**DEVELOPMENT AND PUBLISHING AGREEMENT**

This Development and Publishing Agreement (the “Agreement”) takes effect on [DATE],

**BETWEEN: [PUBLISHER NAME]** (the "Publisher"), a company organised and existing under the laws of [COUNTRY], with its head office located at:

 [YOUR COMPLETE ADDRESS]

**AND: [DEVELOPER NAME]** (the "Developer"), a company organised and existing under the laws of [COUNTRY], with its head office located at:

 [COMPLETE ADDRESS]

**Recitals:**

The Developer has proposed the development of the [SPECIFY PRODUCT] with the working name "[SPECIFY]" which the Developer is desirous of producing and distributing in [SPECIFY FORM] ("Title");

The Publisher is in the business of developing, publishing and distributing [SPECIFY];

The Developer is desirous of having the Publisher provide funding to develop the Title and to publish and distribute the Title on the terms and conditions set forth herein, and the Publisher is willing to provide such funding on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises, conditions, covenants, and warranties herein contained, the parties agree as follows:

# DEFINITIONS

## "Add-On Products" shall mean [SPECIFY] products related to and intended to work with the Title;

## "Advances" shall mean all funds advanced by the Publisher to the Developer to create the Title (as defined below) or Add-On Products under this Agreement.

## "Bundled Copies" shall mean copies of the Title or Add-On Products distributed bundled with [SPECIFY] or other products of the Publisher or a third party.

## "Confidential Information" shall mean the information of either party which is disclosed to the other party under this Agreement, in written form marked "confidential," or if disclosed orally, confirmed in writing summarising such information within [NUMBER] days of disclosure and marked "confidential." By way of example and without limiting the generality of the preceding, Confidential Information shall include trade secrets, know-how, inventions, algorithms, structure, and organisation of software programs, source code, schematics, contracts, customer lists, financial information, sales and marketing plans, and business plans.

## "Cost of Goods" shall mean the Publisher's actual cost of manufacturing and packaging copies of the Title or Add-On Products up to the time of shipment into the distribution channel, including the duplication costs for copies of the Title or Add-On Products on optical or magnetic media, packaging materials, manuals and other collateral materials and programme components.

## "Deliverable Item" shall mean each of the programme components, materials or designs outlined in the relevant Delivery Schedule that the Developer shall deliver to the Publisher in accordance with the terms of this Agreement.

## "Delivery Schedule" shall mean the schedule of Deliverable Items outlined in Annexure B.

## "Effective Date" shall mean the date first set forth above.

## "Net Revenue" shall mean all revenues recognised in accordance with generally accepted accounting principles relating to the distribution or sale of the Title or Add-On Products or other products related thereto by the Publisher or any of its affiliated, associated or subsidiary companies, less (a) units returned as defective, as a result of errors in billing or shipment, or otherwise returned in the ordinary course of business, (b) Cost of Goods, and (c) taxes collected by the Publisher in connection with the Title or Add-On Products or other Title-related products for payment to any governmental authority. The preceding deductions shall be consistent with the amounts paid in the industry for such items.

## "QA Testing" shall mean quality assurance testing of an alpha or beta candidate or gold master for identification of bugs or errors.

## "Retail Copies" shall mean all copies of the Title or Add-On Products distributed to third parties, except Bundled Copies, promotional copies and returns.

## "Specifications" shall mean the functional specifications and description of features and content of the Title as outlined in Annexure A.

## "Territory" shall mean the entire world.

## "Title" shall mean the interactive multimedia product described in Annexure A known by the working name "Metal Research." The Title shall also include any product for which the Publisher exercises its right of first refusal as further provided below.

# ADVANCES

## Advances. The Publisher agrees to pay the Developer an advance against royalties of [AMOUNT/COUNTRY], to be paid in instalments upon approval of deliverables on the schedule outlined in Annexure B. The Developer agrees that this advance shall be sufficient to produce a complete [SPECIFY]. The amount of this advance may be adjusted as follows;

### The Publisher and the Developer agree to meet and discuss regarding reducing the amount of this advance and modifying the Delivery Schedule in the event that, during the development of the Title, it appears that the Title can be developed in a shorter time frame or at a lower cost than presently anticipated.

### Budgeted amounts included in the advance for salaries and overhead expenses such as office space shall be reduced *pro rata* and/or charged against other projects on which the Developer is working concurrently with the Development of the Title under this Agreement.

