

5. **EXTENSION OF SUPPORT.** Additional support under the terms of this Support Agreement may be purchased for additional one (1) year terms at a cost of Five Thousand Dollars (\$5,000.00) per year.

6. **PAYMENT TERMS.** All amounts due or payable to either party under this Support 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 Support 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: PNBUS33 (for international wire transfers)  
Beneficiary Name: Epic Games, Inc.  
Credit Account #20-6266128251-7

7. **TERMINATION.** This Support Agreement shall automatically terminate in the event of the termination of the License Agreement. In addition, either party may terminate this Support Agreement if the other party breaches this Support Agreement and fails to remedy the breach within thirty (30) days after written notice thereof. In the event this Support 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 Support 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 for any reason whatsoever. 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 SUPPORT AGREEMENT FOR ANY REASON WHATSOEVER EVEN IF EPIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. **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.

9. **GENERAL PROVISIONS.**

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

b. **Assignment.** This Support Agreement may not be assigned or by either party in whole or in part (by contract, operation of law or otherwise), 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 the assigning party, the sale by Licensee of the Game and all or substantially all Intellectual Property Rights therein, or the sale by Epic of the Intellectual Property Rights licensed under the terms of this Support Agreement. Subject to the foregoing, this Support 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.

c. Force Majeure. A party shall not be liable for non-performance or delay in performance (other than of obligations regarding payment of money or confidentiality) 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.

d. 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.

e. Beneficiaries. No provision of this Support 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.

f. Governing Law. The validity, construction and performance of this Support Agreement, and the legal relations among the parties to this Support 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 Support Agreement, and the legal relations among the parties to this Support 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 Support 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 Support Agreement.

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

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

i. Entire Agreement. This Support 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.

j. Waiver. The waiver, amendment or modification of any provision of this Support 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.

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

l. Counterparts. This Support 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 Support 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 Support Agreement. Signatures by facsimile or scanned PDF documents shall be deemed original signatures.

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

**38 STUDIOS, LLC ("LICENSEE")**

By: [Signature]  
Name: Brett Close  
Title: President / CEO  
Date: March 11, 2008

**EPIC GAMES, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## MORPHEME LICENCE

**Date:** 11<sup>th</sup> June 2008

**Licensee name:** 38 Studios LLC

**Licensee address:** 5 Clock Tower Place, Suite 140, Maynard, MA 01754

This licence agreement ("Agreement") is dated on the date set out above (the "Effective Date") between:

- (1) NaturalMotion Software Limited, a company incorporated in the United Kingdom whose principal place of business is at Beaver House, 23-38 Hythe Bridge Street, Oxford OX1 2ET, the United Kingdom ("NaturalMotion"); and
- (2) the company whose name appears above, whose principal place of business is at the address above (the "Licensee").

### BACKGROUND

The Licensee wishes to use certain software owned or licensed by NaturalMotion in connection with the development and commercial exploitation of one or more specified video games.

### IT IS AGREED THAT

#### 1. *Definitions and Interpretation*

- 1.1 In this Agreement, unless the context otherwise requires, the following words shall have the following meanings:

**"Add-On Pack"** means any additional content provided for a particular SKU of a Designated Game and which requires the buyer to have purchased and installed a copy of that SKU of that Designated Game in order to access or use such additional content;

**"Designated Game(s)"** means the SKUs of the game(s) listed in Part 1 of Schedule 1, together with such additional SKUs of such additional game(s) as are agreed by the parties from time to time in writing. Designated Game(s) include Add-On Packs and Gold Editions of those games. However, Designated Game(s) do not include sequels, prequels, ports or derivative versions of those games, or SKUs not expressly agreed in writing by both parties;

**"Documentation"** means any documentation relating to the Software and provided by NaturalMotion;

**"Demonstration Materials"** means any materials provided with the Software (including sample animations)

**"End User"** means the user of the Designated Game(s);

**"Fees"** means the Licence Fee and the Maintenance Fee;

**"Gold Edition"** means an enhanced version of a particular SKU of a Designated Game for the same platform; but the term "Gold Edition" excludes (i) any version of a Designated Game for any different platform; and (ii) any version of a Designated Game which may be treated by consumers as being, or is marketed as being, distinct from that Designated Game (including sequels, prequels and ports);

**"Intellectual Property Rights"** means copyright, registered and unregistered designs, database rights, registered and unregistered trade marks and trading names;

**"Licence Fee"** means the sum so described in Schedule 2;

**"Maintenance Fee"** means the sum so described in Schedule 2;

**"Maintenance Services"** means the services described in Schedule 3;

**"MMO"** means a game set wholly or partly within a persistent online world and which can accommodate more than one hundred simultaneous players;

**"Morpheme Connect"** means the software product(s) known to NaturalMotion under the product name "Morpheme Connect" in the format provided by NaturalMotion to the Licensee;

**"Morpheme Runtime"** means the software product(s) known to NaturalMotion under the product name "Morpheme Runtime" in the format

provided by NaturalMotion to the Licensee;

**"Permitted Number"** means the number of Morpheme Connect licences specified in Part 2 of Schedule 1;

**"SKU"** means a version of a game to function on a particular platform. For example, the PlayStation3 and Xbox 360 versions of the same game are different SKUs; and

**"Software"** means Morpheme Connect and Morpheme Runtime.

1.2 In this Agreement, unless the context otherwise requires:

(a) words in the singular include the plural and vice versa and words in one gender include any other gender;

(b) a reference to:

(i) a "person" includes any individual, firm, body corporate, association or partnership (whether or not having a separate legal personality); and

(ii) "clauses" and "schedules" is to clauses and schedules of this Agreement; and

(iii) "includes" and "including" is to be construed without limitation.

1.3 The headings are for convenience only and shall not affect the interpretation of this Agreement.

**2 Licences**

2.1 *Morpheme Connect.* NaturalMotion hereby grants to the Licensee a non exclusive, non transferable licence to use the Permitted Number of copies of Morpheme Connect in order to develop the Designated Game(s).

2.2 *Morpheme Runtime.* NaturalMotion hereby grants to the Licensee a non exclusive, non transferable licence to:

- (a) modify Morpheme Runtime for the sole purpose of incorporating it into the Designated Game(s); and
- (b) incorporate Morpheme Runtime into the Designated Game(s); and
- (c) manufacture, distribute, sell, rent, import, export, license, market, advertise, publicly display and otherwise commercially exploit the Designated Games incorporating Morpheme Runtime in object code only and solely in the ordinary course of the Licensee's business.

2.3 *Restrictions.* The Licensee shall not:

- (a) adapt, modify, create derivative works of, distribute, sell, rent, license, sub-license or commercially exploit: (i) Morpheme Connect in any manner, or (ii) Morpheme Runtime other than as expressly provided herein;
- (b) copy Morpheme Connect or the Documentation or permit any copy of Morpheme Connect to be used by more than one person at any one time;
- (c) integrate Morpheme Connect into any software, or integrate Morpheme Runtime into any software other than the Designated Game(s);
- (d) use Morpheme Connect or the Documentation in connection with the development of any software product other than Designated Game(s);
- (e) use the Software otherwise than in accordance with the Documentation;
- (f) use the Software or the Documentation for any purpose other than the purposes expressly provided herein;
- (g) alter obscure or remove any copyright or proprietary notice on or in the Software or any Documentation or any media on or in which the Software or Documentation is stored;
- (h) store the Software on any computer or server which may be accessed by any person outside the Licensee's own premises, although remote access of the Licensee's employees is allowed, provided that this uses software security no less strict than the rest of the company and at a minimum uses a firewall and VPN;
- (i) use or distribute the Demonstration Materials for any purpose other than understanding how to use the Software; or
- (j) decompile, disassemble or otherwise reverse engineer the Software, other than to the extent required to be permitted according to applicable law, and then solely after the Licensee has provided reasonable notice to NaturalMotion of its intention to decompile, disassemble or otherwise reverse engineer the Software and its reasons for so doing.

2.4 The Licensee may sub-license the rights granted to it in clause 2.2(c) but shall not sub-license any other right granted to it in this Agreement.

**3. Ownership of Intellectual Property Rights**

3.1 All Intellectual Property Rights in or relating to the Software and any name or title given by NaturalMotion to the Software shall belong solely to NaturalMotion. All Intellectual Property Rights in or relating to the Designated Game(s) (except any Software incorporated therein) and any name or title given by the Licensee to the Designated Games shall belong solely to the Licensee. The Licensee shall also own all Intellectual Property Rights in any extensions made to Morpheme Runtime pursuant to clause 2.2(a). NaturalMotion shall own all Intellectual Property Rights for any extensions to the Software made by NaturalMotion staff in supporting the Licensee.

3.2 Each party shall at the request and reasonable expense of the other take such steps and execute such documents as the other may reasonably require in order to give effect to or confirm any provision of this clause 3.

#### 4 *Maintenance and Support; Credits*

4.1 Provided that the Licensee has paid the Maintenance Fee on or before the due date for payment, NaturalMotion shall provide the Maintenance Services in accordance with Schedule 3.

4.2 The Licensee shall comply with its obligations in Schedule 3.

4.3 It is the Licensee's responsibility to evaluate the Software and Documentation and to determine whether the Software is suitable for the Licensee's purposes. The Licensee recognises that the development of video games is experimental in nature and that NaturalMotion does not warrant, represent or promise that the Software or the Documentation is suitable for the purposes intended by the Licensee, irrespective of whether the Licensee has informed NaturalMotion of those purposes or not.

4.4 NaturalMotion shall be entitled to publicise the use of the Software in connection with the development of the Designated Game(s) and to use: (i) the name and title of the Licensee and the Designated Game(s) and their respective trade marks; and (ii) published demos of the Designated Game(s), for such purpose. NaturalMotion shall comply with any reasonable trade mark usage guidelines notified to NaturalMotion by the Licensee prior to the Effective Date. Natural Motion will obtain written permission of each such use from licensee which shall not be unduly delayed or unduly withheld.

4.5 The Licensee shall include the following credit within the credit section of each Designated Game:

This game uses NaturalMotion animation technology

#### 5. *Payment*

5.1 The Licensee shall pay the Licence Fee and the Maintenance Fee to NaturalMotion on the date(s) for payment set out in Schedule 2.

5.2 All sums due under this Agreement are exclusive of any applicable Value Added Tax or other sales tax. The Licensee shall pay any applicable Value Added Tax or other sales tax with the relevant sum at the rate and in the manner from time to time prescribed by law, subject to receiving an appropriate Value Added Tax invoice from NaturalMotion.

5.3 If the Licensee defaults in the payment when due of any sum payable under this Agreement (whether payable by agreement or by an order of a court or otherwise), the liability of the Licensee shall be increased to include interest on that sum from the date when such payment was due until the date of actual payment at a rate per annum of 2% above the sterling overnight LIBOR rate during such period. Such interest shall accrue from day to day and shall be compounded annually. This Clause shall not prejudice any other right or remedy to which NaturalMotion may be entitled under this Agreement or at law.

#### 6. *Termination*

6.1 This Agreement shall commence on the Effective Date. Subject to earlier termination of this Agreement under clause 6.2, this Agreement shall terminate automatically on the earliest date on which no Designated Game is being commercially exploited by any person including the End User.

6.2 Without prejudice to any other right or remedy which may be available to either party under this Agreement or at law, either party (the "Innocent Party") may at any time terminate this Agreement with immediate effect upon giving written notice to the other party (the "Party In Breach") if:

(a) the Party In Breach is in material breach of this Agreement and has failed to remedy such breach within thirty days of receipt of a written notice to that effect from the Innocent Party;

(b) the Licensee (being the Party in Breach) has failed to pay some or all of the Fees to NaturalMotion (being the Innocent Party) by the due date, and has failed to remedy such breach within seven days of receipt of a written notice to that effect from NaturalMotion;

(c) the Party In Breach passes a resolution for its winding up or a court of competent jurisdiction makes an order for the winding up or dissolution of the Party In Breach;

(d) an administration order is made in relation to the Party In Breach or a receiver or administrative receiver is appointed over the Party In Breach or any of its assets;

(e) the Party In Breach makes an arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for protection from its creditors; or

(f) an event substantially similar to an event in clauses 6.2(c) to 6.2(e) inclusive occurs in respect of the Party In Breach in any country having jurisdiction over the Party In Breach.

6.3 The termination of this Agreement howsoever arising shall not affect:

(a) any right or obligation of either party which is expressly or by implication intended to survive the termination of this Agreement, including those in clauses 1, 3, 5-10; or

(h) any right or obligation of either party which has accrued on or before the termination of this Agreement.

6.4 Upon the termination of this Agreement howsoever arising:

(a) all rights and licences in respect of the Software granted to the Licensee and to any sub-licensee of the Licensee shall terminate immediately; and

(b) each party shall promptly deliver to the other party all documents, work product, materials and other work which contain or embody either: (i) the Confidential Information of the other party; or (ii) any element protected by the Intellectual Property Rights of the other party.

7 **Confidentiality**

7.1 In this clause 7, the term "Confidential Information" means all information received or obtained by one party as a result of entering into or performing this Agreement, and which relates to the provisions of this Agreement, the other party, or the products or technology of the other party. Except as referred to in clause 7.3 below, each party shall treat the Confidential Information of the other party as strictly confidential and neither party shall use the Confidential Information of the other party for any purpose not expressly envisaged in this Agreement nor disclose the Confidential Information of the other party to any other person.

7.2 For the avoidance of doubt the Confidential Information of NaturalMotion includes the Software and all non-public information, documentation and know-how relating to the Software and to the use and practical implementation of the Software. The Licensee shall not disclose any such information to any person other than employees of the Licensee who need to know such information and who are already bound by obligations of confidentiality no less onerous than those in this clause.

