**SOFTWARE DEVELOPMENT AND PUBLISHING AGREEMENT**

 This Agreement is made and entered this \_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_\_, by and between [name] \_\_\_\_\_\_\_\_\_\_\_\_\_\_, [Address] \_\_\_\_\_\_\_\_\_\_\_, U.S.A. (PUBLISHING), and [Name] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

[Address] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, U.S.A. (“[Software Developer]”).

**RECITALS**

 1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is in the business of developing and publishing multimedia software programs and desires to have [Software Developer] develop a multimedia software program for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to publish.

 2. [Software Developer] is skilled in the development of multimedia software programs and desires to develop a multimedia software program for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and to have \_\_\_\_\_\_\_\_\_\_\_\_\_\_ publish such program.

 THEREFORE, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and [Software Developer] agree as follows:

**AGREEMENT**

I. Definitions.

As used in this Agreement, the following terms shall have the following meanings:

 1. “Work” shall mean the multimedia software program known as “\_\_\_\_\_\_\_”, and its documentation and related items as more fully described in Exhibit \_\_\_hereto.

 2. “Specifications” shall mean the description of the Work as set forth in Exhibit \_\_\_\_ hereto.

 3. “Derivative Work” shall mean any computer software program, board game or electronic game which either (i) constitutes a derivative work of the Work within the meaning of that term under the United States copyright law or (ii) produces audiovisual effects which would infringe the copyright in the audiovisual effects contained in the Work.

 4. “Derivative Products” shall mean any product or medium other than a computer program, board game or electronic game which is based on or derived from the Work or any audiovisual effects produced by the Work or any characters or themes therein. Derivative Products include, without limitation, T-shirts, comic books, merchandise, books, films and television shows.

 5. “Net Receipts” shall mean \_\_\_\_\_\_\_\_\_\_\_\_\_’s gross receipts (exclusive of sales, use, excise and other taxes reimbursed by customers, interest, finance charges, insurance and shipping costs) from all sales, licenses or other transactions described in Section VIII, Paragraph 1 below, less (a) sales commissions paid to independent sales representatives; (b) the amount of any credits or refunds for returns; (c) any credits, discounts, rebates and promotional allowances to customers; and (d) the amount of any sales or use taxes required to be paid or withheld by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ with respect to the payments due [[Software Developer]] hereunder. The amounts deducted under items (a) through (d) above shall be reasonable and consistent with the amounts customarily paid in the industry for such items.

6. “Errors” shall mean any deviations from the Specifications and any deviations from commonly accepted

standards for normal and correct operation of computer programs, even if not explicitly mentioned in the Specifications, such as any cases where the Work or a Derivative Work abnormally ceases functioning, produces incorrect or misleading information or erroneously interprets information given to it, and similar deviations.

 7. “Subsidiary” shall mean any company which is controlled, directly or indirectly, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

 8. “Affiliate” shall mean any company which controls, is controlled by or is under common control with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

 9. “Control” shall mean possession of more than 50% of the equity interest or voting power of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**II. Development of Work for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.**

 [Software Developer] shall develop the Work for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as a custom program. The operation, capabilities and performance of the Work shall be as described in the Specifications.

**III. License of Work.**

 Upon acceptance of the Work, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall have and [Software Developer] hereby grants to\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ the exclusive, worldwide rights and license to (a) prepare Derivative Works and Derivative Products based on the Work and license others to do so, and (b) copy, edit, publish, sell, license and distribute, with full rights to sublicense others to copy, edit, publish, sell, license and distribute, the Work and all Derivative Works and Derivative Products.

**IV. [Software Developer]’s Warranties and Indemnities.**

 1. Representations. [Software Developer] represents and warrants to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ that (i) the Work, and all Derivative Works developed by [Software Developer], will be original and will not infringe upon any patent, copyright, trade secret or other proprietary rights of others; (ii) [Software Developer] is the sole and exclusive owner of all rights in the Work subject only to the rights herein granted to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; (iii) [Software Developer] has not previously granted and will not grant any rights in the Work to any third party which are inconsistent with the rights granted to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ herein; and (iv) [Software Developer] has full power to enter into this Agreement, to carry out its obligations herein contained and to grant the rights herein granted to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 2. Indemnification.