## Advances for [PRODUCT]. The Publisher shall have the option, in its sole discretion, to add [SPECIFY] [PRODUCT] to the present specifications and budget. It is presently anticipated that the additional cost of such [PRODUCT] would be approximately [AMOUNT/COUNTRY]. The parties also agree that the exercise of this option by the Publisher shall not result in an extension of the delivery dates for the overall Title. To the extent that, at the time of exercising of this option, the Developer believes that the schedule will slip as a result, the Developer shall inform the Publisher of this fact, and the parties shall meet and discuss regarding any adjustment to the Delivery Schedule. The Developer shall investigate actual costs relating to such [PRODUCT], and shall rework the script to include such [PRODUCT], and shall submit a final cost estimate and script including such [PRODUCT] at the time that [SPECIFY] is implemented and demonstrated on the target machine. The Publisher shall make a decision within a reasonable time thereafter as to whether to include such [PRODUCT]. If the Publisher decides to do so, the parties shall mutually agree on a schedule of milestone deliverables and Advances relating to such [PRODUCT].

# PROPRIETARY RIGHTS AND GRANT OF LICENSE

## The Title and all revisions thereof, if any, and all original music composed for and utilised in the Title are written and commissioned at the Publisher's request and direction, and shall be considered works-for-hire.

## All rights to the Title, including but not limited to the copyright, shall be the property of the Publisher or its assignee. The Publisher shall have all rights in the Title, including the right to make or licence derivative works, and the right to produce the Title and derivative works in all forms now known or hereafter developed. The Developer shall not acquire any right, title or interest in or to the Title in any format through the exercise of any rights or performance of any obligations by the Developer hereunder. The Publisher shall have the right to revise the Title, and the Developer shall not have any right to make revisions of the completed Title without the Publisher's prior written consent.

## The Developer grants and assigns the Publisher any and all rights the Developer may now have or may be deemed to have in the future with respect to the Title, including but not limited to the copyright to the Title and any and all portions thereof to the extent that any such rights do not automatically vest in the Publisher as works for hire and are not presently assignable, the Developer agrees to assign such rights to the Publisher in the future, and the Developer agrees to deliver to the Publisher at the Publisher's expense all documents reasonably necessary to effect the assignment of Developer's rights contemplated herein.

## The Publisher retains the exclusive right to distribute, market, sell, display, advertise, and promote the Title in perpetuity throughout the world. The timing and manner of exercise of these rights shall be solely within the discretion of the Publisher.

## Notwithstanding the preceding, the Publisher recognises that the underlying computer software engine in the game will be developed based on certain existing and future-developed proprietary computer software developed by Developer. The Publisher shall be the owner of all work performed on such engine specific to the Title and shall be granted a non-exclusive, perpetual, royalty-free, fully-paid up licence to use the engine in every way and manner contemplated under this Agreement to exploit the Title and the Publisher's rights in the Title.

## The Publisher grants the Developer the exclusive worldwide licence to exploit the non-interactive game uses of the Title subject to the Publisher's prior written approval and payment of a royalty to the Publisher as provided below.

## Developer's First Option. The Developer shall have a first option to develop any Add-On Products and/or derivative interactive works which the Publisher desires to have developed by an outside developer. For purposes of this section, "first option" shall mean that the Publisher will promptly notify the Developer in writing of the nature of such proposed Add-On Product or derivative interactive work. The Publisher shall give the Developer the right to develop such Add-On Product and shall negotiate the terms and conditions of such development in good faith. If the Publisher and the Developer are unable to agree upon the terms and conditions within [NUMBER] days of the Publisher's written notice, then the Publisher shall be free to approach any other developer or third party regarding the development of such Add-On Product or derivative interactive work.