7.3 Each party may use or disclose information which would otherwise be the Confidential Information of the other party if (and solely to the extent that):

- (a) the disclosing party is required to do so by law or any securities exchange or regulatory or governmental body to which it is subject (provided that the disclosing party has notified the other party of its intention to so use or disclose the Confidential Information of the other party as early as practicable);
- (b) the information has come into the public domain through no fault of the disclosing party; or
- (c) the information was previously disclosed to the disclosing party by a third party without any obligation of confidence.

8. **Representations and Warranties**

8.1 NaturalMotion represents and warrants to the Licensee that:

- (a) NaturalMotion is a corporation validly existing and in good standing under the laws of the United Kingdom;
- (b) the use by the Licensee of the Software in accordance with this Agreement shall not infringe the copyright of any person;
- (c) for ninety days after the date of delivery the Software shall perform substantially in accordance with the Documentation; and
- (d) NaturalMotion owns and or has the rights to license all the software cover in this agreement.

The foregoing warranty shall not apply to any work created by the Licensee or to any adaptations or modifications made to the Software by the Licensee.

8.2 The Licensee represents and warrants to NaturalMotion that:

- (a) the Licensee is a corporation validly existing and in good standing under the laws of the state in which it is incorporated; and
- (b) any work undertaken by NaturalMotion in connection with the Designated Game(s) or any other work provided by the Licensee shall not infringe the Intellectual Property Rights of any person.

8.3 Each party (the "Indemnifying Party") shall indemnify and hold the other party (the "Indemnified Party") harmless from and against all costs, damages, liabilities and losses (including reasonable attorneys' fees) caused by a breach by the Indemnifying Party of its warranties in clauses 8.1(a) or (b) (if NaturalMotion is the Indemnifying Party) or clauses 8.2(a) or (b) (if the Licensee is the Indemnifying Party). However, this indemnity is conditional upon the Indemnified Party: (a) promptly notifying the Indemnifying Party of all matters of which it becomes aware and which may result in a claim under this clause, including any potential claim by a third party against the Indemnified Party (a "Third Party Claim"); (b) co-operating with the Indemnifying Party in all reasonable respects in connection with the defence of any Third Party Claim at the reasonable expense of the Indemnifying Party; and (c) not making any admission of liability, agreement or compromise in relation to any Third Party Claim without the prior approval of the Indemnifying Party (such approval not to be unreasonably withheld or delayed).

9. **Liability and Remedies**

9.1 Save as provided in clause 9.3, NaturalMotion shall not be liable to the Licensee for the following loss or damage however caused and even if foreseeable by NaturalMotion: (i) loss of profits, business, contracts, revenues, goodwill, production, product recall costs and anticipated savings of every description; (ii) loss or damage arising from the Licensee's failure to fulfil its responsibilities or any matter under its control; or (iii) any consequential or indirect loss or damage however caused.

9.2 Save as provided in clause 9.3, the entire aggregate liability of NaturalMotion arising under or in connection with this Agreement shall be limited to a sum equal to the Fees actually paid plus the Fees actually due to NaturalMotion on the latest date on which NaturalMotion's liability accrued.

9.3 Nothing in this clause shall limit the liability of NaturalMotion for death or personal injury caused by its negligence or for any misrepresentation made fraudulently.

10. **Miscellaneous Provisions**

10.1 **Notices.** Any notice or other communication to be given by either party under this Agreement shall be in writing and shall be delivered by hand or sent by overnight courier (receipt required) to the other party at the address of the other party set out at the head of this Agreement, or such other address as the other party may notify the first in accordance with this clause.

10.2 **Entire Agreement.** This Agreement sets out the entire agreement and understanding between the parties relating to the subject-matter of this Agreement and supersedes all prior agreements, understandings or arrangements (whether oral or written) in respect of such subject-matter. Each party acknowledges that it has entered into this

Agreement in reliance only on the representations, warranties and promises expressly contained in this Agreement. Save as expressly set out in this Agreement, each party disclaims any further representations (save fraudulent misrepresentations), warranties, conditions or other terms, express or implied, including warranties or other terms of satisfactory quality and fitness for a particular purpose

10.10 **Governing law and jurisdiction.** This Agreement shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts. No term of this Agreement is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

This Agreement has been executed on the date at the top of page 1.

- 10.3 **Severability.** If any part of this Agreement is found to be unenforceable by any court or competent authority or would be found to be unenforceable if it were interpreted or construed in a particular way, then it is the parties' express intention that the relevant wording should be interpreted or construed so as to avoid such a finding and that, in the event of such a finding, the remainder of the provision in question shall be interpreted or construed to give it full effect
- 10.4 **Variation.** No amendment to or variation or modification of this Agreement shall have any effect unless made in a written document signed on behalf of both parties.
- 10.5 **Force Majeure.** Neither party shall be deemed to be in breach of this Agreement, or otherwise liable to the other, by reason of any delay in performance or non-performance of any of its obligations under this Agreement to the extent that such delay or non-performance is due to any event beyond the reasonable control of that party. This clause shall not apply to any obligation to pay any sum due under this Agreement.
- 10.6 **Assignment.** The Licensee shall not assign any of its rights or obligations under this Agreement to any person without the prior written consent of NaturalMotion. NaturalMotion may assign the benefit of this Agreement to any person.
- 10.7 **No joint venture or partnership.** Nothing in this Agreement shall create, or be deemed to create, a partnership or joint venture between the parties or the relationship of principal and agent between the parties.
- 10.8 **No waiver.** The failure of a party to enforce any right of that party under this Agreement or at law shall not constitute a waiver of that party's rights under this Agreement nor shall such failure prevent the exercise or enforcement of any such right at any time.
- 10.9 **Non Solicitation.** Neither party, nor any affiliate of either party, shall knowingly solicit (on an individually targeted basis) any employee of (or the services of any employee, officer or contractor of) the other party engaged in the negotiation or performance of this Agreement ("Restricted Employees"). Each party shall be responsible for the actions of any affiliate of that party as if they were the actions of that party. The terms of this clause 10.9 shall remain in force from the Effective Date until the second anniversary of the termination of this Agreement. However, the provisions of this clause shall not prevent the parties from engaging in ordinary recruitment activities which are not targeted at any particular person, or from engaging any Restricted Employee of the other party if such Restricted Employee approached that party of his or her own motion.

Signed By: <i>[Signature]</i>	Signed By: <i>[Signature]</i>
Print Name: CHRISTOPHER SIMPSON	Print Name: Brett Chase
Position: VP Sales	Position: President/CEO
For and on behalf of NaturalMotion.	For and on behalf of the Licensee. 30 Studios

**SCHEDULE 1**  
**PART 1**  
**DESIGNATED GAMES**

<u>SKU</u>	<u>Name</u>	<u>Platform</u>
1	38 Studios MMO	PC

**PART 2**  
**PERMITTED NUMBER of MORPHEME CONNECT LICENCES**

Unlimited

**SCHEDULE 2**

**FEEES**

**LICENCE FEE:**

For Morpheme Runtime and Morpheme Connect:

*For the first three years of development and usage:*

\$60,000 in respect of each SKU of the Designated Game, totalling \$60,000 (including Maintenance and unlimited morpheme connect licenses)

due on the Effective Date of this agreement and the anniversary of the Effective Date for subsequent years.

*For the subsequent years development and usage:*

\$30,000 in respect of each SKU of the Designated Game, totalling ~~\$60,000~~ <sup>\$30,000</sup> (including Maintenance and unlimited morpheme connect licenses)

due on each anniversary of the Effective Date for subsequent years following the first three years (i.e. commencing on or around June 2010).

### SCHEDULE 3

#### MAINTENANCE SERVICES

The Maintenance Services consist of the provision of technical support by NaturalMotion's engineers, up to an agreed maximum number of man days during an agreed period, in order to assist with the integration of Morpheme Runtime into the Designated Game(s), as further described below. NaturalMotion shall perform the Maintenance Services with reasonable care and skill but does not guarantee the results of the Maintenance Services.

1. Maintenance Services in respect of any Designated Game shall not exceed 10 man days in total per Designated Game, and shall be provided solely during the first year following the Effective Date (the "Maintenance Period"), unless the Licensee has purchased an extension of the Maintenance Services in accordance with paragraph 2 below. Maintenance Services shall be provided during NaturalMotion's ordinary office hours.
2. In the event that the Licensee requires Maintenance Services in respect of any Designated Game at any time after the expiry of the Maintenance Period for that Designated Game, the Licensee may purchase an extension of the Maintenance Services in respect of such Designated Game(s) for an additional period of one year ("Maintenance Extension Period"), such period of one year to commence on the last day of the Maintenance Period for that Designated Game (or on the last day of the most recent Maintenance Extension Period for that Designated Game, if any), irrespective of when the parties agreed to such extension. The fees payable in respect of any such extension of the Maintenance Services shall be agreed by the parties as a condition precedent to such extension coming into effect.
3. Maintenance Services comprise offsite support provided from NaturalMotion's offices. In addition, onsite support may be provided on request at the Licensee's premises, at NaturalMotion's day rates then in force (which are \$2,000 per day as at the Effective Date). Onsite support includes up to 8 hours time between 9am and 6pm. Overtime must be agreed in advance and is chargeable on an hourly basis. These charges shall be added to the Maintenance Fees already described in Schedule 2.
4. Any reasonable expenses (including travel and accommodation expenses) borne by NaturalMotion in connection with the provision of Maintenance Services outside NaturalMotion's offices shall be reimbursed by the Licensee within fifteen days of receipt of an invoice from NaturalMotion.
5. The Licensee shall provide NaturalMotion's designated engineer with reasonable access to the Licensee's suitably qualified staff and to its work in progress. The Licensee shall implement any Software updates provided by NaturalMotion in accordance with NaturalMotion's reasonable instructions.

## SCALEFORM GFX LICENSE AGREEMENT

This License Agreement, made as of this 13 day of June, 2008 by and between Scaleform Corporation, a United States corporation formed under the laws of the State of Delaware and located at 6305 Ivy Lane, Suite 310; Greenbelt, MD 20770 ("Scaleform") and 38 Studios, LLC, a corporation formed under the laws of the country of United States and having its corporate headquarters at 5 Clock Tower Place, Suite 140, Maynard MA, 01754 ("Licensee").

### SECTION 1: LICENSE

- 1.1 Grant. Subject to strict and continuous compliance with the restrictions in this Agreement and the prompt and continuous payment of all license fees and any other payments and obligations undertaken hereunder by Licensee, Scaleform grants to Licensee a nonexclusive, non-transferable, perpetual license only:
- a. To embed those certain Scaleform software components specified in Exhibit A attached hereto and incorporated by reference herein ("GFX") only in the Licensee product(s) expressly set forth in Exhibit A (that product or those products are referenced herein as "Licensee Application");
  - b. To use GFX as Licensee so elects to develop, support, maintain, extend and/or enhance Licensee Application;
  - c. To distribute Licensee Application only utilizing distribution platforms set forth in Exhibit A. Licensee is expressly precluded from porting its software, programs and/or applications which contain GFX to platforms other than as expressly set forth in Exhibit A.
- 1.2 Restrictions on Use.
- a. Licensee shall not:
    - i. Distribute, resell, or relicense GFX or any portion of GFX as a stand-alone product and shall not incorporate any portion of GFX into any product that will be sold or licensed as a development tool;
    - ii. distribute Licensee Applications in other than compiled executable form;
    - iii. use GFX in any manner which may disclose GFX source code or other Scaleform proprietary information to a third party, unless such third party is working for Licensee and is bound by the provisions of 1.2d;
    - iv. distribute GFX in any manner other than as an integral part of Licensee Application;
    - v. copy, reproduce or duplicate, in any manner or form, in whole or in part GFX and any supporting documentation pertaining thereto (except only as necessary to exercise its license rights herein). Licensee shall take diligent measures to prevent any third parties to whom it licenses or sells Licensee Applications from copying, reproducing or duplicating GFX and/or supporting documentation.
  - b. All copies of GFX made by Licensee, whether in source or object code form, must contain the original copyright notice that was included in GFX upon its delivery to Licensee by Scaleform;
  - c. Licensee shall supply Scaleform, at no cost to Scaleform, two retail copies of each SKU of any Licensee Application released as a commercial boxed product that contains GFX code;
  - d. Licensee agrees that, although it may use a third party developer who has agreed in writing to abide by the terms and conditions of Sections 1.1, 1.2, 7.1, 7.2, 8.3b and 10.1 of this Agreement to implement GFX into the Licensee Application, Licensee shall remain primarily liable for all obligations hereunder including the payment of any and all license fees. The third party developer shall possess and use GFX only as as needed to develop the Licensee Application and shall comply fully with the requirements expressed in Section 8.3b of this Agreement to destroy all copies of GFX in its possession upon the completion of its work on the Licensee Application;
  - e. Licensee and any third party developer agree that any rights granted to use GFX source code under Section 1.1b of this Agreement are restricted to personnel working in the following countries: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, South Korea, Luxembourg, Mexico, the Netherland, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, United Kingdom and the United States. Any copies of GFX source code and associated User Materials made by Licensee or any third party developer shall not be exported to, accessed from or used within any country not named in this Section 1.2e. For the avoidance of doubt, the geographic restrictions expressed in this Section 1.2e apply only to GFX source code and User Materials. Licensee and any third party developer authorized under Section 1.2d may use any GFX Lib SDK product without geographic restriction.
- 1.3 Additional Software/User Materials. Any additional software in the form of error corrections, enhancements, or other releases of GFX or "User Materials" (as defined in the next sentence) received by Licensee from Scaleform or created by Scaleform at the request of Licensee shall be solely owned by Scaleform and governed by the terms of this Agreement. "User Materials" includes any materials furnished to Licensee relating to the

use, operation and/or servicing of GFx, including without limitation, drawings, specifications, documentation, user manuals and programming guides and all translations of User Materials and User Materials may consist of the GFx Lib SDK alone or in conjunction with other materials and information provided by Scaleform.

