. EXCLUSIONS FROM WARRANTY. This warranty does not cover problems caused by your acts (or failures to act), the acts of others, or events beyond Microsoft's reasonable control.

D. REMEDY FOR BREACH OF WARRANTY. MICROSOFT WILL REPAIR OR REPLACE THE SOFTWARE AT NO CHARGE. IF MICROSOFT CANNOT REPAIR OR REPLACE IT, MICROSOFT WILL REFUND THE AMOUNT SHOWN ON YOUR RECEIPT FOR THE SOFTWARE. IT WILL ALSO REPAIR OR REPLACE SUPPLEMENTS, UPDATES AND REPLACEMENT SOFTWARE AT NO CHARGE. IF MICROSOFT CANNOT REPAIR OR REPLACE THEM, IT WILL REFUND THE AMOUNT YOU PAID FOR THEM, IF ANY. YOU MUST UNINSTALL THE SOFTWARE AND RETURN ANY MEDIA AND OTHER ASSOCIATED MATERIALS TO MICROSOFT WITH PROOF OF PURCHASE TO OBTAIN A REFUND. THESE ARE YOUR ONLY REMEDIES FOR BREACH OF THE LIMITED WARRANTY.

E. CONSUMER RIGHTS NOT AFFECTED. YOU MAY HAVE ADDITIONAL CONSUMER RIGHTS UNDER YOUR LOCAL LAWS, WHICH THIS AGREEMENT CANNOT CHANGE.

F. WARRANTY PROCEDURES. You need proof of purchase for warranty service.

1. United States and Canada. For warranty service or information about how to obtain a refund for software acquired in the United States and Canada, contact Microsoft at

- (800) MICROSOFT;
- Microsoft Customer Service and Support, One Microsoft Way, Redmond, WA 98052-6399; or
- visit www.microsoft.com/info/nareturns.htm.

2. Europe, Middle East and Africa. If you acquired the software in Europe, the Middle East or Africa, Microsoft Ireland Operations Limited makes this limited warranty. To make a claim under this warranty, you should contact either

- Microsoft Ireland Operations Limited, Customer Care Centre, Atrium Building Block B, Carmanhall Road, Sandymford Industrial Estate, Dublin 18, Ireland; or
- the Microsoft affiliate serving your country (see www.microsoft.com/worldwide).

3. Outside United States, Canada, Europe, Middle East and Africa. If you acquired the software outside the United States, Canada, Europe, the Middle East and Africa, contact the Microsoft affiliate serving your country (see www.microsoft.com/worldwide).

G. NO OTHER WARRANTIES. THE LIMITED WARRANTY IS THE ONLY DIRECT WARRANTY FROM MICROSOFT. MICROSOFT GIVES NO OTHER EXPRESS WARRANTIES, GUARANTEES OR CONDITIONS. WHERE ALLOWED BY YOUR LOCAL LAWS, MICROSOFT EXCLUDES IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. If your local laws give you any implied warranties, guarantees or conditions, despite this exclusion, your remedies are described in the Remedy for Breach of Warranty clause above, to the extent permitted by your local laws.

H. LIMITATION ON AND EXCLUSION OF DAMAGES FOR BREACH OF WARRANTY. THE LIMITATION ON AND EXCLUSION OF DAMAGES CLAUSE ABOVE APPLIES TO BREACHES OF THIS LIMITED WARRANTY.

THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE. YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM COUNTRY TO COUNTRY.

Please note: As this software is distributed in Quebec, Canada, some of the clauses in this agreement are provided below in French.

Remarque : Ce logiciel étant distribué au Québec, Canada, certaines des clauses dans ce contrat sont fournies ci-dessous en français.

GARANTIE LIMITÉE

A. GARANTIE LIMITÉE. Si vous suivez les instructions, le logiciel fonctionnera dans son ensemble comme il est décrit dans la documentation de Microsoft reçue avec ou dans le logiciel.

B. DURÉE DE LA GARANTIE ; BÉNÉFICIAIRE DE LA GARANTIE ; DURÉE DE TOUTE GARANTIE IMPLICITE. La garantie limitée couvre le logiciel pendant un an après son acquisition par le premier utilisateur. Si vous recevez des compléments, des mises à jour ou un logiciel de remplacement au cours de cette année, ils seront

couverts par la garantie pendant la durée restante ou pendant 30 jours, la période la plus longue étant retenue. Si le premier utilisateur transfère le logiciel, la durée restante de la garantie s'applique au destinataire. Dans la limite autorisée par la loi en vigueur, toute garantie ou condition implicite dont vous bénéficiez prendra fin au terme de la garantie limitée. Certains États n'autorisent pas les limitations portant sur la durée d'une garantie implicite, de sorte que les limitations ci-dessus peuvent ne pas vous être applicables. Elles peuvent également ne pas vous être applicables, car certains pays n'autorisent pas les limitations portant sur la durée d'une garantie ou condition implicite.

C. EXCLUSIONS DE LA GARANTIE. Cette garantie ne couvre pas les problèmes engendrés par vos propres actes (ou absences d'actes), ceux de tiers ou tout autre événement indépendant de la volonté de Microsoft.