# ROYALTIES

## Royalties on the Title. The Advances shall be recouped by the Publisher from royalties on revenues relating to the Title and Add-On Products. No royalties shall be paid to the Developer relating to the Title or Add-On Products until all of the Advances paid to the Developer has been recouped by the Publisher. The Publisher shall pay or credit royalties to the Developer at the following rates:

### [NUMBER] per cent of Net Revenue on the Title up to [AMOUNT/COUNTRY]

### [NUMBER] per cent of Net Revenue on the Title from [AMOUNT] [CURRENCY] up to [AMOUNT/COUNTRY]

### [SPECIFY %] per cent of Net Revenue on the Title above [AMOUNT/COUNTRY]

### [SPECIFY %] per cent of Net Revenue on Add-On Products if the Add-On Product is created by a developer other than the Developer;

### [SPECIFY %] per cent of Net Revenue on Add-On Products if the Add-On Product is created by the Developer.

## Royalties from the Developer to the Publisher. The Developer will pay the Publisher a royalty based on all revenues generated from Developer's uses of the Title under the licence granted by the Publisher above. The parties in good faith will negotiate the amount of such royalty at the time the Developer determines the nature of the ancillary product.

## All royalty payments shall be made in [AMOUNT/COUNTRY] by cheque drawn on a [SPECIFY COUNTRY, CURRENCY].

## The above royalty rates shall include all royalties to be paid to third-parties ("content royalties"). It will be the Developer's responsibility to ensure that all content and other third-party royalties are paid when due.

## The Publisher shall render to the Developer on a quarterly basis, within [NUMBER] days after the end of each calendar quarter during which the Title or Add-On Product is sold, a written statement of the royalties due to the Developer concerning such Title or Add-On Product. Such statement shall be accompanied by a remittance of the amount due if any. The Developer shall have the right, upon reasonable request, to review those records of the Publisher necessary to verify the royalties paid are not more than once per the calendar year. Any such audit will be conducted at the Developer's expense, by certified public accountants, and at such times and in such a manner as to not unreasonably interfere with the Publishers normal operations, and the Developer and its auditor shall be required to treat information revealed during the audit as Confidential Information; provided, however, that if any such audit reveals an error of at least [NUMBER] per cent in the payment of royalties, then the Publisher shall pay the costs of the audit. If a deficiency is shown by such audit, the Publisher shall immediately pay that deficiency. Non-payment of any deficiency within [NUMBER] business days of the date on which the Publisher receives notice of such deficiency shall constitute a material breach of this Agreement. Once royalties become due from the Developer to the Publisher under section 4.2, statements and remittance of royalties from the Developer to the Publisher shall also be made according to the terms of this paragraph.

# DEVELOPMENT AND APPROVAL PROCESS

## The Developer agrees to develop the Title with the Publisher in accordance with the terms of this Agreement and Annexure A, and to deliver the Title and the Deliverable Items set forth in the Annexure B to the Publisher for approval, in the Publisher's sole discretion, in the manner and on the dates specified in the Delivery Schedule. The Developer and the Publisher agree that no major additional enhancements to the Specifications outlined in Annexure A will be required or made by the Developer without the parties' prior mutual consent.

## Upon receipt of each Deliverable Item except the alpha, beta, or golden master of a Title, the Publisher shall, within [NUMBER] business days, provide the Developer with either:

## written approval of the Deliverable Item; or

## a written list of changes that must be made before the Publisher will approve such Deliverable Item.

Failure to approve or provide a written list of changes within [NUMBER] days shall constitute approval of the Deliverable Item.

## No Deliverable Item shall be considered to be approved by the Publisher, and no payment will be made for completion of such Deliverable Item until the Developer has received written confirmation of such approval from the Publisher, or a failure to approve or provide a written list of changes has occurred, and the Publisher has approved all preceding Deliverable Items. If any Deliverable Item requires changes before the Publisher will approve it, the steps set forth above shall be repeated until such Deliverable Item is accepted, or until the Publisher exercises its termination or completion rights under section 5.7 below.

## The alpha, beta, and golden masters of a Title must be fully tested by the Developer for conformity with the Specifications before delivery to the Publisher, and must meet the following criteria:

## The initial alpha candidates must be delivered on or before the date outlined in Annexure B and must be fully featured and content complete, according to the description outlined in the Specifications.

## The initial beta candidates must be delivered on or before the date set forth in Annexure B and shall be feature frozen and contain all agreed upon changes from alpha and implement all corrections of any bugs or errors identified during QA testing of alpha that cause system or programme crashes, or otherwise significantly interfere with the user's ability to use and enjoy the Title (priority I bugs).

## The golden masters shall be delivered promptly upon implementation of all remaining corrections of previously identified and agreed upon bugs or errors.