**1.4** Copyright Notice Trademarks.

- a. The "credits screen" and documentation to each Licensee Application distributed by Licensee shall include the following wording: "Portions of this software are included under license © 2008 Scaleform Corporation. All rights reserved." The Scaleform copyright notices in the Licensee Application shall include the same date as is set forth in the copyright notices that Scaleform places on the GFx code delivered, from time to time, to Licensee. The Scaleform copyright notices in the Licensee Applications shall be no less prominently displayed than the copyright notices of other middleware vendors.
- b. Scaleform grants Licensee the right to use the Scaleform name and mark (Scaleform, Scaleform GFx and GFx) for the Scaleform GFx to promote Licensee Application. Licensee shall use commercially reasonable efforts, subject to the prior written consent of its publisher, to display the name and mark for GFx in equal size and prominence with the name and mark of its 3D engine provider for Licensee Application wherever they appear (but specifically including, on the product package, on Licensee's main web site and in any special web site created to promote or market Licensee Application(s) , in print ads, on trade show backdrops, etc.)
- c. Licensee grants Scaleform the right to use, at no charge, Licensee Application content to promote and demonstrate the GFx, with Licensee's prior written approval, which shall not be unreasonably withheld or delayed. Scaleform may use Licensee Application content including game excerpts and screen shots, as approved in writing by Licensee in advance, to promote the GFx so long as the content is properly identified with the name and mark for Licensee Application and the game has already been published.

## **SECTION 2: PAYMENT**

- 2.1** Licensee shall pay Scaleform or its authorized representative (the "Authorized Representative") a nonrefundable license fee in accordance with the terms set forth in Exhibit A and Exhibit B. Payment in full by Licensee to the Authorized Representative of all fees expressed in Exhibit A and Exhibit B shall fulfill all payment obligations of Licensee under this Agreement. Licensee and Scaleform expressly agree that the payments required under this Agreement are to be paid by Licensee in the full amount set forth in Exhibit A, without offsets, deductions or withholdings of any kind or nature and that the fees payable hereunder are not royalties but are business profits to Scaleform. Any tax due on Scaleform's business profits shall be determined by U.S. law and paid in the U.S. Licensee and Scaleform further expressly agree that should Licensee and/or tax authorities in Licensee's country of organization consider the fees payable hereunder as a royalty or any other characterization which may require a withholding or the payment of a tax or other payment to such tax authority, that the obligation to pay any such amount or payment is totally the obligation of Licensee, independent of, and not deducted from, any amount due hereunder from Licensee. The payment of the full amount set forth in Exhibit A is a condition of Licensee's use of GFx and are to be paid by Licensee.

## **SECTION 3: SUPPORT AND MAINTENANCE**

- 3.1** Provided Licensee has paid the Services fees set forth in Exhibit B attached hereto, Scaleform shall provide support and maintenance services ("Services") to Licensee for the GFx in accordance with Scaleform's Support Services Program, the terms of which are set forth in Exhibit B. All Service fees are for services performed or to be performed and are not for the sale or license of a product and are not royalties.

## **SECTION 4: LEGAL RIGHT**

- 4.1** Scaleform warrants that it has the legal right to enter into this Agreement and to grant all the rights and licenses that it is granting hereunder. Additionally, Scaleform warrants, that the GFx code as delivered to Licensee does not and will not violate the intellectual property rights of any third party, that no claim of any such infringement has been asserted against Scaleform.

## **SECTION 5: INDEMNIFICATION**

- 5.1** Each indemnifying party shall defend, indemnify, and hold harmless the other party and the other party's officers, employees, agents and representatives (collectively "indemnified party") from any demand, claim, loss, liability or damage, including but not limited to actual attorneys' fees, that it or any of them may incur by reason of or arising out of any claim which is in whole or in part based on a claim that the indemnifying party's goods, services or activities infringe any intellectual property right of any third party. The indemnified party must give the indemnifying party prompt notice of any such claim, cooperate fully and promptly in the defense, and allow the indemnifying party to control the defense, but the indemnified party shall have the right to participate in the defense.

## SECTION 6: LIMITED WARRANTY

- 6.1 LIMITED WARRANTY. Scaleform represents and warrants to Licensee that for a period of ninety (90) days after the installation of the Software (the "Warranty Period"), the Software will operate substantially in accordance with all User Materials (specifications, descriptions and representations contained in sales materials, operating instructions or manuals) presented to Licensee before or in connection with the execution of this Agreement. This Limited Warranty shall not apply to problems that resulted from (i) factors outside of Scaleform's reasonable control; (ii) any failure by Licensee to use GFx in accordance with the User Materials, GFx Lib SDK or other instructions of Scaleform; (iii) any actions or inactions by third parties; (iv) Licensee's hardware, software, equipment and/or those of third parties, or errors in entering data; (v) the fault or negligence of Licensee, operator error, or any other causes external to GFx or Scaleform.
- 6.2 Malfunction In the event of an error within the Warranty Period, as Licensee's sole and exclusive remedy, Scaleform will repair or replace (at Scaleform's option) GFx, or any portion thereof, with a conforming version. Repair or replacement may take the form of: (i) corrected software; (ii) corrected User Materials; (iii) or modifications to the User Materials containing instructions or procedures to bypass the problem until a more permanent correction can be implemented
- 6.3 Disclaimer of Warranties. Except as expressly provided in this Agreement, GFx is provided "AS IS," and Scaleform makes no (and hereby disclaims all) other warranties, representations, or conditions, whether written or oral, or express, implied, or statutory, including any implied warranties of merchantability or fitness for a particular purpose with respect to the use, misuse, or inability to use the GFx (in whole or in part) or any other products or Services provided by Scaleform, or otherwise arising under this Agreement. No warranties may be imposed on Scaleform by custom or law in any country unless and until Scaleform expressly and in writing agrees to same. Scaleform does not warrant that all Errors can be corrected, or that operation of GFx shall be uninterrupted or Error-free.
- 6.4 LIMITATION OF LIABILITY. EXCEPT AS EXPRESSLY PROVIDED TO THE CONTRARY IN THIS SECTION 6.4, SCALEFORM'S MAXIMUM LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT SHALL BE, IN THE AGGREGATE, LIMITED TO THE TOTAL LICENSE FEE PAID BY LICENSEE TO SCALEFORM. IN NO EVENT SHALL SCALEFORM, ANY PARENT, SUBSIDIARY, AFFILIATE, OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, OR REPRESENTATIVES, BE LIABLE TO ANY THIRD PARTY, INCLUDING ANY USER OF THE LICENSEE APPLICATION, FOR DAMAGES OF ANY KIND OR NATURE OR IN ANY MANNER WHATSOEVER; OR TO LICENSEE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES OR COSTS DUE TO LOSS OF PROFITS, DATA, USE OR GOODWILL REGARDING THIS AGREEMENT OR LICENSE, INCLUDING ANY PROCUREMENT COSTS CLAIMED BY LICENSEE FOR SUBSTITUTE PRODUCTS OR SERVICES OR RESULTING FROM OR IN CONNECTION WITH SCALEFORM'S OR GFX'S PERFORMANCE HEREUNDER OR THE USE, MISUSE, OR INABILITY TO USE GFX OR OTHER PRODUCTS OR SERVICES AS MAY, FROM TIME TO TIME, BE PROVIDED TO LICENSEE BY SCALEFORM REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, EVEN IF SCALEFORM HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. THE PARTIES AGREE THAT THE LIMITATION OF LIABILITY SET FORTH IN THIS SECTION SHALL SURVIVE AND CONTINUE IN FULL FORCE AND EFFECT DESPITE ANY FAILURE OF CONSIDERATION OR OF AN EXCLUSIVE REMEDY. THE FOREGOING LIMITATION DOES NOT APPLY TO ANY CLAIMS WHICH MAY BE BASED UPON CLAIMS BY THIRD PARTIES AGAINST SCALEFORM OR LICENSEE ALLEGING SCALEFORM'S WRONGFUL USE OR INFRINGEMENT OF THAT THIRD PARTY'S INTELLECTUAL PROPERTY.

## SECTION 7: PROPRIETARY RIGHTS

- 7.1 Confidential Information. "Confidential Information" as referenced herein consists of any information designated as confidential, the economic terms of this Agreement and the nature of the relationship between Licensee and Scaleform, any trade secrets related to GFx, and any information relating to either party's products, plans, product designs, product costs, product prices, product names, finances, marketing plans, business opportunities, business plans, marketing concepts and plans, personnel, research, development, or know-how, and GFx (and other Scaleform) source code, including without limitation its underlying logic and concepts. Both parties shall use Confidential Information solely to the limited extent necessary for exercising their rights under this Agreement. Both parties shall use reasonable efforts to prevent and not allow any Confidential Information or materials to be disclosed, used, sold, assigned, leased, sub-licensed, commercially exploited or marketed in any way or manner by them or their employees, agents or representatives to any third parties. Both parties shall limit disclosure of Confidential Information to those of its employees who have "reason to be exposed to it" as determined in their business judgment being mindful of the concerns of disclosure articulated by Scaleform and then only to those of its employees who have agreed in writing to abide by the non-disclosure requirements of this Agreement. Any such Confidential Information shall be protected by the recipient from disclosure to others with at least the same degree of care as that which is accorded its own proprietary information, but in no event

with less than reasonable care. Licensee acknowledges that GFx is a confidential and proprietary product, that it embodies valuable trade secrets of Scaleform and that Scaleform has certain intellectual property rights in and to GFx, including, but not limited to, patents, copyrights, trade secrets, trademarks and service marks. Licensee agrees to retain and treat GFx and all supporting documentation in confidence, and shall not provide, disclose or otherwise make available GFx, or any part thereof, in any form to any person or entity, other than its employees (as set forth above) or authorized third party consultants that have a need to know of it on Licensee's behalf and then only to such consultants or independent contractors who have a preexisting contractual or other legal obligation to maintain the confidentiality obligations of Licensee. Licensee shall take reasonable steps to advise its employees, consultants and independent contractors who meet the requirements set forth herein of the confidential nature of GFx and will ensure that they abide by the restrictions and requirements of this Section 7.1. Further, Licensee shall immediately advise Scaleform of any suspected breaches by such third parties.

- 7.2 Title. Licensee acknowledges and agrees that nothing in this Agreement constitutes, or shall be construed to constitute, any transfer of title or ownership with respect to GFx, including without limitation transfer of any copyrights, patents, trademarks, trade secrets, intellectual property, source code, improvements, enhancements, sequence, logic, structure, and other proprietary rights therein, now or hereafter existing. Licensee acknowledges that a) GFx, and all User Materials furnished or produced in connection therewith, including but not limited to source code, contains trade secrets of Scaleform, entrusted by Scaleform to Licensee under this Agreement for use only in the manner expressly permitted hereby and (b) Scaleform holds all right, title and interest in and to all tangible and intangible intellectual property contained in GFx, including all trade secrets, copyrights and other intellectual property rights pertaining thereto and Licensee shall have only the limited, revocable right to use GFx expressly as set forth in and limited by this Agreement. All modifications, adaptations, changes, or additions made to GFx shall be the sole and exclusive property of Scaleform, even if created at the request of or in conjunction with the assistance of any Licensee, and shall be considered a part of GFx, including all applicable rights to patents, copyrights, trademarks and trade secrets inherent therein and appurtenant thereto. GFx is protected by copyright and contains proprietary information protected by copyright laws, intellectual property laws, international treaty provisions and other applicable laws. Licensee acknowledges that Scaleform owns all United States and international copyrights in GFx and any portions thereof. Licensee shall not do anything to infringe upon, harm or contest the validity of any intellectual property rights of Scaleform.

## SECTION 8: TERMINATION

- 8.1 Term. Unless sooner terminated in accordance with the provisions hereof, the term of this Agreement shall commence as of the date first set forth above and shall continue as set forth in Section 1.
- 8.2 Termination.
- a. Either party shall have the right to terminate this Agreement if the other party breaches any material term or condition of this Agreement and fails to cure that breach within ten (30) days after receiving written notice indicating the intention to terminate and specifying the nature of the breach. Failure to pay the license fees in the exact amount and strictly in accordance with Section 2 and the payment schedule set forth in Exhibit A is a material breach which must be cured in five (5) days after same was due to have been paid. All license fees shall be paid exactly as required and without any offset, deduction, counterclaim or defense of any kind or nature. Should Licensee have any such claims, they shall send written notice of same to Scaleform and should Scaleform not address them following the cure period set forth herein or such additional time as may be needed to affect a cure then Licensee may separately bring such claims against Scaleform as it deems appropriate. No failure of Scaleform to address any breach or alleged breach shall result in Licensee acquiring greater rights to GFx than such rights as are expressly granted to Licensee under this Agreement.
  - b. Either party may terminate this Agreement if the other becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or composition for the benefit of creditors, if that petition or proceeding is not dismissed with prejudice within sixty (60) days after filing. If Licensee files for bankruptcy protection (or a claim is filed against it) and Scaleform does not receive reasonable assurance within ten (10) days thereafter that the license payments will continue unaffected, then Scaleform may immediately terminate this Agreement. No bankruptcy of Licensee shall grant to a trustee or purchaser of some or all of the assets of Licensee the ability to transfer rights to use GFx or this License without the express written consent of Scaleform.
- 8.3 Effect of Termination.
- a. Licensee agrees that upon termination of this Agreement, by cause of Licensee breach, Scaleform is discharged from any further obligations under this Agreement and Licensee's rights to possess and use GFx, and to distribute and license the Licensee Application, shall cease as of the date of such termination.
  - b. Within ten (30) days after termination, Licensee shall delete from electronic storage and memory, and destroy all portions of GFx in whatever form they exist, including those portions of Licensee Application

that include GFx and are in inventory or are otherwise unlicensed. A Licensee's senior officer (Executive Vice President or above) shall certify to Scaleform that said deletions have occurred and that Licensee is not and shall not continue to use GFx except as set forth in section c which follows.