D. RECOURS DANS LE CADRE DE LA VIOLATION DE GARANTIE. Nous nous engageons à réparer ou à remplacer le logiciel gratuitement. Si nous ne pouvons pas le réparer ni le remplacer, nous rembourserons le montant que vous avez payé pour le logiciel figurant sur le reçu. Nous nous engageons à réparer ou à remplacer les compléments, les mises à jour et le logiciel de remplacement gratuitement. Si nous ne pouvons pas les réparer ni les remplacer, nous rembourserons le montant que vous avez payé pour ces composants, le cas échéant. Vous devez désinstaller le logiciel et le renvoyer à Microsoft avec une preuve d'achat pour vous faire rembourser. Ces recours sont les seuls dont vous disposez dans le cadre de la violation de garantie limitée.

E. DROITS DES CONSOMMATEURS NON AFFECTÉS. Vous pouvez bénéficier de droits des consommateurs supplémentaires dans le cadre du droit local, que ce contrat ne peut modifier.

F. PROCÉDURES RELATIVES AUX RÉCLAMATIONS DANS LE CADRE DE LA GARANTIE. Vous devrez fournir une preuve d'achat pour obtenir de l'aide en matière de garantie.

1. États-Unis et Canada. Pour obtenir de l'aide en matière de garantie ou des informations sur la procédure à suivre pour vous faire rembourser un logiciel acquis aux États-Unis et au Canada, mettez-vous en rapport avec Microsoft

- (800) MICROSOFT ;
- Microsoft Customer Service and Support, One Microsoft Way, Redmond, WA 98052-6399 ; ou
- en visitant www.microsoft.com/info/nareturns.htm.

2. Europe, Moyen-Orient et Afrique. Si vous avez acquis le logiciel en Europe, au Moyen-Orient ou en Afrique, Microsoft Ireland Operations Limited offre cette garantie limitée. Pour faire une réclamation au titre de cette garantie, vous devez vous mettre en rapport avec

- Microsoft Ireland Operations Limited, Customer Care Centre, Atrium Building Block B, Carmanhall Road, Sandyford Industrial Estate, Dublin 18, Irlande ; ou
- votre filiale nationale de Microsoft (visitez le site www.microsoft.com/worldwide).

3. En dehors des États-Unis, du Canada, de l'Europe, du Moyen-Orient et de l'Afrique. Si vous avez acquis le logiciel en dehors des États-Unis, du Canada, de l'Europe, du Moyen-Orient et de l'Afrique, mettez-vous en rapport avec votre filiale nationale de Microsoft (visitez le site www.microsoft.com/worldwide).

G. AUCUNE AUTRE GARANTIE. La garantie limitée est la seule garantie directe de Microsoft. Nous n'accordons aucune autre garantie ou condition expresse. Dans toute la mesure permise par le droit local, les garanties implicites de qualité marchande, d'adéquation à un usage particulier et d'absence de contrefaçon sont exclues. Si le droit local vous accorde des garanties ou conditions implicites, nonobstant la présente exclusion, les recours dont vous disposez sont ceux présentés dans la clause de recours dans le cadre de la violation de garantie ci-dessus, dans la limite autorisée par le droit local.

H. LIMITATION DES DOMMAGES-INTÉRÊTS ET EXCLUSION DE RESPONSABILITÉ DANS LE CADRE DE LA VIOLATION DE GARANTIE. La clause de limitation des dommages-intérêts et exclusion de responsabilité ci-dessous s'applique aux violations de cette garantie limitée.

La présente garantie vous confère des droits légaux spécifiques et vous pouvez également bénéficier d'autres droits qui varient d'un État à l'autre. Vous pouvez également bénéficier d'autres droits qui varient d'un pays à l'autre.

LIMITATION DES DOMMAGES-INTÉRÊTS ET EXCLUSION DE RESPONSABILITÉ POUR LES DOMMAGES. Vous pouvez obtenir de Microsoft et de ses fournisseurs une indemnisation en cas de dommages directs uniquement à hauteur du montant que vous avez payé pour le logiciel. Vous ne pouvez prétendre à aucune indemnisation pour les autres dommages, y compris les dommages spéciaux, indirects ou accessoires et pertes de bénéfices.

Cette limitation concerne

- toute affaire liée au logiciel, aux services ou au contenu (y compris le code) figurant sur des sites Internet tiers ou dans des programmes tiers ; et
- les réclamations au titre de violation de contrat ou de garantie ou condition, ou au titre de responsabilité stricte, de négligence ou d'une autre faute dans la limite autorisée par la loi en vigueur.

Elle s'applique également, même si

- la réparation, le remplacement ou le remboursement du logiciel ne compense pas intégralement toute perte subie ; ou

- Microsoft connaissait l'éventualité d'un tel dommage.

Certains États n'autorisent pas l'exclusion ou la limitation de responsabilité pour les dommages indirects ou accessoires, de sorte que la limitation ou l'exclusion ci-dessus peut ne pas vous être applicable. Elles peuvent également ne pas vous être applicables, car votre pays n'autorise pas l'exclusion ou la limitation de responsabilité pour les dommages indirects, accessoires ou de quelque nature que ce soit.

