

1 MATTHEW R. WALSH
2 19197 GOLDEN VALLEY RD #333
3 SANTA CLARITA, CA 91387
4 (661) 644-0012

5 Plaintiff In Pro Per,

6 **UNITED STATES DISTRICT COURT**
7 **CENTRAL DISTRICT OF CALIFORNIA**

MATTHEW R. WALSH
Plaintiff In Pro Per,

vs.

ROKOKO ELECTRONICS
(AND DOES 1 THROUGH 50,
INCLUSIVE)

Defendant

Case No.: 2:25-CV-05340-ODW-RAO

*[Hon. Rozella A. Oliver, Courtroom
590]*

Hearing Date: February 4, 2025
Hearing Time: 10:00 AM

**REQUEST FOR JUDICIAL
NOTICE**

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10 In accordance with Federal Rule of Evidence 201, Plaintiff, Matthew R.
11 Walsh requests that the Court take judicial notice of the documents attached hereto.

12

- 13 • **EXHIBIT 1** – Nintendo’s website showing that non-companies and non-
14 established developers cannot release games through Nintendo.

- 15 • **EXHIBIT 2** – Defendant’s own installation media, downloaded directly
16 from one of Defendants’ servers which shows the 2020, 2021 terms and
17 conditions which Plaintiff agreed to.
- 18 • **EXHIBIT 3** – Defendant’s 2020 terms & conditions, prior lost due to alleged
19 spoliation. Source: Downloaded directly from one of Defendants’ servers.
- 20 • **EXHIBIT 4** – Nintendo of America’s Confidential License Agreement for
21 the Nintendo DS. This agreement is nearly identical to that of the one
22 Plaintiff signed with Nintendo for his game. It contradicts all of Defendants’
23 conjectures and demonstrates that Plaintiff is in fact contractually bound to
24 Nintendo and further is barred from sharing the exact agreement. It is
25 published by the SEC, a government organization making it suitable for
26 judicial notice.

27 **BASIS FOR REQUESTING JUDICIAL NOTICE**

28 Federal Rule of Evidence 201 provides that a court may take judicial notice
29 of adjudicative facts, which are “either (1) generally known within the territorial
30 jurisdiction of the trial court or (2) capable of accurate and ready determination by
31 resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid.
32 201(b). Where a party requests and supplies the court with the necessary
33 information, the court shall take judicial notice of the requested facts. Id., 201(d).
34 A “court may take judicial notice of facts outside the pleadings,” including facts

35 that are matters of public record. *Intermedics, Inc. v. Ventritext, Inc.*, 775 F. Supp.
36 1258, 1261 (N.D. Cal. 1991). Matters properly the subject of judicial notice may
37 be considered in ruling on a Rule 12(b)(6) motion. *Barron v. Reich*, 13 F.3d 1370,
38 1377 (9th Cir. 1994).

39 The information is a matter of public record, is capable of ready
40 determination and its accuracy cannot reasonably be questioned. Courts routinely
41 take judicial notice of documents publicly posted on government websites.

42 *Gerritsen v. Warner Bros. Entm't Inc.*, 112 F. Supp. 3d 1011, 1033 (C.D. Cal.
43 2015) (noting that, under Rule 201, a “court can take judicial notice of ‘*[p]ublic*
44 *records and government documents available from reliable sources on the*
45 *Internet, ’ such as websites run by governmental agencies.”) (internal citations
46 omitted). Accordingly, Plaintiff respectfully requests that this Court take judicial
47 notice of the exhibits attached herein.*

48
49 I declare under penalty of perjury under the laws of the United States of America
50 that the foregoing is true and correct.

51 Executed this 26th day of January, 2025, in Santa Clarita, California.

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Matthew R. Walsh
Plaintiff In Pro Per

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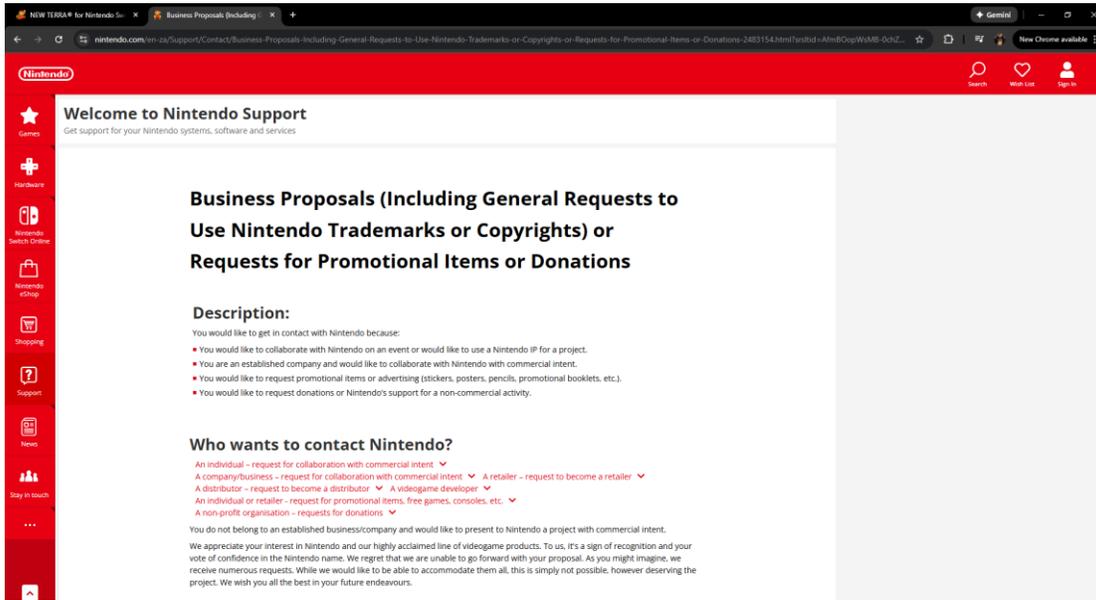
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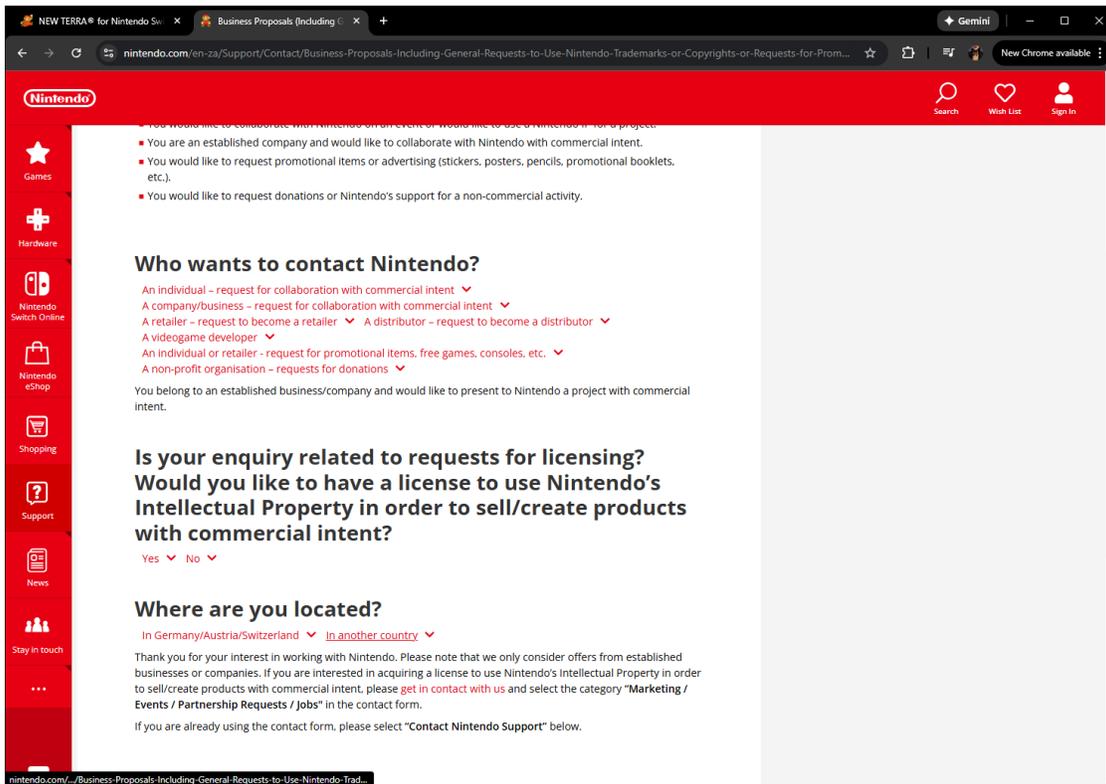
EXHIBIT 1

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61 Nintendo's website clearly stating that non-companies and non-established
62 developers cannot propose nor release games.
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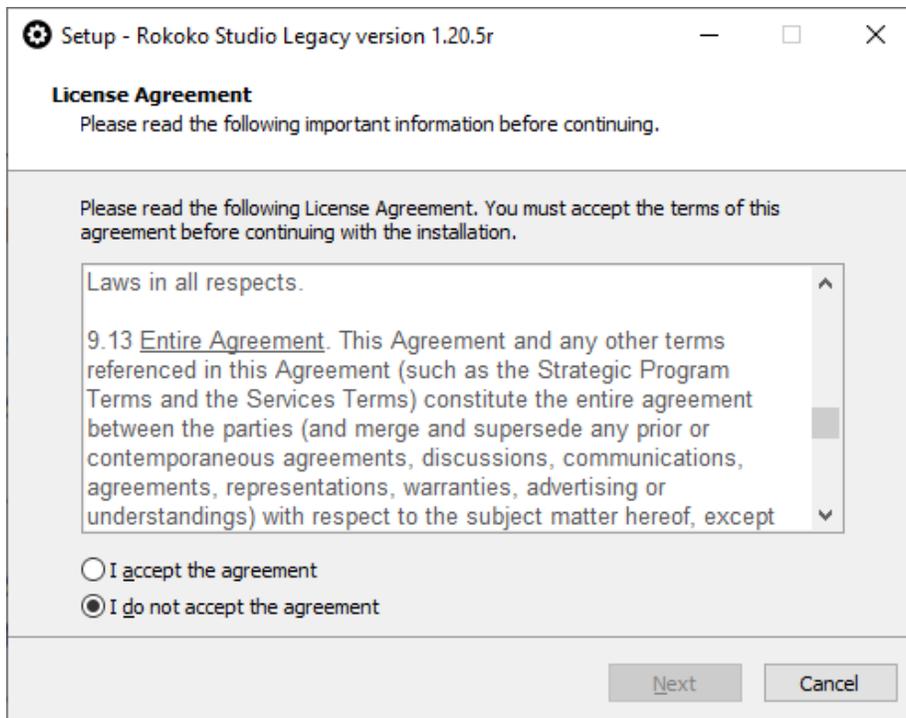
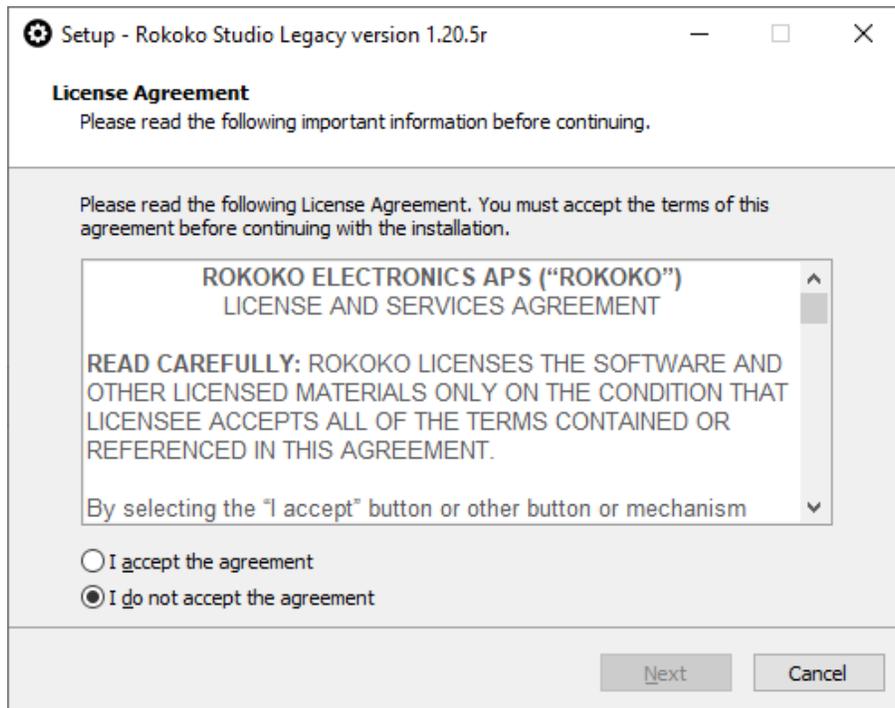
EXHIBIT 2

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73 Defendant's installation media showing the 2020 terms Plaintiff agreed to.