- c. All licenses for the Licensee Application previously entered into with end users shall continue in effect after termination of the Agreement.
- d. Any provision of this Agreement which by its terms is applicable to actions or periods occurring after termination of the Agreement will remain in full force and effect, including without limitation, Sections 7.1, 7.2, and 9.

## SECTION 9: COMPLIANCE WITH LAWS

- 9.1 Compliance with Laws. Licensee will at all times comply with all applicable laws and regulations (including laws regarding personal information protection, data privacy, export controls, consumer protection, business practices and advertising) relating to Licensee and the conduct of its business and the performance of its obligations under this Agreement. Licensee will take no actions or inactions that may cause Scaleform to be in violation of any applicable laws or regulations.

## SECTION 10: GENERAL PROVISIONS

- 10.1 Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns only. Licensee may not assign or transfer this Agreement or any rights hereunder to any other person or entity without the prior written consent of Scaleform, which shall not be unreasonably withheld or delayed. Scaleform shall not unreasonably withhold its consent should Licensee request the right to assign this Agreement to another entity into which Licensee merges or which buys all or substantially all of Licensee's assets or equity upon the following conditions: The surviving or purchasing entity (a) shall have only the right to use GFx in or with respect to such Licensee Applications as exist or are actively under more than token development at the time of the merger or sale, and for which (i) Licensee has already executed a license agreement identifying such Licensee Application(s) and (ii) Licensee has paid 100% of all fees and charges required by this Agreement and (b) shall have no right to use GFx to create any new Licensee Application. The Licensee's use of a "publisher" to promote, market, and distribute Licensee's Application(s) using GFx shall not be deemed to be an assignment in violation of the provisions of this Section 10.1. Such "publisher" shall not acquire rights of any kind in or to GFx other than the limited ability to promote, market, and distribute Licensee's Application(s) which use GFx.
- 10.2 Governing Law. The parties invoke the laws of the State of New York, USA, regarding the protection of their rights and enforcement of their obligations hereunder, and they mutually stipulate and agree that this Agreement is in all respects (including but not limited to, all matters of interpretation, validity, performance and the consequences of breach and termination) to be exclusively construed, governed and enforced in accordance with the internal laws of the State of New York USA, excluding all conflict of laws rules, as from time to time amended and in effect. Any action related to or arising out of this Agreement shall be brought solely in a court of competent jurisdiction, whether federal or state, in New York, NY and the parties irrevocably commit to the jurisdiction of said courts. This Agreement is in the English language and the parties agree that the English language version shall be controlling even if this Agreement is translated, for the convenience of either party, into another language.
- 10.3 Force Majeure. Neither party shall be liable for any loss, damage, or penalty resulting from unavoidable delays or failures in performance resulting from acts of God or other causes beyond its control.
- 10.4 Entire Agreement. This Agreement constitutes the entire and exclusive agreement between the parties hereto with respect to the subject matter hereof, and may only be amended by a writing executed by both parties.

In Witness Whereof, the undersigned are duly authorized by their respective corporations to execute this Agreement on behalf of Licensee and Scaleform, as applicable and to bind their respective corporations to the terms hereof.

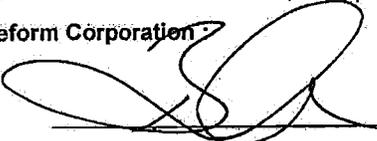
Scaleform Corporation

By:

Name:

Title:

Date:

  
**BRENDAN IRIBE**

**PRESIDENT AND CEO**

June 13 2008

Licensee:

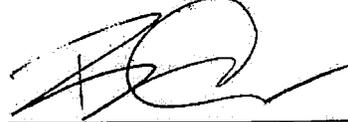
38 Studios LLC

By (signature):

Name (print):

Title:

Date:



Brett Close

President and CEO

13 June 2008

## EXHIBIT A

### GFX PRODUCT DEFINITION

GFX includes GFX Source SDK and all User Materials and executable code as delivered to the Licensee by Scaleform under this Agreement, expressly including any and all upgrades, enhancements, modifications and error corrections as may be delivered by Scaleform to Licensee under Exhibit B of this Agreement.

### LICENSEE APPLICATION

Scaleform grants the Licensee the right to use GFX to develop and distribute its Application(s):

Application Name (or Working Title)	Application Type (Commercial or Casual)	Commercial Game Platform(s) (Please List All)
Copernicus _____ _____	Commercial _____ _____	PC _____ _____

The term "Licensee Application" means a computer software product to be developed by Licensee during the Term using or incorporating GFX and Conversions and Expansion Packs thereto, in all languages ("Localized Versions"), for publication or distribution by Licensee (or its affiliates) or publication by third party publishers ("Publishers") or distribution by third party Licensee Application service operators ("Operators") pursuant to agreements between Licensee and each such Publisher ("Publishing Agreements") or Operator ("Licensee Application Service Agreement"), as applicable. For the avoidance of doubt, Licensee shall have no right to use the GFX to develop, produce or distribute any Sequel to the Licensee Application hereunder and Licensee shall obtain an additional license from Scaleform for GFX prior to performing any development using GFX on any Sequel.

The term "Expansion Pack" means a computer software product which may be purchased by an end-user for use with the Licensee Application which product contains additional gameplay levels to complement those Licensee Application levels originally designed for such Licensee Application and/or some additional features to complement those features originally designed for such Licensee Application.

The term "Sequel(s)" means new and additional Licensee Applications (other than Expansion Packs and Conversions of the Licensee Application) based upon or derived from the Licensee Application which use one or more of the characters or elements from such Licensee Application in a story, scenario or Licensee Application design which is substantially different from the story, scenario or game design of such Licensee Application regardless of whether such story, scenario or Licensee Application design precedes (as in a "prequel") or follows the chronology of events in such Licensee Application.

All other Licensee Applications are specifically excluded from the scope of this Agreement and from any right to use GFX with respect thereto.

### PUBLICITY AND NOTIFICATION

**Notification.** Either the "splash screen" or the "credit screen" within the Licensee Application and the user manual for the Licensee Application shall display the Scaleform/GFX logo, as well as text indicating that the Licensee Application contains GFX from Scaleform. Licensee shall use commercially reasonable efforts, subject to the prior consent of its publisher, to display the Scaleform/GFX logo on any retail box, as well as text indicating that the Licensee Application contains GFX from Scaleform. The size, placement, prominence and all other aspects of any credits required under this Agreement shall be determined by Licensee at its sole discretion, acting reasonably. Notwithstanding anything to the contrary contained in this Agreement, in the event that Licensee fails to include the above credits, such failure shall not be deemed a breach of this Agreement by Licensee, and Licensee agrees to cure, if commercially reasonable, such failure prospectively within a reasonable time after receiving written notice from Scaleform of such breach.

**Use of Licensee's Name.** Licensee hereby gives permission to Scaleform to use Licensee's name and mark in a listing of Scaleform's customers in advertising, marketing, bid documents, or similar materials

## **PAYMENT**

The license fee for GFx is \$30,000 USD. All fees are due upon execution of this Agreement. The license fee includes two (2) years of support, as outlined in Exhibit B, the Scaleform GFx Maintenance and Support Program. Licensee acknowledges that Scaleform shall have no obligation to release GFx for any Licensee Application before all fees have been paid in full and in compliance with Section 2 of this Agreement.

The remainder of this page was intentionally left blank.

## EXHIBIT B

### SCALEFORM GFX MAINTENANCE AND SUPPORT PROGRAM

The following is a description of Scaleform Corporation's ("Scaleform") Maintenance and Support Program ("Program"). The Program and Scaleform's maintenance and support services ("Services") are governed by and incorporated into the License Agreement.

#### PRODUCT

This Program is applicable only to the Scaleform GFx software component ("GFx"), which has been licensed by Scaleform to Licensee for the Licensee Application set forth in Exhibit A. Scaleform will provide Services only for GFx for use for the Licensee Application(s) for which the Licensee has purchased and/or renewed support Services as set forth in the Term and Annual Services Fees Sections of this Exhibit B.

#### LICENSEE CONTACT

The ship-to and bill-to address for Licensee and Licensee's "Designated Primary Contact" person are set forth in the Contact Information Section of this Exhibit B. The Designated Primary Contact shall be a senior corporate executive designated by Licensee to carry out all contacts with Scaleform pursuant to this Agreement. Said Designated Primary Contact shall be empowered by Licensee to be the decision maker on matters pertaining to this Agreement (except in the event of a dispute regarding this Agreement or the Services in which event the CEO or President of Licensee shall personally engage to seek to resolve the dispute). Licensee shall also designate a Secondary Contact who shall be empowered (in the absence or unavailability of the Designated Primary Contact) to interact with Scaleform and to make the decisions and judgments on behalf of Licensee that the Designated Primary Contact is empowered to make.

#### TERM

The Services shall commence on the effective date of the License Agreement, and will continue in effect for a term of two (2) years (the "Initial Term") for each Licensee Application as defined under the License Agreement between the parties. At the end of the Initial Term or any subsequent renewal term (the "Renewal Date"), Scaleform shall issue an invoice for a renewal of term of the Program unless (i) one party provides written notice to the other at least thirty (30) days prior to the expiration of the then-current term of the Agreement that it will not renew the Program; or (ii) unless terminated earlier in accordance with this Section of this Exhibit B herein. Scaleform reserves the right to change the scope or terms of Services (as defined below) or the rates charged for any upcoming renewal term after the third anniversary of this Program, provided that no change will be effective unless notice of such change is provided to Licensee no less than thirty (30) days before Licensee must give notice that it will not renew the Program. The Services may be terminated by Scaleform at any time if Licensee has failed to pay any amount due for Services for a period of fifteen (15) days after its due date.

#### SERVICES

Throughout the term of this Program, the Services to be provided to Licensee under this Program are:

Error Reporting. Scaleform will have technical personnel available each business day (9-6 PM U.S. Eastern Time), excluding its scheduled holidays ("Normal Working Hours") to receive error reports from Licensee. The parties agree that the primary means of error reporting will be by electronic mail. Licensee may use telephone communications to supplement electronic mail reporting, but it is Licensee's responsibility to provide a written error report in the format reasonably requested by Scaleform. Scaleform reserves the right to impose charges on telephone communications in excess of five (5) hours per week. Scaleform shall make commercially reasonable efforts to provide Licensee with an initial response to the error report by 5 PM U.S. Eastern time on the business day following the date of the error report. An error is a failure of GFx to perform according to the functional documentation of or concerning GFx, including, without limitation, the User Materials, as referenced in the License Agreement. There are three prerequisite conditions to a reported problem being deemed an error under this Program: i) Scaleform must be able to recreate the problem; ii) Licensee is using the GFx in accordance with the documentation and other instructions previously provided to Licensee in writing and iii) the Licensee has not modified or altered GFx. To make it totally clear, Scaleform is under no obligation

to support or maintain GFx or provide any service to any aspect of GFx which has been modified or altered in any way; provided, however, such limitation shall not adversely affect Licensee's right to obtain support with respect to GFx (in the form as provided by Scaleform, including any additional software in the form of error corrections, enhancements, upgrades, modifications and/or other releases of GFx or any related User Materials).

**Error Correction.** Scaleform will use commercially reasonable efforts to create Error Corrections within a reasonable amount of time after its receipt of the report of any perceived Error and to provide Licensee with the Error Correction. An "Error Correction" is defined as a software modification or addition, which when made or added to the GFx or its User Materials establishes material conformity of GFx with its functional specifications. Error Corrections include, without limitation, changes in the User Materials, procedures or routines that when used in the regular operation of GFx eliminates the practical adverse effect on Licensee of the nonconformity.

**Enhancements.** An "Enhancement" is defined as extensions and other changes to GFx and that Scaleform makes generally available to Licensees receiving Services for GFx. An Enhancement is defined by Scaleform as extensions and/or improvements to GFx. An Enhancement represents the addition of new functionality to the GFx, as referenced in the amended User Materials. Each Enhancement may be bundled with one or more Error Corrections as needed. Independent software components, products or platforms that Scaleform makes available as a separate item on its price list will not be available as Enhancements under this Program. Scaleform will notify Licensee by electronic mail when an Enhancement is available. Licensee is responsible for downloading and installing any Enhancement from Scaleform's website. While Scaleform will use commercially reasonable efforts to minimize the impact of Enhancements on the development of the Licensee's Application using GFx, Licensee recognizes that the Enhancement process may have some impact on Licensee's Application, including, at Licensee's sole discretion, potentially requiring the modification and re-testing of the Licensee's Application as deemed appropriate by Licensee.

**Technical Support.** During the term of this Program, Scaleform shall provide Licensee, during Normal Working Hours, e-mail support to provide assistance with technical issues relating to the installation, operation and functionality of GFx. During the term of this Program and during Normal Working Hours Scaleform will provide Licensee with electronic mail and telephone (under the conditions set forth above) support for the installation, operation and functionality of GFx (including Enhancements). Scaleform's support responsibilities specifically exclude (i) assistance for Licensee's usage errors, (ii) assistance to any members of Licensee's technical staff who are inexperienced with or untrained in GFx and (iii) any issues relating to Errors in the Licensee's hardware or software platform. Licensee acknowledges that it is solely responsible for integration tasks related to GFx and its custom software, its chosen hardware and software platform, and 3<sup>rd</sup> party software and software tools. Licensee is responsible for demonstrating that a fault relating to the interaction among these technical components is a fault within the GFx and not solely as a consequence of the integration of the platform, hardware, components, software or tools selected or performed or to be performed by Licensee before submitting an Error Report.

## LIMITATIONS ON SERVICES

Scaleform is obligated to provide Services only with respect to its most recent release of GFx. Scaleform may refuse to provide Services if Licensee fails to install all Error Corrections or Enhancements within sixty (60) days of the date of the Error Correction or Enhancement announcement.