 (a) [Software Developer] shall indemnify \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and its customers and sublicensees for, and hold them harmless from, any loss, expense (including reasonable attorneys’ fees), damage or liability arising out of any claim, demand or suit resulting from a breach of any of the foregoing warranties, but [Software Developer] shall have no liability under this indemnity where it is determined that [Software Developer] has not breached any of such warranties. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall promptly inform [Software Developer] in writing of any such claim, demand or suit and [Software Developer] shall fully cooperate in the defense thereof.

 (b) From the date of such written notice, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall have the right to withhold from any payments due [Software Developer] under the terms of this Agreement, and deposit in an interest-bearing escrow account with a commercial bank, reasonable amounts as security for [Software Developer]’s obligations under this paragraph, unless [Software Developer] posts other security reasonably acceptable to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Upon resolution of the claim, the amounts in escrow including accrued interest thereon shall be distributed to [Software Developer] after deductions of the amounts required to be paid to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or its customers or licensees under this indemnity.

 (c) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall not agree to the settlement of any such claim, demand or suit prior to a final judgment thereon without the consent of [Software Developer], whose consent shall not be unreasonably withheld. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and [Software Developer] shall bear equally the costs of any such settlement.

 3. Scope and Survival. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall have the right to extend [Software Developer]’s representations, warranties and indemnities contained herein to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s customers and sublicensees and [Software Developer] shall be liable to the same extent as if such representations and warranties were made by [Software Developer] directly to such customers and sublicensees. The representations, warranties and indemnities stated in this paragraph shall survive the expiration or termination of this Agreement.

**V. Delivery and Advance Payments.**

 1. Deliverable Items. [Software Developer] shall deliver the Work to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in accordance with the Specifications, and [Software Developer] shall test the Work and all deliverable items thoroughly as set forth in the Specifications prior to delivery to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The Work shall include the following items:

 (a) Complete source code listing of the program(s) comprising the Work with explanatory comments and a description of the operation of the program(s) all in the English language and in machine-readable form.

 (b) Such user instructions, development aids, materials, know-how and instructions as set forth in the Specifications.

 (c) Any other deliverable items set forth in Exhibit \_\_\_ or \_\_\_.

 2. Manner of Delivery. All deliverable items shall be transmitted by [Software Developer] or [Software Developer]’s agent to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ electronically via \_\_\_\_\_\_\_\_\_\_\_\_\_ at [Software Developer]’s expense or such other means as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall designate at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s expense. [SOFTWARE DEVELOPER] SHALL NOT DELIVER ANY OF THE DELIVERABLE ITEMS IN ANY TANGIBLE MEDIUM UNLESS SPECIFICALLY AGREED BY PUBLISHER. Upon either party’s reasonable request, [Software Developer] and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall execute such certificates or other documents as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ may request attesting that such items were transmitted electronically as specified herein. [Software Developer] shall give \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ written notice of each delivery identifying the deliverable item, and delivery shall not be considered complete until \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has received such notice.

 3. Schedule of Milestones and Advance Payments. [Software Developer] shall deliver the deliverable items to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in conformance with the Specifications and in accordance with the schedule set forth in Exhibit \_\_\_. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall make advance payments to [Software Developer] as specified in Exhibit \_\_ upon verification of such deliveries. In addition to the advances set forth in Exhibit \_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall provide [Software Developer] with the assistance and equipment described in Exhibit \_\_\_, and the value of such assistance and equipment as set forth in Exhibit \_\_\_ shall be considered to be an advance payment. The advance payments shall not be refundable and shall be recovered by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ only from amounts payable to [Software Developer] under Section VII of this Agreement.

