MULTIMEDIA DEVELOPMENT AND licence AGREEMENT

This Multimedia Development and licence Agreement (the “Agreement”) is effective [DATE],

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

[YOUR COMPLETE ADDRESS]

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

[COMPLETE ADDRESS]

WITNESSETH:

WHEREAS, [YOUR COMPANY NAME], (the “Company”, hereinafter) desires to retain the services of [COMPANY NAME], (the “Developer”, hereinafter) to create interactive multimedia programs, and Developer desires to perform such services on the terms and conditions set forth herein;

WHEREAS, Company and Developer acknowledge that all right, title and interest in such programmes shall be owned by Developer and Company on the terms and conditions set forth herein; and

WHEREAS, Company desires to obtain a licence to reproduce, distribute, perform and display the said programs, and Developer desires to grant such licence on the terms and conditions set forth herein;

WHEREAS Company contemplates a series of programmes to be developed on a project by project basis, individual programme Agreements will define the scope of work and specify details for each project as an addendum to the terms and conditions set forth herein this Master Agreement;

NOW, THEREFORE, in consideration of the mutual premises set forth herein, Developer and Company, intending to be legally bound, hereby agree as follows:

# SCOPE OF DEVELOPER’S WORK

## Company agrees to retain Developer to provide the services and deliver a programme or Programs. The scope of work for each programme will be defined and set forth in a programme Agreement. Developer warrants that the performance of the services shall be of the highest professional quality and shall be accomplished in compliance with all applicable laws and regulations and in accordance with any terms and conditions set forth herein and in the programme Agreement(s).

## To initiate the development of a Program, the Company will pay Developer a fee to develop a programme Plan, including a Specification, a Development Budget, and a Milestone Schedule. Each programme Plan will be submitted to Company for its approval, and following approval will be incorporated in the programme Agreement.

### The Specification will provide a definition of the scope and functional characteristics of the Program, and the minimum hardware requirements.

### The Development Budget will include all projected staff time for the development of the programme that conforms to the Specification.

### The Milestone Schedule will include the list of major development events required to complete the Program. These milestone events typically include the programme design and content outline; draught scripts and storyboards; sample screens and graphics sequences; final scripts and graphics; the completed Program.

## The development fee for a programme Plan will be invoiced using the fee schedule set forth in Exhibit [SPECIFY], not to exceed an amount agreed to in advance by the parties. Company shall pay Developer the development fee for the programme Plan, regardless of whether Company decides to develop the Program.

# DEVELOPER COMPENSATION

## As full compensation for all services performed by Developer and the limited licence granted it hereunder, Company shall pay Developer on time and materials basis using the fee schedule set forth in Exhibit [SPECIFY] attached hereto and incorporated herein, and royalty, as set forth in Section [NUMBER]. Developer shall deliver to Company, within [NUMBER] days after the end of each calendar month, an invoice for its services provided during the preceding month and an accounting of reimbursable expenses. All invoices will be paid within [NUMBER] days.

## If during the course of development, Company requests or Developer recommends the inclusion of capabilities that were not included in the Specification, Developer will present to Company for its approval the projected additional cost in staff time to include the capability in the Program. Following the Company's approval, the programme Plan in the programme Agreement will be amended to reflect the change.

## The deliverable associated with each milestone in the Milestone Schedule will conform to the then current Specification and will be submitted to Company for its written approval and agreement that it conforms to the Specification ("Acceptance"). If approval is withheld due to a requirement for a material change to the Specification, Developer will present any projected additional costs associated with the change.

## The Specification incorporated in the programme Agreement will form the sole basis for Acceptance of the programme by Company.

# DEVELOPER EXPENSES

The developer will be reimbursed by Company for authorised and reasonable expenses incurred by Developer in connection with the performance of the services rendered by Developer hereunder, provided that Developer provides Company with a reasonable accounting, together with receipts, for such expenses. Travel expenses, including transportation, lodging, meals and other similar expenses, shall only be incurred with the advance approval of the Company. Notwithstanding anything to the contrary contained herein, Company shall not reimburse Developer for (a) secretarial or word processing services, whether straight time or overtime; (b) any other staff services, except for services provided by professional staff listed in Exhibit [SPECIFY]; (c) computer time; (d) express delivery services that are not explicitly requested by Company; (e) facsimile charges; (f) photocopying in excess of [SPECIFY] cents per page; or (g) meals (other than meals incurred while traveling).