**GFx as Modified by Licensee.** Scaleform shall have no obligation to provide any Services with respect to GFx as modified by Licensee; provided, however, such limitation shall not adversely affect Licensee's right to obtain support with respect to GFx in the form as provided by Scaleform, including any additional software in the form of error corrections, enhancements, upgrades, modifications and/or other releases of GFx or any related User Materials pursuant to Section 1.3 of the License Agreement.

**Exclusions from Services.** This Program, specifically but without limitation, does not obligate Scaleform to provide: (i) project management; (ii) personnel management; (iii) application design or development; (iv) performance of Services on-site; (v) consulting, training or other support services relating to software other than GFx; (vi) support or maintenance services relating to any hardware or peripheral devices; (vii) recreation or reentry of data lost for any reason whatsoever; (viii) performance of the duties of a software developer engaged to create miscellaneous software applications at Licensee's discretion; (ix) delivery of improvements to GFx requested by Licensee or prepared on a customized basis for Licensee or (x) software integration services.

**Licensee Responsibility.** Licensee is responsible for providing Scaleform with a reasonably detailed description of all software and hardware required to replicate the Licensee's development environment at Scaleform headquarters. Scaleform is solely responsible for providing all platform hardware and operating system software specified in Exhibit A. Licensee shall use commercially reasonable efforts to provide to Scaleform any additional hardware, third party software development tools and custom software developed by Licensee needed for Scaleform to replicate Licensee's development environment. The Licensee will communicate any changes to this replicated development environment to

Scaleform on an as-needed basis. The Licensee will make commercially reasonable efforts to provide Scaleform with updates to 3<sup>rd</sup> party software development tools and Licensee's custom software on an as-needed basis. Licensee will provide technical assistance to confirm and maintain the replicated development environment if requested by Scaleform.

## PRICE AND PAYMENT

For the Services specified, Licensee agrees to pay Scaleform the non-refundable Services fee set forth in the Annual Services Fees Section of this Exhibit B, which shall be paid in accordance with the payment schedule set forth in this Exhibit. Licensee shall report and pay all federal, state and local taxes and assessments (excluding only those taxes based on Scaleform's net income) designated, levied or based upon any amount payable under this Program or on account of this Program. Licensee shall indemnify Scaleform from all claims and liability resulting from Licensee's failure to report or pay such amounts. If this Program is terminated or not renewed, Licensee shall not receive the Services provided hereunder.

## RELEASES AND OWNERSHIP

All rights, titles and interests in and to any programs, systems, data or materials used or produced by Scaleform in the performance of Services, including but not limited to, Error Corrections, Enhancements or other releases (collectively "Releases"), shall remain the sole property of Scaleform. All Releases received by Licensee from Scaleform shall become part of GFx and shall be governed by the terms of the License Agreement. All Releases, including all copyright interests and intellectual property, shall remain the sole property of Scaleform regardless of whether Licensee or its employees or contractors shall have contributed to the conception or the Release, joined in the effort of its development or paid Scaleform for creation of it.

## CONTACT INFORMATION

Licensee Bill-To  
and Ship Address

38 Studios LLC  
5 Clock Tower Place  
Suite 140  
Maynard, MA 01754

Designated Primary  
Contact Person and  
Secondary Contact

John Laff  
Mike Machowski

## ANNUAL SERVICES FEES

The Service fee for each annual renewal term shall be at \$10,000 USD per year per Licensee Application as defined in Exhibit A of the License Agreement. The rate for the Initial Term of Support per Licensee Application, as of the date of this Agreement for the maintenance, services, and support to be provided pursuant to this Agreement is \$0.

EVALUATION LICENCE AGREEMENT

This Agreement (which includes this Cover Sheet and the attached Schedule and Terms and Conditions) (the "Agreement") is between Geomerics Limited, a company registered in England and Wales with company number 05400020, whose registered office is 20 Nugent Road, Surrey Research Park, Guildford, Surrey, England, GU2 7AF and whose principal place of business is City House, 126-130 Hills Road, Cambridge, CB2 1RE ("Geomerics") and the company or organisation set out below (the "Recipient").

RECIPIENT:

Company name:  
Address:

THQ Inc.  
29903 Agoura Road  
Agoura Hills, CA 91301

On behalf of:  
Address:

Big Huge Games  
1954 Greenspring Drive, Suite 520  
Timonium, Maryland 21093

SOFTWARE: Enlighten V1.0 ("Software").

EVALUATION

PERIOD: The period of thirty [30] days commencing from the delivery of the Software by Geomerics to the Recipient.

CONTACTS:

Geomerics Contact

Name: Rob Precious.....  
Tel: +44 (0)1223 450176.....  
Fax: +44 (0)1223 361362.....  
Email: rob.precious@geomerics.com.....

Recipient Contact:

Name: Jason Coleman.....  
Tel: (410) 842-0028.....  
Fax: .....  
Email: Jason.Coleman@thq.com.....

By signing this Agreement below, you confirm your acceptance of the terms set out above and the attached Terms and Conditions (whereby such terms and conditions are incorporated into and form part of this Agreement).

GEOMERICS LIMITED

ACCEPTANCE

Authorised Signatory.....  
Name: Rob Precious.....  
Position: VP SALES.....  
Date: 29/5/08.....

THQ INC.

ACCEPTANCE

Authorised Signatory.....  
Name: Steve DeCosta.....  
Position: VP Finance and Administration.....  
Date: Product Development.....

## TERMS AND CONDITIONS

### 1. DEFINITIONS

- 1.1 In this Agreement, words and phrases shall have the meanings given to them in the Cover Sheet and this Clause 1.1 as follows:

**Confidential Information:** means, any non public information (whether or not marked or stated to be confidential and including without limitation any information disclosed prior to the date of this Agreement) in any form or medium whatsoever including, without limitation, any information relating to know-how, formulas, algorithms, processes, ideas, inventions (whether patentable or not), schematics and other technical, research and development, business, financial, pricing, marketing and product plans, forecasts, strategies and information and other information about a party's shareholders, officers or employees and/or business, suppliers and customers and in the case of Geomerics, its Confidential Information includes without limitation the design, technology, source and object code and know-how of and in the Software and the other Materials;

**Cover Sheet:** the front page of this Agreement as attached to these Terms and Conditions;

**Objective:** the evaluation by the Recipient of the suitability of the Software for use in the development by or on behalf of the Recipient of interactive entertainment software products (the "Products");

**Materials:** the Software, including without limitation, certain software provided as object code and certain software provided as Source Code, the artwork files and any supporting documentation or other assets or materials provided by or on behalf of Geomerics.

- 1.2 Headings are for ease of reference only and are not to be taken into account in construing this Agreement.

### 2. GRANT OF LICENCE

- 2.1 In consideration of the obligations and undertakings of the Recipient set out in this Agreement, Geomerics hereby grants to the Recipient a personal, non-transferable, non-exclusive licence to use the Materials during the Evaluation Period solely for the purposes of the Objective subject to and in accordance with the conditions of this Agreement.

- 2.2 The Recipient may make such copies of the Software as are strictly necessary for the purposes of the Objective but may not, without limitation, make any back-up or archival copies.

### 3. LICENCE CONDITIONS

- 3.1 The Recipient will evaluate the Materials and report to Geomerics' evaluation personnel any comments on any of the Materials including any problems it perceives with the Materials and where practicable co-operate with such personnel in managing and correcting such problems:

- 3.2 The Recipient shall not (nor attempt to):

- (a) adapt, modify, compile, assemble, retranslate or otherwise, use or otherwise exploit any of the Materials for any purpose other than to the extent strictly necessary for the Objective and, without prejudice to the generality of the foregoing, the Recipient shall not create or cause or permit the creation of any derivative works or adaptations based upon, incorporating or derived from the Materials in any product that is disclosed to third parties and/or used or exploited other than for the purposes of the Objective and during the Evaluation Period;
- (b) decompile, disassemble, retranslate or otherwise reverse engineer the Materials in any manner whatsoever (except to the extent the law requires that the same be permitted);
- (c) save as expressly provided for in Clause 9.2 below, provide or make available the Materials to any third party for any purpose whatsoever and further shall not use the Materials on behalf of or for the benefit of any third party and the Recipient shall keep the Materials in its sole possession and control and safeguard them from access by any other person.

### 4. RECIPIENT SOURCE CODE

- 4.1 In the event that the Recipient, acting in its sole discretion,

supplies to Geomerics any of its source code in connection with the Objective or this Agreement then Geomerics shall only use such source code as requested by the Recipient and for the purposes of the Objective, and shall return such source code to the Recipient upon reasonable notice.

- 4.2 For the avoidance of doubt, Geomerics acknowledges that any disclosure of the Recipient's source code pursuant to Clause 4.1 shall not confer on Geomerics any Intellectual Property Rights (as defined in Clause 8.4 below) or other rights in relation to such source code.

### 5. LIABILITY

- 5.1 The Recipient acknowledges that the Software is being supplied pursuant to this Agreement in beta format only and that it has not been developed, tailored or adapted specifically for the Recipient's and/or the Authorised Developer's (as defined below) needs or specifically intended for use by the Recipient or the Authorised Developer. Consequently, Geomerics expressly does not give any representations, conditions, guarantees, warranties or other terms of any kind in respect of the Materials and all statutory and implied warranties and conditions are hereby excluded to the fullest extent permitted by applicable laws. In particular, but without limiting the generality of the foregoing, Geomerics does not warrant to the Recipient that the Materials are free from faults or defects or is fit for a particular purpose.

- 5.2 The Recipient and any Authorised Developer(s) shall use the Materials at their own risk and in no event shall Geomerics be liable to the Recipient and/or any Authorised Developer(s) and hereby expressly excludes any and all liability for any direct or indirect loss or damage of any kind (except personal injury or death resulting from Geomerics' negligence) arising from the Recipient's or Authorised Developer's use of or inability to use the Materials or from faults or defects in any of the Materials whether caused by negligence or otherwise.

- 5.3 The Recipient shall indemnify, defend and hold harmless Geomerics, its affiliates, and their directors, officers, shareholders, employees, agents, successors and assigns, in full and on demand, against any and all claims, expenses, losses, damages, costs, liabilities and judgments, including without limitation legal fees and expenses, arising out of or relating to any claim resulting from or related to: (i) any use by the Recipient and/or the Authorised Developer(s) of Materials other than as expressly allowed by this Agreement or in a manner inconsistent with any accompanying documentation; (ii) any breach of this Agreement by the Recipient and/or an Authorised Developer; or (iii) any violation of applicable law by the Recipient, an Authorised Developer, and their respective directors, officers, shareholders or employees.

- 5.4 Geomerics shall indemnify, defend and hold harmless the Recipient [and its affiliates, subsidiaries], and their directors, officers, shareholders, employees, agents, successors and assigns, in full and on demand, against any and all third party claims, expenses losses, damages, costs, and judgments, including without limitation reasonable legal fees and expenses, arising out of or relating to (i) any claim made by any third party that Geomerics does not have the necessary right, title or interest in or to the Software to grant the rights that it purports to grant to the Recipient pursuant to this Agreement, and (ii) any violation of applicable law by Geomerics, its directors, officers, shareholders or employees.

### 6. CONFIDENTIAL INFORMATION

- 6.1 Each party (the "Receiving Party") shall keep and procure to be kept secret and confidential all Confidential Information of the other party (the "Disclosing Party") disclosed to the Receiving Party or acquired or learned by the Receiving Party as a result of the relationship of the parties or pursuant to this Agreement (whether such Confidential Information was previously, presently or subsequently disclosed, acquired or learned) and shall not use or (save as permitted below) disclose to any person the same.

- 6.2 The Receiving Party may only disclose the Confidential Information of the Disclosing Party to such directors, officers, employees and professional advisers as is strictly necessary for the Objective and will procure that such persons are aware of and shall comply with the terms of this Agreement and the Receiving Party shall be responsible for and remain primarily liable to the Disclosing Party in respect of any breaches of this Agreement by such persons.