 4. Failure to Deliver. If [Software Developer] fails to deliver any deliverable item by its specified delivery date or fails to deliver the completed Work in conformance with the Specifications by its specified delivery date, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall have the option, by giving [Software Developer] written notice within thirty (30) days thereafter, either (a) to terminate this Agreement upon notice to [Software Developer] or (b) to supply, correct or complete the Work and deduct an amount equal to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s costs thereof (including royalties, if any, paid to others) from any payments due [Software Developer] under this Agreement.

**VI. Acceptance of Work.**

 The Work and each Derivative Work developed by [Software Developer] shall be deemed accepted by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, unless within thirty (30) days after delivery of the completed Work or Derivative Work (and written notice thereof) to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ gives [Software Developer] written notice either that the Work or any Derivative Work does not conform to its specifications or that in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s subjective judgment the Work or any Derivative Work is not marketable as submitted. In such event, [Software Developer] shall have thirty (30) days from receipt of such notice to make and submit to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ such changes as shall be reasonably required to correct the deficiencies set forth in the notice. In the event that such changes are submitted to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ by [Software Developer], \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall have an additional thirty (30) day period in which to reexamine and retest the Work or such Derivative Work. If no changes are submitted, or the changes submitted do not correct the deficiencies, then \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ may terminate this Agreement by written notice to [Software Developer], or, at its option, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ may, after written notice to [Software Developer], correct or complete the Work or such Derivative Work and deduct an amount equal to the sum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s costs thereof (including royalties, if any, paid to others) from any payments due [Software Developer] under this Agreement. The thirty (30) day acceptance periods specified in this paragraph shall be extended by any delay caused by [Software Developer] or by any other cause beyond \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s control.

**VII. Marketing.**

 1. Commencement of Marketing. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall commence marketing of the Work within six (6) months after its acceptance or completion of the Work and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ will make a reasonable effort to distribute the Work through sales and/or licenses. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and [Software Developer] shall cooperate to permit \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to commence marketing as set forth above, and the time for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to commence marketing shall be extended by any delay caused by [Software Developer] or by any other cause beyond \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s control. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ makes no representations or warranties, however, that the Work or any Derivative Work will be successfully marketed or that any minimum level of sales or licensing will be achieved.

 2. Marketing Rights. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall have the right to prepare, copy, edit, publish, sell, distribute and license the Work and all Derivative Works and Derivative Products throughout the world (a) in any form, including, without limitation, human- and machine-readable forms, source and object code forms, magnetically recorded forms such as cassettes, tapes and disks, and solid state forms such as read-only memories, (b) by any methods, including, without limitation, distribution of copies (either separately or with other works), licensing or sublicensing and offering the use of the Work and Derivative Works through a time-sharing or videotext service and (c) for use with any computer, videogame, board game, coin-operated game or other medium. All aspects of the distribution and marketing of the Work, Derivative Works and Derivative Products shall be in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s sole control, including, without limitation, determining which Derivative Works and Derivative Products, if any, to be prepared and marketed, the methods of marketing, pricing, naming, packaging, labeling and identification, protection, advertising, terms and conditions of sale and/or license, collection of customers’ names and use of warranty or user registration procedures.

 3. Cooperation by [Software Developer]. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall have the right to use, publish and permit others to use and publish [Software Developer]’s name (including any professional name adopted by [Software Developer]), likeness, voice, biographical material, or any reproduction or simulation thereof in connection with the marketing, sale, advertising, distribution, exploitation, production and manufacture of the Work, Derivative Works and Derivative Products. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ agrees to place the name of [Software Developer], as set forth in Exhibit \_\_\_, on the exterior of the package in which the Work is distributed. [Software Developer] will from time-to-time, at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s request and subject to [Software Developer]’s consent which will not be unreasonably withheld whenever the same will not unreasonably interfere with [Software Developer]’s other professional engagements: (a) appear for photography, artwork and similar reasons under the direction of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or its authorized agent; (b) appear for interviews which \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ may arrange and confer and consult with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ concerning the promotion of the Work; (c) appear on radio, television and elsewhere; and (d) record taped interviews, spot announcements and electrical transcriptions for the purpose of advertising, promoting, publicizing and exploiting the Work, Derivative Works and Derivative Products. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall consult with [Software Developer] and [Software Developer] shall have the right to reasonably approve all photographs of and biographical material concerning [Software Developer] not furnished by [Software Developer], provided: (a) once [Software Developer] has approved any particular photograph or biographical material, [Software Developer] shall be deemed to have approved such photograph or material for all subsequent uses unless [Software Developer] timely notifies \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in writing to the contrary and (b) upon written request by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, [Software Developer] shall have five (5) calendar days to approve or disapprove a particular photograph or biographical material, it being agreed that [Software Developer] shall be deemed to have approved a photograph or biographical material if within such five-day period [Software Developer] fails to approve it or supply an acceptable substitute photograph or substitute biographical material.