## Upon receipt of the initial alpha, beta, and golden master candidates, the Publisher shall, within [NUMBER] business days, provide the Developer with either:

### written acceptance into QA testing of the alpha or beta candidates, which will trigger the Publisher's payment obligations, if any, as outlined in Annexure B; or

### written acceptance of the golden master; or

### a written list of changes that must be made before the Publisher will accept the alpha or beta candidates into testing, or the golden master.

The Publisher's failure to approve or reject the candidate or golden master in writing within [NUMBER] business days of receipt shall constitute approval.

## If changes are required by the Publisher before the Publisher will accept the alpha or beta candidate into testing, or accept the golden master, then the steps set forth above shall be repeated until the alpha or beta is accepted into QA testing, or the golden master is accepted, or until the Publisher terminates the agreement or exercises its completion rights, as described in section 5.7 below.

## If the Developer has not provided an acceptable Deliverable Item or alpha, beta, or golden master candidate within [NUMBER] weeks of the date the Deliverable Item or candidate was originally due to be delivered, or if the Publisher reasonably believes that the development of the Title is or will be at any time more than [NUMBER] per cent over budget, the Publisher shall be entitled to terminate this Agreement or exercise its completion rights as follows: If the Publisher chooses to complete the Title, then the Developer shall deliver to the Publisher within [NUMBER] business days of receipt of notice from the Publisher the most current version of the source code for the Title, together with all related development and production materials, including [PRODUCT] and audio master tapes, scripts, documentation, notes, hint sheets, and bug reports, and the Developer shall cooperate fully with the Publisher's efforts to complete the Title. Any amount spent by the Publisher to complete the Title shall be considered an additional Advance, to be recouped from the royalties that would otherwise be paid to the Developer relating to the Title. Such additional advance shall be recouped at the relevant rate for the Title from Net Revenues until fully recouped. In addition, if the Publisher completes the Title under the terms of this section, the royalty to be paid to the Developer relating to the Title shall be reduced by [NUMBER] per cent. The Publisher shall have sole discretion as to whether it chooses to complete the title if the Publisher terminates under this section.

## Upon acceptance of an alpha candidate, the Publisher shall commence QA Testing. During this period, the Publisher shall provide the Developer with notice of any bugs or errors identified by QA Testing, and the Developer shall work expeditiously to correct any bugs or errors so notified. When the Publisher determines, in its sole discretion, that all agreed upon changes from alpha and all corrections of any bugs and errors identified during QA Testing of alpha that cause system or programme crashes or otherwise significantly interfere with programme operation have been made, the Publisher will notify the Developer that the Publisher is ready to receive the initial beta candidates as set forth above. Upon such notification, the Developer shall promptly prepare and deliver beta candidates to the Publisher as set forth above, and such candidates shall be delivered in any event before the date outlined in Annexure B. A QA Testing period shall then commence on the date that the Publisher accepts the beta candidates into QA Testing. During this period, the Publisher shall provide the Developer with notice of any bugs or errors identified by QA Testing, and the Developer shall work expeditiously to correct any errors so notified. When the Publisher determines, in its sole discretion, that all bugs or errors identified during QA Testing have been corrected, the Publisher will notify the Developer that the Publisher is ready to receive golden masters as set forth above.

## The Publisher shall have the right, at the Publisher's expense, to send the Publisher personnel to the Developer's place of business upon reasonable notice during normal business hours for consultation concerning the Title's development.

## The Developer shall be responsible for all development costs associated with the Title, including, but not limited to, the costs of any fees payable for software or other licencing rights or acquiring services or materials in connection with the Title. If any Deliverable Item contains any non-original material, including music, the Developer shall identify the material and the owner or copyright holder thereof at the time of delivery of such Deliverable Item, and the Developer shall obtain, at the Developer's expense, all authorisations necessary to secure from the owner or copyright holder of such material the rights for the Publisher granted in section 3 above in connection with such material without additional costs to the Publisher and without restriction. In addition, the Developer shall deliver to the Publisher along with the Deliverable Item containing such material, all documentation establishing the Developer's and the Publisher's right to use such material.