- 6.3 The above limitations on use and disclosure shall not apply to information which:

- (a) is known to the Receiving Party before receipt of such information from the Disclosing Party (unless such information was then disclosed in confidence);
- (b) is learned from a third party that was entitled to disclose it to the Receiving Party;
- (c) becomes known publicly other than through disclosure by the Receiving Party;
- (d) is authorised in advance in writing by the Disclosing Party to be released;
- (e) was disclosed by the Receiving Party pursuant to the requirements of a governmental authority or judicial order (provided that if the Receiving Party become aware of the possibility that they may be compelled by such requirements to disclose such confidential information, they will immediately give the Disclosing Party notice of this fact and consult and co-operate with them as to whether and if so what action should be taken to resist the same);
- (f) can be demonstrated via documentary evidence as having been developed by the Receiving Party independently of and without reference to the Confidential Information; or
- (g) was disclosed by the Receiving Party to an Authorised Developer pursuant to Clause 9.2.
- 6.4 At the oral or written request of the Disclosing Party at any time, the Receiving Party shall return to the Disclosing Party immediately all Confidential Information supplied to the Receiving Party and, where applicable, the Authorised Developer(s); all material prepared by the Receiving Party and/or the Authorised Developers which uses or incorporates any of the Confidential Information, any material on which any such information is recorded or stored and all copies thereof and all such information on hard disk shall be irretrievably and permanently erased and any other medium upon which such information is stored or recorded shall be delivered to the Disclosing Party and become their property.
- 6.5 Each party hereby acknowledges that any unauthorised use or disclosure of the other party's Confidential Information and the Recipient acknowledges that unauthorised use of the Materials will cause irreparable harm to the other party for which monetary damages may be difficult to ascertain and will not provide an adequate remedy. Accordingly, each party agrees that the other party, in addition to any other rights and remedies to which such other party may be entitled under this Agreement or by law, shall be entitled to seek injunctive or other equitable relief for any such unauthorised use or disclosure.
- 7. TERMINATION**
- 7.1 Each party shall be entitled to terminate this Agreement:
- (a) immediately by giving written notice to the other party in the event that the other party is in breach of any of its obligations hereunder or becomes insolvent; or
- (b) at its sole discretion and without cause by providing the Recipient with no less than seven (7) days' prior written notice.
- 7.2 Upon the expiration of the Evaluation Period or earlier termination of this Agreement in accordance with the terms of this Agreement, unless the parties have entered into an agreement permitting the same, all rights granted in this Agreement shall terminate immediately and the Recipient shall, and shall procure that any and all Authorised Developers shall, immediately discontinue use of the Materials and within five (5) working days from receiving written notice from Geomerics destroy or deliver up to Geomerics (at Geomerics' discretion) all copies of, and any materials or other content or product incorporating, the Materials in their respective possession or control.
- 7.3 The obligations set out in Clauses 4, 5, 6, 7, 8 and 9 shall survive the expiry of the Evaluation Period and/or the termination of this Agreement.
- 8. INTELLECTUAL PROPERTY RIGHTS**
- 8.1 The Materials, all related documentation and any and all Intellectual Property Rights (as defined below) therein are owned by and shall remain owned by Geomerics or its licensors. The Recipient acknowledges that any disclosure or use pursuant to this Agreement shall not confer on the Recipient any Intellectual Property Rights or other rights in relation to the Materials.
- 8.2 The Recipient acknowledges that the Materials contains Intellectual Property Rights (as such term is defined in Clause 8.4 below) that are owned by third parties and licensed to Geomerics for use in connection with the Materials ("Third Party Rights"). The Recipient shall use such Third Party Rights in accordance with the terms of this Agreement.
- 8.3 All Intellectual Property Rights (as defined below) in and to any of Recipient's software, game concepts and content, computer codes and source code, but excluding for the avoidance of doubt the Materials ("Recipient's Materials") are owned by and shall remain owned by the Recipient or its licensors. Geomerics acknowledges that any disclosure or use pursuant to this Agreement shall not confer on Geomerics any Intellectual Property Rights in relation to Recipient's Materials.
- 8.4 For the purposes of this Agreement, "Intellectual Property Rights" shall mean all patents, rights in inventions, copyrights (including rights in computer software), moral rights, design rights, trade marks, trade names, service marks, trade secrets, know-how, database rights and other rights in the nature of Intellectual property rights (whether registered or unregistered) and all applications or rights to apply for any of the foregoing anywhere in the world.
- 9. GENERAL**
- 9.1 The person signing this Agreement on behalf of the Recipient confirms that he/she is authorised to enter into this Agreement on the Recipient's behalf, and to bind the Recipient to its terms and conditions.
- 9.2 The Recipient shall not assign, sub-license or otherwise transfer its rights or obligations under this Agreement without the prior written consent of Geomerics. Notwithstanding the above, the Recipient is permitted to provide the Materials to a developer which is developing Products for or on behalf of the Recipient (each an "Authorised Developer") provided always that (a) the Recipient procures that each such Authorised Developer is aware of the terms of this Agreement and undertakes to Geomerics to comply with such terms by validly executing and delivering to Geomerics a written notification in the form set out in the Schedule to this Agreement prior to any disclosure of the Materials; and (b) the Recipient shall be responsible for and remain primarily liable to Geomerics in respect of any breaches of this Agreement by such Authorised Developers.
- 9.3 The invalidity, illegality or unenforceability of any provision (or part of a provision) of this Agreement under the laws of any jurisdiction shall not affect or prejudice the validity, legality or enforceability of the remaining provisions of this Agreement.
- 9.4 This Agreement, together with any other documents referred to herein, constitutes the complete and exclusive statement of the Agreement between the parties in relation to the subject matter covered and supersedes any previous agreements, correspondence and understandings, written or oral, relating to the subject of this Agreement. Each party confirms that, in agreeing to enter into this Agreement, it has not relied on any representation save insofar as the same has expressly been made a representation in this Agreement and agrees that it shall have no remedy in respect of any misrepresentation which has not become a term of this Agreement save that the agreement of the parties contained in this Section shall not apply in respect of any fraudulent misrepresentation whether or not such has become a term of this Agreement.
- 9.5 Save as provided in Clause 8.2, the parties agree that the provisions of this Agreement are personal to them and are not intended to confer any rights of enforcement on any third party. The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement or to any of its provisions.
- 9.6 No variation or waiver of any of the terms of this Agreement shall be valid unless evidenced in writing and signed by or on behalf of both parties.
- 9.7 No relaxation, delay, forbearance or indulgence of any party in exercising or enforcing nor any failure by any party to exercise or enforce any rights conferred upon it by this Agreement shall be deemed a waiver of any such right or operate so as to bar the exercise or enforcement thereof at any time or times thereafter.
- 9.8 The construction, validity and performance of this Agreement shall be governed by the laws of England and Wales and the parties hereby

submit to the non-exclusive jurisdiction of the courts of England and Wales.

9.9 Nothing herein contained shall in any way create any association, partnership, joint venture or the relation of principal and agent between the parties hereto or be construed to evidence the intention of the Parties to constitute such.

9.10 All notices and statements shall be in writing and shall be delivered personally by hand delivery or by United States Postal Service, certified, return receipt requested, Federal Express or other internationally recognized receipted overnight or courier service, postage prepaid, or sent by a confirmed (confirmation report printed) facsimile transmission with follow up copy sent by any of the aforesaid means (failure to send

follow up copy by other means shall be deemed failed delivery of notice), to the intended party at the address set forth at the beginning of this Agreement (unless notification of a change of address is given in writing). Notice shall be deemed delivered upon the date of personal delivery or facsimile transmission or the date of delivery as indicated by Federal Express or other internationally recognized receipted overnight or courier service, or the date indicated on the return receipt from the United States Postal Service.

Geomerics Limited (Company no. 05400020) and whose registered office is 20 Nugent Road, Surrey Research Park, Guildford, Surrey, England, GU2 7AF.

Danny

## ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT made effective as of May 15, 2008 is executed and delivered by 38 Studios, LLC, a Delaware limited liability company ("Buyer") to Mentor Media, LLC, a Delaware limited liability company ("Seller"). Capitalized terms that are used but not defined herein shall have the meanings ascribed to such terms in the Asset Purchase Agreement (the "Agreement") dated as of the date hereof by and between Buyer and Seller.

WHEREAS, pursuant to the Agreement, Seller has agreed to sell, transfer, convey, assign and deliver to Buyer, and Buyer has agreed to purchase from Seller, the right, title and interest in and to all of the Assets, other than the Excluded Assets and to assume and perform the Assumed Liabilities, at the Closing.

NOW, THEREFORE, in consideration of the mutual promises set forth in the Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties here agree as follows:

1. Assignment. Seller does hereby sell, transfer and assign to Buyer, upon the terms and conditions set forth in the Agreement, all of its right, title and interest in and to the Assumed Liabilities.
2. Assumption. Buyer does hereby assume and agree to perform, as appropriate, the Assumed Liabilities, and Seller hereby transfers the Assumed Liabilities to Buyer, and Buyer shall be responsible for payment and performance of, and agrees to pay and perform, and be solely responsible for, all of (and Seller shall have no responsibility with respect to any of) the Assumed Liabilities, all in accordance with the provisions of the Agreement. Nothing contained herein shall preclude Buyer from contesting in good faith the amount or validity of any Assumed Liability, as against the party to whom such liability is owed. For the avoidance of doubt, Buyer shall not assume any liabilities of Seller which are not expressly included in the definition of Assumed Liabilities, and, with respect to each Assumed Liability, Buyer does not assume and shall not have or be under any liability or obligation over and above any amount set forth in such definition that is explicitly set forth in the Assigned Contract under which it arises.
3. Governing Law. This Assignment and Assumption Agreement and the rights and obligations hereunder shall be governed, interpreted and enforced in accordance with the laws of the Commonwealth of Massachusetts, without regard to its principles of conflicts of laws.
4. Counterparts. This Assignment and Assumption Agreement may be executed in counterparts.
5. Binding Effect. This Assignment and Assumption Agreement shall be binding upon, and shall be enforceable by and inure to the benefit of, the parties named herein and their respective legal representatives, successors and assigns.
6. Purchase Agreement. Each of the parties, by their execution of this Assignment and Assumption Agreement, hereby acknowledges and agrees that neither the representations and warranties nor the rights, remedies or obligations of any party under the Agreement shall be deemed to be enlarged, reduced, modified or altered in any way by this instrument.

[The remainder of this page has been intentionally left blank.]

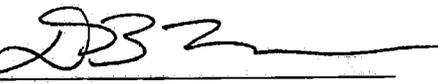
IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Assumption Agreement to be duly executed under seal as of and on the date first above written.

38 STUDIOS, LLC

By:   
Its: \_\_\_\_\_

Address: 5 Clock Tower Place  
Suite 140  
Maynard, MA 01754  
Facsimile: (978) 310-5123  
Attn: Bill Thomas  
Chief Operating Officer

MENTOR MEDIA, LLC

By:   
Its: \_\_\_\_\_

Address: 23 Cart Path Road  
Weston, MA 02493  
Facsimile:  
Attn: Douglas Macrae

Dandy

## BILL OF SALE

THIS BILL OF SALE made effective as of May 15, 2008 is executed and delivered by Mentor Media, LLC, a Delaware limited liability company ("Seller"), to 38 Studios, LLC, a Delaware limited liability company ("Buyer"). Capitalized terms that are used but not defined herein shall have the meanings ascribed to such terms in the Asset Purchase Agreement (the "Agreement") dated as of the date hereof by and between Buyer and Seller.

WHEREAS, pursuant to the Agreement, Seller has agreed to sell, transfer and assign to Buyer the Assets at the Closing.

NOW, THEREFORE, in consideration of the mutual promises set forth in the Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller hereby agrees as follows:

1. Assignment. Seller hereby sells, transfers, conveys, assigns and delivers to Buyer, its successors and assigns, to have and to hold forever, all of Seller's right, title and interest in and to the Assets.
2. Further Assurances. At any time and from time to time at or after the Closing, at Buyer's request, and without further consideration, Seller shall execute, acknowledge, seal and deliver, or cause to be executed, acknowledged, sealed and delivered, such other documents, including instruments of sale, transfer, conveyance, assignment and confirmation or obtain any consent, license, permit, registration or approval, and take such other actions, as Buyer may reasonably deem necessary or appropriate in furtherance of the transactions contemplated by the Agreement and/or in order to more effectively transfer, convey and assign to Buyer, and to confirm Buyer's title to, all of the Assets and the assumption of the Assumed Liabilities as contemplated by the Agreement, to put Buyer in actual possession and operating control thereof, and to assist Buyer in exercising all rights with respect thereto.
3. Power of Attorney. Seller hereby constitutes and appoints Buyer and its successors and assigns the true and lawful attorney and attorneys of Seller with full power of substitution in the name and stead of Seller and its successors and assigns to demand and receive any and all of the Assets transferred or to be transferred by Seller to Buyer pursuant to the Agreement and to give receipts and releases for and in respect to the same or any part thereof, to endorse any claim or right of any kind in respect thereof and to do all acts and things in relation to the Assets which Buyer, its successors or assigns, may deem desirable, Seller hereby declaring that the foregoing powers are coupled with an interest and are not revocable and shall not be revoked by Seller for any reason whatsoever.
4. Purchase Agreement. Each of Seller, by its execution of this Bill of Sale, and Buyer, by its acceptance of this Bill of Sale, hereby acknowledges and agrees that neither the representations and warranties nor the rights, remedies or obligations of any party under the Agreement shall be deemed to be enlarged, reduced, modified or altered in any way by this instrument.
5. Governing Law. This Bill of Sale and the rights and obligations hereunder shall be governed, interpreted and enforced in accordance with the laws of the Commonwealth of Massachusetts, without regard to its principles of conflicts of laws.
6. Counterparts. This Bill of Sale may be executed in counterparts.

[The remainder of this page has been intentionally left blank.]

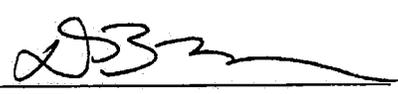
IN WITNESS WHEREOF, the parties hereto have caused this Bill of Sale to be duly executed under seal as of and on the date first above written.

38 STUDIOS, LLC

By:   
Its: \_\_\_\_\_

Address: 5 Clock Tower Place  
Suite 140  
Maynard, MA 01754  
Facsimile: (978) 310-5123  
Attn: Bill Thomas  
Chief Operating Officer

MENTOR MEDIA, LLC

By:   
Its: \_\_\_\_\_

Address: 23 Cart Path Road  
Weston, MA 02493  
Facsimile:  
Attn: Douglas Macrae

*Page 6*

## SERVICE MARK ASSIGNMENT

THIS SERVICE MARK ASSIGNMENT (this "Assignment"), dated as of May 15, 2008, is entered into by and between 38 Studios, LLC, a Delaware limited liability company ("Assignee"), and Mentor Media, LLC, a Delaware limited liability company ("Assignor").

WHEREAS, Assignor has adopted, is using and is the owner of all right, title, interest, and goodwill in and to the service marks and service mark applications listed in the attached Schedule A (the "Marks"); and

WHEREAS, Assignor and Assignee have entered into an Asset Purchase Agreement, dated as of the date hereof (the "Agreement"), pursuant to which Assignor has agreed to assign, sell and transfer all of the Marks, and the goodwill of the business symbolized thereby, unto Assignee.