 4. Termination of Marketing Efforts. Notwithstanding paragraph 1 above, if \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ determines that due to changes in market conditions or for any other reason \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ will not market or will not continue to market or distribute the Work or any Derivative Work, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall have the right, without further liability to [Software Developer] except as specified below, to terminate this Agreement by giving written notice to [Software Developer]. If \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ removes from its published price lists the Work and all Derivative Works and makes no further effort to market the Work or any Derivative Works, [Software Developer] may terminate this Agreement by giving written notice to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, unless within ninety (90) days after such notice, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ restores the Work or at least one Derivative Work to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s price lists or otherwise commences marketing efforts. Upon termination of this Agreement under this Paragraph, [Software Developer] shall retain all advances paid by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ hereunder, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and [Software Developer] shall have the rights set forth in Section XVIII below.

**VIII. Royalty Payments to [Software Developer].**

 1. Royalties. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall, except as described in this Section VII, credit against any advance payments made to [Software Developer] under Section IV hereof and against any reimbursable costs incurred under Sections IV, V or IX hereof, and, after such amounts have been fully reimbursed, pay to [Software Developer] royalties equal to the percentages specified in Exhibit \_\_\_ of the “Net Receipts” actually received by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ with respect to all sales, licenses or other transactions pursuant to which customers are permitted to use or market the Work, Derivative Works or Derivative Products.

 2. Combination with Other Works. If the Work, any Derivative Work or Derivative Product is sold or licensed with other works in a package or on a single medium for a single price, the Net Receipts attributable to the Work, Derivative Work or Derivative Product shall be determined by prorating the receipts from the package or medium according to the suggested retail prices or values established by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for the separate works contained in the package or on the medium whether or not such works are sold separately, provided that such prices or values are reasonably related to the values or sales potentials of the separate works and are consistent with prices customarily charged in the industry.

 3. Replacement and Promotional Copies. Net Receipts shall not include any receipts from copies of the Work, Derivative Work or Derivative Product which are distributed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to existing customers as back-up, replacement or corrected copies whether provided to such customers under a back-up, warranty or maintenance policy or otherwise, and no amount shall be credited or paid to [Software Developer] with respect to any receipts from copies supplied for promotional purposes to the press, trade, sales representatives or potential customers.

 4. Deposits or Advances. Any amounts received by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as deposits or advances shall not be deemed to have been received until deliveries have been made against such deposits or advances. In the event of a partial payment of an invoice which includes the Work or a Derivative Work or Derivative Product and other items, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall calculate its Net Receipts by prorating the payment received over the invoiced amounts for the Work, Derivative Work or Derivative Product and the other items.

 5. Foreign currencies. Amounts received by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in foreign currencies shall be deemed converted into United States Dollars at the average exchange rates used by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in its financial statements for the month of receipt, except that “blocked funds” which cannot be remitted to the United States in Dollars shall not be deemed received until they can be so remitted, provided that, at [Software Developer]’s request and if reasonably practicable, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall deposit in a foreign bank account established by [Software Developer] the amount in the foreign currency of the royalties that would be due [Software Developer] with respect to such blocked funds.

**IX. Payments; Reports; Inspection.**

 1. Payments. Payments due [Software Developer] under Section VII hereof shall be calculated on a calendar quarter and shall be made within forty-five (45) days after the close of each calendar quarter to [Software Developer] at the address listed above or such other address as [Software Developer] may direct in writing.