EFFET JURIDIQUE. Le présent contrat décrit certains droits juridiques. Vous pourriez avoir d'autres droits prévus par les lois de votre État ou pays. Vous pourriez également avoir des droits à l'égard de la partie de qui vous avez acquis de logiciel. Le présent contrat ne modifie pas les droits que vous confèrent les lois de votre État ou pays si celles-ci ne le permettent pas.

DL Malloc 2.8.3

Platforms: PC, PS3

License Terms: <http://creativecommons.org/licenses/publicdomain>

PCCompat 2007.6.29.4

Platforms: PC

EXHIBIT C

AGEIA LICENSE AGREEMENT

This License Agreement (this "Agreement") is entered into concurrently with the license agreement between Epic Games, Inc. ("Epic") and the licensee (the "Epic License Agreement") and is by and between Ageia Technologies, Inc., a Delaware corporation ("Ageia") having its principal place of business at 4041 Forest Park Blvd., St. Louis, MO 63108, USA, and the Licensee under the Epic License Agreement ("Licensee"). Capitalized terms used in this Agreement but not otherwise defined herein will have the meanings assigned to them in the Epic License Agreement.

1. **EPIC LICENSE AGREEMENT.** Pursuant to the Epic License Agreement, Licensee desires to license from Epic the Licensed Technology. The Licensed Technology includes the Ageia Software (as defined herein) as Third Party Software. Licensee agrees to the terms of this Agreement by executing the Epic License Agreement. The terms and conditions of the Epic License Agreement (except Sections 3, 4, 5, 6, 9(a)(i), and 9(c)(i)(C), which will not apply) are hereby incorporated into and made a part of this Agreement as if set forth herein in their entirety and made applicable to Ageia and the Ageia Software, except as expressly provided herein. In the event of any contradiction between the terms of this document and the terms of the Epic License Agreement that are incorporated herein as applicable to the Ageia Software, the terms of this document will prevail.

2. **AGEIA SOFTWARE; LICENSE; RESTRICTIONS.**

2.1 "Ageia Software" means any software developed, maintained or owned by Ageia included as Third Party Software in the Licensed Technology.

2.2 Ageia grants to Licensee the right to use, market and distribute the Licensed Technology incorporating Ageia Software solely pursuant to the terms, conditions and restrictions set forth in the Epic License Agreement (as incorporated herein, and as applicable to the Ageia Software) and the exceptions and additional terms, conditions and restrictions set forth in this Agreement, provided that (a) the Ageia Software is afforded the same level of protection as the Licensed Technology, and used only as use of the Licensed Technology is permitted under the Epic License Agreement, and (b) the terms of the Epic License Agreement providing rights to Epic will be enforceable by Ageia with respect to Licensee's use of the Ageia Software (except those provisions of the Epic License Agreement not incorporated herein, or any provisions regarding payment of royalties or license fees).

2.3 Notwithstanding anything to the contrary in the Epic License Agreement and regarding Licensee's obligations with respect to any Ageia Software provided in source code form. Licensee agrees to promptly disclose and deliver to Ageia any modifications to such source code, including, with respect to bugs or errors, a detailed description of the bug or error that necessitated such modifications. Any such modifications will be owned by Ageia and will be Ageia Software subject to the terms, conditions and restrictions of this Agreement. The foregoing notwithstanding Licensee's obligation to disclose and deliver to Ageia any such Source Code Modifications in Source Code form and Ageia's ownership right in the same are subject to Licensee's contractual and confidentiality obligations to other parties. If, for example, Licensee modifies the Ageia Licensed Software in Source Code form to operate on a proprietary hardware platform not supported by Ageia and has a contractual nondisclosure obligation for that platform Licensee will not be required to disclose that code to Ageia and Ageia will not own that code. For the sake of clarity the parties agree it is the intent of this section to grant Licensee the right to make any modification to the Ageia Licensed Software in Source Code form at any time Licensee sees fit for any reason Licensee deems necessary.

3. **PROPRIETARY RIGHTS; NOTICES.** Licensee acknowledges and agrees that Ageia and its licensors are the sole and exclusive owners of the trademarks, copyrights and other intellectual property rights associated with Ageia and the Ageia Software and all derivative works thereof. Licensee will reproduce faithfully all of Ageia's and its licensors' trademark, copyright and other proprietary notices on any copies of the Ageia Software and will comply at all times with Ageia's policies in effect from time to time with respect thereto. The foregoing notwithstanding Licensee is not be required to publicly display as embedded in the games products of each any trademark, copyright and other proprietary notices that appear in the Ageia Licensed Software), Except as expressly licensed to Licensee hereunder, Ageia and its licensors retain all right, title and interest to the Ageia Software, and to any modifications made by Licensee or any third party to

the Ageia Software, and Licensee agrees to execute any necessary documents to effectuate the terms of this section. Licensee agrees that any feedback it may supply to Ageia regarding the Ageia Software will become the sole property of Ageia to use as it sees fit.

4. **LICENSEE INDEMNITY.** Licensee will indemnify and defend Ageia and its affiliates and its and their respective directors, officers, employees and agents from, and hold them harmless against, any loss, damage, liability and expense (including reasonable attorneys' fees) suffered or incurred by any of them in connection with any demand, claim or legal proceeding arising from a breach by Licensee of its obligations with respect to the Ageia Software.