## Incentives/Over Budget

### If the development of the Title is over the budget, the Developer shall have an obligation to pay for the overage. If the Developer fails to do so, the Publisher may in its sole discretion cover the overage, but if the Publisher chooses to do so, the salaries of Developer's Executive Producer and Producer will be cut [NUMBER] [%]beginning immediately upon the Publisher first obtaining information which would lead a reasonable person to believe that a budget overage will occur, and the amount not paid as salary shall be used to reduce such overage until such overage (or the grounds for believing that such overage will occur) is eliminated. If the Publisher covers the overage and the project remains over budget at the time the Publisher accepts the golden master, the royalties to be paid to the Developer will be reduced [NUMBER] per cent for every [AMOUNT] or portion thereof that the Title is over budget. Any amount paid by the Publisher to reduce a budget overage (or in any event in addition to the Advances set forth above) shall be fully recoupable from royalties which would otherwise be paid to the Developer.

### In the event that the Title is delivered before the due date, and on or under budget as of the delivery date of the relevant deliverable item and for the Title as a whole, incentive payment(s) may be awarded to the Developer in the Publisher's sole discretion. This incentive payment or payments shall be limited at a maximum to the following:

### If the Title is finished in acceptable form, under budget and early, the Publisher may pay the Developer the remaining amounts in the budget for the Developer salaries, which amount shall count as an Advance to be recouped hereunder;

### If the alpha, beta, golden master, and demo deliverables are delivered on or before the dates that they are due and on or under budget, the Publisher may pay to the Developer a bonus of up to [AMOUNT] for each of these deliverables (to a maximum of [AMOUNT]), which amounts shall count as an additional Advance to be recouped hereunder; and

### For each top rating that the Title receives from reviews *in re*putable industry recognised publications, the Publisher may pay the Developer an incentive bonus of up to [AMOUNT] which shall not count as an advance, provided, however, that the maximum amount payable to the Developer under this subsection shall be [AMOUNT], and such bonuses shall be paid only if all of the relevant deliverables are completed on or before the date that they are due and on or under budget.

## Reports. The Developer shall provide the Publisher with monthly status reports, including updates of budget versus actual expenditures, and progress against the Delivery Schedule, on the first of each month within the term of the development of the Title. In addition, the Developer shall inform the Publisher promptly as soon as the Developer becomes aware that there is a risk as to:

## exceeding the budget,

## failing to meet the schedule,

## inability of the Title to perform up to the technical requirements contemplated in the Specifications or any other design materials or documents, or

## inability to provide the feature functionality contemplated in the Specifications or any other related design materials or documents.

## Equipment. Equipment purchased by the Developer using funds from the Advances shall be owned by the Publisher until all Advances are recouped. The equipment presently owned by the Developer is listed in Annexure D. It shall be presumed that any equipment purchased by the Developer from the effective date of this Agreement until the date development of the Title is completed is owned by the Publisher under the terms of this section.

# PRODUCT NAME, MARKETING AND PROMOTION, AND CREDITS

## The parties agree to work together to choose the name under which the Title is distributed. The Publisher understands that the choice of a name is important to the Developer, and will use reasonable efforts to accommodate the Developer's concerns. Notwithstanding the preceding, the final decision as to the name of the Title shall be the Publishers. The Publisher shall own the name of the Title as the Publisher's trademark, but shall allow the Developer to use such name in connection with any approved ancillary product.

## The Developer will provide the Publisher with all commercially reasonable cooperation and support of the Publisher's efforts to market and promote each Title. In particular, but without limiting the generality of the preceding, the Developer agrees at its own expense:

### to permit the use of the images, voices, names, likenesses, and biographies of the persons involved in the creation of each Title and the persons involved in creating or appearing in the content incorporated in the Titles in connection with the advertising, marketing, publicity, and promotion of the Titles; and

### to provide the Publisher with demonstration [PRODUCT]s, as reasonably requested by the Publisher.

## The Publisher will consult with the Developer regarding the packaging and marketing of each Title. The Publisher will use reasonable efforts to accommodate the Developer's packaging and marketing suggestions. Notwithstanding the preceding, the Publisher shall have the final decision on all packaging and marketing matters and shall pay all costs related thereto. The Developer shall not engage in any independent marketing or promotional activities without consulting with the appropriate Publisher personnel and receiving the Publisher's prior consent.

## The Developer shall include the Publishers title animation on the first screen to be viewed by end-users of the Title.

## The Developer shall be given credits in the Titles consistent with industry standards, subject to the Publisher's approval in the Publisher's sole discretion. In particular, the Developer shall be given at least the credits listed in Annexure C, provided that the Developer and any individuals named thereon carry out their responsibilities throughout the development of the Title.