# ROYALTIES

## For each programme developed under this Master Agreement, Company will pay Developer a royalty equal to the percentage of the Company's Net [SPECIFY CURRENCY] Receipts, such percentage set forth in the programme Agreement. For purposes of this Agreement, Net [CURRENCY] Receipts shall mean [COUNTRY] [SPECIFY CURRENCY] actually received by Company derived from licencing a programme or module thereof, and excluding any excise, sales, use or other domestic or foreign tax (except for income taxes), and transportation, shipping and handling charges applicable thereto, and less bad debts, customer returns, allowances and credits as well as any taxes withheld. All rights and licences granted, and all sales made by Company pursuant to this Agreement to any affiliate or subsidiary of Company will be treated as though they were rights and licences granted and sales made to unrelated publishers and licensees.

## The programme will be licenced at a price to be determined by the Company in its sole discretion. In addition, Company may licence a programme in conjunction with other Company products. In the event that a programme is licenced in conjunction with other Company products, royalties shall be paid to Developer on a pro-rata basis reflecting the proportion that the then current published price of the programme bears to the sum of the then current prices of the programme and the other products.

## Royalties will be paid [SPECIFY], on or before the last day of [MONTH] of each year for royalties due for the preceding year ending the last day of [MONTH]. Royalty payments will be accompanied by an appropriate statement of account, detailing both Net [CURRENCY] Receipts and units installed under end user and site licenses.

## Developer reserves the right to audit the Company's books and records annually in order to verify Product Net [CURRENCY] Receipts and royalties due, and such books and records will be maintained by the Company for [NUMBER] years following each royalty payment or the termination of this Agreement, whichever is later.

## The royalty obligations of Company to Developer shall survive the termination of this Agreement.

# TIME REQUIRED FOR DUTIES

During the term of this Agreement, Developer shall devote such time and attention to the duties under this Agreement as is reasonably required to provide satisfactory services to Company in accordance with the terms of this Agreement.

# IMPLEMENTATION OF CHANGES

If, at any time following the Acceptance of a completed Program, Company requests an update, revision, extension, or other modification to the Program's Software or Content (collectively, a "Change"), Developer, within a reasonable time after Company's request, shall provide an estimate of the time and costs required to implement the Change. Following Company's approval, Developer will proceed with the implementation of the Change, and Company will compensate Developer as set forth in Paragraph [SPECIFY].

# DEVELOPER’S RELATION TO COMPANY

The developer is retained by Company solely for the purposes set forth herein. Developer shall not have the power to bind Company nor shall Developer make any such representation. Developer's relation to Company shall be that of an independent contractor solely responsible for the manner and means by which the duties hereunder are carried out. Developer shall not be construed for any purpose to be an employee subject to the control and direction of Company.

# CONFIDENTIALITY

## Developer and Company acknowledge and agree that each will have access to, or become acquainted with, Confidential Information of the other. For the purposes of this Agreement, "Confidential Information" shall mean any information of either party whether or not developed by the other, including but not limited to pre-existing or new information which relates to all ideas, designs, methods, discoveries, improvements, products or other results of consulting services, trade secrets, product data and specifications, proprietary rights, business affairs, product developments, customer information or employee information. Confidential Information does not include any information that:

### either party can prove was known prior to the date of this Agreement and any other agreement between the parties hereto, without an obligation to keep it confidential;

### either party can prove was lawfully obtained from a third party without any obligation of confidentiality;

### is or becomes part of the public domain through no act or violation of any obligation of either party; or

### is required to be disclosed by court order or operation of law.

## The parties acknowledge and agree that their Confidential Information constitutes valuable trade secrets of each other. The parties shall keep all Confidential Information in confidence and shall not, at any time during or after the term of this Agreement, without the other's prior written consent, disclose or otherwise make available, directly or indirectly, any item of Confidential Information to anyone. The parties shall use the Confidential Information only in connection with this Agreement and for no other purpose.