5. **NO WARRANTY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE EPIC LICENSE AGREEMENT, LICENSEE UNDERSTANDS AND AGREES THAT THE AGEIA SOFTWARE IS NOT WARRANTED TO LICENSEE TO BE FREE FROM DEFECTS AND IS PROVIDED TO LICENSEE "AS IS." AGEIA EXPRESSLY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE AGEIA SOFTWARE, WHETHER SUCH WARRANTIES ARE EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

6. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE EPIC LICENSE AGREEMENT, AGEIA WILL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY (A) INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, (B) LOST PROFITS, LOST BUSINESS OR LOST OR CORRUPTED DATA, OR (C) COST OF PROCUREMENT OF SUBSTITUTE SOFTWARE, TECHNOLOGY, GOODS OR SERVICES, EVEN IF THE REMEDIES PROVIDED FOR IN THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE AND EVEN IF AGEIA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL AGEIA'S LIABILITY TO LICENSEE ARISING UNDER THIS AGREEMENT EXCEED \$50 IN THE AGGREGATE.

7. **CONFIDENTIALITY.** The confidentiality obligations of Licensee set forth in Section 7 of the Epic License Agreement will apply to this Agreement and the Ageia Software to the same extent such obligations are applicable to the Confidential Information, and will be fully enforceable by Ageia.

8. **GOVERNING LAW.** This Agreement and the rights of Ageia with respect to the Ageia Software set forth in this Agreement or in the Epic License Agreement will be governed by and construed under the laws of the State of California and the United States without regard to the conflicts of law provisions thereof and without regard to the United Nations Convention on Contracts for the International Sale of Goods. The parties hereby submit to the exclusive jurisdiction of the state and federal courts sitting in Santa Clara County, California.

IN WITNESS WHEREOF, Licensee has duly executed the Epic License Agreement effective as of the Effective Date of this Agreement, and agrees to all the terms of this Agreement.

EXHIBIT D

**ACKNOWLEDGEMENT OF LICENSE TERMS
(for Third Party Developers)**

Unreal Engine Licensee ("Licensee")	38 Studios, LLC
Third Party Developer ("Developer")	[insert legal name of Third Party Developer]
Game (tentative title acceptable):	TBD

1. **Overview.** 38 Studios, LLC ("Licensee") is party to an agreement with Epic Games, Inc. ("Epic") under which Epic grants Licensee the right to use its proprietary computer software program known as the Unreal Engine 3 in the connection with the development of video and computer games (the "License Agreement"). Pursuant to the License Agreement, Licensee is granted the right to use third party developers to assist in its development of games, provided that such third party developers execute this Acknowledgement of License Terms prior to receiving access to the Unreal Engine 3.

2. **Acknowledgements and Agreements of Developer.** Developer acknowledges and agrees that:

a. it will be given access to the proprietary computer software program of Epic known as the Unreal® Engine 3 and improvements, enhancements, updates, fixes and other changes thereto that Epic, from time to time, provides to Licensee (the "Unreal Engine Technology");

b. it will use the Unreal Engine Technology solely for the purpose of developing the Game listed above on behalf of Licensee;

c. it has and will have no rights or claims of any type of the Unreal Engine Technology and waives any claim to title and ownership rights (including trade secret and copyright ownership) in the Unreal Engine Technology;

d. Epic claims and reserves all rights and benefits afforded under federal copyright law in the Unreal Engine Technology and program documentation, as unpublished works, and any copying, modification, or distribution of such copyrighted works is strictly forbidden;

e. except as otherwise authorized in this Acknowledgment of License Terms, it shall not: (i) copy, modify (except to the extent that Licensee is permitted to create Enhancements in accordance with the License Agreement), display or distribute to any person other than Licensee all or any part of the Unreal Engine Technology; (ii) disassemble, de-compile or reverse engineer the Unreal Engine Technology, or any part thereof; (iii) use or distribute the Unreal Engine Technology in any manner on or in any stand-alone, on-line service or to provide service bureaus, time sharing or other computer services to third parties; or (iv) license, sub-license, distribute, make available or disclose the Unreal Engine Technology to any third party;

f. as regards the conduct of that portion of its business that relates to the Game that it will: (i) to conduct such business without causing adverse publicity for Epic or the Licensed Technology; (ii) avoid deceptive, misleading or unethical practices that are or might be detrimental to Epic, the Unreal Engine Technology, or the public, including but not limited to the disparagement of Epic or the Unreal Engine Technology; (iii) not make false or misleading representations with regard to Epic or the Unreal Engine Technology; (iv) not publish or employ or cooperate in the publication or employment of any misleading or deceptive advertising material about Epic or the Unreal Engine Technology; and (v) not make representations, warranties or guarantees to customers, or to the trade, with respect to the specifications, features or capabilities of the Unreal Engine Technology which are inconsistent with literature distributed by Epic;