 2. Reports. At the time of payment \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall deliver to [Software Developer] a report, which shall provide all reasonably necessary information for computation of the payments, if any, due or credited to the [Software Developer] for such period, together with any adjustments in payments due [Software Developer] with respect to such period.

 3. Inspection and Audit. A certified public accountant, retained by [Software Developer] and reasonably acceptable to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, may, upon reasonable notice and during normal business hours, inspect the records of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on which such reports are based no more often than once per year, provided that such accountant shall hold such records in strict confidence except as necessary to report to [Software Developer] and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on the accuracy of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s reports.

**X. Derivative Works and Derivative Products.**

 1. Development by [Software Developer]. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall have the exclusive rights set forth in Section II hereof with respect to any Derivative Works or Derivative Products that are developed, or the rights to which are acquired, by [Software Developer] during the term of this Agreement. [Software Developer] shall promptly inform \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of any Derivative Works and Derivative Products which are developed, or the rights to which are acquired, by [Software Developer] during the term of this Agreement, and [Software Developer] shall deliver copies thereof to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ upon \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s request.

 2. Development at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s Request. If \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ desires to prepare or have a third party prepare a Derivative Work, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall first give [Software Developer] written notice and give [Software Developer] the opportunity to prepare the Derivative Work. If [Software Developer] does not agree within thirty (30) days to prepare the Derivative Work, if [Software Developer] and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ do not agree within ninety (90) days to specifications and a delivery schedule for the Derivative Work, or if [Software Developer] fails to prepare the Derivative Work in accordance with the mutually agreed upon specifications and delivery schedule, then \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall have the right, after giving [Software Developer] written notice, to prepare or cause a third party to prepare the Derivative Work. If [Software Developer] prepares the Derivative Work, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall pay [Software Developer] the normal royalties specified in Exhibit\_\_\_. If \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ prepares the Derivative Work, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall pay [Software Developer] the reduced royalty rate specified in Exhibit \_\_ for Derivative Works prepared by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

 3. Derivative Products. During the term of this Agreement, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall have the unrestricted right to develop or have third parties develop Derivative Products and shall have all ownership and marketing rights with respect to such Derivative Products subject to the terms and conditions of this Agreement.

 4. Development Aids. During the term of this Agreement, [Software Developer] shall provide to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ promptly upon \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s request, at no charge except for reasonable duplication costs, copies of all documents, development aids and information which [Software Developer] has the legal right to provide to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and are necessary or useful to enable \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to develop Derivative Works and Derivative Products as contemplated herein. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall not, without [Software Developer]’s permission, use such development aids for any purpose other than preparing Derivative Works or Derivative Products.

 5. Consulting services. Within one year after \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s acceptance of the Work, [Software Developer] shall provide to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s designated personnel, at times and places mutually agreed upon by [Software Developer] and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, up to forty (40) person-hours of training in the use, operation and modification of the Work. Such training shall be provided at no charge except for reasonable travel, food and lodging expenses incurred by [Software Developer] and approved in advance by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. In addition, if requested by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, [Software Developer] shall render up to one hundred sixty (160) additional person-hours of consulting services to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to assist \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to develop Derivative Works and Derivative Products. Such consulting services shall be provided at [Software Developer]’s standard hourly consulting rate not to exceed \_\_\_\_\_\_\_\_\_ ($\_\_\_\_) per hour, plus reasonable travel, food and lodging expenses incurred by [Software Developer] and approved in advance by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and the amounts paid for such services shall not be deducted from royalties that accrue under this Agreement.

**XI. Maintenance.**

 [Software Developer] shall promptly deliver to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, at no charge to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, all corrections or modifications necessary to correct any Errors in the Work or Derivative Works developed by [Software Developer], of which errors \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ notifies [Software Developer] during the period while payments are accruing to [Software Developer] hereunder. [Software Developer] and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ agree that, due to the nature of complex computer programs such as the Work, [Software Developer] cannot warrant the Work to be completely free of errors at present or in the future.