NOW, THEREFORE, for good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, Assignor does hereby assign, sell and transfer unto Assignee, all of its right, title and interest in and to the Marks, together with (i) the applications to register the Marks and any registrations of the Marks resulting therefrom, (ii) the goodwill of the business symbolized by and associated with the Marks and (iii) the right to sue and recover for, and the right to profits or damages due or accrued arising out of or in connection with, any and all past, present or future infringements or dilution of or damage or injury to the Marks or the registration thereof or such associated goodwill. Assignor does further consent to the recordation of this Assignment with any governmental agency.

Assignor agrees, without further consideration, to execute all oaths, assignments, powers of attorney, applications, and other papers necessary or desirable to fully secure to Assignee the right, title and interest conveyed herein, and to take such further actions as may be reasonably requested by Assignee in order to carry out the provisions and purposes of this Assignment including, without limitation, to execute one or more further assignments covering the Marks in a form acceptable for recordation in both the United States Patent and Trademark Office and in foreign trademark offices.

[Remainder of Page Intentionally Left Blank]

The foregoing assignment is hereby made as of the 15th day of May, 2008.

MENTOR MEDIA, LLC

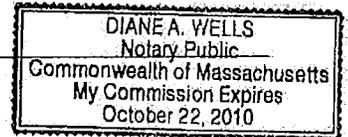
By: [Signature]  
Name:  
Title:

COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF MIDDLESEX

SUBSCRIBED AND SWORN to before me on this 15th day of May, 2008, appeared Doua Macrae, the person who signed this instrument, who acknowledged that he/she is the assignor of Mentor Media, LLC and that being duly authorized he/she signed such instrument as a free act on behalf of Mentor Media, LLC.

[Signature]  
Notary Public

My Commission Expires:



The foregoing assignment is accepted as of the 15th day of May, 2008.

38 STUDIOS, LLC

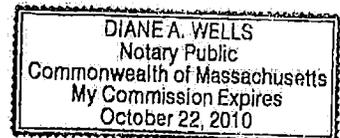
By: [Signature]  
Name:  
Title:

COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF MIDDLESEX

SUBSCRIBED AND SWORN to before me on this 15 day of May, 2008, appeared Curt Schilling, the person who signed this instrument, who acknowledged that he/she is the/a assignee of 38 Studios, LLC, and that being duly authorized he/she signed such instrument as a free act on behalf of 38 Studios, LLC.

[Signature]  
Notary Public

My Commission Expires:



**SCHEDULE A**  
**MARKS**

<b>Mark</b>	<b>Country</b>	<b>Serial No.</b>	<b>Filing Date</b>
MENTOR MEDIA	U.S.	78/903,329	June 7, 2006

**PATENT ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT
<b>CONVEYING PARTY DATA</b>	
Name	Execution Date
Douglas Macrae	05/29/2009
Thomas Westberg	06/01/2009
John O'Keefe	06/02/2009
<b>RECEIVING PARTY DATA</b>	
Name:	38 STUDIOS, LLC
Street Address:	5 Clock Tower Place
City:	Maynard
State/Country:	MASSACHUSETTS
Postal Code:	01754
<b>PROPERTY NUMBERS Total: 2</b>	
Property Type	Number
Application Number:	11764788
Application Number:	60814164
<b>CORRESPONDENCE DATA</b>	
Fax Number:	(626)577-8800
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Email:	pto@cph.com
Correspondent Name:	CHRISTIE, PARKER & HALE, LLP
Address Line 1:	P.O. Box 7068
Address Line 4:	Pasadena, CALIFORNIA 91109-7068
ATTORNEY DOCKET NUMBER:	60059/M1002
NAME OF SUBMITTER:	Wesley W. Monroe

Total Attachments: 3  
 source=60059assignment#page1.tif

**500875297**

**PATENT  
 REEL: 022770 FRAME: 0209**

CH \$80.00 11764788

**ASSIGNMENT**

**WHEREAS, WE, DOUGLAS MACRAE, THOMAS WESTBERG, AND JOHN O'KEEFE**, residing at 23 Cart Path Road, Weston, MA 02493; 553 Sudbury Road, Stow, MA 01775; and 28 Wild Wood Road, Stow, MA 01775, respectively, have invented certain new and useful improvements disclosed in an application for United States Letters Patent entitled **SYSTEM AND METHOD FOR GENERATING TARGETED NEWSLETTERS**, filed June 18, 2007, Application No. 11/764,788, together with claim to the priority of United States Provisional Application No. 60/814,164, filed June 16, 2006.

**AND WHEREAS 38 STUDIOS, LLC**, a Massachusetts limited liability company, having a place of business at 5 Clock Tower Place, Maynard, Massachusetts 01754 (hereafter, together with any successors, legal representatives or assigns thereof, called "ASSIGNEE") wants to acquire the entire right, title and interest in and to said improvements and application.

**NOW, THEREFORE**, in consideration of the sum of One Dollar (\$1.00) to us in hand paid, and other good and valuable consideration, the receipt of which is hereby acknowledged, we have sold, assigned, transferred and set over, and do hereby sell, assign, transfer and set over to ASSIGNEE the entire right, title and interest in and to said improvements, and said application and all divisions and continuations thereof, and all United States Letters Patents which may be granted thereon and all reissues, reexaminations and extensions thereof, including the right to sue or otherwise bring action and to collect and receive damages therefrom, for past infringement thereof, and all priority rights under all available International Agreements, Treaties and Conventions for the protection of intellectual property in its various forms in every participating country, and all applications for patents (including related rights such as utility-model registrations, inventor's certificates, and the like) heretofore or hereafter filed for said improvements in any foreign countries, and all patents (including all continuations, divisions, extensions, renewals, substitutes, and reissues thereof) granted for said improvements in any foreign countries; and we hereby authorize and request the United States Commissioner of Patents and Trademarks, and any officials of foreign countries whose duty it is to issue patents on applications as aforesaid, to issue all patents for said improvements to ASSIGNEE in accordance with the terms of this Assignment;

**AND WE HEREBY** covenant that we have full right to convey the entire interest herein assigned, and that we have not executed, and will not execute, any agreement in conflict herewith;

**AND WE HEREBY** further covenant and agree that we will communicate to ASSIGNEE any facts known to us respecting said improvements, and testify in any legal proceeding, sign all lawful papers, execute all divisional, continuation, substitute and reissue applications, make all rightful oaths and generally do everything possible to aid ASSIGNEE to obtain and enforce proper patent protection for said improvements in all countries.

ASSIGNMENT  
Docket No. 60059/M1002

Joint

IN TESTIMONY WHEREOF, I hereunto set my hand this 29<sup>TH</sup> day of MAY,  
2009

  
\_\_\_\_\_  
Douglas Macrae

STATE OF MASSACHUSETTS )  
COUNTY OF Middlesex )

On June 1, 2009 before me, Diane A. Wells,  
Notary Public, personally appeared Douglas Macrae, who proved to me on the basis of  
satisfactory evidence to be the person whose name is subscribed to the within instrument and  
acknowledged to me that he executed the same in his authorized capacity, and that by his  
signature on the instrument the person, or the entity upon behalf of which the person acted,  
executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Massachusetts that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Signature of Notary (Seal)

\*\*\*\*\*

IN TESTIMONY WHEREOF, I hereunto set my hand this 1 day of June,  
2009.

  
\_\_\_\_\_  
Thomas Westberg

STATE OF MASSACHUSETTS )  
COUNTY OF Middlesex )

On June 1, 2009 before me, Diane A. Wells,  
Notary Public, personally appeared Thomas Westberg, who proved to me on the basis of  
satisfactory evidence to be the person whose name is subscribed to the within instrument and  
acknowledged to me that he executed the same in his authorized capacity, and that by his  
signature on the instrument the person, or the entity upon behalf of which the person acted,  
executed the instrument.

ASSIGNMENT  
Docket No. 60059/M1002

Joint

I certify under PENALTY OF PERJURY under the laws of the State of Massachusetts that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Diane A. Wells  
Signature of Notary (Seal)

\*\*\*\*\*

IN TESTIMONY WHEREOF, I hereunto set my hand this 1 day of June, 2009.

John O'Keefe  
John O'Keefe

STATE OF MASSACHUSETTS  
COUNTY OF Middlesex)

On June 2, 2009 before me, Diane A. Wells,  
Notary Public, personally appeared **John O'Keefe**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Massachusetts that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Diane A. Wells  
Signature of Notary (Seal)

WWM/asl

ASL PAS815584.1-4-10/29/08 10:11 AM

-3-

RECORDED: 06/02/2009

PATENT  
REEL: 022770 FRAME: 0213



## CUSTOMER SERVICES AGREEMENT

This Agreement is between 38 Studios ("Customer") and Kelly Services, Inc. ("Kelly") regarding the provision of temporary staffing and related services by Kelly to Customer.

- 1. Kelly Guarantee.** Kelly guarantees that temporary employees it assigns to Customer will satisfactorily perform the services ordered by Customer. If not, Kelly will, upon reasonable notice from Customer, cancel charges for unsatisfactory services and furnish a replacement as soon as possible.
- 2. Assignment of Kelly Temporary Employees.** Customer will place orders with Kelly describing the type of work requested, specific duties to be performed, skills required, and any other requirements. Kelly will assign temporary employees to perform services that Customer requests under Customer's operational supervision at the location(s) and at the rates in the attached Pricing Exhibit A.
- 3. Employment Relationship with Kelly Temporary Employees.** As the provider of staffing services, Kelly will be the employer of Kelly Temporary Employees, and will be responsible for the staffing services listed below. As the recipient of such staffing services, Customer will be responsible for controlling the environment in which temporary employees perform their work, the details of their work, and their work product, and for the business-related responsibilities below.

**A. Kelly's Responsibilities.** Kelly will:

1. Recruit, select, and hire Kelly Temporary Employees;
2. Assign Kelly Temporary Employees according to Customer's requirements;
3. Pay Kelly Temporary Employees the wages and provide the benefits that Kelly offers to them as its employees (e.g., vacations and holidays);
4. Pay or withhold payroll taxes (e.g., FICA) and insurance premiums (e.g., Medicare) and fulfill its obligations for unemployment compensation (e.g., FUTA, SUTA);
5. Provide workers' compensation benefits and coverage for Kelly Temporary Employees;
6. Maintain Kelly Temporary Employees' personnel and payroll records related to their employment by Kelly;
7. Comply with laws, rules or regulations applicable to providers of staffing services;
8. Require Kelly Temporary Employees to agree in writing to protect the confidentiality of Customer's proprietary information;
9. Require Kelly Temporary Employees to execute agreements that Customer requests with regard to intellectual property developed by them in performance of their work for Customer;
10. Require Kelly Temporary Employees to acknowledge in writing that they have no right to participate in Customer's employee benefit plans;
11. Require Kelly Temporary Employees to comply with all rules and policies of Customer (e.g., those relating to premises access and security);
12. Make legally required employment law disclosures to Kelly Temporary Employees; and
13. Provide Kelly Temporary Employees of diverse race, gender, ethnicity, and background.

Customer may arrange to review Kelly's records as necessary to confirm that Kelly is performing these services. Customer agrees to maintain the confidentiality of records it reviews.

**B. Customer's Responsibilities.** Customer will:

1. Provide temporary employees with a safe and suitable workplace and provide Kelly with prompt notice of any injury suffered by a temporary employee;
2. Use temporary employees only in assignments that match the job descriptions for which Kelly assigns them;
3. Provide adequate internal controls, supervision, and instructions for temporary employees, and be responsible for their conduct when they are required to handle cash, confidential or credit card information, trade secrets, valuables, or similar property;
4. Be responsible for the use of any vehicle or powered mobile equipment by temporary employees in connection with an order, except for workers' compensation claims of Kelly Temporary Employees;
5. Be responsible for the conduct of its own officers, employees, and agents; and
6. Comply with duties imposed on it by law, rule, or regulation.

4. **Insurance Including Workers' Compensation Coverage.** Kelly will maintain during the term of this Agreement at least the following types and limits of insurance or other coverage:

- A. Workers' compensation on the Kelly Temporary Employees, in amounts no less than required by law;
- B. Employer's liability insurance with a limit of \$1,000,000;
- C. Commercial automobile liability insurance with a \$1,000,000 combined single limit on vehicles owned, leased, or rented by Kelly;
- D. Commercial General Liability insurance, including personal injury, contractual liability, and property damage, with a \$1,000,000 combined single limit per occurrence; and
- E. Commercial blanket bond with limits of \$3,000,000 per occurrence.

Kelly will provide Customer with certificates of this insurance coverage, upon request.