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EXHIBIT 3

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83 **ROKOKO ELECTRONICS APS (“ROKOKO”)**

84 LICENSE AND SERVICES AGREEMENT

85

86 **READ CAREFULLY: ROKOKO LICENSES THE SOFTWARE AND OTHER LICENSED**
87 **MATERIALS ONLY ON THE CONDITION THAT LICENSEE ACCEPTS ALL OF THE**
88 **TERMS CONTAINED OR REFERENCED IN THIS AGREEMENT.**

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101 of such other entity.

102

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112 APPLICABLE LICENSE FEES PAID BY THE LICENSEE.

113

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115 Agreement are defined terms. The definitions can be found in Exhibit A (if the terms are not
116 defined in the main body of the Agreement).

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421 REPRESENTATIONS ABOUT THE ROKOKO MATERIALS, STRATEGIC PROGRAM S
422 OR SERVICES AND THEIR FEATURES OR FUNCTIONALITY IN THE LICENSED
423 MATERIALS OR ANY COMMUNICATION WITH LICENSEE ARE FOR INFORMATION
424 PURPOSES ONLY, AND DO NOT CONSTITUTE A WARRANTY, REPRESENTATION,
425 OR CONDITION. WITHOUT LIMITING THE FOREGOING, ROKOKO DOES NOT
426 WARRANT: (a) THAT THE OPERATION OR OUTPUT OF THE LICENSED MATERIALS
427 OR SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, SECURE, ACCURATE,
428 RELIABLE, OR COMPLETE, WHETHER OR NOT UNDER A STRATEGIC PROGRAM
429 OR SUPPORT BY ROKOKO OR ANY THIRD PARTY; (b) THAT ERRORS WILL BE
430 CORRECTED BY ROKOKO OR ANY THIRD PARTY; OR (c) THAT ROKOKO OR ANY
431 THIRD PARTY WILL RESOLVE ANY PARTICULAR SUPPORT REQUEST OR THAT
432 SUCH RESOLUTION WILL MEET LICENSEE’S REQUIREMENTS OR EXPECTATIONS.
433 NOTHING IN THE FOREGOING RESTRICTS THE EFFECT OF WARRANTIES OR
434 CONDITIONS WHICH MAY BE IMPLIED BY LAW WHICH CANNOT BE EXCLUDED,
435 RESTRICTED OR MODIFIED NOTWITHSTANDING A CONTRACTUAL RESTRICTION
436 TO THE CONTRARY.

437

438 **6. Warnings**

439 6.1 Functionality Limitations. The Licensed Materials and Services (except for Licensed
440 Materials designed for non-commercial use, such as ROKOKO Materials designed to be used for

441 consumer purposes or licensed only for purposes of educational or individual learning) are
442 commercial professional tools intended to be used by trained professionals only. Particularly in
443 the case of commercial professional use, the Licensed Materials and Services are not a substitute
444 for Licensee's professional judgment or independent testing. The Licensed Materials and
445 Services are intended only to assist Licensee with its design, analysis, simulation, estimation,
446 testing and/or other activities and are not a substitute for Licensee's own independent design,
447 analysis, simulation, estimation, testing, and/or other activities, including those with respect to
448 product stress, safety and utility. Due to the large variety of potential applications for the
449 Licensed Materials and Services, the Licensed Materials and Services have not been tested in all
450 situations under which they may be used. ROKOKO will not be liable in any manner whatsoever
451 for the results obtained through use of the Licensed Materials or Services. Persons using the
452 Licensed Materials or Services are responsible for the supervision, management, and control of
453 the Licensed Materials and Services and the results of using the Licensed Materials and Services.
454 This responsibility includes, without limitation, the determination of appropriate uses for the
455 Licensed Materials and Services and the selection of the Licensed Materials, Services and other
456 computer programs and materials to help achieve intended results. Persons using the Licensed
457 Materials or Services are also responsible for establishing the adequacy of independent
458 procedures for testing the reliability, accuracy, completeness, and other characteristics of any
459 output of the Licensed Materials or Services, including, without limitation, all items designed
460 with the assistance of the Licensed Materials or Services. Licensee further acknowledges and
461 agrees that the Licensed Materials form part of Licensee's total unique hardware and software
462 environment to deliver specific functionality, and that the Licensed Materials and Services
463 provided by ROKOKO may not achieve the results Licensee desires within Licensee's design,
464 analysis, simulation, estimation, and/or testing constraints.

465

466 6.2 Activation Codes and Security.

467 6.2.1 Activation Code Required for Installation/Access and Continued Use. Installation of and
468 Access to the Licensed Materials may require, and the continued use thereof may from time to
469 time require, activation codes issued by ROKOKO. Registration may be required before an
470 activation code is issued by ROKOKO. Licensee will provide ROKOKO and its Reseller with
471 any information required for such registration and agrees that any information provided to
472 ROKOKO or its Reseller will be accurate and current. Licensee will also maintain and update
473 Licensee's registration information, on an ongoing basis, through customer data registration
474 processes, including without limitation the Customer Information Form, which may be provided
475 by ROKOKO. Licensee acknowledges and agrees that ROKOKO may use such information in
476 accordance with its Privacy Statement (as described or referenced in Section 4 (Privacy; Use of
477 Information; Connectivity)).

478

479 6.2.2 Disabling Access. LICENSEE ACKNOWLEDGES AND AGREES THAT
480 INSTALLATION OF AND ACCESS TO LICENSED MATERIALS MAY BE DISABLED BY
481 THE ACTIVATION, SECURITY, AND TECHNICAL PROTECTION MECHANISMS IF
482 LICENSEE TRIES TO TRANSFER ALL OR A PART OF THE LICENSED MATERIALS TO
483 ANOTHER COMPUTER, IF LICENSEE TAMPERS WITH THE TECHNICAL
484 PROTECTION MECHANISMS OR DATE-SETTING MECHANISMS ON A COMPUTER
485 OR IN THE LICENSED MATERIALS, IF LICENSEE USES THE LICENSED MATERIALS
486 PAST AN APPLICABLE STRATEGIC PROGRAM PERIOD OR FIXED TERM, OR IF
487 LICENSEE UNDERTAKES CERTAIN OTHER ACTIONS THAT AFFECT THE SECURITY
488 MODE OR UNDER OTHER CIRCUMSTANCES AND THAT, IN ANY SUCH EVENT,
489 LICENSEE’S ACCESS TO LICENSEE’S WORK PRODUCT AND OTHER DATA MAY BE
490 AFFECTED. MORE INFORMATION IS CONTAINED IN THE APPLICABLE LICENSED
491 MATERIALS OR AVAILABLE FROM ROKOKO ON REQUEST.

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493 6.2.3 Effect of Activation Codes. Licensee acknowledges and agrees that receipt of an activation
494 code (whether or not provided to Licensee in error) will not constitute evidence of or affect the
495 scope of Licensee’s license rights. Those rights will be only as set forth in this Agreement and
496 the applicable License Identification.

497

498 6.3 Affected Data. Work product and other data created with Licensed Materials made available
499 under certain License Types, including licenses that limit the permitted purpose to educational
500 purposes or personal learning purposes, may contain certain notices and limitations that make the
501 work product and other data usable only in certain circumstances (e.g., only in the education
502 field). In addition, if Licensee combines or links work product or other data created with such
503 Licensed Materials with work product or other data otherwise created, then such other work
504 product or data may also be affected by these notices and limitations. ROKOKO will have no
505 responsibility or liability whatsoever if Licensee combines or links work product or other data
506 created with such Licensed Materials with work product or other data otherwise created. In
507 addition, Licensee will not remove, alter or obscure any such notices or limitations.

508

509 **7. Limitations of Liability**

510 7.1 Limitation on Type and Amount of Liability. IN NO EVENT WILL ROKOKO OR ITS
511 SUPPLIERS HAVE ANY LIABILITY (DIRECTLY OR INDIRECTLY) FOR ANY
512 INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES; FOR

513 LOSS OF PROFITS, USE, REVENUE, OR DATA; OR FOR BUSINESS INTERRUPTION
514 (REGARDLESS OF THE LEGAL THEORY FOR SEEKING SUCH DAMAGES OR OTHER
515 LIABILITY). IN ADDITION, THE LIABILITY OF ROKOKO AND ITS SUPPLIERS
516 ARISING OUT OF OR RELATING TO ANY ROKOKO MATERIALS, STRATEGIC
517 PROGRAM S OR SERVICES WILL NOT EXCEED THE AMOUNT PAID OR PAYABLE
518 BY LICENSEE FOR SUCH ROKOKO MATERIALS, STRATEGIC PROGRAM S, OR
519 SERVICES, RESPECTIVELY.

520

521 7.2 Application of and Basis for Limitations. THE LIMITATIONS OF LIABILITY IN THIS
522 SECTION 7 (LIMITATIONS OF LIABILITY) WILL APPLY TO THE MAXIMUM EXTENT
523 PERMITTED BY APPLICABLE LAW TO ANY DAMAGES OR OTHER LIABILITY,
524 HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER
525 DERIVED FROM CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION,
526 NEGLIGENCE) OR OTHERWISE, EVEN IF ROKOKO HAS BEEN ADVISED OF THE
527 POSSIBILITY OF SUCH LIABILITY AND REGARDLESS OF WHETHER THE LIMITED
528 REMEDIES AVAILABLE HEREUNDER FAIL OF THEIR ESSENTIAL PURPOSE. ALSO,
529 LICENSEE AGREES THAT THE LICENSE, STRATEGIC PROGRAM’S AND SERVICES
530 FEES AND OTHER FEES CHARGED BY ROKOKO AND PAID BY LICENSEE ARE
531 BASED ON AND REFLECTIVE OF THE ALLOCATION OF RISK CONTEMPLATED BY
532 THIS SECTION 7 (LIMITATIONS OF LIABILITY) AND THAT THE LIABILITY
533 LIMITATIONS IN THIS SECTION 7 (LIMITATIONS OF LIABILITY) ARE AN
534 ESSENTIAL ELEMENT OF THE AGREEMENT BETWEEN THE PARTIES.

535

536 **8. Term and Termination**

537 8.1 Term; Termination or Suspension. Each license under this Agreement, with respect to each
538 specific set of Licensed Materials covered by this Agreement, will become effective as of the
539 latest to occur of: (a) this Agreement becoming effective, (b) payment by Licensee of the
540 applicable fees, excluding licenses (such as evaluation licenses) where no fees are required, (c)
541 delivery of the specific Licensed Materials, and (d) in the case of ROKOKO Materials provided
542 in connection with a Strategic Program , upon commencement of the applicable Strategic
543 Program period or fixed term. Each of ROKOKO or Licensee may terminate this Agreement,
544 Licensee’s license as to Licensed Materials, Licensee’s Strategic Program , and/or the provision
545 of Services relating to the Licensed Materials if the other party is in breach of this Agreement
546 and fails to cure such breach within ten (10) days after written notice of the breach; however, if
547 Licensee is in breach of Section 1 (License) or Section 2 (License Limitations; Prohibitions),
548 ROKOKO may terminate this Agreement, Licensee’s license as to Licensed Materials,
549 Licensee’s Strategic Program , and/or the provision of Services relating to the Licensed Materials

550 immediately upon written notice of the breach. In addition, ROKOKO may, as an alternative to
551 termination, suspend Licensee's license as to the Licensed Materials, Licensee's Strategic
552 Program , the provision of Services relating to the Licensed Materials, and/or other ROKOKO
553 obligations or Licensee rights under this Agreement (or under other terms, if any, relating to
554 materials associated with the Licensed Materials), if Licensee fails to make a payment to
555 ROKOKO or a Reseller or otherwise fails to comply with the provisions of this Agreement or
556 other terms relating to any such license, Strategic Program , Services, or other associated
557 materials. ROKOKO may also terminate this Agreement if Licensee becomes subject to
558 bankruptcy proceedings, becomes insolvent, or makes an arrangement with Licensee's creditors.
559 This Agreement will terminate automatically without further notice or action by ROKOKO if
560 Licensee goes into liquidation.

561 Licensee acknowledges and agrees that ROKOKO may assign or sub-contract any of its rights or
562 obligations under this Agreement.