## The Publisher shall include the Developer's logo (as provided by the Developer in suitable electronic format) on the packaging for the product. The size and placement of Developer's logo shall be within the Publisher's sole discretion.

## The Publisher shall be responsible for all costs of focus group testing of the Title and Add-On Products.

# DEVELOPER COPIES

## The Developer shall be given a total of [NUMBER]copies of the Title for each platform free of charge at the time the Title is first shipped for a platform in commercial quantities in the retail channel.

## The Developer shall be entitled to purchase a reasonable number of additional copies of the Title for each platform at the Publisher's cost in any calendar quarter beginning with the calendar quarter after the Title first ships in commercial quantities in the retail channel. Such copies shall be supplied from stock on hand and shall not be resold by the Developer, but shall be used for promotional purposes only, after consultation with the appropriate Publisher personnel. In the event the Publisher does not have sufficient copies of the Title to satisfy the Developer's request, the Publisher shall deliver enough copies of the Title to satisfy the request from the next pressing of the Title.

# MAINTENANCE

The Developer agrees to perform maintenance on the Title and Add-Ons created by the Developer for as long as the Title is being offered for sale. Such maintenance shall include, but not be limited to, fixing any bugs or errors in the Titles within [NUMBER] days of being notified of such a bug or error, and providing updated versions of the Title and source code containing such corrections. Such maintenance shall be provided at the Developer's expense in the first [NUMBER] days after the commercial release of the Title for the initial platforms, and thereafter at the Developer's reasonable and customary work for hire rates.

# SOURCE CODE

The Developer shall send to the Publisher the most recent version of the source code for the Title at the end of each calendar month on a medium and in a format to be mutually agreed upon by the parties, until the Titles which have been finished and finally accepted by the Publisher, and a final version of the source code has been provided to the Publisher.

# CUSTOMER SERVICE AND INFORMATION

## The Publisher will be responsible for providing reasonable and customary customer service for the Title. The Developer agrees to provide such technical assistance and information to the Publisher as shall be reasonably necessary for the Publisher to provide such customer service.

## The Publisher agrees to provide to the Developer upon request, but not more than once per quarter, a list of all registered users of the Titles, containing names, addresses, phone numbers, and other relevant marketing data, if known to the Publisher. Such information shall be treated as Confidential Information under this Agreement.

# DOCUMENTATION

In addition to any documentation called for in the Delivery Schedule for any Title, the Developer shall provide user documentation for the Title at Developer's expense.

# WARRANTIES, INDEMNIFICATION, AND REMEDIES

## The Developer warrants that it will proceed expeditiously to complete the Title, and that upon completion of the Title, it shall conform in all material respects to the Specifications and other descriptions prepared by the Developer and contained in any accompanying written materials, and shall contain no viruses.

## The Developer represents, warrants and covenants that it has full right, power and authority to enter into this Agreement and to grant the rights granted herein without violating any other agreement or commitment of any sort; that it has no outstanding agreements or understandings, written or oral, concerning the Title; that the Developer has not previously sold, licenced, encumbered or pledged the Title or any portion thereof as security to any third party; that the Deliverable Items provided hereunder shall be original; and that the Title does not and will not infringe or constitute a misappropriation of any trademark, patent, copyright, trade secret or other proprietary, publicity, or privacy right of any third-party and the Publisher's use, reproduction, sale, licencing and/or distribution of each Title as provided in this Agreement shall not violate any rights of any kind or nature of any third-party.

## The Developer shall defend, indemnify and hold harmless the Publisher, its successors, assigns, parents, subsidiaries, affiliates, licensees and sublicensees, and their respective officers, directors, agents and employees, from and against any action, lawsuit, claim, damages, liability, costs and expenses (including reasonable attorneys' fees), arising out of or in any way connected with any breach of any representation or warranty made by the Developer herein or any claim that the Title infringes any intellectual property rights or other rights of any third-party. The Publisher shall give the Developer prompt notice of any such claim or any threatened claim, and reasonably cooperate with the Developer in the defence thereof

## If the Publisher receives notice of any claim, demand or lawsuit, or of any facts which would lead a reasonable person to believe that there has been a breach of the Developer's warranties as set forth herein, the Publisher shall have the right to withhold from any payments due to the Developer under this Agreement, and deposit in an interest-bearing escrow account with a commercial bank, reasonable amounts as security for the Developer's obligations hereunder, unless the Developer posts other security reasonably acceptable to the Publisher. Upon resolution of the claim, the amount in escrow including accrued interest thereon shall be distributed to the Developer after deductions of any amounts required to be paid to the Publisher or third parties under this indemnity.