g. (i) Epic is the owner of all right, title and interest in the Unreal Engine Technology and any and all Intellectual Property Rights (as defined in Section 3 below) in and to the Unreal Engine Technology, including all translations, modifications, corrections, additions, extensions, upgrades, improvements, adaptations or abridgments to the Unreal Engine Technology created by or for Epic (specifically excluding the Intellectual Property Rights of any third party software contained in the Unreal Engine Technology ("Third Party Software"), which shall remain the property of the its owner(s)); and (ii) it will execute any necessary documents to effectuate the terms of this Section 2(g);

h. it will not obtain any ownership rights in the Unreal Engine Technology;

i. the Unreal Engine Technology and all other items connected therewith and provided to Developer and all copies thereof constitute or contain valuable trade secrets or proprietary and Confidential Information (as defined below) of Epic or its licensors and licensees; that title thereto is and shall remain with Epic or its licensors and licensees; and that all applicable copyright, trademark, patent and other Intellectual Property Rights in the Unreal Engine Technology and all items licensed hereunder are and shall remain the property of the Epic or its licensors or licensees, as such rights may exist;

j. (i) Epic is the sole and exclusive owner of the trademarks and service marks associated with Epic and the Unreal Engine Technology ("Epic Trademarks"); (ii) it will not remove or destroy any copyright notices, trademarks or other proprietary or confidential legends or markings placed upon or contained within the Unreal Engine Technology or on any other documentation or materials related to the Unreal Engine Technology; (iii) will not have or obtain any interest in the Epic Trademarks; (iv) will not at any time assert or claim any interest in or do anything which may adversely affect the validity or enforceability of any Epic Trademarks or trade name(s) belonging to Epic; (v) will not register, seek to register, or cause to be registered any of Epic's Trademarks or trade designations to any Unreal Engine Technology; (vi) will not register, seek to register, obtain any ownership in, or otherwise utilize any website, domain name, URL, Internet presence or other electronic communications portal which contains, incorporates, or consists of any of Epic Trademarks or trade designations; and (vii) it shall not use, advertise or display any name or mark which is, or any part of which is, similar to or confusing with any designation associated with any of the Unreal Engine Technology or Epic's Trademarks;

k. (i) the Unreal Engine Technology, related expertise, documentation, marketing or business information, or other material or information about Epic received by Developer in connection with its development of the Game ("Confidential Information"), whether for Developer's own internal use or otherwise, and whether provided, orally, in writing or in any other medium, is and shall be treated as the confidential property of Epic or the owner(s) of the Third Party Software as applicable; (ii) Developer shall hold such Confidential Information in strictest confidence; and (iii) the Confidential Information shall not be duplicated or in any way disclosed to others in whole or in part. It is expressly understood and agreed by Developer that the obligations of this Section 2(k) shall survive the expiration, termination or rescission of this Agreement, or any part hereof, provided, however, that this Section 2(k) shall not apply to information it receives in connection with its development of the Game which: (i) is or becomes publicly available; or (ii) is declared not confidential by Epic in writing; and

l. upon the completion of the Game, in the event that Licensee ceases using it to develop the Game, or in the event that the License Agreement expires or terminates: (i) it shall immediately return to Epic all copies of the Unreal Engine Technology, or portions thereof in its possession; (ii) it shall immediately purge, or cause to be purged, all copies of the Unreal Engine Technology or any portion thereof (whether modified or not) in its possession, including from any computer storage device or medium on which Developer has placed the Unreal Engine Technology; and (iii) it shall give Epic a written certification that it has complied with all of its obligations under this Section 2(l).

3. **Definitions.** The term "Intellectual Property Rights" shall mean any and all tangible and intangible and now known or hereafter existing: (i) rights associated with works of authorship throughout the world, including but not limited to copyrights, moral rights, and mask-works; (ii) trademark and trade name rights and similar rights; (iii) trade secret rights; (iv) patents, designs, algorithms and other industrial property rights; (v) all other intellectual and proprietary rights (of every kind and nature throughout the world and however designated) (including without limitation logos, character rights, "rental" rights and moral rights), whether arising by operation of law, contract, license or otherwise; and (vi) all registrations, applications, renewals, extensions, continuations, divisions or reissues thereof (including without limitation rights in any of the foregoing).

4. **Indemnification.** Developer agrees to indemnify and hold harmless Epic and the owner(s) of the Third Party Software from and against any expenses (including court costs and reasonable fees of attorneys, accountants and expert witnesses), claim, costs, action, demand, proceeding, award, liability, loss and damages suffered by Epic or the owner(s) of the Third Party Software in connection with any failure by Developer, its officers, directors, employees, subcontractors, agents, or sub-licensees to: (i) satisfy any of their obligations under this Acknowledgement of License Terms; and (ii) to undertake whatever action is necessary to remedy any such failure.

5. **Rights of Epic.** Without prejudice to anything to the contrary contained herein, Developer agrees that all terms and provisions of this Acknowledgement of License Terms shall be enforceable by Epic Games, Inc. as a third party beneficiary directly against Developer.