563

564 8.2 Effect of Termination of Agreement or License. Upon termination or expiration of this
565 Agreement, the licenses granted hereunder will terminate. Upon termination or expiration of any
566 license granted to Licensee, Licensee must cease all use of ROKOKO Materials to which such
567 license applies, any Strategic Program (including, without limitation, associated services), and
568 any Services and Uninstall all copies of the ROKOKO Materials. At ROKOKO's request,
569 Licensee agrees to destroy or return to ROKOKO or the Reseller from which they were acquired
570 all ROKOKO Materials. ROKOKO reserves the right to require Licensee to show satisfactory
571 proof that all copies of the ROKOKO Materials have been Uninstalled and, if so requested by
572 ROKOKO, destroyed or returned to ROKOKO or the Reseller from which they were acquired. If
573 Licensee's Strategic Program is terminated or expires, but this Agreement and Licensee's
574 license to the Licensed Materials remains in effect, any rights of Licensee based on the Strategic
575 Program (including, without limitation, rights with respect to Previous Versions) will terminate,
576 and (unless otherwise authorized by the Strategic Program Terms) Licensee must comply with
577 the obligations of Section 1.2.1 (Effect of Upgrades) with respect to (including the obligations to
578 cease use of, Uninstall and destroy or return) all copies of such Previous Versions.

579

580 8.3 Survival. Sections 1.3 (Additional Terms), 1.4 (Other Materials), 1.5
581 (Authorized Users), 1.6 (Third-Party Licensed Materials), 1.11 (APIs), 2.1.1 (No License
582 Granted;Unauthorized Activities), 2.1.4 (Effect of Unauthorized Use), 2.2 (Circumvention), 3
583 (All Rights Reserved), 4 (Privacy; Use of Information; Connectivity), 5.2 (Disclaimer), 6
584 (Warnings), 7 (Limitations of Liability), 8 (Term and Termination), and 9 (General Provisions)
585 and Exhibit A will survive any termination or expiration of this Agreement.

586

587 **9. General Provisions**

588 9.1 Notices. Notices in connection with this Agreement by either party will be in writing and will
589 be sent by electronic mail, postal service, or a delivery service (such as UPS, FedEx or DHL),
590 except that Licensee may not provide notice to ROKOKO of an ROKOKO breach or provide
591 notice of termination of this Agreement by electronic mail. Notices from ROKOKO to Licensee
592 will be effective (a) in the case of notices by email, one (1) day after sending to the email address
593 provided to ROKOKO, or (b) in the case of notices by mail or delivery service, five (5) days
594 after sending by regular post or delivery service to the address provided to ROKOKO. Licensee
595 hereby consents to service of process being effected on Licensee by registered mail sent to the
596 address set forth on Licensee's Customer Information Form (or, if no Customer Information
597 Form has been provided, Licensee's last address known by ROKOKO) if so permitted by
598 applicable law. Notices from Licensee to ROKOKO will be effective (a) in the case of notices by
599 email, one (1) day after sending to (and receipt by ROKOKO at) HI@ROKOKO.com, or (b) in
600 the case of notices by mail or delivery service, when received by ROKOKO at ROKOKO APS,
601 Sankt Gertruds Straede 6E, 1129 Copenhagen, Denmark, Attention: Copyright Agent. If
602 Licensee participates in a Strategic Program , either party may also provide notice as set forth in
603 the Strategic Program Terms.

604

605 9.2 Governing Law and Jurisdiction. This Agreement will be governed by and construed in
606 accordance with the laws of Denmark. The laws of such jurisdictions shall govern without
607 reference to the conflicts-of-laws rules thereof. The UN Convention on Contracts for the
608 International Sale of Goods and the Uniform Computer Information Transaction Act shall not
609 apply to (and are excluded from the laws governing) this Agreement. In addition, each party
610 agrees that any claim, action or dispute arising under or relating to this Agreement will be
611 brought exclusively in (and the parties will be subject to the exclusive jurisdiction of) the courts
612 of Denmark. Nothing in the foregoing will prevent ROKOKO from bringing an action for
613 infringement of intellectual property rights in any country where such infringement is alleged to
614 occur.

615

616 9.3 No Assignment; Insolvency. Licensee may not assign this Agreement or any rights hereunder
617 (whether by purchase of stock or assets, merger, change of control, operation of law, or
618 otherwise) without ROKOKO's prior written consent, which may be withheld in ROKOKO's
619 sole and absolute discretion, and any unauthorized purported assignment by Licensee will be
620 void. In the context of any bankruptcy or similar proceeding, Licensee acknowledges and agrees
621 this Agreement is and shall be treated as an executory contract that may not be assumed and/or

622 assigned without ROKOKO's prior written consent, which consent may be withheld in
623 ROKOKO's sole and absolute discretion whether pursuant to Section 365(c)(1) of Title 11 of the
624 United States Code or any other applicable law respecting the treatment of executory contracts
625 within bankruptcy. Any assignment (regardless of how or on what basis the assignment may
626 occur) will be conditioned on compliance with the following: at least thirty (30) days before
627 assigning or agreeing to any assignment of rights under this Agreement (including transferring
628 any copies of or right to use the Software), (a) Licensee must provide written notice to
629 ROKOKO, Uninstall all copies of the Software, and (without limitation of the generality of
630 Section 9.7 (Audits)) allow ROKOKO or its designee to inspect the records, systems and
631 facilities of (or operated for) Licensee and its subsidiaries and affiliates to verify (by any means
632 available to ROKOKO, whether remotely or on premises) that all copies of the Software have
633 been Uninstalled, (b) the proposed assignee must agree to comply (and Licensee must ensure that
634 the assignee will comply) with all of the obligations of this Agreement with respect to such
635 Software, which agreement must provide that ROKOKO is a third-party beneficiary of the
636 assignee's agreement, and the assignee must provide a copy of the agreement to ROKOKO, and
637 (c) Licensee and proposed assignee must comply with all other transfer procedures identified by
638 ROKOKO.

639
640 9.4 ROKOKO Subsidiaries and Affiliates. Licensee acknowledges and agrees that ROKOKO
641 may arrange to have its subsidiaries and affiliates engage in activities in connection with this
642 Agreement, including, without limitation, delivering ROKOKO Materials and providing
643 Strategic Program's and Services, provided that ROKOKO (and not such subsidiaries and
644 affiliates) will remain subject to the obligations of ROKOKO under this Agreement. Licensee
645 also agrees that ROKOKO's subsidiaries and affiliates may enforce (including taking actions for
646 breach of) this Agreement.

647
648 9.5 Exceptions to Prohibitions; Severability.

649 9.5.1 Exceptions to Prohibitions. The prohibitions contained in this Agreement will not apply
650 where and to the extent applicable law does not allow such prohibitions to be enforced. Licensee
651 may have other rights under the laws of the state or country within the Territory where the
652 Licensed Materials are acquired, and this Agreement does not change Licensee's rights under the
653 laws of such state or country if and to the extent the laws of such state or country do not permit
654 this Agreement to do so. Licensee will bear the burden of proof to demonstrate that applicable
655 law does not allow (i) the enforcement of such prohibitions; or (ii) this Agreement to change
656 particular rights in a state or country (and that Licensee has not exceeded the bounds of the
657 unenforceable prohibitions and unchangeable rights).

658

659 9.5.2 Severability. If and to the extent any provision of this Agreement is held illegal, invalid, or
660 unenforceable in whole or in part under applicable law, such provision or such portion thereof
661 will be ineffective as to the jurisdiction in which it is illegal, invalid, or unenforceable to the
662 extent of its illegality, invalidity, or unenforceability and will be deemed modified to the extent
663 necessary to conform to applicable law so as to give the maximum effect to the intent of the
664 parties. The illegality, invalidity, or unenforceability of such provision in that jurisdiction will
665 not in any way affect the legality, validity, or enforceability of such provision or any other
666 provision of this Agreement in any other jurisdiction.

667

668 9.6 No Waiver. No term or provision of this Agreement will be considered waived, and no
669 breach excused, unless such waiver is in writing signed on behalf of the party against which the
670 waiver is asserted. No waiver (whether express or implied) will constitute consent to, waiver of,
671 or excuse of any other, different, or subsequent breach.

672

673 9.7 Audits. Licensee agrees that ROKOKO has the right to require an audit (electronic or
674 otherwise) of the ROKOKO Materials and the Installation thereof and Access thereto. As part of
675 any such audit, ROKOKO or its authorized representative will have the right, on fifteen (15)
676 days' prior notice to Licensee, to inspect Licensee's records, systems and facilities, including
677 machine IDs, serial numbers and related information, to verify Licensee's Installation of and
678 Access to the ROKOKO Materials. Additionally, within fifteen (15) days of the audit request,
679 Licensee will provide to ROKOKO all records and information requested by ROKOKO in order
680 to verify Licensee's Installation of and Access to the ROKOKO Materials. Licensee will provide
681 full cooperation to enable any such audit. If ROKOKO determines that Licensee's Installation of
682 or Access to the ROKOKO Materials is not in conformity with the applicable agreements or
683 terms of service, Licensee will obtain immediately and pay for valid license(s) to bring
684 Licensee's Installation and Access into compliance and pay the reasonable costs of the audit. In
685 addition to such payment rights, ROKOKO reserves the right to seek any other remedies
686 available at law or in equity.

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688 9.8 Language. The English language version of this Agreement is legally binding in case of any
689 inconsistencies between the English version and any translations.

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691 9.9 Construction. Ambiguities in this Agreement will not be construed against the drafter.

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9.10 Force Majeure. ROKOKO will not be liable for any loss, damage or penalty resulting from delays or failures in performance resulting from acts of God, supplier delay or other causes beyond ROKOKO's reasonable control.

9.11 U.S. Government Rights. For U.S. Government procurements, all ROKOKO Materials are deemed to be commercial computer software as defined in FAR 12.212 and subject to restricted rights as defined in FAR Section 52.227-19 "Commercial Computer Software - Restricted Rights" and DFARS 227.7202, "Rights in Commercial Computer Software or Commercial Computer Software Documentation", as applicable, and any successor regulations. Any use, modification, reproduction release, performance, display or disclosure of the ROKOKO Materials by the U.S. Government shall be solely in accordance with license rights and restrictions described herein.

9.12 Export Control. Licensee acknowledges and agrees that the ROKOKO Materials and Services (including any data submitted by Licensee in connection with a Service and any Licensee-specific output generated by a Service) are subject to the export control and trade sanctions laws, rules and regulations of the Denmark and may be subject to the export control and trade sanctions laws, rules and regulations of other countries, including but not limited to countries where Licensee is located or operates. Together, these Danish and other country laws, rules, and regulations are referred to as the "Export Control Laws." Licensee will comply with the Export Control Laws in all respects.

9.13 Entire Agreement. This Agreement and any other terms referenced in this Agreement (such as the Strategic Program Terms and the Services Terms) constitute the entire agreement between the parties (and merge and supersede any prior or contemporaneous agreements, discussions, communications, agreements, representations, warranties, advertising or understandings) with respect to the subject matter hereof, except that particular ROKOKO Materials may be subject to additional or different terms associated with such ROKOKO Materials. The parties acknowledge that, in entering into this Agreement, they are not relying on any agreements, discussions, communications, agreements, representations, warranties, advertising or understandings other than as expressly set forth in this Agreement. Licensee acknowledges and agrees that ROKOKO may add to or change the Strategic Program Terms and the Services Terms from time to time, provided that ROKOKO will provide written notice of the additions or changes (and may allow Licensee not to renew, may permit Licensee to terminate, and may offer other options with respect to Strategic Program s or Services) before the additions or changes are effective as to

728 Licensee. In the event of a conflict between this Agreement and any other terms of ROKOKO
729 (including, without limitation, the Strategic Program Terms, the Services Terms, or such
730 additional or different terms), the other terms will apply. Terms stipulated by Licensee in any
731 communication by Licensee which purport to vary this Agreement or such other terms will be
732 void and of no effect unless agreed in a writing signed by an authorized representative of
733 ROKOKO. Any other modifications to this Agreement will also be invalid unless agreed to in a
734 writing signed by an authorized representative of ROKOKO.

735

736 **Exhibit A**

737 **Definitions**

738 1. “Access” or “Accessible” means, with respect to a computer program or other materials, (a) to
739 use or execute the computer program or other materials or (b) to use or otherwise benefit from
740 the features or functionality of the computer program or other materials.

741 2. “Agreement” means this License and Services Agreement, including all exhibits and schedules
742 thereto, as the License and Services Agreement may be amended from time to time in
743 accordance with the terms thereof.

744 3. “Authorized User” means any individual person who Installs or Accesses, or is authorized to
745 Install or Access, any of the Licensed Materials.

746 4. “ROKOKO” means ROKOKO ELECTRONICS APS, a Danish corporation.

747 5. “ROKOKO License Manager” means the tool known as ROKOKO License Manager or any
748 future ROKOKO tool for managing, monitoring or controlling Installation of or Access to
749 ROKOKO Materials.

750 6. “ROKOKO Materials” means any materials distributed or made available by ROKOKO,
751 directly or indirectly, including Software, Supplemental Materials, User Documentation and
752 Excluded Materials (whether or not licensed to Licensee).

753 7. “Computer” means (i) a single electronic device, with one or more central processing units
754 (CPUs), that accepts information in digital or similar form and manipulates the information for a
755 specific result based on a sequence of instructions, or (ii) a software implementation of such a
756 device (or so-called virtual machine).