XII. Protection of Proprietary Rights.

 [Software Developer] and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ acknowledge that the Work is of a character which is or may be protectable by patent, trade secrecy and/or copyright under the laws of the United States and other countries. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall use reasonable efforts to obtain and maintain proprietary protection for the Work consistent with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s ability to effectively market the Work in each country in which the Work is distributed. [Software Developer] agrees to cooperate with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s expense, in obtaining patent, copyright or other statutory protections for the Work, Derivative Works and Derivative Products in each country in which they are sold, distributed or sublicensed, and [Software Developer] hereby authorizes \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to execute and prosecute in [Software Developer]’s name as author or inventor and/or \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s name as exclusive licensee an application for patent or copyright registration of the Work, Derivative Works or Derivative Products developed by [Software Developer]. [Software Developer] agrees to execute such other documents of registration and recordation as may be necessary to perfect in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, or protect, the exclusive rights granted \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ hereunder in each country in which such items are sold or distributed. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall place or cause to be placed in and on each copy that is distributed an appropriate copyright notice in the following form:

 (a) In the case of the Work or any Derivative Work or Derivative Product developed by [Software Developer]:

 Copyright 20\_\_ [Software Developer]

 (b) In the case of any Derivative Work or Derivative Product developed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_:

 Copyright 20\_\_ [Software Developer] and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall be the owner of the copyright and all other proprietary rights in all Derivative Works and Derivative Products developed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, subject to [Software Developer]’s copyright in the original Work.

**XIII. Nondisclosure.**

 [Software Developer] agrees that the trade secrets and technology embodied in the Work and any Derivative Work or Derivative Product to which \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ acquires the exclusive rights hereunder, any information disclosed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to [Software Developer] or [Software Developer]’s accountants or attorneys under Section IX, and any other information concerning \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s marketing plans, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s existing or future products (including the Work and Derivative Works or Derivative Products), the existing or future products of hardware manufacturers, any methods of protection employed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or such manufacturers to prevent unauthorized duplication of software programs, the terms of this Agreement, and any other confidential business or technical information disclosed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to [Software Developer] in the furtherance of this Agreement shall be held in strict confidence and shall not be disseminated or disclosed to any other party without the express written consent of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The obligations of this Paragraph shall survive the expiration or termination of this Agreement. This Paragraph shall not apply to algorithms or programming techniques of general applicability which were developed by [Software Developer] prior to entering into this Agreement.

XIV. Trademarks.

 Any trademarks used by [Software Developer] specifically to identify the Work are hereby assigned by [Software Developer] to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Any trademarks adopted and used by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in the marketing of the Work, Derivative Works or Derivative Products shall be the sole property of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall have the sole responsibility for ensuring that any such trademarks do not infringe the rights of third parties. [Software Developer] understands and agrees that it may not use the trademarks of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in any way without permission of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**XV. Infringement by Others.**

 1. Notification. Each party will notify the other of any infringements of rights in the Work, Derivative Works or Derivative Products that come to such party’s attention.

 2. First Option Rights of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ In the event of any infringement of any rights granted to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ hereunder, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall have the first option to bring any action for such infringement on behalf of itself and [Software Developer], and [Software Developer] shall cooperate fully with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in such action; and in such event \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall bear the expenses of the action and shall recover its expenses from any sums recovered in the action. The balance of the proceeds of such action shall be deemed to be Net Receipts and shall be divided between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and [Software Developer] according to the percentages specified in Exhibit \_\_.

 3. Rights of [Software Developer]. If \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ declines in writing to bring any such action, [Software Developer] may proceed and shall bear all expenses of the action and shall recover its expenses from any sums recovered in the action. The balance of such recovery, if any, shall be deemed to be Net Receipts and shall be divided as provided above.

**XVI. Term.**

 The term of this Agreement shall commence on the date hereof and shall continue until terminated in accordance with the provisions of this Agreement.