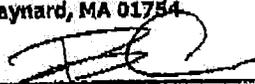
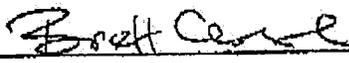
5. **Billing.**

- A. **Invoices.** Kelly will invoice Customer on a weekly basis for hours worked by temporary employees at agreed-upon hourly bill rates. The rates at which Kelly will invoice Customer (and any reimbursable expenses) are listed in Pricing Exhibit A. If Customer's rates are not set out in Pricing Exhibit A, Kelly and Customer will agree on rates at the time of an order, which Kelly will record electronically in its systems.
  - B. **Taxes.** Any sales or use taxes that apply to sales to Customer will be added to Customer's invoices as a separate item.
  - C. **Adjustments.** Kelly will adjust pricing annually and, additionally, to reflect periodic increases in wage and/or related tax, benefit and other costs as the result of an action by a governmental authority, collective bargaining unit or insurance or benefit program (e.g., annual SUTA adjustments).
  - D. **Overtime.** Kelly Temporary Employees are presumed to be "nonexempt" employees -- they are paid overtime if Kelly determines overtime pay is legally required (or when Customer has requested payment of overtime). Kelly will charge Customer overtime rates only when Customer has approved or knowingly allowed the overtime. Unless listed in Pricing Exhibit A, overtime rates will be calculated by applying to Kelly's bill rate the same overtime multiple as Kelly is required to apply to the Kelly Temporary Employee's pay rate.
  - E. **Record Of Time Worked.** Customer agrees to review and approve, by signature or electronic means, a record of time worked by Kelly's employees. Customer will also designate a representative to approve the record. If a Customer representative is unavailable, Kelly's representative responsible for the Customer assignment, or other Kelly representative authorized by Customer, may approve the record on Customer's behalf.
6. **Payment Terms.** Payment for services is due upon Customer's receipt of Kelly's invoice (Kelly acknowledges that Customer's processing of the invoice may take up to 5 days).
7. **Conversion and Transition of Kelly Temporary Employees.** Customer acknowledges that Kelly incurs substantial expenses for recruiting, testing, training and retaining its employees, and Customer agrees to obtain the services of each Kelly Temporary Employee only through an order with Kelly. If Customer wishes to obtain the services of a Kelly Temporary Employee by hiring them (a "conversion"), or by assignment, arrangement, or contract from another source (a "transition"), Customer will compensate Kelly at the conversion rates in Pricing Exhibit A.
8. **Issue Resolution and Indemnification.** Kelly and Customer expect to resolve any other issues that arise with respect to performance of this Agreement through business discussion and conciliation. In the unlikely event that resolution efforts are unsuccessful, each party agrees to indemnify the other party (and its officers, directors, and employees) for claims, losses, penalties, and damages (and reasonable legal fees) to the extent they arise from the indemnifying party's violation of law, or material breach of this Agreement, including obligations listed in Section 3.
9. **Indemnification Process.** To obtain indemnification, a party must promptly notify the other party, cooperate in resolving the claim, and (when liability to third parties is involved) yield reasonable control of the claim's resolution to the other party. Neither party is obligated to provide or commit itself to indemnity while the underlying matter is still pending.
10. **LIMITATION OF LIABILITY.** AS COMMERCIAL PARTIES INTENDING TO ESTABLISH A MUTUALLY BENEFICIAL TEMPORARY STAFFING RELATIONSHIP, KELLY AND CUSTOMER EACH ACKNOWLEDGES THAT THE FOLLOWING LIMITATIONS FORM AN ESSENTIAL PART OF THEIR AGREEMENT. KELLY WILL BE RESPONSIBLE FOR DAMAGES TO THIRD PARTIES FOR WHICH KELLY IS OBLIGATED UNDER SECTION 8. FOR OTHER DAMAGES, KELLY'S ENTIRE LIABILITY TO CUSTOMER WILL NOT EXCEED PROVEN DIRECT DAMAGES EQUAL TO PROFITS MADE BY KELLY UNDER THIS AGREEMENT OR \$10,000 PER OCCURRENCE, WHICHEVER IS LESS. NEITHER KELLY NOR CUSTOMER WILL BE

LIABLE FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSS OF PROFITS, REVENUES, OR GOODWILL ARISING OUT OF THIS AGREEMENT REGARDLESS OF THE BASIS OF THE CLAIM.

- 11. **Term.** This Agreement will continue in force unless one party gives the other party at least 15 days' written notice of termination. Kelly may terminate this Agreement immediately for non-payment. Termination of this Agreement will end the staffing relationship, but this Agreement will continue to govern the parties' rights and obligations with respect to the business done before termination, including but not limited to conversion or transition of temporary employees.
- 12. **Notices.** Notices or communications required by this Agreement must be in writing and mailed (including electronic transmission) or, faxed to the person indicated in the signature block below.
- 13. **Independent Contractor.** Nothing in this Agreement makes Kelly an agent, partner or joint venturer of Customer.
- 14. **Governing Law.** The laws of the State of Massachusetts will govern this Agreement, without regard to its conflicts of laws rules.
- 15. **Force Majeure.** Neither party will be responsible for failure or delay under this Agreement because of force majeure events or other causes beyond its control.
- 16. **Severability; Waiver.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement. Any delay or waiver by a party to declare a breach or seek any remedy available to it under this Agreement or by law will not constitute a waiver as to any past or future breaches or remedies.
- 17. **Entire Agreement.** This Agreement (including any attachments) contains all of the terms between Customer and Kelly on the subject of temporary staffing services for the jobs and locations specified; it replaces all prior agreements and representations on the subject. Modifications to this Agreement must be in writing signed and dated by both parties. Forms that may be used by the parties in their staffing relationship such as purchase orders, time cards, and invoice recitals will not supersede, supplement, modify, or control this Agreement.

38 Studios, LLC  
 Address for Notices:  
 5 Clock Tower Place  
 Suite 140  
 Maynard, MA 01754

  
 \_\_\_\_\_  
 Signature  
 Brett Close   
 \_\_\_\_\_  
 Printed Name  
 President and CEO  
 \_\_\_\_\_  
 Title  
 December 3, 2008  
 \_\_\_\_\_  
 Date Signed

KELLY SERVICES, INC.  
 Address for Notices:  
 999 W. Big Beaver Road  
 Troy, MI 48064  
 Attn: General Counsel

  
 \_\_\_\_\_  
 Signature  
 Gern Gadsou  
 \_\_\_\_\_  
 Printed Name  
 New England District Manager  
 \_\_\_\_\_  
 Title  
 12-4-08  
 \_\_\_\_\_  
 Date Signed



5 Clock Tower Place  
Suite 140  
Maynard, MA 01754

CONFIDENTIAL

Leighton Communications, Inc.  
235 Beau Tree Drive  
Wilmington, DE 19810

2 September 2008

Attention: Katie Leighton

Katie:

This letter agreement (the "Agreement") shall confirm the engagement of Leighton Communications, Inc. by 38 Studios, LLC, A Delaware limited liability company (the "Company"), as the Company's referral source of investors in connection with any private placement of equity securities of the Company to those potential investors introduced by you during the term of the engagement (the "Transaction"). Leighton Communications understands that the Company currently contemplates the Transaction to be a private placement of equity securities of the Company (the "Securities") made pursuant to one or more exemptions from registration under Securities Act of 1933, as amended (the "Securities Act"), and any applicable securities laws of any state or other jurisdiction (the "Blue Sky Laws"). The Transaction will be subject to the following terms and conditions:

### Compensation

Fees. As compensation for said services hereunder, the Company shall pay Leighton Communications (i) a fee of two percent (2.0%) of the Aggregate Consideration (as defined below) of the Transaction received by the Company from the introduced investors (the "Placement Fee"), with fees payable in cash by wire transfer immediately on which such Aggregate Consideration is paid.

"Aggregate Consideration" shall be defined as amounts funded at closing and amounts funded over time under a financing commitment as provided by an equity partner, with such financing commitment being arranged as a result of Leighton Communications engagement hereunder.

Please confirm that the foregoing correctly sets forth our agreement by signing and returning to 38 Studios, LLC the enclosed duplicate copy of this Agreement.

### Period of Engagement

This agreement shall be in affect on an evergreen basis (as defined below) from the date above and is cancelable by either party in writing with 30 (thirty) days notice. All introductions made by Leighton Communications prior to this engagement letter will be considered as though they were made during the Period of engagement. All introductions made during the period of engagement that result in funding after a termination of this agreement shall be subject to fees as defined in this agreement.

### Registration

Each of your referrals referral shall be documented by Leighton Communications via normal business communications (email, fax or letter format). This communication shall include the name of the organization, the contact person within the organization, contact details (email address, telephone number and address), your association with them, what information you have given them and why you believe they make a good potential investor. These referrals shall be addressed to Brett Close President of 38 Studios and cced to Curt Schilling Chairman, Bill Thomas COO and Jennifer MacLean VP Business Development 38 Studios. Within 2 business days 38 Studios will advise you, by normal business communications, if they accept or deny your referral.

The "evergreen basis" is a term which is continually renewed.

Very truly yours,

38 Studios, LLC

By

Curt Schilling

Chairman and Founder

Date:

Accepted and agreed:

By: Leighton Communications

By

Katie Leighton

Date:

9/5/08

January 1, 2008

Mr. Todd McFarlane  
The McFarlane Companies  
PO Box 12230 Tempe, AZ 85284-0038

**Re: Incentive Arrangement**

Dear Todd:

This letter shall set forth the understanding between 38 Studios, LLC, a Delaware limited liability company ("38 Studios"), and you with respect to the massively multiplayer online game program (the "MMO Program") being created by 38 Studios, LLC with your assistance. Set forth below is our understanding of the arrangement between 38 Studios and you.

1. Provision of Services; Ownership of Intellectual Property. In connection with the MMO Program,
  - a) You agree to provide direction and leadership with respect to creating the concept art for the massively multiplayer online game program being created by 38 Studios (including the concept art for all characters), creating the environment for the title and providing reasonable support to facilitate or enhance the launch of the program,
  - b) You agree that 38 Studios can publicize your involvement in and role with 38 Studios both within and outside of the company,
  - c) You will provide reasonable support to facilitate or enhance the launch of the MMO Program,
  - d) You agree to participate in a weekly telephone conference calls with 38 Studios to discuss the status of your work and the overall progress of the project. It is anticipated that each of these teleconferences will be approximately one hour long. Subject to mutual availability, we intend to schedule these teleconferences for Monday and Friday at 10:00 a.m. your local time or times that are mutually agreed.
  - e) Additionally, you agree you will visit our headquarters once each calendar quarter. It is anticipated that these meetings will be one to two days in length and may include the participation of some of your staff members, and
  - f) You agree to such other duties as mutually agreed to by 38 Studios and you.

Any interest in any materials, information, technological innovations, inventions, trademarks, copyrights, developments, designs, discoveries and processes that you, either alone, jointly with others or with or through your employees, agents and/or contractors, may now or hereafter create, design, generate, prepare, conceive of or develop for the MMO Program, for 38 Studios or otherwise in connection with the Services (the "MMO Program IP") are for the benefit of and belong exclusively to 38 Studios, and you hereby assign, transfer, grant, sell and otherwise convey to 38 Studios all of your right, title and interest in and to the MMO Program IP. To the extent that you may be entitled to claim any ownership interest in the MMO Program IP, you hereby assign to 38 Studios without further compensation, all of your right, title and interest in and to all such MMO Program IP and 38 Studios will be entitled to obtain and own all such materials, and all rights therein, including but not limited to all copyrights, in 38 Studios own name. You will cooperate fully and sign any instruments or documents requested by 38 Studios to obtain, maintain in force and vest in the Company clear of all liens, charges and encumbrances, any interest in the MMO Program IP in the United States and elsewhere. In the event of your breach or threatened breach of the provisions of this Section 1, 38 Studios shall be entitled to injunctive relief, without the necessity of posting any bond, restraining and prohibiting you from claiming any, right, title or interest in or to the MMO Program IP.

2. Reimbursement of Expenses. 38 Studios will reimburse you for travel expenses relating to your travel at their request in the performance of the Services and any additional parties mutually agreed upon.

3. Allocation. An allocation of 2.5% (1,250,000 units) of equity ownership in 38 Studios, LLC will be made at the signing date of this agreement. This allocation will vest at the rate of 0.5% per at the signing of this agreement and twelve (12) months after effective date of this agreement for two (2) continuous twelve (12) month periods and 1.0% vested thirty-six (36) months after the effective date of this agreement but no sooner than twelve (12) months after the launch of the first MMO. This equity will be allocated in Class A Units and will have all rights thereto. These shares will have full voting rights.

4. Future Investment: 38 Studios agrees to advise you of all additional funding round details with the understanding you will be able to participate in those rounds at the current equity pricing.

5. Forfeiture of Payments. Notwithstanding anything in this letter agreement to the contrary, you shall forfeit your right to any of equity allocation set forth above if you violate the terms of your signed Confidentiality and Non-Disclosure Agreement with 38 Studios by judgment in any Court having jurisdiction thereof..

6. Independent Contractor Status. Notwithstanding anything in this letter agreement to the contrary, you are not an employee of 38 Studios, and 38 Studios will not

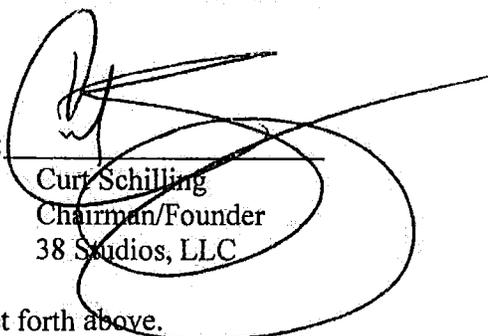
withhold for taxes on any payments made by it under this letter agreement. You are solely responsible for all applicable taxes for all compensation paid to you pursuant to this letter agreement. You have no authority to enter into any contracts that bind 38 Studios or to create any obligations on the part of 38 Studios without the prior written authorization of the manager of 38 Studios.

7. Miscellaneous Provisions. This letter agreement is intended to be binding upon and inure to the benefit of 38 Studios, you and our respective heirs, successors and assigns. This letter agreement may not be assigned by you without the prior written consent of 38 Studios. This Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Massachusetts applicable to agreements made and to be performed therein without reference to conflicts of law principles. Any disputes under this Agreement may be brought only in the state or federal courts located in the State of Massachusetts, and 38 Studios and you hereby consent to the sole and exclusive personal and subject matter jurisdiction and venue of these courts. The provisions of this letter agreement may be amended only with a prior written consent of 38 Studios and you, and no course of conduct or failure or delay in enforcing any provisions of this letter agreement shall affect the validity, binding effect or enforceability of this letter agreement.

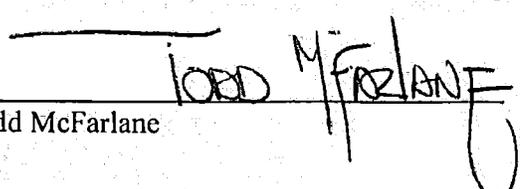
8. Royalty Agreement. Royalty agreements will be executed for each individual toy or related object you produce or comic book you produce.

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

By:

  
Curt Schilling  
Chairman/Founder  
38 Studios, LLC

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

  
Todd McFarlane

Date: OCT-27-2008