757 8. “Customer Information Form” means a form completed by or on behalf of Licensee and
758 submitted to ROKOKO or a Reseller, directly or indirectly, in connection with Licensee’s order
759 for a license of ROKOKO Materials, Strategic Program or Services.

760 9. “Educational Licensee” means a Licensee who is also (a) a Qualified Educational Institution,
761 (b) Faculty, (c) Student or (d) Other Authorized Educational Licensee. An Educational Licensee
762 may be required to show proof of eligibility if requested by ROKOKO. ROKOKO, in its sole
763 discretion, retains the right to determine the eligibility of an Educational Licensee.

764 10. “Educational Purposes” means (i) in the case of a Qualified Educational Institution, Faculty
765 or Other Authorized Educational Licensees, purposes directly related to learning, teaching,
766 training, research and development that are part of the instructional functions performed by a
767 Qualified Educational Institution or Other Authorized Educational Licensee and (ii) in the case
768 of Students, purposes related to learning, training, research or development. “Educational
769 Purposes” does not include commercial, professional or any other for-profit purposes, except if
770 otherwise authorized in writing by ROKOKO.

771 11. “Evaluation Purposes” means purposes of evaluation and demonstration of the capabilities of
772 the Software or Supplemental Materials but excludes competitive analysis and any commercial,
773 professional, or other for-profit purposes.

774 12. “Excluded Materials” means any materials, including Software, Supplemental Materials or
775 User Documentation (and including, without limitation, any computer programs, modules or
776 components of a computer program, functionality or features of a computer program,
777 explanatory printed or electronic materials, content or other materials, if any), that may be
778 provided or become available to Licensee, by any means, or that are on any media delivered to
779 Licensee, for which (a) Licensee does not have a License Identification, or (b) Licensee has not
780 paid (and continued to pay) the applicable fees. Licensee acknowledges that Excluded Materials
781 are included on media or via download for convenience of the licensing mechanism used by
782 ROKOKO, and inclusion does not in any way authorize, expressly or impliedly, a right to use
783 such Excluded Materials.

784 13. “Faculty” means an individual person who is an employee or independent contractor working
785 for a Qualified Educational Institution.

786 14. “Install” and “Installation” means, with respect to a computer program or other materials, to
787 copy the program or other materials onto a hard disk or other storage medium.

788 15. “License Identification” means one or more designations by ROKOKO that set forth the
789 License Type (among other things) for Licensee’s license of the Licensed Materials. The License
790 Identification may be (a) located (i) in the Licensed Materials (e.g., in an “About” box, license
791 information dialog box, or text file of Software), (ii) on or with ROKOKO packaging, or (iii) in a
792 written confirmation or other notice issued to Licensee by ROKOKO and transmitted via email,
793 facsimile, physical delivery, or otherwise, or (b) obtained from ROKOKO on request. For
794 clarification, License Identification does not include a designation, confirmation, packaging or
795 other document provided by a Reseller or other third party.

796 16. “License Type” means a type of license specified by ROKOKO for ROKOKO Materials,
797 including the types set forth in Exhibit B. License Type includes the terms specified by
798 ROKOKO for each type of license, including the applicable terms set forth in Exhibit B. License
799 Type is determined by ROKOKO and may be specified in the applicable License Identification.

800 17. “Licensed Materials” means Software, Supplemental Materials and User Documentation (a)
801 downloaded by clicking on the “I accept” button or other button or mechanism associated with
802 this Agreement or by otherwise indicating assent to this Agreement, (b) delivered prepackaged
803 with this Agreement, or (c) otherwise accompanied by this Agreement, provided that (i) in the
804 case of Software, the Software is identified in an applicable License Identification, and (ii)
805 Licensee has paid (and continues to pay) the applicable fees. Licensed Materials also includes
806 Supplemental Materials and User Documentation that ROKOKO provides or makes available to
807 Licensee for use with Software licensed under this Agreement if there are no separate terms for
808 such materials specified by ROKOKO. Licensed Materials includes, without limitation, any error
809 corrections, patches, service packs, updates and upgrades to, and new versions of, the Licensed
810 Materials that ROKOKO provides or makes available to Licensee under Licensee’s then-current
811 license. Licensee acknowledges that availability of Upgrades and new versions may be subject to
812 additional fees and the Strategic Program Terms. In addition, Licensed Materials includes,
813 without limitation, any Previous Versions and other ROKOKO Materials that Licensee receives
814 or retains pursuant to the Strategic Program Terms, but only for so long as and to the extent
815 expressly authorized by the Strategic Program Terms. Notwithstanding the foregoing (or any
816 other provision of this Agreement), Licensed Materials in all cases excludes Excluded Materials.

817 18. “Licensee” means (a) the company or other legal entity on behalf of which ROKOKO
818 Materials are acquired, if the ROKOKO Materials are acquired on behalf of such an entity (e.g.,
819 by an employee, independent contractor, or other authorized representative), or (b) if there is no
820 such entity, the individual who accepts this Agreement (e.g., by selecting the “I accept” button or
821 other button or mechanism associated with this Agreement or otherwise indicating assent to this
822 Agreement, or by installing, downloading, accessing, or otherwise copying or using all or any
823 portion of the ROKOKO Materials). For clarification, “Licensee” refers only to a single,
824 specifically identified legal entity or individual, and does not include any subsidiary or affiliate
825 of any such legal entity or individual or any other related person.

826 19. “Licensee’s Internal Business Needs” means, in reference to Licensed Materials, the use of
827 such Licensed Materials (and the features and functionality thereof) by Licensee’s own
828 Personnel to meet the internal requirements of Licensee’s business in the ordinary course of such
829 business, provided that Internal Business Needs will in no event include providing or making
830 available such Licensed Materials (or the features or functionality thereof) to any third party.

831 20. “Networked Basis” means a computing environment that includes a Computer acting as a file
832 server which allows the Licensed Materials Installed on such Computer to be uploaded and

833 Installed to, and operated, viewed or otherwise Accessed from, other Computers through a local
834 area network connection or through a VPN connection subject to compliance with the VPN
835 Requirements.

836 21. "Permitted Number" means a maximum number (e.g., number of authorized users, number of
837 concurrent users, number of computers, sessions, etc.) applicable to a license of the Licensed
838 Materials and to the License Type associated with such license. Such number is determined by
839 ROKOKO and may be specified in the applicable License Identification.

840 22. "Personal Learning Purposes" means (i) personal learning as a Student or (ii) in the case of a
841 non-Student, personal learning, excluding (a) in-person or online classroom learning in any
842 degree-granting or certificate granting program, and (b) learning related to any commercial,
843 professional or other for-profit purposes.

844 23. "Personnel" means (a) Licensee's individual employees and (b) individual persons who are
845 independent contractors working on Licensee's premises and who Install and Access the
846 Licensed Materials only on and through Computers owned or leased and controlled by Licensee.

847 24. "Previous Versions" means, as to any then-current release of Licensed Materials, a prior
848 release of the Licensed Materials as to which such then-current release is a successor or
849 substitute (as determined by ROKOKO).

850 25. "Qualified Educational Institution" means an educational institution which has been
851 accredited by an authorized governmental agency within its applicable local, state, provincial,
852 federal, or national government and has the primary purpose of teaching its enrolled students.

853 26. "Strategic Program" means (i) Subscription or (ii) a rental program offered generally by
854 ROKOKO pursuant to which ROKOKO makes available Licensed Materials.

855 27. "Strategic Program Terms" means the terms for a Strategic Program or any successor or
856 supplemental web page of ROKOKO (the URL for which may be obtained on ROKOKO's
857 website or on request).

858 28. "Reseller" means a distributor or reseller authorized directly or indirectly by ROKOKO to
859 distribute authentic ROKOKO Materials to Licensee.

860 29. "Services" means services (including the results of services) provided or made available by
861 ROKOKO, including, without limitation, support services, storage, simulation and testing
862 services, training and other benefits, but excluding services provided or made available as part of
863 a Strategic Program .

864 30. "Services Terms" means the terms for Services set forth at a location where a user may order
865 or register for, or that is displayed in connection with ordering or registering for, such Services
866 (e.g., a web page) or any successor or supplemental web pages of ROKOKO.

867 31. “Software” means a computer program, or a module or component of a computer program,
868 distributed or made available by ROKOKO. The term “Software” may also refer to functions and
869 features of a computer program.

870 32. “Stand-alone Basis” means (i) the Licensed Materials are Installed on a single Computer and
871 (ii) the Licensed Materials cannot be Installed on, or operated, viewed or otherwise Accessed
872 from or through any other Computer (e.g., through a network connection of any kind).

873 33. “Student” means an individual person enrolled as a student at a Qualified Educational
874 Institution.

875 34. “Subscription” is the program offered generally by ROKOKO under which ROKOKO
876 provides (among other things) updates and upgrades to, new versions of, and certain other
877 support, services and training relating to ROKOKO Materials.

878 35. “Supplemental Materials” means materials, other than Software and related User
879 Documentation, that are distributed or made available by ROKOKO for use with Software.
880 Supplemental Materials include, without limitation, (a) content, such as sample drawings and
881 designs, modules for drawings and designs, and representations of elements used in drawings
882 and designs (e.g., buildings, parts of buildings, fixtures, furniture, bridges, roads, characters,
883 backgrounds, settings and animations), (b) background materials, such as building codes and
884 descriptions of building practices, (c) tools for rendering the output of the Software, such as
885 fonts, and (d) Development Materials, application programming interfaces (APIs), and other
886 similar developer materials (including API Information).

887 36. “Territory” (a) means the country, countries or jurisdiction(s) specified in the License
888 Identification, or (b) if there is no such License Identification, or no country or jurisdiction is
889 specified in the License Identification, means the country in which Licensee acquires a license to
890 the ROKOKO Materials. If the License Identification specifies, or Licensee acquires the
891 ROKOKO Materials in, a member country of the European Union or the European Free Trade
892 Association, Territory means all the countries of the European Union and the European Free
893 Trade Association.

894 37. “Uninstall” means to remove or disable a copy of ROKOKO Materials from a hard drive or
895 other storage medium through any means or otherwise to destroy or make unusable a copy of the
896 ROKOKO Materials.

897 38. “Upgrade” means a full commercial version of Licensed Materials (a) which is a successor to
898 or substitute for a qualifying prior release (and may incorporate error corrections, patches,
899 service packs and updates and upgrades to, and may enhance or add to the features or
900 functionality of, the prior release) or different release of Licensed Materials, (b) is provided to a
901 Licensee who has previously licensed the applicable qualifying prior or different release from
902 ROKOKO and (c) for which ROKOKO generally charges a separate fee or makes available

903 solely to customers under a Strategic Program . Whether ROKOKO Materials are an Upgrade
904 may be specified in the applicable License Identification. Whether ROKOKO Materials are an
905 Upgrade and whether Licensee has met the qualifications to license particular ROKOKO
906 Materials as an Upgrade are determined by ROKOKO.

907 39. “User Documentation” means the explanatory or instructional materials for Software or
908 Supplemental Materials (including materials regarding use of the Software or Supplemental
909 Materials), whether in printed or electronic form, that ROKOKO or a Reseller incorporates in the
910 Software or Supplemental Materials (or the packaging for the Software or Supplemental
911 Materials) or otherwise provides to its customers when or after such customers license, acquire
912 or Install the Software or Supplemental Materials.

913 40. “VPN Requirements” means (i) the Licensed Materials are Accessed through a secure virtual
914 private network (“VPN”); (ii) the maximum number of concurrent users Accessing the Licensed
915 Materials (on a Networked Basis or through the VPN) does not exceed the Permitted Number at
916 any time; (iii) all copies of the Licensed Materials are Installed and Accessed exclusively in
917 conjunction with the technical protection device (if any) supplied with the Licensed Materials;
918 and (iv) the VPN connection is secure and complies with current industry standard encryption
919 and protection mechanisms.

920

921 **Exhibit B**

922 **License Types**

923 1. Stand-alone (Individual) or Single-user License. If the License Identification identifies the
924 License Type as “Stand-alone”, “Individual” or “Single-user”, then Licensee may Install a single
925 primary copy of the specific release of the Licensed Materials designated in the applicable
926 License Identification on one (1) Computer, on a Stand-alone Basis, and permit Access to such
927 primary copy of the Licensed Materials solely by Licensee’s Personnel, and solely for Licensee’s
928 Internal Business Needs. Licensee may also Install a single additional copy of such Licensed
929 Materials on one (1) additional Computer, on a Stand-alone Basis; provided that (i) such
930 additional copy of the Licensed Materials is Accessed solely by the same person as the primary
931 copy; (ii) such person is Licensee (if Licensee is an individual) or an employee of Licensee; (iii)
932 such person Accesses the additional copy solely to perform work while away from that person’s
933 usual work location and solely for Licensee’s Internal Business Needs; and (iv) the primary and
934 additional copies are not Accessed at the same time. Stand-alone (Individual) or Single-user
935 License is for a perpetual term, except as otherwise provided in this Agreement.