6. **Use of Third Party Development Resources.**

(i) Subject to the terms and conditions of this Acknowledgement of License Terms (including this Section 6), Developer shall have the right to be assisted by third party development resources in connection with the development of the Game (each a "Third Party Development Resource"). Epic must approve in writing each Third Party Development Resource engaged by a Third Party Developer that will receive access to the Unreal Engine Technology and/or any Epic Confidential Information, prior to the Third Party Developer's use of such Third Party Development Resource. Third Party Developers are required to execute and to have each of their Third Party Development Resources that are to receive access to the Unreal Engine Technology and/or any Epic Confidential Information related to the Unreal Engine Technology execute an "Acknowledgement of License Terms (for Third Party Development Resources)" in the form attached hereto as Attachment 1, prior to a Third Party Development Resource's receipt of such Unreal Engine Technology and/or Epic Confidential Information. Developer and Licensee shall be responsible for gathering and keeping executed originals of each Acknowledgement of License

Terms (for Third Party Development Resources), and shall immediately deliver such executed originals as instructed by Epic. Subject to the foregoing, Developer and/or Licensee shall be solely responsible for providing the Unreal Engine Technology and/or Epic Confidential Information to Third Party Development Resources, and the Third Party Development Resources shall not be entitled to receive any Unreal Engine Technology or Epic Confidential Information directly from Epic or any Epic computer networks.

(ii) Upon receipt of notice from Epic, Developer shall cease using a Third Party Development Resource to develop any Games for Developer utilizing the Licensed Technology if: (A) the Third Party Development Resource has committed or permitted a breach of any of the provisions of a Third Party Development Resource Acknowledgement of License Terms that it has executed and fails to remedy such breach, to Epic's satisfaction, within thirty (30) days of notice of such breach; or (B) the Third Party Development Resource has committed or permitted a breach of any provision of any agreement that gives such Third Party Developer the right to use the Unreal Engine for software development purposes. In the event that, in accordance with this Section 6(ii), Developer is required by Epic to cease using a Third Party Development Resource, Licensee shall be entitled to use a different Third Party Development Resource to complete the removed Third Party Development Resource's project(s), provided, however, that Developer shall not use a development team that consists of substantially the same members that made up the removed Third Party Development Resource. Developer agrees that it will immediately notify Epic of any actual, or likely breach or violation: (A) by a Third Party Development Resource or a Third Party Development Resource Acknowledgment of License Terms; or (B) of any agreement that gives a Third Party Development Resource the right to use the Unreal Engine for software development purposes of which Licensee becomes aware.

AGREED TO AND ACCEPTED BY:

[Insert legal name of Developer]

38 Studios, LLC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Epic Games, Inc.

By: _____

Name: _____

Title: _____

Date: _____

Platforms: PC / Xbox 360 / PS3

DEVELOPER WARRANTS AND REPRESENTS THAT IT HAS EXECUTED ALL APPROPRIATE AND NECESSARY LICENSES WITH THE VARIOUS CONSOLE HARDWARE MANUFACTURERS OR OTHER ENTITIES AND IS A PROPERLY LICENSED DEVELOPER FOR THE PLATFORMS SELECTED ABOVE.

<p>Developer Business Contact:</p> <p>Name: _____</p> <p>Title: _____</p> <p>Phone: _____</p> <p>E-mail: _____</p>	<p>Developer Technical Contact:</p> <p>Name: _____</p> <p>Title: _____</p> <p>Phone: _____</p> <p>E-mail: _____</p>
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ATTACHMENT 1

ACKNOWLEDGEMENT OF LICENSE TERMS (for Third Party Development Resources)

Unreal Engine Licensee ("Licensee")	[38 Studios, LLC
Third Party Developer ("Developer")	[insert legal name of Third Party Developer]
Third Party Development Resource ("Resource")	[insert legal name of Third Party Development Resource]
Game (tentative title acceptable):	TBD

1. **Overview.** 38 Studios, LLC ("Licensee") is party to an agreement with Epic Games, Inc. ("Epic") under which Epic grants Licensee the right to use its proprietary computer software program known as the Unreal Engine 3 in the connection with the development of video and computer games (the "License Agreement"). Pursuant to the License Agreement, Licensee is granted the right to use third party developers to assist in the development of Licensee's games, and such third party developers are granted the right to use third party development resources to assist in the development of Licensee's games, provided that such third party developers and third party development resources execute this Acknowledgement of License Terms prior to the third party development resource receiving access to the Unreal Engine 3.

2. **Acknowledgements and Agreements of Resource.** Resource acknowledges and agrees that:

a. it will be given access to the proprietary computer software program of Epic known as the Unreal® Engine 3 and improvements, enhancements, updates, fixes and other changes thereto that Epic, from time to time, provides to Licensee (the "Unreal Engine Technology");

b. it will use the Unreal Engine Technology solely for the purpose of developing the Game listed above on behalf of Licensee;

c. it has and will have no rights or claims of any type of the Unreal Engine Technology and waives any claim to title and ownership rights (including trade secret and copyright ownership) in the Unreal Engine Technology;

d. Epic claims and reserves all rights and benefits afforded under federal copyright law in the Unreal Engine Technology and program documentation, as unpublished works, and any copying, modification, or distribution of such copyrighted works is strictly forbidden;