## The Publisher hereby represents, warrants and covenants that it has the full right, power, and authority to enter into this Agreement. The Publisher shall defend, indemnify and hold harmless the Developer, its successors, assigns, parents, subsidiaries, affiliates, licensees and sublicensees, and their respective officers, directors, agents and employees, from and against any action, lawsuit, claim, damages, liability, costs, and expenses (including reasonable attorneys' fees), arising out of or in any way connected with any breach of any representation or warranty made by the Publisher herein. The Developer shall give the Publisher prompt notice of any such claim or any threatened claim, and shall reasonably cooperate in the defence thereof.

## Neither the Developer or the Publisher shall agree to the settlement of any such claim, demand or lawsuit before final judgement  thereon without the consent of the other party, whose consent shall not unreasonably be withheld.

## The parties' indemnification obligations outlined in the preceding paragraphs shall survive termination of this Agreement.

# TERMINATION

## This Agreement will terminate on the [NUMBER] day after one party gives the other notice of a material breach by the other of any term of this Agreement, unless the breach is cured before that day; provided, however, that if the material breach relates only to a particular Add-On Product, then only the rights with respect to that Add-On Product shall be terminated. The Publisher shall have the right to suspend payment for milestones or royalties from the time the Publisher notifies the Developer of a breach until the time such breach is cured by Developer.

## This Agreement may be terminated by either party without prior notice if:

## the other party files a petition for bankruptcy or is adjudicated a bankrupt,

## a petition in bankruptcy is filed against the other party,

## the other party becomes insolvent or makes an assignment for the benefit of its creditors or an arrangement for its creditors under any bankruptcy law,

## the other party discontinues its business, or

## a receiver is appointed for the other party or its business.

## This Agreement also may be terminated by the Publisher immediately upon notice under the terms of section 5.7 above.

## In the event of any termination of this Agreement, the Developer shall within [NUMBER] days turn over to the Publisher all copies of the source code, artwork, text files, graphics, design documents, bug reports and databases, and all other materials related in any way to the development of the Title.

## Notwithstanding any termination of this Agreement, the Publisher shall retain the rights granted herein for the Title.

## Termination of this Agreement shall not extinguish any of the Publisher's or the Developer's rights or obligations under this Agreement which by their terms continue after the date of termination. Termination of this Agreement shall be without prejudice to any other rights that either party may have at law or in equity, and shall not affect the rights of end-users to continue to use all distributed copies of the Titles.

# CONFIDENTIAL INFORMATION

## Neither party shall disclose any of the Confidential Information of the other party during or after the time this Agreement is in effect. The information shall not be deemed confidential if it:

### is now or hereafter becomes, through no act or omission on the part of the receiving party, generally known or available within the industry, or is now or later enters the public domain through no act or omission on the part of the receiving party;

### was acquired by the receiving party before receiving such information from the disclosing party and without restriction as to use or disclosure;

### is hereafter rightfully furnished to the receiving party by a third party, without restriction as to use or disclosure;

### is required to be disclosed under the law, provided the receiving party uses reasonable efforts to give the disclosing party reasonable notice of such required disclosure and cooperates in any attempts by the disclosing party to obtain a protective order or other similar protection against disclosure of the Confidential Information;

### is disclosed with the prior written consent of the disclosing party.

## The Developer will not disclose or prerelease any Title or any Deliverable Item or component thereof to any person or entity without the prior written consent of the Publisher.

# FREEDOM TO COMPETE

Subject to the terms of this Agreement, each party agrees that nothing in this Agreement will be construed as restricting or prohibiting either party from lawfully competing with the other party in any other aspect of its business, including, but not limited to, the development or distribution of other products or services, or the publishing of products competitive with those contemplated under this Agreement, and each party agrees to continue to compete vigorously in all other such aspects of its business.

# EXPORT CONTROLS

Each party assures the other that it will comply with all export laws and restrictions and regulations of the Department of Commerce or other [COUNTRY] or foreign agency or authority, and not export, or allow the export or reexport of any Title in violation of any such restrictions, laws or regulations.