936 2. Multi-seat Stand-alone License. If the License Identification identifies the License Type as
937 “Multi-seat Stand-alone”, then Licensee may Install primary copies of the specific release of the
938 Licensed Materials designated in the applicable License Identification on up to the Permitted

939 Number of Computers, on a Stand-alone Basis, and permit Access to such copies of the Licensed
940 Materials solely by Licensee’s Personnel, and solely for Licensee’s Internal Business Needs.
941 Licensee may also Install additional copies of such Licensed Materials on additional Computers
942 in an amount up to the Permitted Number of Computers, on a Stand-alone Basis; provided that
943 (i) each additional copy of such Licensed Materials is Accessed solely by the same person as the
944 primary copy; (ii) such person is Licensee (if Licensee is an individual) or an employee of
945 Licensee; (iii) such person Accesses the additional copy solely to perform work while away from
946 that person’s usual work location and solely for Licensee’s Internal Business Needs; and (iv) the
947 primary and additional copies are not Accessed at the same time. Multi-seat Stand-alone License
948 is for a perpetual term, except as otherwise provided in this Agreement.

949 3. Network or Multi-user License. If the License Identification identifies the License Type as
950 “Network” or “Multi-user”, then Licensee may Install copies of the specific release of the
951 Licensed Materials designated in the applicable License Identification on a Computer and permit
952 Access to such Licensed Materials on multiple Computers, on a Networked Basis, solely by
953 Licensee’s Personnel, solely for Licensee’s Internal Business Needs, only so long as the
954 maximum number of concurrent Authorized Users does not exceed the Permitted Number of
955 Authorized Users or other limits imposed by the ROKOKO License Manager (if any). Licensee
956 may, at Licensee’s option, also Install the Licensed Materials on a Hot Backup Server; provided
957 that Licensee may Access the Licensed Materials on the Hot Backup Server only during the time
958 period when, and solely for as long as, the primary Installed copy of the Licensed Materials is
959 inoperable and only subject to the same terms and conditions as are applicable to the primary
960 Installed copy. A “Hot Backup Server” means a file server Computer that has a second copy of
961 the Software and Supplemental Materials Installed but that is not permitted to be Accessible
962 except when the primary Installed copy of the Software and Supplemental Materials are
963 inoperable and only for so long as such primary Installed copy is inoperable. A Network or
964 Multi-user License is for a perpetual term, except as otherwise provided in this Agreement.

965 4. Educational Stand-alone (Individual) License. If the License Identification identifies the
966 License Type as “Educational Stand-alone (Individual)”, then an Educational Licensee may
967 Install a copy of the specific release of the Licensed Materials designated in the applicable
968 License Identification on two (2) Computers (or as otherwise authorized in writing by
969 ROKOKO), subject to certain functional limitations described in Section 6.3 (Affected Data), on
970 a Stand-alone Basis, and permit Access to such copy of the Licensed Materials solely by the
971 Educational Licensee solely for Educational Purposes. An Educational Stand-alone (Individual)
972 License is for a fixed term specified in the applicable License Identification or, if no such term is
973 specified, the term is thirty-six (36) months from Installation or as otherwise authorized in
974 writing by ROKOKO.

975 5. Educational Multi-seat Stand-alone License. If the License Identification identifies the License
976 Type as “Educational Multi-seat Stand-alone,” then an Educational Licensee may Install copies

977 of the specific release of the Licensed Materials designated in the applicable License
978 Identification on up to the Permitted Number of Computers, subject to certain functional
979 limitations described in Section 6.3 (Affected Data), on a Stand-alone Basis, and permit Access
980 to such copies of the Licensed Materials solely by Educational Licensees solely for Educational
981 Purposes. An Educational Multi-seat Stand-alone License is for a fixed term specified in the
982 applicable License Identification or, if no such term is specified, the term is thirty-six (36)
983 months from Installation or as otherwise authorized in writing by ROKOKO.

984 6. Educational Network License. If the License Identification identifies the License Type as
985 “Educational Network”, then an Educational Licensee may Install copies of the specific release
986 of the Licensed Materials designated in the applicable License Identification on a single file
987 server Computer, subject to certain functional limitations described in Section 6.3 (Affected
988 Data), and Access such Licensed Materials on multiple Computers on a Networked Basis, and
989 permit Access to such copies of the Licensed Materials solely by Educational Licensees solely
990 for Educational Purposes, only so long as the maximum number of concurrent Authorized Users
991 does not exceed the Permitted Number of Authorized Users. An Educational Network License is
992 for a fixed term specified in the applicable License Identification or, if no such term is specified,
993 the term is thirty-six (36) months from Installation or as otherwise authorized in writing by
994 ROKOKO.

995 7. Personal Learning License. If the License Identification identifies the License Type as
996 “Personal Learning”, then Licensee may Install a copy of the specific release of the Licensed
997 Materials designated in the applicable License Identification on one (1) Computer, subject to
998 certain functional limitations described in Section 6.3 (Affected Data), on a Stand-alone Basis,
999 and permit Access to such copy of the Licensed Materials solely by Licensee, as an individual,
1000 solely for Personal Learning Purposes and only at and from locations that are not labs or
1001 classrooms and are not operated for commercial, professional or for-profit purposes. A Personal
1002 Learning License is for a fixed term specified in the applicable License Identification. If no such
1003 term is specified, the term is thirteen (13) months from Installation.

1004 8. Evaluation/Demonstration/Trial. If ROKOKO identifies the License Type as a
1005 “demonstration”, “evaluation”, “trial,” “not for resale” or “NFR” version (each, an “Evaluation
1006 License”) in the applicable License Identification, Licensee may Install a copy of the specific
1007 release of the Licensed Materials designated in the applicable License Identification on ten (10)
1008 Computers, subject to certain functional limitations described in Section 6.3 (Affected Data), on
1009 a Stand-alone Basis, and permit Access to such copy of the Licensed Materials, solely by
1010 Licensee’s Personnel, solely for Evaluation Purposes, only so long as the maximum number of
1011 concurrent Authorized Users does not exceed ten (10), and only from Licensee’s work location.
1012 An Evaluation License is for a fixed term specified in the applicable License Identification, or if
1013 no such term is specified, the term is thirty (30) days from Installation or as otherwise authorized
1014 in writing by ROKOKO.

1015 9. Fixed Term/Limited Duration/Rental License. If ROKOKO identifies a license in the
1016 applicable License Identification as being for a specified period or limited duration or as having
1017 a fixed term or as a rental license, Licensee’s right to Install and Access the Licensed Materials
1018 will continue only for the period, duration or term specified in the License Identification. Such
1019 Installation and Access will be in accordance with and subject to the applicable License Type
1020 and Permitted Number. If ROKOKO identifies a license in the applicable License Identification
1021 as being for a specified period or limited duration, or as having a fixed term, or a rental license
1022 but no period, duration or term is specified in the License Identification, the period, duration or
1023 term will be ninety (90) days from Installation (or the period specified in Sections B.6
1024 (Educational Network License), B.7 (Personal Learning License) or B.8
1025 (Evaluation/Demonstration/Trial) of this Exhibit B with respect to the licenses described in those
1026 sections).

1027 10. Session Specific Network License. If the License Identification identifies the License Type
1028 as a "Session Specific Network License", Licensee may install one (1) copy of the specific
1029 release of the Licensed Materials designated in the applicable License Identification on a
1030 Computer and permit Access to such Licensed Materials from multiple Computers through a
1031 Supported Virtualization Application, on a Networked Basis, solely by Licensee's Personnel,
1032 solely for Licensee's Internal Business needs, only so long as the maximum number of
1033 concurrent Sessions does not exceed the Permitted Number or other limits imposed by the
1034 ROKOKO License Manager tool (if any). For purposes of this Session Specific Network
1035 License, (a) a “Session” is defined as a single interactive information exchange between two
1036 Computers that are connected through a Supported Virtualization Application, and (b)
1037 “Supported Virtualization Application(s)” are those third party virtualization applications or
1038 methods that are specifically identified as supported by ROKOKO in the User Documentation
1039 for the Licensed Materials. With respect to the applicable Supported Virtualization Application,
1040 Licensee agrees to activate any available session tracking mechanism, not disable any such
1041 session tracking mechanism and to retain all records generated by such session tracking
1042 mechanism. A Session Specific Network License is for a perpetual term, except as other wise
1043 provided in this Agreement.

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EXHIBIT 4

1048

**CONFIDENTIAL LICENSE AGREEMENT
FOR NINTENDO DS (Western Hemisphere)**

THIS LICENSE AGREEMENT (“Agreement”) is entered into between NINTENDO OF AMERICA INC. (“NOA”), at 4820 150th Avenue N.E., Redmond, WA 98052 Attn: General Counsel (Fax: 425-882-3585) and Activision Publishing, Inc., (“LICENSEE”) at 3100 Ocean Park Blvd, Santa Monica, CA 90405 Attn: General Counsel (Fax: (310) 255-2152). NOA and LICENSEE agree as follows:

1. RECITALS

1.1 NOA markets and sells advanced design, high-quality video game systems, including the Nintendo DS system.

1.2 LICENSEE desires a license to use highly proprietary programming specifications, development tools, trademarks and other valuable intellectual property rights of NOA and its parent company, Nintendo Co., Ltd. (collectively “Nintendo”), to develop, have manufactured, advertise, market and sell video game software for play on the Nintendo DS system.

1.3 NOA is willing to grant a license to LICENSEE on the terms and conditions set forth in this Agreement.

2. DEFINITIONS

2.1 “Artwork” means the design specifications for the Game Card label and Printed Materials in the format specified by NOA in the Guidelines.

2.2 “Bulk Goods” means the Game Cards with Game Card labels affixed.

2.3 “Development Tools” means the development kits, programming tools, emulators and other materials that may be used in the development of Games under this Agreement.

2.4 “Effective Date” means October 11, 2004.

2.5 “Finished Product(s)” means the fully assembled and shrink-wrapped Licensed Products, each including a Game Card, Game Card label and Printed Materials.

2.6 “Game Card(s)” means custom card media specifically manufactured under the terms of this Agreement for play on the Nintendo DS system, incorporating semiconductor components in which a Game has been stored.

2.7 “Game(s)” means the Nintendo DS version of an interactive video game program, or other applications approved by Nintendo (including source and object/binary code) developed for the Nintendo DS system.

[***] The portions of this document marked with three asterisks represent confidential portions omitted and filed separately with the Securities and Exchange Commission.

2.8 “Guidelines” means the current version or any future revision of the “Nintendo DS Packaging Guidelines”, “Nintendo DS Development Manual” and related guidelines provided by NOA.

2.9 “Independent Contractor” means any individual or entity that is not an employee of LICENSEE, including any independent programmer, consultant, contractor, board member or advisor.

2.10 “Intellectual Property Rights” means individually, collectively or in any combination, Proprietary Rights owned, licensed or otherwise held by Nintendo that are associated with the development, manufacturing, advertising, marketing or sale of the Licensed Products, including, without limitation, (a) registered and unregistered trademarks and trademark applications used in connection with Games for the Nintendo DS system including “Nintendo®”, “Nintendo DSTM”, “DSTM and the “Official Nintendo Seal®”, (b) select trade dress associated with the Nintendo DS system and licensed Games for play thereon, (c) Proprietary Rights in

the Security Technology incorporated into the Game Cards, (d) rights in the Development Tools for use in developing the Games, (e) patents or design registrations

Nintendo in the Confidential Information.

2.11 “Licensed Products” means (a) Finished Products, or (b) Bulk Goods when fully assembled and shrink-wrapped with the Printed Materials.

2.12 “Marketing Materials” means marketing, advertising or promotional materials developed by or for LICENSEE (or subject to LICENSEE’s approval) to promote the sale of the Licensed Products, including, but not limited to, television, radio and on-line advertising, point-of-sale materials (e.g. posters, counter-cards), package advertising and print media or materials.

2.13 “NDA” means the non-disclosure agreement providing for the protection of Confidential Information related to the Nintendo DS system previously entered into between NOA and LICENSEE.

2.14 “Notice” means any notice permitted or required under this Agreement. All notices shall be sufficiently given when served or delivered, (b) transmitted by first class U.S. mail, or (c) deposited, postage prepaid, with a guaranteed air courier service, in each case addressed as stated herein, or addressed to such other person or address either party may designate in a Notice. Notice shall be deemed effective upon the earlier of actual receipt or two (2) business days after transmittal.

2.15 “Price Schedule” means the current version or any future revision of NOA’s schedule of purchase prices and minimum order quantities for Finished Products and Bulk Goods.