e. except as otherwise authorized in this Acknowledgment of License Terms, it shall not: (i) copy, modify (except to the extent that Licensee is permitted to create Enhancements in accordance with the License Agreement), display or distribute to any person other than Licensee all or any part of the Unreal Engine Technology; (ii) disassemble, de-compile or reverse engineer the Unreal Engine Technology, or any part thereof; (iii) use or distribute the Unreal Engine Technology in any manner on or in any stand-alone, on-line service or to provide service bureaus, time sharing or other computer services to third parties; or (iv) license, sub-license, distribute, make available or disclose the Unreal Engine Technology to any third party;

f. as regards the conduct of that portion of its business that relates to the Game that it will: (i) to conduct such business without causing adverse publicity for Epic or the Licensed Technology;; (ii) avoid deceptive, misleading or unethical practices that are or might be detrimental to Epic, the Unreal Engine Technology, or the public, including but not limited to the disparagement of Epic or the Unreal Engine Technology; (iii) not make false or misleading representations with regard to Epic or the Unreal Engine Technology; (iv) not publish or employ or cooperate in the publication or employment of any misleading or deceptive advertising material about Epic or the Unreal Engine Technology; and (v) not make representations, warranties or guarantees to customers, or to the trade, with respect to the specifications, features or capabilities of the Unreal Engine Technology which are inconsistent with literature distributed by Epic;

g. (i) Epic is the owner of all right, title and interest in the Unreal Engine Technology and any and all Intellectual Property Rights (as defined in Section 3 below) in and to the Unreal Engine Technology, including all translations, modifications, corrections, additions, extensions, upgrades, improvements, adaptations or abridgments to the Unreal Engine Technology created by or for Epic (specifically excluding the Intellectual Property Rights of any third party software contained in the Unreal Engine Technology ("Third Party Software"), which shall remain the property of the its owner(s)); and (ii) it will execute any necessary documents to effectuate the terms of this Section 2(g);

h. it will not obtain any ownership rights in the Unreal Engine Technology;

i. the Unreal Engine Technology and all other items connected therewith and provided to Resource and all copies thereof constitute or contain valuable trade secrets or proprietary and Confidential Information (as defined below) of Epic or its licensors and licensees; that title thereto is and shall remain with Epic or its licensors and

licensees; and that all applicable copyright, trademark, patent and other Intellectual Property Rights in the Unreal Engine Technology and all items licensed hereunder are and shall remain the property of the Epic or its licensors or licensees, as such rights may exist;

j. (i) Epic is the sole and exclusive owner of the trademarks and service marks associated with Epic and the Unreal Engine Technology ("Epic Trademarks"); (ii) it will not remove or destroy any copyright notices, trademarks or other proprietary or confidential legends or markings placed upon or contained within the Unreal Engine Technology or on any other documentation or materials related to the Unreal Engine Technology; (iii) will not have or obtain any interest in the Epic Trademarks; (iv) will not at any time assert or claim any interest in or do anything which may adversely affect the validity or enforceability of any Epic Trademarks or trade name(s) belonging to Epic; (v) will not register, seek to register, or cause to be registered any of Epic's Trademarks or trade designations to any Unreal Engine Technology; (vi) will not register, seek to register, obtain any ownership in, or otherwise utilize any website, domain name, URL, Internet presence or other electronic communications portal which contains, incorporates, or consists of any of Epic Trademarks or trade designations; and (vii) it shall not use, advertise or display any name or mark which is, or any part of which is, similar to or confusing with any designation associated with any of the Unreal Engine Technology or Epic's Trademarks;

k. (i) the Unreal Engine Technology, related expertise, documentation, marketing or business information, or other material or information about Epic received by Resource in connection with its development of the Game ("Confidential Information"), whether for Resource's own internal use or otherwise, and whether provided, orally, in writing or in any other medium, is and shall be treated as the confidential property of Epic or the owner(s) of the Third Party Software as applicable; (ii) Resource shall hold such Confidential Information in strictest confidence; and (iii) the Confidential Information shall not be duplicated or in any way disclosed to others in whole or in part. It is expressly understood and agreed by Resource that the obligations of this Section 2(k) shall survive the expiration, termination or rescission of this Agreement, or any part hereof, provided, however, that this Section 2(k) shall not apply to information it receives in connection with its development of the Game which: (i) is or becomes publicly available; or (ii) is declared not confidential by Epic in writing;

l. upon the completion of the Game, in the event that Licensee ceases using it to develop the Game, or in the event that the License Agreement expires or terminates: (i) it shall immediately return to Epic all copies of the Unreal Engine Technology, or portions thereof in its possession; (ii) it shall immediately purge, or cause to be purged, all copies of the Unreal Engine Technology or any portion thereof (whether modified or not) in its possession, including from any computer storage device or medium on which Resource has placed the Unreal Engine Technology; and (iii) it shall give Epic a written certification that it has complied with all of its obligations under this Section 2(l); and

m. it shall not use any individuals other than its employees in the development of the Game and shall not in any way disclose or make available the Unreal Engine Technology or Confidential Information to any individuals or parties other than its employees.