# RIGHTS IN CONTENT AND SOFTWARE

## **Content**

## All right, title and interest in and to all text, graphics, animation, audio and/or digital video components and all other components of the Product other than the Software, as defined below (the "Content"), including without limitation, any copyrights, trade secrets and other intellectual or industrial property rights therein, is and shall be held by Company, and shall be considered "works made for hire," as that term is defined in The Copyright Act of [SPECIFY], as amended. If for any reason the Content is not deemed to be "works made for hire," Developer hereby assigns all copyrights therein to Company.

## **Software**

## All right, title and interests in and to any computer code (both source and object) including, but not limited to, all interfaces, navigational devices, menus, menu structures or arrangements, icons, help and other operational instructions and the literal and nonliteral expressions of ideas that operate, cause, create, direct, manipulate, access or otherwise affect the Content in the Product (the "**Software**") including without limitation, any copyrights, patents, trade secrets and other intellectual or industrial property rights therein is and shall be held by Developer, provided, however, that Software shall not include Content and Company Property.

## **License**

## Developer grants to Company, but not affiliates, subsidiaries, parents or other entities, a worldwide, irrevocable right, to reproduce, market, sell, distribute through itself or others, the Software only and exclusively for use with the Content in the Program, and only for use, display and performance subject to the sublicense to users as per the attached sublicense and only on the specific hardware stated in the Specifications. The licence granted herein shall begin on the date hereof and continue in force for [NUMBER] years as it relates to any patented components, [NUMBER] years as it relates to any copyrighted components and in perpetuity as it relates to any trade secret components of the Software.

## **Return to Company**

## Developer agrees to return any documents, papers, drawings, magnetic media or other tangible property, or any copies thereof, given to Developer by Company upon Company's request.

## **Grant Back**

## Company hereby grants to Developer a royalty fee, perpetual, non-exclusive transferable right in the Content created by Developer to use, copy, distribute, perform, display, and/or create Derivative Works therefrom, or any other right afforded under the intellectual property laws of the [COUNTRY], provided that the use of such works are outside the Field of Exclusivity.

## **OTHER PROPERTY RIGHTS**

## All intellectual property rights not expressly granted herein are reserved to the respective party.

# PROTECTION OF INTELLECTUAL PROPERTY

## Each party acknowledges the unique and proprietary nature of the intellectual property created pursuant to this Agreement or licenced hereunder. Each party understands and agrees that remedies at law may be inadequate and that an aggrieved party may be entitled to equitable relief, including without limitation injunctive relief, specific performance or other equitable remedies in addition to all other remedies provided hereunder or available to that party at law or equity.

## Company shall not, and shall not assist or permit others to, decompile, reverse engineer, decrypt, or disassemble a programme or Software to create or derive the source code of the programme from the object code copy of the programme or from any other information.

## Each party agrees to ensure that its employees, independent contractors, agents, sales and distribution agents and others acting in concert with it or on its behalf are prohibited from taking any action otherwise prohibited to each party hereunder and to promptly notify the other party of the circumstances surrounding any such use or possession of a programme or any part thereof.

# TERMINATION OF AGREEMENT

## This Agreement and/or a programme Agreement may be terminated by Company on [NUMBER] days prior written notice. In the event that Company terminates an Agreement, Company will pay Developer for all unpaid invoices and uncompensated staff time and expenses up to the date of termination. Thereafter, Company shall have no obligation to make any further payment to Developer hereunder, except as provided in Paragraph [SPECIFY]. In no event, however, will Developer be obligated to refund to Company any monies paid.

## Either party may immediately terminate this Agreement and/or a programme Agreement for cause if the other breaches any provision of the Agreement or fails to perform its obligations under the Agreement.

## Upon termination of this Agreement and/or a programme Agreement for any reason,

### all rights and licences granted Company hereunder shall immediately terminate, and all such rights shall revert to Developer;

### all rights and licences granted Developer hereunder shall immediately terminate, and all such rights shall revert to Company;

### Developer shall have the right to grant licences and other rights to other parties in the Field of Exclusivity without any restriction or without any obligation to Company;

### Company shall immediately return all Developer materials (including without limitation the programme designs, scripts, storyboards, masters and all other material relating to the Software) delivered to it by Developer hereunder and all copies of the same, and certify by sworn statement of one of its officers that all such materials and copies have been delivered to Developer;

### Developer shall immediately deliver to Company all documents or other property of Company.

## Notwithstanding the above provisions, upon termination of this Agreement by Company without cause, the grant of rights by Company to Developer to create Derivative Works from Content created by Developer as set forth in Paragraph [SPECIFY] shall survive the termination of this Agreement.

## Upon termination of this Agreement and/or a programme Agreement, notwithstanding the rights of any third parties, Company will retain all right, title and interest, including but not limited to copyright, in the Content, and Company will grant to Developer a royalty-free, perpetual, non-exclusive, transferable right in the Content to use, copy, distribute, perform, display, and/or create Derivative Works therefrom, or any other right afforded under the intellectual property laws of the [COUNTRY], without restriction by the Field of Exclusivity. Upon termination, Developer will deliver to Company machine-readable copies of all Content in their exact form and content as created and maintained by Developer at the time of termination.

# DEVELOPER’S REPRESENTATIONS AND WARRANTIES

## DEVELOPER REPRESENTS AND WARRANTS TO COMPANY THAT THE MASTERS SHALL BE SUITABLE FOR MANUFACTURING GOOD QUALITY, MERCHANTABLE COPIES OF THE PRODUCT AND SHALL BE FREE FROM DEFECTS IN WORKMANSHIP AND MATERIALS FOR A PERIOD OF [SPECIFY] YEAR FROM THE DATE OF ACCEPTANCE. DEVELOPER DOES NOT WARRANT THE PRODUCT AGAINST FAILURE OF PERFORMANCE DUE TO FAILURE OF COMPUTER HARDWARE. THE FOREGOING WARRANTY IS THE ONLY WARRANTY MADE WITH RESPECT TO THE USE AND OPERATION OF THE PRODUCT AND IS A LIMITED WARRANTY. DEVELOPER EXPRESSLY DISCLAIMS ANY, AND ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. OTHER THAN FOR CLAIMS INVOLVING INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, THE LIABILITY OF DEVELOPER FOR ANY REASON AND UPON ANY CAUSE OF ACTION WHATSOEVER SHALL BE LIMITED TO THE AMOUNT THEN PREVIOUSLY PAID BY COMPANY TO DEVELOPER. IN NO EVENT SHALL DEVELOPER BE LIABLE TO COMPANY OR ANY THIRD PARTY, INCLUDING BUT NOT LIMITED TO USERS, FOR ANY DIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR OTHER ECONOMIC LOSS (WHETHER ARISING FROM BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE) EVEN IF DEVELOPER HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

## Developer represents and warrants to Company that:

### The developer has the full power and authority to enter into and fulfil the terms of this Agreement and to make the grant of rights to Company contained herein;

### The developer is the sole and exclusive owner of, or has licenced from the appropriate third party, all rights in and to the Software, including but not limited to the intellectual property therein;

### no element of the Software or Content proved by Developer violates or infringes any copyright, trademark, or trade secret of any third party provided, however, that the foregoing representations do not extend to any Content provided by Company;

### The developer has not previously assigned, pledged or otherwise encumbered any rights to the Software in a manner that conflicts with the rights granted herein, and Developer shall not assume any obligations or restrictions which would in any way interfere with or be inconsistent with this Agreement;

### to Developer's knowledge, no element of the Software or Content provided by Developer violates or infringes any patent of any third party.

### The company may incorporate the Content and the Software in a Program, and exploit all such rights granted it with respect to the Content herein without obligation to make any payment of any kind to Developer or any third party except as expressly set forth in this Agreement.

## For a period of [NUMBER] year from Acceptance of a Program, Developer will correct, at no charge to Company, all Software errors that prevent the programme from performing as stated in the specifications. To obtain such free maintenance, the Company must provide Developer with a written description explaining the error and a demonstration of the error. Developer's only obligation to Company shall be to provide Company with a revised set of masters. The company will be solely responsible for the distribution of such revised software to Company's previously licenced users of the Program.

# COMPANY’S REPRESENTATIONS AND WARRANTIES

## The company represents and warrants to Developer that:

### The company has the full power and authority to enter into and fulfil the terms of this Agreement and to make the grant of rights to Developer contained herein with respect to the Content;

### no element of the Content provided by Company violates or infringes any copyright, trademark, or trade secret of any third party;

### The company is the owner of all rights in and to the Content provided by Company, or has obtained written permission or licence from third parties to electronically distribute the Content in a format necessary for the use, display, or performance of a Program, including but not limited to the intellectual property therein;

### The developer may incorporate the Content provided by Company in a Program, and exploit all such rights granted it with respect to the Content provided by Company herein without obligation to make any payment of any kind to Company or any third party.

### The company has not previously assigned, pledged or otherwise encumbered any rights to the Content provided by Company in a manner that conflicts with the rights granted Developer herein, and Company shall not assume any obligations or restrictions which would in any way interfere with or be inconsistent with this Agreement; and

## Company shall indemnify and hold Developer harmless from and against any and all claims, liabilities, demands, causes of action, damages, losses and expenses, including, without limitation, reasonable attorneys' fees and costs of suit, arising out of or in connection with:

### information Company provides Developer for inclusion in the Program;

### injuries to any party from the use of information contained in the Program;

### injuries to any party based on advice or conclusions drawn from information contained in the Program;

### any breach or alleged breach of the representations or warranties in Section [NUMBER];

### any element of the Content provided by Company and/or any other material delivered by Company to Developer hereunder and/or added to the programme by or at the request of Company or its agents;

### Company's or its agents' sale, distribution, promotion, advertising and/or manufacture of the programme or any use, display or performance of the programme by any subscriber, person, or entity, including without limitation all direct consequential and/or punitive damages, provided, however, Company shall have the right in lieu of providing such indemnification (but in addition to paying any Damages to which Company is or becomes subject) to procure for Developer at Company's expense any necessary licence under such intellectual property right satisfactory to Developer.

## Notwithstanding anything to the contrary herein, Developer shall not settle or compromise any claim subject to this Section without Company's prior written consent, not to be unreasonably withheld or delayed.

## Developer shall indemnify and hold Company harmless from and against any and all claims, liabilities, demands, causes of action, damages, losses and expenses, including, without limitation, reasonable attorneys' fees and costs of suit, arising out of or in connection with:

### any breach or alleged breach of the representations or warranties in Section [NUMBER] above;

### an infringement of any element of the Content provided by Developer and/or any other material delivered by Developer to Company hereunder and/or added to the programme by or at the request of Developer, provided, however, Developer shall have the right in lieu of providing such indemnification (but in addition to paying any Damages to which Developer is or becomes subject) to procure for Company at Developer's expense any necessary licence under such intellectual property right satisfactory to Company.

## Notwithstanding anything to the contrary herein, Company shall not settle or compromise any claim subject to this Section without Developer's prior written consent, not to be unreasonably withheld or delayed.

# NOTICES OF COPYRIGHT AND PROPRIETARY RIGHTS

## Company shall place on all copies of a programme and associated documentation (and any parts thereof) the copyright notices, confidentiality legends, patent markings and other labels (singularly or collective "Proprietary Rights Notices") in the exact form(s) reasonably specified in written notice(s) by Developer or Developer's licensors. Company shall not remove or alter any copyright or other Proprietary Rights Notice placed by Developer on any of the masters.

## Company agrees that Developer will be credited as the Developer of the programme in an "About" screen or similar display available at the beginning of the Program.

## Company agrees that all copies of the programme will be packaged and distributed with a User licence Agreement. The form of the User licence Agreement is attached hereto as Exhibit [SPECIFY].

# SEVERABILITY; WAIVER

If any of the provisions of this Agreement shall be held invalid or unenforceable by reason of the scope or duration thereof or for any other reason, such invalidity or unenforceability shall attach only to the particular aspect of such provision found invalid or unenforceable and shall not affect any other any other provision of this Agreement. To the fullest extent permitted by [YOUR COUNTRY LAW], this Agreement shall be construed as if the scope or duration of such provision had been more narrowly drafted so as not to be invalid or unenforceable.

# FORCE MAJEURE; DISASTER RECOVERY

Each party shall be released from and shall have no liability for any failure beyond its reasonable control, including, but not limited to, acts of God, labour troubles, strikes, lockouts, severe weather, delay or default of utilities or communications companies or accidents.

# NOTICES

Any notice required or permitted hereunder shall be deemed sufficient if given in writing and delivered personally, by facsimile transmission, by reputable overnight courier service or [COUNTRY] mail, postage prepaid, to the addresses shown below or to such other addresses as are specified by similar notice, and shall be deemed received upon personal delivery, upon confirmed facsimile receipt, [NUMBER] days following deposit with such courier service, or [NUMBER] days from deposit in the [COUNTRY] mails, in each case as herein provided:

If to [COMPANY NAME]: If to [DEVELOPER NAME]:

[COMPANY NAME] [COMPANY NAME]

[FULL ADDRESS] [FULL ADDRESS]

[COUNTRY] [COUNTRY]

Attention: [INDIVIDUAL NAME] Attention: [INDIVIDUAL NAME]

[PHONE NUMBER] [PHONE NUMBER]

[FAX NUMBER] [FAX NUMBER]

With a Copy to: With a Copy to:

[INDIVIDUAL NAME] [INDIVIDUAL NAME]

[FAX NUMBER] [FAX NUMBER]

[FULL ADDRESS] [FULL ADDRESS]

[PHONE NUMBER] [PHONE NUMBER]

[FAX NUMBER] [FAX NUMBER]

A party may change its address and the name of its designated recipient of copies of notices for purposes of this Agreement by giving the other parties written notice of the new name and the address, phone and facsimile number of its designated recipient.

# LIMITATIONS

The relationship of Company and Developer hereunder is limited to the respective rights and obligations of the parties with respect to the development and licencing of a programme as specifically provided herein. Notwithstanding any other provision of this Agreement to the contrary, nothing herein shall be construed to create a partnership between the parties, to authorise either party to act as agent for the other, to permit either party to undertake any agreement for the other, or to use the name or identifying mark of the other, all except as is specifically provided herein.

# SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of Developer and Company. Neither party may assign its rights or obligations hereunder without the prior written consent of the other, except that the sale of substantially all of the assets of either or the acquisition by or merger into another company of either shall not be deemed an assignment which requires the other's consent, provided prompt notice of any such sale, acquisition or merger shall be given.

# NO OTHER AGREEMENT

The parties acknowledge having read this Agreement and agree to be bound by its Terms. This Agreement and the Schedules attached hereto and supersedes and replaces any existing agreement, written or otherwise, entered into between or among Developer and Company relating to the subject matter hereof. No amendment or modification hereof shall be binding unless in writing and duly executed by both parties.

# GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of [COUNTRY], with regard to its choice of law provisions.

# BENEFIT TO PARTIES

The provisions set forth in this Agreement are for the sole benefit of the parties hereto and their successors and assigns, and they shall not be construed as conferring any rights on any other persons.

# SURVIVAL

The respective rights and obligations of the parties hereunder shall indefinitely survive the termination of this Agreement to the extent necessary to the intended preservation of such rights and obligations.

# COUNTERPARTS

This Agreement may be executed in one or more counterpart copies, each of which shall be deemed an original and all of which shall together be deemed to constitute one agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

# COMPANY DEVELOPER

Authorised Signature Authorised Signature

Print Name and Title Print Name and Title