2.16 “Printed Materials” means the Game Card label and title sheet, user instruction booklet, poster, warranty card and LICENSEE inserts incorporating the Artwork, together with a precautions booklet as specified by NOA.

[***] The portions of this document marked with three asterisks represent confidential portions omitted and filed separately with the Securities and Exchange Commission.

2.17 “Proprietary Rights” means any rights or applications for rights owned, licensed or otherwise held in patents, trademarks, service marks, copyrights, mask works, trade secrets, trade dress, moral rights and publicity rights, together with all inventions, discoveries, ideas, technology, know-how, data, information, processes, formulas, drawings and designs, licenses, computer programs, software source code and object code, and all amendments, modifications, and improvements thereto for which such patent, trademark, service mark, copyright, mask work, trade secrets, trade dress, moral rights or publicity rights may exist or may be sought and obtained in the future.

2.18 “Reverse Engineer(ing)” means, without limitation, (a) the x-ray, electronic scanning or decryption or simulation of object code or executable code, or (c) any other technique designed to extract source code or facilitate the duplication of a program or product.

2.19 “Security Technology” means, without limitation, any security signature, bios, data scrambling, password, hardware security apparatus, watermark, hologram, encryption, Digital Rights management system, copyright management information system or any feature that facilitates or limits compatibility with other hardware, software, or accessories or other peripherals outside of the Territory or on a different video game system.

2.20 “Term” mean three (3) years from the Effective Date.

2.21 “Territory” means all countries within the Western Hemisphere and their respective territories and possessions.

3. GRANT OF LICENSE; LICENSEE RESTRICTIONS

3.1 Limited License Grant. For the Term and for the Territory, NOA grants to LICENSEE a nonexclusive, nontransferable, limited license to use the intellectual Property Rights to develop Games for manufacture, advertising, marketing and sale as Licensed Products, subject to the terms and conditions of this Agreement. Except as permitted under a separate written authorization from Nintendo, LICENSEE shall not use the Intellectual Property Rights for any other purpose.

3.2 LICENSEE Acknowledgement. LICENSEE acknowledges (a) the valuable nature of the Intellectual Property Rights, (b) the right, title, and interest of Nintendo in and to the Intellectual Property Rights, and (c) the right, title and interest of Nintendo in and to the Proprietary Rights associated with all aspects of the Nintendo DS system. LICENSEE recognizes that the Games, Game Cards and Licensed Products will embody valuable rights of Nintendo and Nintendo's licensors. LICENSEE represents and warrants that it will not undertake any act or thing that in any way impairs or is intended to impair any part of the right, title, interest or goodwill of Nintendo in the Intellectual Property Rights. LICENSEE's use of the Intellectual Property Rights shall not create any right, title or interest of LICENSEE therein.

3.3 LICENSEE Restrictions and Prohibitions. LICENSEE is not licensed to, and covenants that, without the express written consent of Nintendo, it will not at any time, directly or indirectly, do or cause to be done any of the following:

[***] The portions of this document marked with three asterisks represent confidential portions omitted and filed separately with the Securities and Exchange Commission.

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(a) grant access to, distribute, transmit or broadcast a Game by electronic means or by any other means known or hereafter devised, including, without limitation, by wireless, cable, fiber optic, telephone lines, microwave, radiowave, computer or other device network, except (a) as a part of wireless Game • lay on and among Nintendo DS systems. (b) for the purpose of facilitating Game development under the terms of this Agreement, or (c) as otherwise approved in writing by Nintendo. LICENSEE shall use reasonable security measures, customary within the high technology industry, to reduce the risk of unauthorized interception or retransmission of any Game transmission. No right of retransmission shall attach to any authorized transmission of a Game,

(b) modify, install or operate a Game on any server or other device for the purpose of or resulting in the rental, lease, loan or sale of rights of access to the Game,

(c) emulate, interoperate, interface or link a Game for operation or use with any hardware platform, software program, accessory, computer language, computer environment, chip instruction set, consumer electronics device, telephone, ceephone, RDA, or other device, including for 'purposes of data interchange, password usage or interactive video game play, other than a Nintendo DS system, an application approved by Nintendo, or the Development Tools,

(d) emulate any past, current or future Nintendo brand video game system, or any portion thereof, in software or hardware or any combination thereof,

(e) embed, incorporate, or store a Game in any media or format except the Game Card format utilized by the Nintendo DS system, except as may be necessary as a part of the Game development process under this Agreement,

(f) design, implement or undertake any process, procedure, program or act designed to circumvent the Security Technology,

(g) utilize the Intellectual Property Rights to design or develop any interactive video game program, except as authorized under this Agreement,

(h) manufacture or reproduce a Game developed under this Agreement, except through Nintendo, or

(i) Reverse Engineer or assist in the Reverse Engineering of all or any part of the Development Tools or the Security Technology.

3.4 No Free-Riding No Co-Publishing Arrangements. To protect Nintendo's valuable Intellectual Property Rights, to prevent the dilution of Nintendo's trademarks and to preclude free-riding by third parties on the goodwill associated with Nintendo's trademarks, the license granted under this Agreement is limited to LICENSEE and may not be delegated or contracted out for the benefit of a third party, or to a division, affiliate or subsidiary of LICENSEE. This Agreement, together with all submissions, representations, undertakings and approvals contemplated of LICENSEE by this Agreement, is and shall remain the right and obligation only of LICENSEE. All Printed Materials and Marketing Materials for a Game shall prominently and accurately identify LICENSEE as NOA's licensee. NOA does not permit the designation or

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[***] The portions of this document marked with three asterisks represent confidential portions omitted and filed separately with the Securities and Exchange Commission.

4

identification of any third party co-publisher for a Game on any Licensed Product Game Card case or Game Card label, however, LICENSEE may identify a third party as a co-publisher, licensor, developer or other partner of LICENSEE in those Printed Materials (other than the Game Card label), Marketing Materials or Game credits, as authorized under the Guidelines. For purposes of clarification, LICENSEE's name, or logo, will appear on the Licensed Product Game Card case and Game Card label as it appears in the preamble of this Agreement.

3.5 Development Tools. Nintendo may lease, loan or sell Development Tools to LICENSEE to assist in the development of Games under this Agreement. Ownership and use of any Development Tools provided to LICENSEE by Nintendo shall be subject to the terms of this Agreement and any separate license or purchase agreement required by Nintendo. LICENSEE acknowledges the exclusive interest of Nintendo in and to the Proprietary Rights associated with the Development Tools. LICENSEE's use of the Development Tools shall not create any right, title or interest of LICENSEE therein. LICENSEE shall not, directly or indirectly, (a) use the Development Tools for any purpose except the design and development of Games under this Agreement, (b) reproduce or create derivatives of the Development Tools, except in association with the development of Games under this Agreement, (c) Reverse Engineer the Development Tools, or (d) sell, lease, assign, lend, license, encumber or otherwise transfer the Development Tools. Any tools developed or derived by LICENSEE as a result of a study of the performance, design or operation of the Development Tools shall be considered derivative works of the Intellectual Property Rights and shall belong to Nintendo, but may be retained and utilized by LICENSEE in connection with this Agreement. In no event shall LICENSEE (i) seek, claim or file for any patent, copyright or other Proprietary Right with regard to any such derivative work, (ii) make available any such derivative work to any third party, or (iii) use any such derivative work except in connection with the design and development of Games under this Agreement.

4. SUBMISSION OF GAME AND ARTWORK FOR APPROVAL

4.1 Development and Sale of the Games. LICENSEE may develop Games and have manufactured, advertise, market and sell Licensed Products for play on the Nintendo DS system only in accordance with this Agreement.

4.2 Third Party Developers. LICENSEE shall not disclose the Confidential Information, the Guidelines or the Intellectual Property Rights to any independent Contractor, nor permit any Independent Contractor to perform or assist in development work for a Game, unless and until such Independent Contractor has been approved by NOA and has executed a written confidentiality agreement with NOA relating to the Nintendo DS system.

4.3 Delivery of Completed Game. Upon completion of a Game, LICENSEE shall deliver a prototype of the Game to NOA in a format specified in the Guidelines, together with written user instructions, a complete description of any security holes, backdoors, time bombs, cheats, "easter eggs" or other hidden features or characters in the Game [***]. NOA shall promptly evaluate the Game with regard to its technical compatibility with and error-free operation on the Nintendo DS system. LICENSEE is responsible for ensuring that the Game and any other content to be included on the Game Card complies with the Advertising Code of Conduct of the Entertainment Software Ratings Board ("ESRB") and that the Game has been

[***] The portions of this document marked with three asterisks represent confidential portions omitted and filed separately with the Securities and Exchange Commission.

5

rated EC, E, M or T by the ESRB. LICENSEE shall provide NOA with a related certificate of rating for the Game from the ESRB.

4.4 Approval of Completed Game. NOA shall, within a reasonable period of time after receipt, approve or disapprove each submitted Game. If a Game is disapproved, NOA shall specify in writing the reasons for such disapproval and state what corrections or improvements are necessary. After making the necessary corrections or improvements, LICENSEE shall submit a revised Game to NOA for approval. NOA shall not unreasonably withhold or delay its approval of any Game. The approval of a Game by NOA shall not relieve LICENSEE of its sole responsibility for the development, quality and operation of the Game or in any way create any warranty for a Game or a Licensed Product by NOA.

4.5 Submission of Artwork. Upon submission of a completed Game to NOA, LICENSEE shall prepare and submit to NOA the Artwork for the proposed Licensed Product. Within seven (7) business days of receipt, NOA shall approve or disapprove the Artwork. If any Artwork is disapproved, NOA shall specify in writing the reasons for such disapproval and state what corrections or improvements are necessary. After making the necessary corrections or improvements, LICENSEE shall submit revised Artwork to NOA for approval. NOA shall not unreasonably withhold or delay its approval of any Artwork. The approval of the Artwork by NOA development and quality of the Artwork or in any way create any warranty for the Artwork or any Licensed Product by NOA.

4.6 Artwork for Bulk Goods. If LICENSEE submits an order for Bulk Goods, all Artwork shall be submitted to NOA in advance of NOA's acceptance of the order and no production of Printed Materials shall occur until such Artwork has been approved by NOA under Section 4.5 herein.

5. ORDER PROCESS, PURCHASE PRICE, PAYMENT AND DELIVERY

5.1 Submission of Orders by LICENSEE. LICENSEE may at any time submit written purchase orders to NOA for any approved Licensed Product title. The purchase order shall specify whether it is for Finished Products or Bulk Goods. The terms and conditions of this Agreement shall control over any contrary terms of such purchase order or any other written documents submitted by LICENSEE. All orders are subject to acceptance by NOA in Redmond, WA.

5.2 Purchase Price and Minimum Order Quantities. The purchase price and minimum order quantities for Finished Products and Bulk Goods shall be set forth in NOA's then current Price Schedule. The purchase price includes the cost of manufacturing together with a royalty for the use of the Intellectual Property Rights. No taxes, duties, import fees or other tariffs related to the development, manufacture, import, marketing or sale of the Licensed Products are included in the purchase price and all such taxes are the responsibility of LICENSEE (except for taxes imposed on NOA's income). The Price Schedule is subject to change by NOA at any time, provided, however, that any price increase shall be applicable only to purchase orders submitted, paid for, and accepted by NOA after the effective date of the price increase.

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5.3 Payment. Upon placement of an order with NOA, LICENSEE shall pay the full purchase price to NOA either (a) by placement of an irrevocable letter of credit in favor of NOA and payable at sight, issued by a bank acceptable to NOA and confirmed, if requested by NOA, at LICENSEE's expense, or (b) in cash, by wire transfer to NOA's designated account. All associated banking charges are the responsibility of the LICENSEE.

5.4 Shipment and Delivery. All Licensed Products shall be delivered to LICENSEE EXW Ex works Japan (as defined by Incoterms 2000), or such other delivery point specified by NOA, with shipment at LICENSEE's direction and expense. Orders may be delivered by NOA in partial shipments, each directed to not more than two (2) destinations designated by LICENSEE within the Territory. Title to the Licensed Products shall vest [***].

6. MANUFACTURE OF THE LICENSED PRODUCT

6.1 Manufacturing. Nintendo shall be the exclusive source for the manufacture of the Game Cards, and shall control all aspects of the manufacturing process, including the selection of the locations and specifications for any manufacturing facilities, determination of materials and processes, appointment of suppliers and subcontractors and management of all work-in-progress.

6.2 Manufacture of the Licensed Products. Upon acceptance by NOA of a purchase order for an approved Licensed Product title and payment as provided for under Section 5.3 herein, NOA will arrange for the manufacture of Finished Product or Bulk Goods, as specified in LICENSEE's purchase order.

6.3 Security Features. The final release version of the Game, Game Cards and Printed Materials shall include such Security Technology as Nintendo, in its sole discretion and at its sole expense, may deem necessary or appropriate.