3. **Definitions.** The term "Intellectual Property Rights" shall mean any and all tangible and intangible and now known or hereafter existing: (i) rights associated with works of authorship throughout the world, including but not limited to copyrights, moral rights, and mask-works; (ii) trademark and trade name rights and similar rights; (iii) trade secret rights; (iv) patents, designs, algorithms and other industrial property rights; (v) all other intellectual and proprietary rights (of every kind and nature throughout the world and however designated) (including without limitation logos, character rights, "rental" rights and moral rights), whether arising by operation of law, contract, license or otherwise; and (vi) all registrations, applications, renewals, extensions, continuations, divisions or reissues thereof (including without limitation rights in any of the foregoing).

4. **Indemnification.** Developer and Resource agree to jointly and severally indemnify and hold harmless Epic and the owner(s) of the Third Party Software from and against any expenses (including court costs and reasonable fees of attorneys, accountants and expert witnesses), claim, costs, action, demand, proceeding, award, liability, loss and damages suffered by Epic or the owner(s) of the Third Party Software in connection with any failure by Resource, its officers, directors, or employees to: (i) satisfy any of their obligations under this Acknowledgement of License Terms; and (ii) to undertake whatever action is necessary to remedy any such failure.

5. **Rights of Epic.** Without prejudice to anything to the contrary contained herein, Resource agrees that all terms and provisions of this Acknowledgement of License Terms shall be enforceable by Epic Games, Inc. as a third party beneficiary directly against Resource.

AGREED TO AND ACCEPTED BY:

[Insert legal name of Resource]

[Insert legal name of Developer]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Epic Games, Inc.

By: _____

Name: _____

Title: _____

Date: _____

Platforms: PC / Xbox 360 / PS3

RESOURCE WARRANTS AND REPRESENTS THAT IT HAS EXECUTED ALL APPROPRIATE AND NECESSARY LICENSES WITH THE VARIOUS CONSOLE HARDWARE MANUFACTURERS OR OTHER ENTITIES AND IS A PROPERLY LICENSED DEVELOPER FOR THE PLATFORMS SELECTED ABOVE.

Resource Business Contact:	Resource Technical Contact:
Name: _____	Name: _____
Title: _____	Title: _____
Phone: _____	Phone: _____
E-mail: _____	E-mail: _____

EXHIBIT E

List of Unauthorized Third Party Developers and Resources

- Id Software, Inc. or its Affiliates
- Valve Corporation or its Affiliates
- Electronic Arts, Inc. or its Affiliates
- Criterion Software or its Affiliates
- 2015, Inc. or its Affiliates
- Mr. Tom Kudirka (or any company who employs him as a video or computer game developer or as a developer of middleware used for the development of video or computer games)
- Crytek GmbH or its Affiliates
- Havok.com Inc. or its Affiliates
- Silicon Knights, Inc. or its Affiliates
- Any computer company engaged in the sale of middleware used for the development of computer or video games

EXHIBIT F

Epic Trademarks

UNREAL® ENGINE 3

SUPPORT AGREEMENT

This Agreement (the "Support Agreement") is entered into on March 6, 2008 (the "Effective Date") by and between Epic Games, Inc., a Maryland corporation with offices at 620 Crossroads Blvd., Cary, NC 27518 ("Epic"), and 38 Studios, LLC, a Massachusetts limited liability company with offices at 5 Clock Tower Place, Suite 140, Maynard, MA 01754 ("Licensee").

RECITALS

- A. Epic has developed a proprietary computer program known as the Unreal Engine 3 (the "Unreal Engine") and grants to certain individuals and organizations nonexclusive licenses to use the Unreal Engine in object and source code form for the development of specific Games.
- B. On February 21, 2008, Licensee entered into a nonexclusive license agreement with Epic pursuant to which Licensee acquired the right to develop, market and sublicense a certain Game using the Unreal Engine and Third Party Software (the "License Agreement").
- C. Licensee desires to enter into this Support Agreement whereby Epic will provide support for the Unreal Engine in conjunction with the License Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration and in consideration of the mutual covenants and conditions herein contained, Epic and Licensee agree as follows:

1. **DEFINITIONS.** All capitalized terms shall have the same meaning as provided in the License Agreement unless otherwise defined herein.
2. **TECHNICAL SUPPORT.** Except with respect to Third Party Software which is specifically excluded from this Support Agreement, Epic shall use commercially reasonable efforts to: (i) provide Licensee with all Upgrades to the Licensed Technology; and (ii) technical support with respect to the Licensed Technology via e-mail (private email and/or email mailing lists designated for support purposes). Epic agrees to provide a single, one day initial training visit for Licensee's creative staff (artists, level designers, etc.) on site at Licensee's offices at Epic's expense. Licensee may, at its option, send a reasonable number of programmers/software engineers to Epic's office at Licensee's expense for single, one day initial programmer training.
3. **TERM.** The term of this Support Agreement shall commence upon the Effective Date first set forth above and continue for an initial period of two (2) years, unless sooner terminated by the parties.
4. **NON-REFUNDABLE LICENSE SUPPORT FEE.** Licensee shall pay Epic the non-refundable license support fee of \$5,000 per year (the "Support Fee"), in a lump sum of \$10,000 no later than five (5) days following the execution of this Support Agreement. The Support Fee shall be recognized as Five Thousand Dollars (\$5,000.00) per year over the two-year period of the Support Agreement.