# ASSIGNMENT

This Agreement may not be assigned by the Developer without the prior written consent of the Publisher, except that the Developer shall be entitled to assign this Agreement to a company to be created by the Developer provided that such company assumes all rights and obligations of the Developer hereunder, and provided that the same personnel are devoted to the Title by the company. An assignment by the Developer in accordance with the preceding requirements shall operate to relieve the Developer of any personal obligations regarding this Agreement, except as such obligations may arise from the Developer's affiliation as an officer, director, or employee of the assignee company. The Publisher may assign this Agreement freely. Subject to the preceding, this Agreement will bind and inure to the benefit of the parties and their respective successors and permitted assigns.

# INTEGRATION

This Agreement sets forth the entire agreement between the parties concerning the subject matter hereof, and may not be modified or amended except by written agreement executed by the parties hereto.

# SEVERABILITY

If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect, and the invalid provision shall be replaced by the legal provision which most closely achieves the intent of the invalid provision.

# GOVERNING LAW

This Agreement shall be governed by the laws of the [COUNTRY] applicable to agreements made and to be wholly performed therein (without reference to conflict of laws). In any action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and expenses.

# FORCE MAJEURE

If the performance of this Agreement or any obligation under it (except payment of monies due) is prevented, restricted or interfered with by reason of acts of God, acts of government, or any other cause not within the control of either party, the party so affected shall be excused from such performance, but only for so long as and to the extent that such a force prevents, restricts or interferes with that party's performance. Notwithstanding the preceding, the non-affected party may terminate this Agreement immediately upon written notice if the force majeure circumstances continue for more than [NUMBER] days.

# INDEPENDENT CONTRACTOR

The Developer shall be deemed to have the status of an independent contractor, and nothing in this Agreement shall be deemed to place the parties in the relationship of employer-employee, principal-agent, partners or joint venturers. The Developer shall be responsible for any withholding taxes, payroll taxes, disability insurance payments, unemployment taxes and other similar taxes or charges on the payments received by the Developer hereunder.

# NOTICES

The address of each party hereto as set forth above shall be the appropriate address for the mailing of notices, cheques, and statements, if any, hereunder. Notices sent to the Publisher shall be sent to the attention of [SPECIFY]. Notices sent to the Developer will be sent to the attention of [SPECIFY]. All notices which either party is required or may desire to serve upon the other party may be served personally or by certified or registered mail (postage prepaid), reputable commercial courier, or by facsimile transmission, and shall be effective upon receipt. Either party may change its address by written notice to the other.

# NO BROKERS

All negotiations relative to this Agreement have been carried on by the parties directly, without the intervention of any person as a result of any act of either party (and, so far as known to either party, without the intervention of any such person) in such manner as to give rise to any valid claim against the parties hereto for brokerage commissions, finder's fees or other like payment.

# WAIVER

No waiver by either party, whether express or implied, of any provision of this Agreement shall constitute a continuing waiver of such provision or a waiver of any other provision of this Agreement. No waiver by either party, whether express or implied, of any breach or default by the other party, shall constitute a waiver of any other breach or default of the same or any other provision of this Agreement.

# PARAGRAPH HEADINGS

Paragraph headings contained herein are for the convenience of the parties only. They shall not be used in any way to govern, limit, modify, or construe this Agreement and shall not be given any legal effect.

# COUNTERPARTS

This Agreement may be executed in two or more counterparts, and all counterparts so executed shall for all purposes constitute one agreement, binding on all parties hereto.

IN WITNESS WHEREOF, the parties have caused this Development Agreement to be executed on the date set forth above by their duly Authorised representatives

# PUBLISHER DEVELOPER

Authorised Signature Authorised Signature

Print Name and Title Print Name and Title

**ANNEXURE A**

**SPECIFICATIONS (INCLUDING BUDGET)**

Budgeted amounts for salaries and overhead expenses such as office space shall be reduced *pro rata* and/or charged against other projects on which the Developer is working concurrently with the Development of the Title under this Agreement.

**ANNEXURE B**

**DELIVERABLE ITEMS AND DELIVERY SCHEDULE**

Delivery Schedule

|  |  |  |
| --- | --- | --- |
| Date | Deliverable Item | Amount To Be Paid Upon Acceptance of Deliverable Item |
|  |  |  |
|  |  |  |

**ANNEXURE C**

**CREDITS**

**ANNEXURE D**

**DEVELOPER EQUIPMENT**