6.4 Production of Bulk Goods Printed Materials. For Bulk Goods, LICENSEE shall arrange Goods, LICENSEE shall assemble the Game Cards and Printed Materials into the Licensed Products. Games may be sold or otherwise distributed by LICENSEE only in fully assembled and shrink-wrapped Licensed Products.

6.5 Prior Approval of LICENSEE's Independent Contractor. Prior to the placement of a purchase order for Bulk Goods, LICENSEE shall obtain NOA's approval of any Independent Contractors selected to perform LICENSEE's production and assembly operations. LICENSEE shall provide NOA with the names, addresses and all business documentation reasonably requested by NOA for such Independent Contractors. NOA may, prior to approval and at reasonable intervals thereafter, (a) require submission of additional business or financial information regarding the Independent Contractors, (b) inspect the facilities of the Independent Contractors, and (c) be present to supervise any work on the Licensed Products to be done by any Independent Contractors. If at any time NOA deems an Independent Contractor to be unable to meet quality, security or performance standards reasonably established by NOA, NOA may refuse to grant its approval or withdraw its approval upon Notice to Licensed Product by such Independent Contractor until NOA's concerns have been resolved to its satisfaction or until LICENSEE has selected and received NOA's approval of another Independent Contractor. NOA

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may establish preferred or required supply sources for the Game Card case, or select components of the Printed Materials, which sources shall be deemed pre-approved in accordance with this Section 6.5. LICENSEE shall comply with all sourcing requirements established by NOA.

6.6 NOA Inserts for Bulk Goods. NOA, at its option and at its sole expense, may provide LICENSEE with NOA produced promotional materials (as provided for at Section 7.7(a) herein), that LICENSEE agrees to include in the assembly of the Licensed Products.

6.7 Sample Printed Materials and Bulk Goods. Within a reasonable period of time after LICENSEE's assembly of the initial order for a Bulk Goods title, LICENSEE shall provide NOA with (a) one (1) sample of the fully assembled, shrink-wrapped Licensed Product, and (b) [***] of LICENSEE produced Printed Materials for such Licensed Product.

6.8 Retention of Sample Licensed Products by Nintendo. Nintendo may, at its own expense, manufacture reasonable quantities of the Game Cards or the Licensed Products to be used for archival purposes, legal proceedings against infringers of the Intellectual Property Rights or for other lawful purposes [***].

6.9 Retention of User Instruction Booklet by NOA. For use in training consumer support personnel, product orientation and other consumer support activities, as well as for archival purposes, NOA may (a) retain (or request that LICENSEE provide to NOA) a reasonable number of copies of the user instruction booklet for each Licensed Product, and (b) make a reasonable number of copies of the user instruction booklet for each Licensed Product.

7. MARKETING AND ADVERTISING

7.1 Approval of Marketing Materials. LICENSEE represents and warrants that the Marketing Materials shall (a) be of high quality and comply with the Guidelines, (b) comply with all ESRB advertising, marketing and merchandising guidelines, and (c) comply with all applicable laws and regulations in those jurisdictions in the Territory where they will be used or distributed. All LICENSEE controlled websites featuring the Games shall adopt a privacy policy [***] and that complies with the Children's Online Privacy Protection Act. Prior to actual use or distribution, LICENSEE shall submit to NOA for review samples of all proposed Marketing Materials. NOA shall, within ten (10) business days of receipt, approve or disapprove the quality of such samples. If any of the samples are disapproved, NOA shall specify the reasons for such disapproval and state what corrections and/or improvements are necessary. After making the necessary corrections and/or improvements, LICENSEE shall submit revised samples for approval by NOA. No Marketing Materials shall be used or distributed by LICENSEE without NOA's prior written approval. NOA shall not unreasonably withhold or delay its approval of any proposed Marketing Materials.

7.2 No Bundling. To protect Nintendo's valuable Intellectual Property Rights, to prevent the dilution of Nintendo's trademarks and to preclude free-riding by non-licensed products on the goodwill associated with Nintendo's trademarks, LICENSEE shall not market or distribute any Licensed Products that are bundled with (a) any peripheral designed for use with the Nintendo DS system that has not been licensed or approved in writing by NOA, or (b) any

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other product or service where Nintendo's sponsorship, association, approval or endorsement might be suggested by the bundling of the products or services.

7.3 Warranty and Repair. LICENSEE shall provide the original consumer with a minimum ninety (90) day limited warranty on all Licensed Products. LICENSEE shall also provide reasonable product service, including out-of-warranty service, for all Licensed Products.

7.4 Business Facilities. LICENSEE agrees to develop and maintain (a) suitable office under this Agreement, (b) necessary warehouse, distribution, marketing, sales, collection and credit operations to facilitate proper handling of the Licensed Products, and (c) customer service and Game counseling, including telephone service, to adequately support the Licensed Products.

7.5 No Sales Outside the Territory. LICENSEE represents and warrants that it shall not market, sell, offer to sell, import or distribute the Licensed Products outside the Territory, or within the Territory when LICENSEE has actual or constructive knowledge that a subsequent destination of the Licensed Product is outside the Territory.

7.6 Defects and Recall. In the event of a material programming defect in a Licensed Product that would, in NOA's reasonable judgment, significantly impair the ability of a consumer to play the Game, NOA may, after consultation with LICENSEE, require the LICENSEE to recall the Licensed Product and undertake suitable repairs or replacements.

7.7 NOA Promotional Materials, Publications and Events. At its option, NOA may (a) insert in the Printed Materials for the Licensed Products promotional materials concerning Nintendo Power magazine or other NOA products, services or programs, (b) utilize screen shots, Artwork and information regarding the Licensed Products in Nintendo Power, Nintendo Power Source, official Nintendo-sponsored web sites, or other advertising, promotional or marketing media that promotes Nintendo products, services or programs, and (c) exercise public performance rights in the Games and use related trademarks and Artwork in connection with NOA sponsored contests, tours, conventions, trade shows, press briefings and similar events that promote the Nintendo DS system.

7.8 Nintendo Gateway System. To promote and increase demand for games on Nintendo video game systems, NOA licenses a system (the "Nintendo Gateway System") in various non-coin customers play games on specially adapted Nintendo video game systems. If NOA identifies a Game for possible license on the Nintendo Gateway System, the parties agree to conduct good faith negotiations toward including the Game in the Nintendo Gateway System.

8. CONFIDENTIAL INFORMATION

8.1 Definition. "Confidential Information" means information provided to LICENSEE by Nintendo or any third party working with Nintendo relating to the hardware and software for the Nintendo DS system or the Development Tools, including, but not limited to, (a) all current or future information, know-how, techniques, methods, information, tools, emulator hardware or software, software development specifications and/or trade secrets, (b) any patents or patent applications, (c) any business, marketing or sales data or information, and (d) any other information or data relating to development, design, operation, manufacturing, marketing or sales. Confidential Information shall include all confidential information disclosed, whether in

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writing, orally, visually, or in the form of drawings, technical manifest, in any form, the above listed information. Confidential Information shall not include (i) data and information that was in the public domain prior to LICENSEE's receipt of the same hereunder, or that subsequently becomes part of the public domain by publication or otherwise, except by LICENSEE's wrongful act or omission, (ii) data and information that LICENSEE can demonstrate, through written records kept in the ordinary course of business, was in its possession without restriction on use or disclosure, prior to its receipt of the same hereunder and was not acquired directly or indirectly from Nintendo under an obligation of confidentiality that is still in force, and (iii) data and information that LICENSEE can show was received by it from a third party who did not acquire the same directly or indirectly from Nintendo and to whom LICENSEE has no obligation of confidentiality.

8.2 Disclosures Required by Law. LICENSEE shall be permitted to disclose Confidential Information if such disclosure is required by an authorized governmental or judicial entity, provided that NOA is given Notice thereof at least thirty (30) days prior to such disclosure, or such lesser period if required. LICENSEE shall use its best efforts to limit the disclosure to the greatest extent possible, consistent with LICENSEE's legal obligations, and if required by NOA, shall cooperate in the preparation and entry of appropriate protective orders.

8.3 Disclosure and Use. NOA may provide LICENSEE with highly confidential development information, Guidelines, Development Tools, systems, specifications and related resources and information constituting and incorporating the Confidential Information to assist LICENSEE in the development of Games. LICENSEE agrees to maintain all Confidential Information as strictly confidential and to use such Confidential Information only in accordance with this Agreement. LICENSEE shall limit access to the Confidential Information to CfCI:NSEE's employees having a strict need to Know and shall advise such employees of their obligation of confidentiality as provided herein. LICENSEE shall require each such employee to retain in confidence the Confidential Information pursuant to a written non-disclosure agreement between LICENSEE and such employee. LICENSEE shall use its best efforts to ensure that its employees working with or otherwise having access to Confidential Information shall not disclose or make any unauthorized use of the Confidential Information.

8.4 No Disclosure to Independent Contractors. LICENSEE shall not disclose the Confidential Information to any Independent Contractor without the prior written consent of NOA. Any Independent Contractor seeking access to Confidential Information shall be required to enter into a written non-disclosure agreement with NOA prior to receiving any access to or disclosure of the Confidential Information from either LICENSEE or NOA.

8.5 Agreement Confidentiality. LICENSEE agrees that the terms, conditions and contents of this Agreement shall be treated as Confidential Information. Any public announcement or press release regarding this Agreement or the release dates for Games developed by LICENSEE under this Agreement shall be subject to NOA's prior written approval. The parties may disclose this Agreement (a) to accountants, banks, financing sources, lawyers, parent companies and related parties under substantially equivalent confidentiality obligations, (b) in connection with any formal legal proceeding for the enforcement of this Agreement, (c) as required by the regulations of the Securities and Exchange Commission ("SEC"), provided that all Confidential Information regarding NOA shall be redacted from such

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disclosures to the maximum extent allowed by the SEC, (d) in response to lawful process, subject to a written protective order approved in advance by NOA, and (e) to a third party proposing to enter into a business transaction with LICENSEE or with NOA, but only to the extent reasonably necessary for carrying out the proposed transaction and only under terms of mutual confidentiality.

8.6 Notification Obligations. LICENSEE shall promptly notify NOA of the unauthorized use or disclosure of any Confidential Information by LICENSEE or any of its employees, or any Independent Contractor or its employees, and shall promptly act to recover any such information and prevent further breach of the obligations herein. The obligations of LICENSEE set forth herein are in addition to and not in lieu of any other legal remedy that may be available to NOA under this Agreement or applicable law.

8.7 Continuing Effect of the NDA. The terms of this Section 8 supplement the terms of the NDA, which shall remain in effect. In the event of a conflict between the terms of the NDA and this Agreement, the terms of this Agreement shall control.

9. REPRESENTATIONS AND WARRANTIES

9.1 LICENSEE's Representations and Warranties. LICENSEE represents and warrants that:

- (a) it is a duly organized and validly existing corporation and has full authority to enter into this Agreement and to carry out the provisions hereof,
- (b) the execution, delivery and performance of this Agreement by LICENSEE does not conflict with any agreement or understanding to which LICENSEE may be bound, and

(c) excluding the Intellectual Property Rights, LICENSEE is either (i) the sole owner of all right, title and interest in and to the trademarks, copyrights and other intellectual property rights used on or in association with the development, advertising, marketing and sale of the Licensed Products and the Marketing Materials, or (ii) the holder of such rights to the trademarks, copyrights and other intellectual property rights that have been licensed from a third party as are necessary for the development, advertising, marketing and sale of the Licensed Products and the Marketing Materials under this Agreement.

9.2 NOA's Representations and Warranties. NOA represents and warrants that:

(a) it is a duly organized and validly existing corporation and has full authority to enter into this Agreement and to carry out the provisions hereof, and

(b) the execution, delivery and performance of this Agreement by NOA does not conflict with any agreement or understanding to which NOA may be bound.

9.3 [***]

9.4 [***]

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9.5 LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER NOA NOR NINTENDO CO., LTD. (OR THEIR RESPECTIVE AFFILIATES, LICENSORS OR SUPPLIERS) SHALL BE LIABLE FOR LOSS OF PROFITS, OR FOR ANY SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF LICENSEE OR ITS CUSTOMERS ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE BREACH OF THIS AGREEMENT BY NOA, THE MANUFACTURE OF THE LICENSED PRODUCTS OR THE USE OF THE LICENSED PRODUCTS ON ANY NINTENDO VIDEO GAME SYSTEM BY LICENSEE OR ANY END USER.