**XVII. Breach by** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

 1. Triggering Events. In the event of the bankruptcy of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or a material breach of a material provision hereof by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ prior to the payment of the Maximum Amount specified in Section VIII herein, which breach is not cured within sixty (60) days after written notice thereof by [Software Developer], [Software Developer] may, effective thirty (30) days after written notice thereof to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, terminate this Agreement, and all rights granted to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ hereunder shall thereupon automatically revert to [Software Developer] as provided below in this Paragraph.

 2. Good Fair Dispute. A good faith dispute as to the determination or calculation of payments due [Software Developer] hereunder shall not be considered a breach of this Agreement provided that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ deposits the disputed amount in an interest-bearing escrow account with a commercial bank and offers to arbitrate the dispute in accordance with the Commercial Rules of the American Arbitration Association in \_\_\_\_\_\_\_\_\_\_\_[city], [state].

 3. Additional Rights. In addition to or in lieu of its rights to terminate this Agreement upon a material breach by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, [Software Developer] shall have the right to pursue any remedies [Software Developer] may have at law or in equity, provided that in no event will \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ be liable to [Software Developer] for incidental or consequential damages or the loss of anticipated profits arising from any breach of this Agreement by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**XVIII. Breach by [Software Developer].**

 In the event of a material breach by [Software Developer] of a material provision hereof, which breach is not cured within sixty (60) days after written notice thereof by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, then \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ may, effective thirty (30) days after written notice thereof to [Software Developer], terminate this Agreement, and the rights granted to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ hereunder shall revert to [Software Developer] as provided in Section XIX hereof. In addition to or in lieu of its rights to terminate this Agreement upon a material breach by [Software Developer], \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall have the right to pursue any remedies at law or equity, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ may pay into an interest bearing escrow account with a commercial bank any payments due [Software Developer] hereunder as security for payment of any damages arising from any material breach by [Software Developer] of any provision of this Agreement. Upon resolution of the claim, the amounts in escrow including interest thereon shall be distributed to [Software Developer] after deduction of the amounts, if any, required to be paid to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Except as provided in Section IV, [Software Developer] shall not be liable to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for incidental or consequential damages or the loss of anticipated profits arising from any breach of this Agreement by [Software Developer].

**XIX. Effect of Termination.**

 Upon termination of this Agreement:

 1. The licenses granted in Section II shall terminate and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall promptly return to [Software Developer] copies of the Work and all Derivative Works and Derivative Products developed by [Software Developer], including all master copies, and production materials relating thereto in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s possession;

 2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall promptly execute and deliver to [Software Developer] all documents necessary to assign to [Software Developer] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s interest in any patent and copyright in such works as originally delivered to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ by [Software Developer];

 3. [Software Developer] shall have no rights to any Derivative Works or Derivative Products developed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;

 4. All rights and licenses granted by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to third parties shall continue in full force and effect;

 5. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall in any event have the right to retain copies of any version of the Work for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s own use and for the purpose of providing support to its then existing customers; and

 6. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s obligation to pay [Software Developer] royalties then due or which may thereafter become due under Section VIII with respect to Net Receipts received by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall continue.

**XX. Options for Other Works.**

 [Software Developer] hereby grants \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ the first option and right of first refusal set forth below to copy, edit, sell, publish, market and distribute, as set forth in Section II, all computer software programs (other than the Work and Derivative Works and Derivative Products thereof) which [Software Developer] develops and seeks to market within two (2) years after the date of this Agreement.

 (a) First Option. [Software Developer] shall promptly inform \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of each computer software program on which [Software Developer] intends to develop for sale or licensing within such period and [Software Developer] shall give \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ a written notice setting forth the specifications for each such program. [Software Developer] shall offer \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ the right to market each such program and shall negotiate the terms and conditions of such marketing in good faith. If \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and [Software Developer] are unable to agree upon the terms and conditions within thirty (30) days of [Software Developer]’s written notice, then [Software Developer] shall be free to market the program directly to end-users, but prior to granting any marketing rights to such program to any distributor, publisher or other party other than a retail dealer, [Software Developer] shall offer such rights to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as set forth in subparagraph (b) below.