10. INDEMNIFICATION

10.1 LICENSEE's Indemnification. LICENSEE shall indemnify and hold harmless NOA and Nintendo Co., Ltd. (and any of their respective affiliates, subsidiaries, licensors, suppliers, officers, directors, employees or agents) from any claims, losses, liabilities, damages, expenses and costs, including, without limitation, reasonable attorneys' fees and costs and any expenses incurred in the settlement or avoidance of any such claim, that result from or are in connection with:

(a) a breach of any of the provisions, representations or warranties undertaken b LICENSEE in this Agreement,

(b) any infringement of a third party's Proprietary Rights as a result of the design, development, advertising, marketing, sale or use of the Licensed Products or the Marketing Materials,

(c) any claims alleging a defect, failure to warn, bodily injury (including death) or other personal or property damage arising out of, or in connection with, the design, development, advertising, marketing, sale or use of any of-the Licensed Products, and

(d) any federal, state or foreign civil or criminal actions relating to the design, development, advertising, marketing, sale or use of the Licensed Products or the Marketing Materials.

NOA and LICENSEE shall give prompt Notice to the other of any indemnified claim under this Section 10.1. With respect to any third party claim subject to this indemnity clause, LICENSEE, as indemnitor, shall have the right to select counsel and to control the defense and/or settlement thereof. NOA may, at its own expense, participate in such action or proceeding with counsel of its own choice. LICENSEE shall not enter into any settlement of any such claim in which (i) NOA or Nintendo Co., Ltd. has been named as a party, or (ii) claims relating to the Intellectual Property Rights have been asserted, without NOA's prior written consent. NOA shall provide reasonable assistance to LICENSEE in its defense of any such claim.

10.2 LICENSEE's Insurance. LICENSEE shall, at its own expense, obtain a commercial general liability insurance policy (including coverage for advertising injury and product liability claims) from an insurance company rated at least B+ by A.M. Best.

Such policy of insurance shall be in an amount of not less than [***] on a per occurrence basis (not claims made) and shall provide for adequate protection against any suits, claims, loss or damage arising

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out of or relating to the Licensed Products. Such policy shall name NOA and Nintendo Co., Ltd. as additional insureds and shall specify that it may not be canceled without thirty (30) days' prior written Notice to NOA. A Certificate of Insurance shall be provided to NOA's Licensing Department not later than the date of the initial order of Licensed Products under this Agreement. If LICENSEE fails to provide NOA's Licensing Department with period of two (2) years thereafter, NOA, in its sole discretion may 1) terminate this Agreement in accordance with Section 13.2 herein; or 2) secure comparable insurance for the benefit of NOA and Nintendo Co., Ltd. only, and not for Licensee, at LICENSEE's expense.

10.3 Suspension of Production. In the event NOA deems itself at risk with respect to any claim, action or proceeding under this Section 10, NOA may, at its sole option, suspend production, delivery or order acceptance for any Licensed Products, in whole or in part, pending resolution of such claim, action or proceeding.

11. PROTECTION OF PROPRIETARY RIGHTS

11.1 Joint Actions Against Infringers. LICENSEE and NOA may agree to jointly pursue cases of infringement involving the Licensed Products, as such Licensed Products will contain Proprietary Rights owned by each of them. Unless the parties otherwise agree, or unless the recovery is expressly allocated between them by the court, in the event of such an action, any recovery shall be used first to reimburse LICENSEE and NOA for their respective reasonable attorneys' fees and costs incurred in bringing such action, pro rata, and any remaining recovery shall be distributed to LICENSEE and NOA, pro rata, based upon the fees and costs incurred in bringing such action.

11.2 Actions by LICENSEE. LICENSEE, without the consent of NOA, may bring any action or proceeding relating to an infringement or potential infringement of LICENSEE's Proprietary Rights in the Licensed Products. LICENSEE will have the right to retain all proceeds it may derive from any recovery in connection with such actions.

11.3 Actions by NOA. NOA, without the consent of LICENSEE, may bring any action or proceeding relating to an infringement or potential infringement of the Intellectual Property Rights. NOA will have the right to retain all proceeds it may derive from any recovery in connection with such actions.

12. ASSIGNMENT

12.1 Definition. "Assignment" means every type and form of assignment, transfer, sale, sublicense, delegation, encumbrance, pledge and/or hypothecation of LICENSEE's rights or obligations under this Agreement, including, but not limited to, (a) a voluntary assignment, transfer, sale, sublicense, obligations under this Agreement, (b) the assignment, transfer, sale, sublicense, delegation, encumbrance, pledge and/or hypothecation of all or any portion of LICENSEE's rights or obligations under this Agreement to or by LICENSEE's trustee in bankruptcy, receiver, or other individual or entity appointed to control or direct the business and affairs of LICENSEE, (c) an involuntary assignment, transfer, sale, sublicense, delegation, encumbrance, pledge or hypothecation of all or a portion of LICENSEE's rights or obligations under this Agreement, including but not limited to a foreclosure by a third party upon assets of

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LICENSEE, (d) the merger or consolidation of LICENSEE if LICENSEE is a corporation, and (e) any other means or method whereby rights or obligations of LICENSEE under this Agreement are sold, assigned or transferred to another individual or entity for any reason. Assignment also includes the sale, assignment, transfer or other event affecting a change in the controlling interest of LICENSEE,

whether by sale, transfer or assignment of shares in LICENSEE, or by sale, transfer or assignment of partnership interests in LICENSEE, or otherwise.

12.2 No Assignment by LICENSEE. This Agreement and the subject matter hereof are effective without NOA's prior written consent, [***]. In the event of an attempted Assignment in violation of this provision, NOA shall have the right at any time, at its sole option, to immediately terminate this Agreement. Upon such termination, NOA shall have no further obligation under this Agreement to LICENSEE or to LICENSEE's intended or purported assignee.

12.3 Proposed Assignment. Prior to any proposed Assignment of this Agreement, LICENSEE shall give NOA not less than thirty (30) days prior written Notice thereof, which Notice shall disclose the name of the proposed assignee, the proposed effective date of the Assignment and the nature and extent of the rights and obligations that LICENSEE proposes to assign. NOA may, in its sole discretion, approve Assignment, any attempted or purported Assignment shall be deemed disapproved and NOA shall have the unqualified right, in its sole discretion, to terminate this Agreement at any time. Upon termination, NOA shall have no further obligation under this Agreement to LICENSEE or to LICENSEE's intended or purported assignee.

12.4 LICENSEE's Obligation of Non-Disclosure. LICENSEE shall not (a) disclose Nintendo's Confidential Information to any proposed assignee of LICENSEE, or (b) permit access to Nintendo's Confidential Information by any proposed assignee or other third party, without the prior written consent of NOA to such disclosure.

13. TERM AND TERMINATION

13.1 Term. This Agreement shall commence on the Effective Date and shall continue for the Term, unless earlier terminated as provided for herein, or extended by a written amendment to this Agreement.

13.2 Default or Breach. In the event that either party is in default or commits a breach of this Agreement, that is not cured within thirty (30) days after Notice thereof, then this Agreement shall, except as otherwise provided, automatically terminate on the date specified in such Notice.

13.3 Bankruptcy. At NOA's option, this Agreement may be terminated immediately and (b) becomes insolvent, (c) files a voluntary petition for bankruptcy, (d) acquiesces to any involuntary bankruptcy petition, (e) is adjudicated as a bankrupt, or (f) ceases to do business.

13.4 Termination Other Than by Breach. Upon (a) the expiration of this Agreement, (b) its termination other than by LICENSEE's breach, or (c) termination of this Agreement by NOA after one hundred twenty days (120) Notice to LICENSEE in the event NOA reasonably

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believes that LICENSEE has developed, marketed, or sold a product that infringes any intellectual property rights of NOA or its parent company, Nintendo Co., Ltd., anywhere in the world (provided that if the parties are able to resolve such alleged infringement within such 120 day period, such termination shall not take effect), LICENSEE shall have a period of [***] to sell any unsold Licensed Products. All Licensed Products in LICENSEE's control following the expiration of such sell-off period shall be destroyed by LICENSEE within [***] and proof of such destruction (certified by an officer of LICENSEE) shall be provided to NOA.

13.5 Termination by LICENSEE's Breach. If this Agreement is terminated by NOA as a result of a breach of its terms and conditions by LICENSEE, LICENSEE shall immediately cease all distribution, advertising, marketing or sale of any Licensed Products. All Licensed Products in LICENSEE's control as of the date of such termination shall be destroyed by LICENSEE within ten (10) days and proof of such destruction (certified by an officer of LICENSEE) shall be provided to NOA.

13.6 Breach of NDA or Other NOA License Agreements. At NOA's option, any breach by LICENSEE of (a) the NDA, or (b) any other license agreement between NOA and LICENSEE relating to the development of games for any Nintendo video game system that is not cured within the time period for cure allowed under the applicable agreement, shall be considered a material breach of this Agreement entitling NOA to terminate this Agreement in accordance with Section 13.5 herein.

13.7 No Further Use of the Intellectual Property Rights. Upon expiration and/or termination of this Agreement, LICENSEE shall cease all use of the Intellectual Property Rights for any purpose, except as may be required in connection with the sale of Licensed Products authorized under Section 13.4 herein. LICENSEE shall, within thirty (30) days thereafter, return or destroy all Guidelines, writings, drawings, models, data, tools and other materials and things in LICENSEE's possession or in the possession of any past or present employee, agent or contractor receiving the information through LICENSEE, that constitute or relate to or disclose any Confidential Information, without making copies or otherwise retaining any such information. Proof of any destruction shall be certified by an officer of LICENSEE and promptly provided to NOA.

13.8 Termination by NOA's Breach. If this Agreement is terminated by LICENSEE as a result of a breach of its terms or conditions by NOA, LICENSEE may continue to sell the Licensed Products in the Territory until the expiration of the Term, at which time the provisions of Section 13.4 shall apply.

14. GENERAL PROVISIONS

14.1 Export Control. LICENSEE agrees to comply with the export laws and regulations of the United States and any other country with jurisdiction over the Licensed Products, Confidential information, Intellectual Property Rights, Development Tools or either party.

14.2 Force Majeure. Neither party shall be liable for any breach of this Agreement occasioned by any cause beyond the reasonable control of such party, including governmental

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action, war, riot or civil inadequate supply of suitable materials or any other cause that could not with reasonable diligence be controlled or prevented by the parties. In the event of material shortages, including shortages of materials or production facilities necessary for production of the Licensed Products, NOA reserves the right to allocate such resources among itself and its licensees.

14.3 Records and Audit. During the Term and for a period of [***] thereafter, LICENSEE agrees to keep accurate complete and detailed records related to the development and sale of the Licensed Products and the Marketing Materials. Upon [***] Notice to LICENSEE, NOA may, at its expense, audit LICENSEE'S records, reports and other information related to LICENSEE'S compliance with this Agreement.

14.4 Waiver, Severability, Integration, and Amendment. The failure of a party to enforce any provision of this Agreement shall not be construed to be a waiver of such provision or of the right of such party to thereafter enforce such provision. In the event that any term, clause or provision of this Agreement shall be construed to be or adjudged invalid, void or unenforceable, such term, clause or provision shall be construed as severed from this Agreement, and the remaining terms, clauses and provisions shall remain in effect. Together with the NDA, this Agreement constitutes the entire agreement between the parties relating to the subject matter hereof. All prior negotiations, representations, agreements and understandings are merged into, extinguished by and completely expressed by this Agreement and the NDA. Any amendment to this Agreement shall be in writing, signed by both parties.

14.5 Survival. In addition to those rights specified elsewhere in this Agreement that may reasonably be interpreted or construed as surviving, the rights and obligations set forth in Sections 3, 8, 9, 10, 13 and 14 shall survive any expiration or termination of this Agreement to the degree necessary to permit their complete fulfillment or discharge.

14.6 Governing Law and Venue. This Agreement shall be governed by the laws of the State of Washington, without regard to its conflict of laws principles. Any legal action (including judicial and administrative proceedings) with respect to any matter arising under or growing out of this Agreement, shall be brought in a court of competent jurisdiction in King County, Washington. Each party hereby consents to the jurisdiction and venue of such courts for such purposes.

14.7 Equitable Relief. LICENSEE acknowledges that in the event of its breach of this Agreement, no adequate remedy at law may be available to NOA and that NOA shall be entitled to seek injunctive or other equitable relief in addition to any relief available at law.

14.8 Attorneys' Fees. In the event it is necessary for either party to this Agreement to undertake legal action to enforce or defend any action arising out of or relating to this Agreement, the prevailing party in such action shall be entitled to recover from the

other party all reasonable attorney fees, costs and expenses relating to such legal action or any appeal therefrom.

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14.9 Counterparts and Signature by Facsimile. This Agreement may be signed in counterparts, that shall together constitute a complete Agreement. A signature transmitted by facsimile shall be considered an original for purposes of this Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the dates set forth below.

NOA:

NINTENDO OF AMERICA INC.

By: /s/ James R. Cannataro

Name: James R. Cannataro

Title: Executive VP, Administration

Date: 11/15/2004

LICENSEE:

ACTIVISION PUBLISHING, INC.

By: /s/ George L. Rose

Name: George L. Rose

Title: Sr. VP and General Counsel

Date: _____

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