 (b) Right of First Refusal. Prior to entering into any agreement with any distributor, publisher or other party for the sale or licensing of the rights to market any program which \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has previously declined to market pursuant to subparagraph (a) above, [Software Developer] shall give \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ written notice setting forth the specifications and terms and conditions under which such rights are proposed to be sold or licensed and the name and address of the party to whom such rights are to be offered. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall then have thirty (30) days in which to review the specifications for the work and the terms of the proposed sale or license and to exercise a right of first refusal to accept or reject the offer. If, during such thirty-day period, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ gives [Software Developer] written notice that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ accepts such offer, [Software Developer] shall promptly execute an agreement granting to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ the rights set forth in the notice on the terms and conditions set forth therein. If \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ rejects such offer, then [Software Developer] shall be free for a period of ninety (90) days thereafter to enter into an agreement with the party named in the notice for the sale or licensing of such rights on the same terms and conditions as set forth in the notice to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. If [Software Developer] changes the terms and conditions or the party to whom the rights are offered, or if [Software Developer] proposes to offer the same terms and conditions after ninety (90) days have elapsed, [Software Developer] shall again offer such rights to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as set forth in this subparagraph (b).

 (c) No Waiver. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s failure to exercise any of its rights under this Section XX shall not operate as a waiver of any other rights \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ may subsequently have under this Section XX.

**XXI. General.**

 1. Entire Agreement. This Agreement, including Exhibits \_\_, \_\_\_, \_\_\_ and \_\_etc. states the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, understandings and agreements between the parties hereto concerning the subject matter hereof. No amendment or modification of this Agreement shall be made except by an instrument in writing signed by both parties.

 2. Independent Contractors. [Software 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 ventures. [Software 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 [Software Developer] hereunder.

 3. Equitable Relief. [Software Developer] acknowledges that the performance of [Software Developer]’s obligations hereunder and the rights and licenses granted to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ hereunder are of a special, unique, unusual, extraordinary and intellectual character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action at law, that a material breach by [Software Developer] of this Agreement will cause \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ great and irreparable injury and damage and, therefore, that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall be entitled to injunctive relief to prevent such injury and damage.

 4. Force Majeure. Neither party shall be deemed in default of this Agreement to the extent that performance of their obligations or attempts to cure any breach or delayed or prevented by reason of any act of God, fire, natural disaster, accident, act of government, shortages of material or supplies or any other cause beyond the control of such party, provided that such party gives the other party written notice thereof promptly and, in any event, within fifteen (15) days of discovery thereof. In such an event, the time for performance or cure shall be extended for a period equal to the duration of the event, but not in excess of six (6) months.

 5. Assignment. This Agreement may not be assigned in whole or in part by either party without consent of the other, which consent shall not be unreasonably withheld, except that [Software Developer] may assign (subject to any rights of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_) [Software Developer]’s interest in all or part of the payments due [Software Developer] hereunder upon notice in writing to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ may assign (subject to any rights of [Software Developer]) any or all of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s rights under this Agreement to any subsidiary or affiliate of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or to any third party which succeeds by operation of law to, purchases or otherwise acquires substantially all of the assets of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or a subsidiary or affiliate of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and assumes \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s obligations hereunder, upon written notice to [Software Developer]. A sublicense of substantially all rights to the Work shall be considered to be an assignment.

 6. Governing Law. This Agreement shall be governed and interpreted in accordance with the substantive laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_. The parties agree that any dispute arising under this Agreement shall be resolved in the state or federal courts within the State of \_\_\_\_\_\_\_\_\_\_\_\_ and [Software Developer] expressly consents to jurisdiction therein.

 7. Severability. Should any provision of this Agreement be held to be void, invalid or inoperative, the remaining provisions of this Agreement shall not be affected and shall continue in effect as though such provisions were deleted.

 8. Notices. Any notice required or permitted to be sent hereunder shall be deemed delivered if hand delivered or if mailed, postage prepaid, by registered or certified mail, return receipt requested, to either party at the address listed above, or such other addresses which either party may so notify the other.

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [SOFTWARE DEVELOPER]:

By: By:

Name: Name:

Title: Title: