As filed with the Securities and Exchange Commission on September 24, 2001

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-3/A
REGISTRATION STATEMENT
Under
THE SECURITIES ACT OF 1933

Take-Two Interactive Software, Inc.
(Exact name of registrant as specified in its charter)

Delaware	575 Broadway New York, New York 10012 (212) 334-6633	51-0350842
(State or other jurisdiction of incorporation or organization)	(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)	(I.R.S. employer identification number)

Kelly Sumner, Chief Executive Officer
Take-Two Interactive Software, Inc.
575 Broadway
New York, New York 10012
(212) 334-6633
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Robert H. Cohen, Esq.
Morrison Cohen Singer & Weinstein LLP
750 Lexington Avenue
New York, New York 10022
Telephone: (212) 735-8680
Telecopier: (212) 735-8708

Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this Registration Statement.

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box |_|

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box. |_|

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier registration statement for the same offering. |_|

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. |_|

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. |_|

Calculation of Registration Fee

Title of Shares to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price Per Share(3)	Proposed Maximum Aggregate Offering Price(3)	Amount of Registration Fee
Common Stock, $.01 par value	1,300,000 (2)	$18.325	$23,822,500	$5,955.63(4)

(1) Represents shares to be sold by the selling stockholders.

(2) Pursuant to Rule 416 of the Securities Act, there are also being registered such additional shares as may be issued for future stock dividends, stock distributions, stock splits or similar capital readjustments.

(3) Estimated solely for the purpose of calculating the registration fee. Pursuant to Rule 457(c) of the Securities Act, as amended, the registration fee has been calculated based upon the average of the high and low prices as reported by Nasdaq for the registrant's Common Stock on August 2, 2001.

(4) Registration Fees in the amount of $5,955.63 have been previously paid.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act, or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

Prospectus

1,300,000 Shares

Take-Two Interactive Software, Inc.

This Prospectus relates to the resale of up to 1,300,000 shares of common stock by the selling stockholders.

Common Stock

The selling stockholders may sell these shares from time to time through ordinary brokerage transactions in the over-the-counter markets, in negotiated transactions or otherwise, at market prices prevailing at the time of sale, at negotiated prices and in certain other ways, as described under "Plan of Distribution" on page 15. We will not receive any of the proceeds from the sale of these shares.

Our common stock is listed for trading on the Nasdaq National Market under the symbol "TTWO." On September 20, 2001, the last reported sale price of our common stock on the Nasdaq National Market was $8.00.

Investing in our common stock involves certain risks. See "Risk Factors" beginning on page 4.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

We have not authorized any dealer, salesperson or other person to give any information or to make any representation other than those contained or incorporated by reference in this prospectus and any accompanying prospectus supplement. You must not rely upon any information or representation not contained or incorporated by reference in this prospectus or any accompanying prospectus supplement as if we had authorized it. This prospectus and any accompanying prospectus supplement do not constitute an offer to sell or the solicitation of an offer to buy any securities other than the registered securities to which they relate, nor does this prospectus and any accompanying prospectus supplement constitute an offer to sell or the solicitation of an offer to buy securities in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction. You should not assume that the information contained in this prospectus and any accompanying prospectus supplement is correct on any date after their respective dates, even though this prospectus or any prospectus supplement is delivered or securities are sold on a later date.

This prospectus is dated _____, 2001

The information in this prospectus is not complete and may be changed. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other financial and business information with the SEC. Our SEC filings are available on the SEC's web site at http://www.sec.gov. You also may read and copy any document we file at the SEC's public reference rooms in Washington, D.C., New York, New York and Chicago, Illinois. Please call the SEC at 1-800-SEC-0330 for further information about their public reference rooms, including copy charges.

The SEC allows us to "incorporate by reference" the information we file with them, which means that we can disclose important information to you by referring to those documents. The information incorporated by reference is an important part of this prospectus, and information that we file later with the SEC will automatically update and supersede information in this prospectus and in our other filings with the SEC. We incorporate by reference into this prospectus our Annual Report on Form 10-K for the year ended October 31, 2000, our Annual Report on Form 10-K/A dated February 22, 2001, our Quarterly Reports for the three months ended January 31, 2001, April 30, 2001 and July 31, 2001, our Proxy Statement dated June 21, 2001, our Quarterly Report on Form 10-Q/A dated July 18, 2001 and the description of our Common Stock which is contained in our Registration Statement on Form 8-A, each of which we already have filed with the SEC. We also incorporate by reference into this prospectus any future filings we make with the SEC under Sections 13(a), 13(c), 14, or 15(d) of the Securities Exchange Act until all of the shares of common stock covered by this Prospectus are sold.

You may request a copy of these filings at no cost, by writing or calling us at the following address:

Take-Two Interactive Software, Inc.
575 Broadway
New York, New York 10012
Attention: Kelly Sumner
Telephone: (212) 334-6633

You should rely only on the information contained in, or incorporated by reference into, this prospectus or any applicable prospectus supplement. We have not authorized anyone to provide you with additional or different information. You should not assume that the information in this prospectus, any prospectus supplement, or any document incorporated by reference is accurate as of any date other than the date of those documents.

You may also obtain from the SEC a copy of the Registration Statement and exhibits that we filed with the SEC when we registered the shares of common stock. The Registration Statement may contain additional information that may be important to you.

We have filed a registration statement on Form S-3 with the SEC under the Securities Act with respect to the securities offered in this prospectus. This prospectus, which is filed as part of a registration statement, does not contain all of the information set forth in the registration statement, certain portions of which have been omitted in accordance with the SEC's rules and regulations. Statements made in this prospectus as to the contents of any contract, agreement or other document referred to are not necessarily complete and are qualified in their entirety by reference to each such contract, agreement or other document which is filed as an exhibit to the registration statement. The registration statement may be inspected without charge at the public reference facilities maintained by the SEC, and copies of such materials can be obtained from the Public Reference Section of the SEC at prescribed rates.

FORWARD-LOOKING STATEMENTS

We make statements in this prospectus and the documents incorporated by reference that are considered forward-looking statements under the federal securities laws. Such forward-looking statements are based on the beliefs of our management as well as assumptions made by and information currently available to them. The words "anticipate," "believe," "may," "estimate," "expect," and similar expressions, and variations of such terms or the negative of such terms, are intended to identify such forward-looking statements.

All forward-looking statements are subject to certain risks, uncertainties and assumptions. If one or more of these risks or uncertainties materialize, or if underlying assumptions prove incorrect, our actual results, performance or achievements could differ materially from those expressed in, or implied by, any such forward-looking statements. Important factors that could cause or contribute to such difference include those discussed under "Risk Factors" in this Prospectus and in our Annual Report on Form 10-K, as amended. You should not place undue reliance on such forward-looking statements, which speak only as of their dates. We do not undertake any obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. You should carefully consider the information set forth under "Risk Factors" in this prospectus.

ABOUT THIS PROSPECTUS

When we refer to "we," "our" and "us" in this prospectus, we mean Take-Two Interactive Software, Inc., excluding, unless the context otherwise requires or as otherwise expressly stated, our subsidiaries. When we refer to "you" or "yours," we mean the offerees or holders of the applicable shares of common stock.

ABOUT TAKE-TWO INTERACTIVE SOFTWARE, INC.

We are a leading global developer, publisher and distributor of interactive software games designed for PCs and video game consoles manufactured by Sony, Nintendo and Microsoft.

We were incorporated in the state of Delaware in September 1993. Our principal executive offices are located at 575 Broadway, New York, New York 10012, and our telephone number is (212) 334-6633.

RISK FACTORS

You should carefully consider the risks described below together with all of the other information included in this prospectus before making an investment decision.

The Market for Interactive Entertainment Software Is Characterized by Short Product Life Cycles and Our Profitability Depends on Our Ability to Continually Introduce New Products That Achieve Market Acceptance.

The interactive entertainment software market is characterized by short product life cycles and frequent introduction of new products. We believe that our success is dependent on the production of successful titles on a continuous basis. New products introduced by us may not achieve significant market acceptance or achieve sufficient sales to permit us to recover development and associated costs. Historically, few interactive entertainment software products have achieved sustained market acceptance. A limited number of products have become popular and have accounted for a substantial portion of revenues in the industry. Even the most successful titles remain popular for only limited periods of time, often less than six months. The life cycle of a game generally consists of a relatively high level of sales during the first few months after introduction followed by a decline in sales. Because revenues associated with the initial shipments of a new product generally constitute a high percentage of the total revenues associated with the life of a product, any delay in the introduction of one or more new products could harm our operating results. Additionally, because we introduce a relatively limited number of new products in a given period, the failure of one or more of our products to achieve market acceptance could result in losses.

A Significant Portion Of Our Revenues Are Derived From A Limited Number Of Titles.

For the year ended October 31, 1999, our ten largest selling titles accounted for approximately 33.5% of our revenues, with Grand Theft Auto products accounting for approximately 18.7% of our revenues. Our ten largest selling titles accounted for approximately 14.8% of our revenues for the year ended October 31, 2000 and 32.6% of our revenues for the nine months ended July 31, 2001, with Grand Theft Auto products accounting for approximately 3.2% of our revenues for the year ended October 31, 2000 and 1.5% of our revenues for the nine months ended July 31, 2001. The Max Payne product accounted for a significant portion of our publishing revenues for the three months ended July 31, 2001. Our future titles may not be commercially viable. We also may not be able to release new titles within scheduled release times or at all. If we fail to continue to develop and sell new, commercially successful titles, our revenues and profits may decrease substantially and we may incur losses.

Our Quarterly Operating Results May Vary Significantly, Which Could Cause Our Stock Price to Decline.

We have experienced and may continue to experience wide fluctuations in quarterly operating results. The interactive entertainment industry is highly seasonal, with sales typically higher during the fourth and first calendar quarters, due primarily to the increased demand for games during and immediately following the holiday buying season. Our failure or inability to introduce products on a timely basis to meet seasonal fluctuations in demand will harm our business and operating results. These fluctuations could also cause our stock price to decline. Other factors that cause fluctuations include:

- delays in the introduction of new titles;
- the size and timing of product and corporate acquisitions;
- variations in sales of titles designed to operate on particular platforms;
- development and promotional expenses relating to the introduction of new titles, sequels or enhancements of existing titles;
- projected and actual changes in platforms;
- the timing and success of title introductions by our competitors;
- product returns;
- the accuracy of retailers' forecasts of consumer demand; and
- the timing of orders from major customers.

Our expense levels are based, in part, on our expectations regarding future sales and therefore, our operating results would be harmed by a decrease in sales or a failure to meet our sales expectations. The uncertainties associated with interactive entertainment software development, lengthy manufacturing lead times, production delays and the approval process for products by hardware manufacturers and other licensors make it difficult to predict the quarter in which our products will ship and therefore, may cause us to fail to meet financial expectations. In future quarters our operating results may fall below the expectations of securities analysts and investors. In this event, the trading price of our common stock could significantly decline.

The Interactive Entertainment Software Industry Is Cyclical, And We May Fail To Anticipate Changing Consumer Preferences.

Our business is subject to all of the risks generally associated with the interactive entertainment software industry, which has been cyclical in nature and has been characterized by periods of significant growth followed by rapid declines. Our future operating results will depend on numerous factors beyond our control, including:

- the popularity, price and timing of new software and hardware platforms being released and distributed by us and our competitors;
- international, national and regional economic conditions, particularly economic conditions adversely affecting discretionary consumer spending;
- changes in consumer demographics;
- the availability of other forms of entertainment; and
- critical reviews and public tastes and preferences, all of which change rapidly and cannot be predicted.

In order to plan for acquisition and promotional activities, we must anticipate and respond to rapid changes in consumer tastes and preferences. A decline in the popularity of interactive entertainment software or particular platforms could cause sales of our titles to decline dramatically. The period of time necessary to develop new game titles, obtain approvals of manufacturers and produce CD-ROMs or game cartridges is unpredictable. During this period, consumer appeal of a particular title may decrease, causing sales to decline.

Rapidly Changing Technology And Platform Shifts Could Hurt Our Operating Results.

The interactive entertainment industry in general is associated with rapidly changing technology, which often leads to software and platform obsolescence and significant price erosion over the life of a product. The introduction of new platforms and technologies can render existing software obsolete or unmarketable. We expect that as more advanced platforms are introduced, consumer demand for software for older platforms will decline. In addition, a broad range of competing and incompatible emerging technologies may lead consumers to postpone buying decisions until a particular hardware platform gains widespread acceptance. As a result, our titles developed for such platforms may not generate sufficient sales to make such titles profitable. Obsolescence of software or platforms could leave us with increased inventories of unsold titles and limited amounts of new titles to sell to consumers which would have a material adverse effect on our operating results.

We need to anticipate technological changes and continually adapt our new titles to emerging platforms to remain competitive in terms of price and performance. Our success depends upon our ability and the ability of third-party developers to adapt software to operate on and to be compatible with various hardware platforms. Generally, because of the length of the development cycle, our development efforts must begin well in advance of the release of new hardware platforms in order to introduce titles on a timely basis with the release of such hardware platforms. Further, we have no control over the release dates of new hardware platforms or the number of units that will be shipped upon such release. It is difficult to ensure that our schedule for releasing new titles will coincide with the release of the corresponding hardware platforms.

A number of software publishers who compete with us have developed or are currently developing software for use by consumers over the Internet. Future increases in the availability of such software or technological advances in such software or the Internet could result in a decline in platform-based software and impact our sales. Direct sales of software by major manufacturers over the Internet would adversely affect our distribution business.

Next-Generation Hardware Platforms On Which We Have Based Our Business Strategy May Not Achieve Significant Market Acceptance.

Our software development efforts with respect to new hardware platforms may not lead to marketable titles or titles that generate sufficient revenues to recover their development and marketing costs, especially if a new hardware platform does not reach a significant level of market acceptance. This risk may increase in the future, as continuing increases in development costs require corresponding increases in net sales in order for us to maintain profitability.

We have devoted and will continue to devote significant development and marketing resources on products designed for next-generation video game systems, such as the PlayStation2, that have not yet achieved large installed bases. We released several titles for the PlayStation2 and have additional titles under development for this platform. If PlayStation2 does not achieve wide acceptance by consumers or Sony is unable to ship a significant number of PlayStation2 units in a timely fashion, or if the sale of our titles fails to meet our expectations, we will have spent a substantial amount of our resources for developing products for this platform without corresponding revenues, which could result in losses. We are also devoting development resources on products designed for Microsoft's Xbox and Nintendo's GameCube, which have not yet been commercially introduced. If fewer than expected units of a new hardware platform are produced or shipped, such as recently occurred with PlayStation2, we may experience lower than expected sales for these platforms.

Our Business Is Dependent On Licensing And Publishing Arrangements With Third-Parties.

Our success depends on our ability to identify and develop new titles on a timely basis. We have entered into agreements with third-parties to acquire the rights to publish and distribute interactive entertainment software. These agreements typically require us to make advance payments, pay royalties and

satisfy other conditions. Our advance payments may not be sufficient to permit developers to develop new software successfully. In addition, software development costs, promotion and marketing expenses and royalties payable to software developers have increased significantly in recent years and reduce the potential profits derived from sales of our software. Future sales of our titles may not be sufficient to recover advances to software developers, and we may not have adequate financial and other resources to satisfy our contractual commitments. If we fail to satisfy our obligations under these license agreements, the agreements may be terminated or modified in ways that may be burdensome to us.

Returns of Our Titles and Markdown Allowances May Adversely Affect Our Operating Results.

We are exposed to the risk of product returns and markdown allowances with respect to our customers. Although our distribution arrangements with retailers generally do not give them the right to return titles to us or to cancel firm orders, our arrangements with retailers for published titles require us to accept returns for stock balancing, markdowns or defects. We sometimes negotiate accommodations to retailers, including price discounts, credits and returns, when demand for specific titles falls below expectations. We establish a reserve for future returns of published titles at the time of sales, based primarily on these return policies and historical return rates, and we report our revenues net of returns.

Decreased demand for products compatible with older hardware platforms may result in a higher level of markdown allowances. In addition, if new platforms do not achieve market acceptance, we may be required to grant markdown allowances to maintain our relationships with retailers and access to distribution channels.

Our sales returns and allowances were $25,147,000 for the year ended October 31, 1999, $40,162,000 for the year ended October 31, 2000 and $39,710,000 for the nine months ended July 31, 2001. If return rates and markdown allowances for our published titles significantly exceed our reserves, our net revenues will decline and we could incur losses.

The Interactive Entertainment Software Industry Is Highly Competitive.

We compete for both licenses to properties and the sale of interactive entertainment software with Sony, Nintendo and Sega, each of which is the largest developer and marketer of software for its platforms. Sony and Nintendo currently dominate the industry and have the financial resources to withstand significant price competition and to implement extensive advertising campaigns, particularly for prime-time television. These companies may also increase their own software development efforts or focus on developing software products for third-party platforms.

In addition, we compete with domestic public and private companies, international companies, large software companies and media companies. Many of our competitors have far greater financial, technical, personnel and other resources than we do, and many are able to carry larger inventories, adopt more aggressive pricing policies and make higher offers to licensors and developers for commercially desirable properties than we can.

Competition in the entertainment software industry is largely based upon:

- product quality and features;
- brand name recognition;
- access to distribution channels;
- effectiveness of marketing;
- product reliability and ease of use; and
- price.

As competition in the entertainment software industry increases, our cost of acquiring licenses for popular properties is likely to increase, possibly resulting in reduced margins. Prolonged price competition, increased licensing costs or reduced operating margins would cause our profits to decrease significantly.

Our titles also compete with other forms of entertainment such as motion pictures, television and audio and video cassettes featuring similar themes, online computer programs and forms of entertainment which may be less expensive or provide other advantages to consumers.

Increased Competition For Limited Shelf Space And Promotional Support From Retailers Could Affect The Success Of Our Business And Require Us To Incur Greater Expenses To Market Our Titles.

Retailers typically have limited shelf space and promotional resources, and competition is intense among an increasing number of newly introduced interactive entertainment software titles for adequate levels of shelf space and promotional support. Competition for retail shelf space is expected to increase, which may require us to increase our marketing expenditures just to maintain current levels of sales of our titles. Competitors with more extensive lines and popular titles frequently have greater bargaining power with retailers. Accordingly, we may not be able to achieve the levels of support and shelf space that such competitors receive.

Rating Systems For Interactive Entertainment Software, Potential Legislation, Consumer Opposition and International Events Could Inhibit Sales Of Our Products.

Trade organizations within the video game industry requires interactive entertainment software publishers to provide consumers with information relating to graphic violence or sexually explicit material contained in software titles. Certain countries have also established similar rating systems as prerequisites for sales of interactive entertainment software in such countries. In some instances, we may be required to modify our products to comply with the requirement of such governmental entities, which could delay the release of those products in such countries. We believe that we comply with such rating systems and display the ratings received for our titles. Our software titles receive a rating of "G" (all ages) or "T" (age 13 and over), although we expect that many of our newer titles will receive a rating of "M" (age 18 and over), which may limit the potential markets for these titles. Certain retailers, such as Kmart, Sears, Target Stores and Wal-Mart, have generally declined to sell interactive entertainment software containing graphic violence or sexually explicit material.

Several proposals have been made for federal legislation to regulate the interactive entertainment software, motion picture and recording industries, including a proposal to adopt a common rating system for interactive entertainment software, television and music containing violence and sexually explicit material and an inquiry by the Federal Trade Commission with respect to the marketing of such material to minors has been initiated. Consumer advocacy groups have also opposed sales of interactive entertainment software containing graphic violence and sexually explicit material by pressing for legislation in these areas and by engaging in public demonstrations and media campaigns. If any groups were to target our titles, we might be required to significantly change or discontinue a particular title. Additionally, in light of the recent events in New York, Washington and Pennsylvania we are revising content in certain of our products which we deem inapproprate. Delays in the release of products as a result of any of the foregoing can result in lost revenues.

We Cannot Publish Our Interactive Entertainment Software Titles Without The Approval Of Hardware Manufacturers.

We are required to obtain a license to develop and publish titles for each hardware platform for which we develop and publish titles. Our existing hardware platform licenses for Sony's PlayStation and PlayStation2, Nintendo's Game Boy Color, Game Boy Advance and GameCube, Nintendo 64 and Microsoft's Xbox require that we obtain approval for the publication of new titles on a title-by-title basis. As a result, the number of titles we are able to publish for these hardware platforms, along with our ability to time the release

of these titles and, accordingly, our revenues from titles for these hardware platforms, may be limited. If any manufacturer chooses not to renew or extend our license agreement at the end of its current term, or if the manufacturer were to terminate our license for any reason, we would be unable to publish additional titles for that manufacturer's hardware platform.

License agreements relating to these rights generally extend for a term of three years. The agreements are terminable upon the occurrence of a number of factors, including: (1) breach of the agreement by us; (2) our bankruptcy or insolvency; or (3) our entry into a relationship with, or acquisition by, a competitor of the manufacturer. We cannot assure you that we will be able to obtain new or maintain existing licenses on acceptable terms, or at all.

We are dependent upon a license agreement with Sony to publish titles for PlayStation2. The term of the license agreement expires in March 2003 and is automatically extended, unless terminated by one of the parties, for additional successive one-year terms. Termination of such agreement would seriously hurt our business.

Sony, Nintendo and Sega are the sole manufacturers of the titles we publish under license from them. Each platform license provides that the manufacturer may raise prices for the titles at any time and grants the manufacturer substantial control over the release of new titles. The relatively long manufacturing cycle for cartridge-based titles for the Nintendo platform (from 30 to 45 days) requires us to accurately forecast retailer and consumer demand for our titles far in advance of sales. Nintendo cartridges are also more expensive to manufacture than CD-ROMs, resulting in greater inventory risks for those titles. Each of these manufacturers also publishes software for its own platforms and manufactures titles for all of its other licensees and may choose to give priority to its own titles or those of other publishers if it has insufficient manufacturing capacity or if there is increased demand.

In addition, these manufacturers may not have sufficient production capacity to satisfy our scheduling requirements during any period of sustained demand. If manufacturers do not supply us with finished titles on favorable terms without delays, our operations would be materially interrupted, and we would be unable to obtain sufficient amounts of our product to sell to our customers. If we cannot obtain sufficient product amounts, our revenues will decline and we could incur losses.

We May Not Be Able To Protect Our Proprietary Rights Or Avoid Claims That We Infringe On The Proprietary Rights Of Others.

We develop proprietary software and technologies and have obtained the rights to publish and distribute software developed by third-parties. We attempt to protect our software and production techniques under copyright, trademark and trade secret laws as well as through contractual restrictions on disclosure, copying and distribution. We do not hold any patents.

Interactive entertainment software is susceptible to unauthorized copying. Unauthorized third-parties may be able to copy or to reverse engineer our software to obtain and use programming or production techniques that we regard as proprietary. In addition, our competitors could independently develop technologies substantially equivalent or superior to our technologies.

As the amount of interactive entertainment software in the market increases and the functionality of this software further overlaps, we believe that interactive entertainment software will increasingly become the subject of claims that such software infringes the copyrights or patents of others. From time to time, we receive notices from third-parties alleging infringement of their proprietary rights. Although we believe that our software and technologies and the software and technologies of third-party developers and publishers with whom we have contractual relations do not and will not infringe or violate proprietary rights of others, it is possible that infringement of proprietary rights of others may occur. Any claims of infringement, with or without merit, could be time-consuming, costly and difficult to defend.

We Are Dependent Upon Licenses To Properties Originated And Owned By Third Parties For The Development Of Our Titles.

Certain of our titles, such as those from our Austin Powers series currently in development, are based upon entertainment properties licensed from third-parties. Numerous companies compete intensely for such properties, and we cannot assure you that we will be able to obtain new licenses, or renew existing ones, on reasonable terms, if at all. If we are unable to obtain licenses for the properties which we believe offer significant consumer appeal, we would be required to develop additional titles internally or forego future product offerings. Certain of our own titles may require significantly greater marketing expense in order to establish brand identity.

We Are Dependent On Third-Party Software Developers To Complete Many Of Our Titles.

We rely on third-party software developers for the development of a significant number of our titles. Quality third-party developers are continually in high demand. For this reason, third-party software developers who have developed titles for us in the past may not be available to develop software for us in the future. Due to the limited number of third-party software developers and the lack of control that we exercise over them, these developers may not be able to complete titles for us on a timely basis or within acceptable quality standards, if at all.

We depend on third-party software developers and our internal development studios to develop new interactive entertainment software within anticipated release schedules and cost projections. In addition, the development cycle for new titles is long, typically ranging from twelve to twenty-four months. After development of a product, it may take between six to twelve additional months to develop the product for other hardware platforms. If developers experience financial difficulties, additional costs or unanticipated development delays, we will not be able to release titles according to our schedule and may incur losses.

In May l998, we entered in an agreement with Apogee Software a/k/a 3D Realms to develop two games based on the Max Payne character. The agreement grants us the exclusive worldwide right to publish Max Payne and a sequel on PC platforms. The agreement requires us to pay royalties and satisfy other conditions, and grants Apogee approval rights with respect to products under development. The agreement may be terminated by either party in the event of a material breach or default.

Our Software Is Susceptible To Errors Which Can Harm Our Financial Results And Reputation.

The software incorporated into our products may contain defects or errors which do not become apparent until after commercial introduction. Remedying such errors may delay our plans, cause us to incur additional costs and adversely affect our operations.

The technological advancements of the new hardware platforms also allow more complex software products. As software products become more complex, the risk of undetected errors in products when first introduced increases. If, despite testing, errors are found in new products or releases after shipments have been made, we could experience a loss of or delay in timely market acceptance, product returns, loss of revenues and damage to our reputation.

The Costs Of Developing And Marketing Products For New Interactive Entertainment Hardware Platforms May Be Substantial And Could Harm Our Operating Results.

The costs associated with the introduction of products for new hardware platforms, such as Nintendo's GameCube, Sony's PlayStation2 and Microsoft's Xbox, could harm our operating results. We anticipate that it will be more costly to develop titles for new hardware platforms and believe the costs of developing and publishing titles for these hardware platforms may require greater financial and technical resources than prior development and publishing efforts. Additionally, during periods of new technology and platform introductions, forecasting our revenues and earnings is more difficult than in more stable or rising product markets.

Our Distribution Business Is Subject To Intense Competition, Both In The U.S. And Internationally.

Our distribution business operates in a highly competitive environment, both in the United States and internationally. The intense competition that characterizes our industry is based primarily on:

- breadth, availability and quality of product lines;
- price;
- terms and conditions of sale;
- credit terms and availability;
- speed and accuracy of delivery; and
- effectiveness of sales and marketing programs.

Our competitors include regional, national and international distributors, as well as hardware manufacturers and software publishers. We may lose market share in the United States or in international markets, or, be forced in the future to reduce our prices in response to the actions of our competitors, and thereby experience a reduction in our gross margins.

Gross Margins Relating To Our Distribution Business Have Been Historically Narrow, Which Increases The Impact Of Variations In Costs On Our Operating Results.

As a result of intense price competition in the console hardware and software distribution industry, our gross margins have historically been narrow and we expect them to continue to be narrow in the future. We receive purchase discounts from suppliers based on various factors, including volume purchases. These purchase discounts directly affect gross margins. It may become more difficult for us to achieve the percentage growth in sales required for larger discounts due to the current size of our revenue base. A decrease in revenues could also negatively affect the level of volume discounts received from our suppliers.

A significant percentage of our revenues relates to products sold to us by relatively few manufacturers or publishers. They each have the ability to make rapid and significantly adverse changes in their sales terms and conditions, such as reducing the amount of price protection and return rights as well as reducing the level of purchase discounts they make available to us. Our inability to pass through to our customers the impact of these changes could have a negative impact on our gross margins. A decline in gross margins could have a material adverse effect on our business and could result in losses.

We May Not Be Able To Adequately Adjust Our Cost Structure In A Timely Fashion In Response To A Sudden Decrease In Demand.

A significant portion of our selling and general and administrative expense is comprised of personnel, facilities and costs of invested capital. Historically, we have attempted to monitor and control growth in operating costs in relation to overall revenue growth to reduce operating costs as a percentage of revenues. Additionally, we have continued to pursue and implement process and organizational changes to provide sustainable operating efficiencies. However, in the event of a significant decline in revenues, we may not be able to exit facilities, reduce personnel, or make other significant changes to our cost structure without significant disruption to our operations or without significant termination and exit costs. Management may not be able to implement such actions, if at all, in a timely manner to offset an immediate shortfall in revenues and gross profit.

Our Distribution Business Is Dependent On Suppliers To Maintain An Adequate Supply Of Products To Fulfill Customer Orders On A Timely Basis.

Our ability to obtain particular products in required quantities and to fulfill customer orders on a timely basis is critical to our success. In most cases, we have no guaranteed price or delivery agreements with suppliers. In certain product categories, limited price protection or return rights offered by manufacturers may have a bearing on the amount of product we may be willing to purchase. The console hardware industry

experiences significant product supply shortages from time to time due to the inability of certain manufacturers to supply certain products on a timely basis. As a result, we have experienced, and may in the future continue to experience, short-term hardware inventory shortages. In addition, manufacturers who currently distribute their products through us may decide to distribute, or to substantially increase their existing distribution, through other distributors, or directly to retailers. In the case of software, alternative means of distribution have emerged, such as electronic distribution. We cannot assure you that suppliers will be able to maintain an adequate supply of products to fulfill our customer orders on a timely basis or that we will be able to obtain particular products or that products currently offered by suppliers will continue to be available.

We Are Subject To The Risk That Our Inventory Values May Decline And Protective Terms Under Supplier Arrangements May Not Adequately Cover The Decline In Values.

The interactive entertainment software and hardware industry is subject to rapid technological change, new and enhanced generations of products, and evolving industry standards. These changes may cause inventory to decline substantially in value or to become obsolete. We are also exposed to inventory risk to the extent that supplier price protections are not available on all products or quantities and are subject to time restrictions. In addition, suppliers may become insolvent and unable to fulfill price protection obligations.

We are dependent on independent shipping companies for the delivery of our products.

We Rely On Arrangements With Independent Shipping Companies For The Delivery Of Our Products.

The termination of our arrangements with one or more of these independent shipping companies, or the failure or inability of one or more of these independent shipping companies to deliver products from suppliers to us or products from us to our customers could adversely affect our results of operations.

Our Rapid Expansion And Acquisitions May Strain Our Operations.

We have expanded through internal growth and acquisitions, which have placed and may continue to place a significant strain on our management, administrative, operational, financial and other resources. We have released a significant number of titles on new platforms, expanded our publishing and distribution operations, increased our advances to developers and payments to manufacturers, enlarged our work force and expanded our presence in international markets. To successfully manage this growth, we must continue to implement and improve our operating systems as well as hire, train and manage a substantial and increasing number of management, technical, marketing, administrative and other personnel. We may be unable to effectively manage expanded operations which are geographically dispersed.

We May Not Be Able To Successfully Make Acquisitions Of Or Investments In Other Companies.

Since 1998, we have acquired more than 25 complementary products and or companies. In the future, we may acquire or make investments in complementary businesses, products, services or technologies. From time to time we have had discussions with companies regarding our acquiring, or investing in, their businesses, products, services or technologies. We cannot assure you that we will be able to identify suitable acquisition or investment candidates. Even if we do identify suitable candidates, we cannot assure you that we will be able to make acquisitions or investments on commercially acceptable terms. If we buy a company, we could have difficulty in integrating the company's personnel and operations. In addition, the key personnel of the acquired company may decide not to work for us. If we make other types of acquisitions, we could have difficulty in integrating the acquired products, services or technologies into our operations. These difficulties could disrupt our ongoing business, distract our management and employees, increase our expenses and adversely affect our results of operations due to accounting requirements such as amortization of goodwill. Furthermore, we may

incur debt or issue equity securities to pay for any future acquisitions. The issuance of equity securities could be dilutive to our existing stockholders.

A Limited Number Of Customers May Account For A Significant Portion Of Our Sales.

Sales to our five largest customers accounted for approximately 22.4% of our revenues for the year ended October 31, 1998, 24.5% of our revenues for the year ended October 31, 1999, 20.0% of our revenues for the year ended October 31, 2000 and 22.8% of our revenues for the nine months ended July 31, 2001. Our customers may terminate their relationship with us at any time. The loss of our relationships with principal customers or a decline in sales to principal customers could harm our operating results.

We Have Significant Debt Obligations Which Could Harm Our Business.

We have incurred substantial indebtedness in order to finance our expanded operations, which require significant amounts of capital. The degree to which we are leveraged could adversely affect our ability to obtain additional financing and could make us more vulnerable to industry downturns and competitive pressures. Our ability to meet our debt service obligations will depend on our future performance, which will be subject to financial, business, and other factors affecting our operations, many of which are beyond our control. As of July 31, 2001, $56,000,000 was outstanding under a line of credit agreement between us and a group of lenders led by Bank of America, N.A., as agent. This line of credit provides for borrowings of up to $75,000,000. Borrowings under the line of credit with Bank of America are collateralized by our accounts receivable, inventory, equipment, general intangibles, securities and other personal property, including the capital stock of our domestic subsidiaries. The loan agreement contains certain financial covenants and limits or prohibits us, subject to certain exceptions, from declaring or paying cash dividends, merging or consolidating with another corporation, selling assets (other than in the ordinary course of business), creating liens and incurring additional indebtedness. If we default on our obligations, the banks could elect to declare our indebtedness to be due and payable and foreclose on our assets. Our UK subsidiary also had outstanding indebtedness of $13,085,000 at July 31, 2001.

We Are Subject To Credit And Collection Risks.

Our sales are typically made on credit, with terms that vary depending upon the customer and the demand for the particular title being sold. We do not hold any collateral to secure payment by our customers. As a result, we are subject to credit risks, particularly in the event that any of our receivables represent sales to a limited number of retailers or are concentrated in foreign markets. If we are unable to collect on accounts receivable as they become due and such accounts are not covered by insurance, it could adversely affect our financial condition. Our accounts receivable, less an allowance for doubtful accounts and product returns, at July 31, 2001 were $86,380,000.

We Are Subject To Risks And Uncertainties Of International Trade.

Sales in international markets, primarily in the United Kingdom and other countries in Europe and the Pacific Rim, have accounted for a significant portion of our revenues. Sales in international markets (excluding Canada) accounted for approximately 21.6% of our revenues for the year ended October 31, 1998, 34.6% of our revenues for the year ended October 31, 1999, 29.4% of our revenues for the year ended October 31, 2000 and 21.6% of our revenues for the nine months ended July 31, 2001. We are subject to risks inherent in foreign trade, including:

- increased credit risks;
- tariffs and duties;
- fluctuations in foreign currency exchange rates;
- shipping delays; and

- international political, regulatory and economic developments, all of which can have a significant impact on our operating results.

All our international sales are made in local currencies. For the nine months ended July 31, 2001, our foreign currency translation adjustment loss was $1,509,000. We purchase currency forward contracts to a limited extent to seek to minimize an explosive to fluctuations in foreign currency exchange rates.

We Are Dependent Upon Our Key Executives And Personnel.

Our success is largely dependent on the personal efforts of certain key personnel. The loss of the services of one or more of these key employees could adversely affect our business and prospects. Our success is also dependent upon our ability to hire and retain additional qualified operating, marketing, technical and financial personnel. Competition for qualified personnel in the interactive entertainment software industry is intense, and we may have difficulty hiring or retaining necessary personnel in the future. If we fail to hire and retain necessary personnel as needed, our business will be significantly impaired.

Our Stock Price Has Experienced And Is Likely To Continue To Experience Significant Price And Volume Fluctuations.

The market price of our common stock has fluctuated in the past and is likely to continue to be highly volatile and could be subject to wide fluctuations. In addition, the stock market has experienced extreme price and volume fluctuations. Disclosures of our operating results, announcements of various events by us or our competitors and the developing and marketing of new titles affecting the interactive entertainment software industry may cause the market price of our common stock to change significantly over short periods of time. Sales of shares under this prospectus may have a depressive effect on the market price of our common stock. Investors may be unable to resell their shares of our common stock at or above the purchase price.

If Our Stock Price Is Volatile, We May Become Subject To Securities Litigation Which Is Expensive And Could Result In A Diversion Of Resources.

In the past, following periods of volatility in the market price of a particular company's securities, securities class action litigation has often been brought against that company. We may also become involved in this type of litigation. Litigation is often expensive and diverts management's attention and resources, which could materially and adversely affect our business, financial condition and results of operations.

Future Sales Of Our Common Stock May Affect The Market Price Of Our Common Stock.

As of September 12, 2001, we had 36,631,308 shares of common stock outstanding, excluding 4,192,795 shares subject to options and warrants outstanding as of such date. We cannot predict the effect, if any, that future sales of common stock or the availability of shares of common stock for future sale, will have on the market price of common stock prevailing from time to time. We may grant registration rights in connection with acquisitions of businesses and products. Sales of substantial amounts of common stock (including shares issued upon the exercise of stock options), or the perception that such sales could occur, may materially and adversely affect prevailing market prices for common stock.

Anti-Takeover Provisions In Our Charter Documents And In Delaware Law Could Prevent Or Delay A Change In Control And, As A Result, Negatively Impact Our Stockholders.

Certain provisions of our Certificate of Incorporation and By-Laws may have the effect of discouraging a third party from making an acquisition proposal for us. This could inhibit a change in control in circumstances that could give our stockholders the opportunity to realize a premium over the then prevailing market price of our common stock. These provisions may also adversely affect the market price for our common stock.

USE OF PROCEEDS

We will not receive any proceeds from the sale of shares by the selling stockholders.

SELLING STOCKHOLDERS

On July 25, 2001, the Company priced and agreed to sell an aggregate of 1,300,000 shares of its common stock through Commerzbank Securities and Gerard Klauer Mattison & Co., Inc. at an approximately 8-1/2% discount to the closing price of our common stock on July 24, 2001. The following table sets forth certain information with respect to the selling stockholders. The selling stockholders do not have a material relationship with us.

Selling Stockholders	Shares Beneficially Owned Prior to Offering	Shares to be Sold in the Offering	Shares Beneficially Owned After Offering	Percentage of Shares Beneficially Owned After Offering
GLG Investment Fund(1)	1,000,000	1,000,000	--	--
MAC & Co.(2)	117,900	57,300	60,600	*
Chartwater & Co.(2)	17,300	8,400	8,900	*
Ell & Co.(2)	53,900	26,200	27,700	*
Hare & Co.(2)	66,400	32,300	34,100	*
Kale & Co.(2)	139,200	67,500	71,700	*
Maril & Co.(2)	16,300	7,900	8,400	*
Marinerock & Co.(2)	84,600	41,000	43,600	*
Pitt & Co.(2)	122,400	59,400	63,000	*

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(1) GLG Investment Fund is a partnership owned by Noam Gottesman, Pierre LeGrange, Johnathan Green and Philippe Jabre.

(2) Zurich Scudder Investments, Inc., an Investment Adviser registered under Section 203 of the Investment Advisers Act of 1940, is an investment advisor for the above entities, and has sole dispositive and voting power over the securities held by such entities.

* Less than one percent.

This table assumes the sale of all of the shares offered.

PLAN OF DISTRIBUTION

We have agreed to pay all expenses in connection with the registration of the shares of common stock for sale by the selling stockholders. The selling stockholders will bear all brokerage commissions and similar selling expenses, if any, attributable to sales of their shares. Sales of shares may be effected by the selling stockholders from time to time in one or more types of transactions, any of which may involve crosses and block transactions, made on Nasdaq, in the over-the-counter market, on a national securities exchange, in privately negotiated transactions or otherwise or in a combination of such transactions at prices and at terms and market prices prevailing at the time of sale or at privately negotiated prices. These transactions may or may not involve brokers or dealers.

Without limiting the generality of the foregoing, the shares may be sold in one or more of the following types of transactions: (a) a block trade in which the broker-dealer so engaged will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction; (b) purchases by a broker or dealer as principal and resale by such broker or dealer for its account pursuant

to this prospectus; (c) an exchange distribution in accordance with the rules of such exchange; (d) ordinary brokerage transactions and transactions in which the broker solicits purchasers; and (e) face-to-face transactions between sellers and purchasers without a broker-dealer. In effecting sales, brokers or dealers engaged by the selling stockholders may arrange for other brokers or dealers to participate in the resale. In addition, any shares covered by this prospectus which qualify for sale pursuant to Section 4(1) of the Securities Act or Rule 144 promulgated thereunder may be sold under such provisions rather than pursuant to this prospectus.

Brokers or dealers may receive compensation in the form of commissions, discounts or concessions from the selling stockholders in amounts to be negotiated in connection with sales. Such brokers or dealers may be deemed to be "underwriters" within the meaning of the Securities Act. In this case, any commissions, discounts or concessions received by broker-dealers and any profit on the resale of the shares sold by them may be deemed to be underwriting discounts or commissions under the Securities Act. Compensation to be received by broker-dealers and retained by the selling stockholders in excess of usual and customary commissions, will, to the extent required, be set forth in a supplement to this prospectus. Any dealer or broker participating in any distribution of the shares may be required to deliver a copy of this prospectus, including any supplements, to any person who purchases any of the shares from or through such dealer or broker.

During such time as they may be engaged in a distribution of the shares included in this prospectus, the selling stockholders are required to comply with Regulation M promulgated under the Securities Exchange Act. With certain exceptions, Regulation M precludes the selling stockholders, any affiliated purchasers and any broker-dealer or other person who participates in such distribution from bidding for or purchasing, or attempting to induce any person to bid for or purchase any security which is the subject of the distribution until the entire distribution is complete. Regulation M also prohibits any bids or purchases made in order to stabilize the price of a security in connection with the distribution of that security. All of the foregoing may affect the marketability of our common stock.

It is possible that a significant number of shares may be sold under this prospectus. Accordingly, these sales or the possibility of such sales may have a depressive effect on the market price of our common stock.

LIMITATIONS OF LIABILITY AND INDEMNIFICATION

The General Corporation Law of the State of Delaware contains provisions permitting our directors and officers to be indemnified against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees, as the result of an action or proceeding in which they may be involved by reason of having been a director or officer. Our Certificate of Incorporation includes a provision that limits the personal liability of our directors to us or our stockholders for monetary damages arising from a breach of their fiduciary duties as directors to the fullest extent now or hereafter permitted by the Delaware General Corporation Law. This provision does not prevent us or our stockholders from seeking equitable remedies, such as injunctive relief or rescission. If equitable remedies are found not to be available to stockholders in any particular case, stockholders may not have any effective remedy against actions taken by directors that constitute negligence or gross negligence.

Our Certificate of Incorporation provides that we shall indemnify our officers and directors to the maximum extent permitted from time to time under the Delaware General Corporation Law and requires us to advance expenses to any director or officer to the extent that such indemnification and advancement of expenses is permitted under such law, as it may from time to time be in effect. In addition, our By-laws require us to indemnify, to the fullest extent permitted by law, any director, officer, employee or agent for acts which such person reasonably believes are not in violation of our corporate purposes as set forth in our Certificate of Incorporation. At present, the Delaware General Corporation Law provides that, in order to be entitled to indemnification, an individual must have acted in good faith and in a manner he or she reasonably believed to be in or not opposed to our best interests.

Insofar as indemnification against liabilities arising under the Securities Act may be permitted to directors, officers and persons controlling us pursuant to the foregoing provisions or otherwise, we have been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

LEGAL MATTERS

Morrison Cohen Singer & Weinstein LLP of New York, New York will pass upon the validity of the shares of common stock offered hereby.

EXPERTS

The consolidated financial statements incorporated in this Prospectus by reference to the Annual Report on Form 10-K for the year ended October 31, 2000 have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, independent accountants, given on the authority of said firm as experts in auditing and accounting.

We have not authorized any dealer, salesperson or any other person to give any information or to make any representations other than those contained in this prospectus. You must not rely on unauthorized information. This prospectus does not offer to sell or solicit an offer to buy securities in any jurisdiction in which it is unlawful. Neither the delivery of this prospectus nor any sale made under this prospectus shall imply that the information in this prospectus is correct as of any time after the date of this prospectus.

TABLE OF CONTENTS

1,300,000 Shares of

Common Stock

TAKE-TWO INTERACTIVE
SOFTWARE, INC.

PROSPECTUS

_____, 2001

PART II - INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution.

Expenses payable in connection with the issuance and distribution of the securities being registered (estimated except in the case of the registration fee) are as follows:

	Amount
Registration Fee	$5,956
Printing	5,000
Legal and Accounting Fees and Expenses	35,000
Transfer Agents and Registrars Fees	1,000
Miscellaneous	3,044
TOTAL	$50,000

The above fees will be paid by the Company

Item 15. Indemnification of Directors and Officers

Section 145 of the Delaware General Corporation Law ("DGCL") contains provisions entitling the Company's directors and officers to indemnification from judgments, finds, amounts paid in settlement and reasonable expenses (including attorneys' fees) as the result of an action or proceeding in which they may be involved by reason of having been a director or officer of the Company. In its Certificate of Incorporation, the Company has included a provision that limits, to the fullest extent now or hereafter permitted by the DGCL, the personal liability of its directors to the Company or its stockholders for monetary damages arising from a breach of their fiduciary duties as directors. Under the DGCL as current in effect, this provision limits a director's liability except where such director (i) breaches his duty of loyalty to the Company or its stockholders, (ii) fails to act in good faith or engaged in intentional misconduct or a knowing violation of law, (iii) authorizes payment of an unlawful dividend or stock purchase or redemption as provided in Section 174 of the DGCL, or (iv) obtains an improper personal benefit. This provision does not prevent the Company or its stockholders from seeking equitable remedies, such an injunctive relief or rescission. If equitable remedies are found not to be available to stockholders in any particular case, stockholders may not have any effective remedy against actions taken by directors that constitute negligence or gross negligence.

The Certificate of Incorporation also includes provisions to the effect that (subject to certain exceptions) the Company shall, to the maximum extent permitted from time to time under the law of the State of Delaware, indemnify, and upon request shall advance expenses to, any director or officer to the extent that such indemnification and advancement of expenses is permitted under such law, as it may from time to time be in effect. In addition, the By-laws require the Company to indemnify, to the fullest extent permitted by law, any director, officer, employee or agent of the Company for acts which such person reasonably believes are not in violation of the Company's corporate purposes as set forth in the Certificate of Incorporation. At present, the DGCL provides that, in order to be entitled to indemnification, an individual must have acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the Company's best interests.

Item 16. Exhibits

(a) Exhibits

Exhibit No.

5 Opinion of Morrison Cohen Singer & Weinstein LLP regarding legality of securities being registered.*

10.1 The Licensed Publisher Agreement, entered into as of the 1st day of April, 2000, by and between Sony Computer Entertainment America Inc. and Take-Two Interactive Software.**

10.2 The Publishing Agreement for Max Payne, effective May 8, 1998, by and between Gathering Developers I, Ltd. and Apogee Software, Ltd./ 3D

Realms.**

23.1 Consent of PricewaterhouseCoopers LLP.*

23.2 Consent of Morrison Cohen Singer & Weinstein LLP (included in Exhibit 5).*

24 Power of Attorney included in the signature page of this registration statement.

* See Form S-3 previously filed with the Commission on August 3, 2001.
** Portions hereof have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment in accordance with Rule 24b-2.

Item 17. Undertakings

The undersigned registrant hereby undertakes:

(1) To file, during any period in which it offers or sells securities, a post-effective amendment to this registration statement;

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the Prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment shall be deemed a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) For the purpose of determining any liability under the Securities Act of 1933, each filing of an annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers, and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer, or controlling person of the small business issuer in the successful defense of any action, suit, or proceeding) is asserted by such director, officer, or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements of filing on Form S-3 and has duly caused this Registration Statement to be signed on its behalf by the undersigned thereunto duly authorized, in the City of New York, State of New York, on the 21st day of September, 2001.

TAKE-TWO INTERACTIVE SOFTWARE, INC.

By: /s/ Kelly Sumner

Kelly Sumner, Chief Executive Officer

Each person whose signature appears below hereby authorizes Kelly Sumner as his true and lawful attorney-in-fact with full power of substitution to execute in the name and on behalf of such person, individually and in each capacity stated below, and to file, any and all amendments to this Registration Statement, including any and all post-effective amendments thereto (including Registration Statements pursuant to Rule 462).

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates stated.

Signature	Title	Date
*	Chairman	September 21, 2001
Ryan A. Brant		
/s/ Kelly Sumner	Chief Executive Officer (Principal Executive Officer) and Director	September 21, 2001
Kelly Sumner		
*	Chief Financial Officer (Principal Financial and Accounting Officer)	September 21, 2001
James H. David Jr.		
*	President and Director	September 21, 2001
Paul Eibeler		
*	Director	September 21, 2001
Don Leeds		
	Director	September , 2001
Oliver R. Grace, Jr.		
*	Director	September 21, 2001
Mark Lewis		
*	Director	September 21, 2001
Robert Flug		

*By: /s/ Kelly Sumner

Kelly Sumner
Attorney-In-Fact

EXHIBIT 10.1

PLAYSTATION(R) 2
CD-ROM/DVD-ROM
LICENSED PUBLISHER AGREEMENT

This LICENSED PUBLISHER AGREEMENT (the "Agreement" or "LPA"), entered into as of the 1st day of April, 2000 (the "Effective Date"), by and between SONY COMPUTER ENTERTAINMENT AMERICA INC., with offices at 919 E. Hillsdale Boulevard, Foster City, CA 94404 (hereinafter "SCEA"), and TAKE 2 INTERACTIVE SOFTWARE, with offices at 575 Broadway, 3rd Floor New York, NY 10012 (hereinafter "Publisher").

WHEREAS, SCEA, its parent company, Sony Computer Entertainment Inc., and/or certain of their affiliates and companies within the group of companies of which any of them form a part (collectively referred to herein as "Sony") are designing and developing, and licensing core components of, a computer entertainment system known as the PlayStation(R) 2 computer entertainment system (hereinafter referred to as the "System").

WHEREAS, SCEA has the right to grant licenses to certain SCEA Intellectual Property Rights (as defined below) in connection with the System.

WHEREAS, Publisher desires to be granted a non-exclusive license to publish, develop, have manufactured, market, distribute and sell Licensed Products (as defined below) pursuant to the terms and conditions set forth in this Agreement; and SCEA is willing, on the terms and subject to the conditions of this Agreement, to grant Publisher such a license.

NOW, THEREFORE, in consideration of the representations, warranties and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Publisher and SCEA hereby agree as follows:

1. Definition of Terms

1.1 "Advertising Materials" means any advertising, marketing, merchandising, promotional, public relations (including press releases) and display materials relating to or concerning Licensed Products or proposed Licensed Products, or any other advertising, merchandising, promotional, public relations (including press releases) and display materials depicting any of the Licensed Trademarks. For purposes of this Agreement, Advertising Materials include any advertisements in which the System is referred to or used in any way, including but not limited to giving the System away as prizes in contests or sweepstakes and the public display of the System in product placement opportunities.

1.2 "Affiliate of SCEA" means, as applicable, either Sony Computer Entertainment Inc. in Japan, Sony Computer Entertainment Europe Ltd. in the United Kingdom or such other Sony Computer Entertainment entity as may be established from time to time.

1.3 "Designated Manufacturing Facility" means a manufacturing facility or facilities which is designated by SCEA in its sole discretion to manufacture Licensed Products and/or their component parts, which may include manufacturing facilities owned and operated by affiliated companies of SCEA.

1.4 "Development System Agreement" means an agreement entered into between SCEA and a Licensed Publisher, Licensed Developer or other licensee for the sale or license of Development Tools.

1.5 "Development Tools" means the PlayStation 2 development tools sold or licensed by SCEA to a Licensed Publisher or Licensed Developer for use in the development of Executable Software for the System.

1.6 "Executable Software" means software which includes Product Software and any software provided directly or indirectly by SCEA or an Affiliate of SCEA designed for execution exclusively on the System and which has the ability to communicate with the software resident in the System.

1.7 "Fiscal Year" means a year measured from April 1 to March 31.

1.8 "Generic Line" means the generic legal attribution line used on SCEA marketing or other materials, which shall be or be substantially similar to the following: "Product copyright and trademarks are the property of the respective publisher or their licensors".

1.9 "Guidelines" shall mean any guidelines of SCEA or an Affiliate of SCEA with respect to SCEA Intellectual Property Rights, which may be set forth in the SourceBook 2 or in other documentation provided by SCEA or an Affiliate or SCEA to Publisher.

1.10 "Legal Copy" means any legal or contractual information required to be used in connection with a Licensed Product or Product Information, including but not limited to copyright and trademark attributions, contractual credits and developer or distribution credits.

1.11 "Level 1 Rebate" shall have the meaning set forth in Section 8.4 hereto.

1.12 "Level 2 Rebate" shall have the meaning set forth in Section 8.4 hereto.

1.13 "Licensed Developer" means any developer that has signed a valid and then current Licensed Developer Agreement.

1.14 "Licensed Developer Agreement" or "LDA" means a valid and current license agreement for the development of Licensed Products for the System, fully executed between a Licensed Developer and SCEA or an Affiliate of SCEA.

1.15 "Licensed Products" means the Executable Software (which may be combined with Executable Software of other Licensed Publishers or Licensed Developers), which shall consist of one product developed for the System or for the original PlayStation game console per Unit, in final form developed exclusively for the System. Publisher shall have no right to package or bundle more than one product developed for the System or for the original PlayStation game console in a single Unit unless separately agreed with SCEA.

1.16 "Licensed Publisher" means any publisher that has signed a valid and then current Licensed Publisher Agreement.

1.17 "Licensed Publisher Agreement" or "LPA" means a valid and current license agreement for the publication, development, manufacture, marketing, distribution and sale of Licensed Products for the System, fully executed between a Licensed Publisher and SCEA or an Affiliate of SCEA.

1.18 "Licensed Territory" means the United States (including its possessions and territories) and Canada. The Licensed Territory may be modified and/or supplemented by SCEA from time to time pursuant to Section 4.4 below.

1.19 "Licensed Trademarks" means the trademarks, service marks, trade dress, logos and other icons or indicia designed by SCEA in the SourceBook 2 or other Guidelines for use on or in connection with Licensed Products. Nothing contained in this Agreement shall in any way grant Publisher the right to use the trademark "Sony" in any manner. SCEA may amend such Licensed Trademarks from time to time in the SourceBook 2 or other Guidelines or upon written notice to Publisher.

1.20 "Manufacturing Specifications" means specifications setting forth terms relating to the manufacture and assembly of PlayStation 2 Format Discs, Packaging, Printed Materials and each of their component parts, which shall be set forth in the SourceBook 2 or other documentation provided by SCEA or a Designated Manufacturing Facility to Publisher and which may be amended from time to time upon reasonable notice to Publisher.

1.21 "Master Disc" means a recordable CD-ROM or DVD-ROM disc in the form requested by SCEA containing final pre-production Executable Software for a Licensed Product.

1.22 "Packaging" means, with respect to each Licensed Product, the carton, containers, packaging, edge labels and other proprietary labels, trade dress and wrapping materials, including any jewel case (or other CD-ROM or DVD-ROM container) or parts thereof, but excluding Printed Materials and PlayStation 2 Format Discs.

1.23 "PlayStation 2 Format Discs" means the uniquely marked or colored CD-ROM or DVD-ROM discs formatted for use with the System which, for purposes of this Agreement, are manufactured on behalf of Publisher and contain Licensed Products or SCEA Demo Discs.

1.24 "Printed Materials" means all artwork and mechanicals set forth on the disc label of the PlayStation Disc relating to any of the Licensed Products and on or inside any Packaging for the Licensed Product, and all instructional manuals, liners, inserts, trade dress and other user information to be inserted into the Packaging.

1.25 "Product Information" means any information owned or licensed by Publisher relating in any way to Licensed Products, including but not limited to demos, videos, hints and tips, artwork, depictions of Licensed Product cover art and videotaped interviews.

1.26 "Product Proposal" shall have the meaning set forth in Section 5.2.1 hereto.

1.27 "Product Software" means any software including audio and video material developed by a Licensed Publisher or Licensed Developer, which, either by itself or combined with Product Software of other licensees, when integrated with software provided by SCEA or an Affiliate of SCEA, creates Executable Software. It is understood that Product Software contains no proprietary information of Sony or any other rights of SCEA.

1.28 "Publisher Intellectual Property Rights" means those intellectual property rights, including but not limited to patents and other patent rights, copyrights, trademarks, service marks, trade names, trade dress, mask work

rights, utility model rights, trade secret rights, technical information, know-how, and the equivalents of the foregoing under the laws of any jurisdiction, and all other proprietary or intellectual property rights throughout the universe, which pertain to Product Software, Product Information, Printed Materials, Advertising Materials or other rights of Publisher required or necessary under this Agreement.

1.29 "Purchase Order" means a written purchase order processed in accordance with the terms of Section 6.2.2 hereto, the Manufacturing Specifications or other terms provided separately by SCEA or a Designated Manufacturing Facility to Publisher.

1.30 "SCEA Demo Disc" means any demonstration disc developed and distributed by SCEA.

1.31 "SCEA Established Third Party Demo Disc Programs" means (i) any consumer or trade demonstration disc program specified in the SourceBook 2, and (ii) any other third party demo disc program established by SCEA for Licensed Publishers.

1.32 "SCEA Intellectual Property Rights" means those intellectual property rights, including but not limited to patents and other patent rights, copyrights, trademarks, service marks, trade names, trade dress, mask work rights, utility model rights, trade secret rights, technical information, know-how, and the equivalents of the foregoing under the law of any jurisdiction, and all other proprietary or intellectual property rights throughout the universe, which are required to ensure compatibility with the System or which pertain to the Licensed Trademarks.

1.33 "SCEA Product Code" means the product identification number assigned to each Licensed Product, which shall consist of separate product identification numbers for multiple disc sets (i.e., SLUS-xxxxx). This SCEA Product Code is used on the Packaging and PlayStation Disc relating to each Licensed Product, as well as on most communications between SCEA and Publisher as a mode of identifying the Licensed Product other than by title.

1.34 "Sony Materials" means any data, object code, source code, firmware, documentation (or any part(s) of any of the foregoing), related to the System, selected in the sole judgment of SCEA, which are provided or supplied by SCEA or an Affiliate of SCEA to Publisher or any Licensed Developer and/or other Licensed Publisher. For purposes of this Agreement, Sony Materials shall not include any hardware portions of the Development Tools, but shall include firmware in such hardware.

1.35 "SourceBook 2" means the PlayStation 2 SourceBook (or any other reference guide containing information similar to the SourceBook 2 but designated with a different name) prepared by SCEA, which is provided separately to Publisher. The SourceBook 2 is designed to serve as the first point of reference by Publisher in every phase of the development, approval, manufacture and marketing of Licensed Products.

1.36 "Standard Rebate" shall mean the rebate offered by SCEA on titles of Licensed Products that achieve specified sales volumes as set forth in Section 8.4 of this Agreement.

1.37 "Third Party Demo Disc" means any demo disc developed and marketed by a Licensed Publisher, which complies with the terms of an SCEA Established Third Party Demo Disc Program.

1.38 "Unit" means an individual copy of a Licensed Product title regardless of the number of PlayStation 2 Format Discs constituting such Licensed Product title.

1.39 "Wholesale Price" or "WSP" shall mean the greater of (i) the first published price of the Licensed Product offered to retailers by Publisher as evidenced by a sell sheet or price list issued by Publisher, or (ii) the actual price paid by retailers upon the first commercial shipment of a Licensed Product without offsets, rebates or deductions from invoices of any kind.

2. License.

2.1 License Grant. SCEA grants to Publisher, and Publisher hereby accepts, for the term of this Agreement, within the Licensed Territory, under SCEA Intellectual Property Rights owned, controlled or licensed by SCEA, a non-exclusive, non-transferable license, without the right to sublicense (except as specifically provided herein), to publish Licensed Products using Sony Materials, which right shall be limited to the following rights and other rights set forth in, and in accordance with the terms of, this LPA: (i) to produce or develop Licensed Products and to enter into agreements with Licensed Developers and other third parties to develop Licensed Products; (ii) to have such Licensed Products manufactured; (iii) to market, distribute and sell such Licensed Products and to authorize others to do so; (iv) to use the Licensed Trademarks strictly and only in connection with the development, manufacturing, marketing, packaging, advertising and promotion of the Licensed Products and subject to SCEA's right of approval as provided herein; and (v) to sublicense to end users the right to use the Licensed Products for noncommercial purposes in conjunction with the System only, and not with other devices or for public performance.

2.2 Separate PlayStation Agreements. Unless specifically set forth in this Agreement, all terms used herein are specific to the System and the third party licensing program related thereto and not to the original PlayStation game

console or third party licensing program related thereto. Licenses relating to the original PlayStation game console are subject to separate agreements with SCEA, and any license of rights to Publisher under such separate agreements shall not confer on Publisher any rights under the System and vice versa.

3.0 Development of Licensed Products

3.1. Right to Develop. This LPA grants Publisher the right to develop Licensed Products. It also gives Publisher the right to purchase and/or license Development

Tools, as is appropriate, from SCEA or its designated agent, pursuant to a separate Development System Agreement with SCEA, to assist in such development. In developing Executable Software (or portions thereof), Publisher and its agents shall fully comply in all respects with any and all technical specifications which may from time to time be issued by SCEA. In the event that Publisher uses third party tools to develop Executable Software, Publisher shall be responsible for ensuring that it has obtained appropriate licenses for such use.

3.2. Development by Third Parties. Except as otherwise set forth herein, Publisher shall not provide Sony Materials or SCEA's Confidential Information to any third party. Publisher shall be responsible for determining that third parties meet the criteria set forth herein. Publisher may contract with a third party for development of Licensed Products, provided that such third party is: (i) a Licensed Publisher, (ii) a Licensed Developer, or (iii) an SCEA-authorized subcontractor in compliance with the provisions of Section 16.6. Publisher shall notify SCEA in writing of the identity of any such third party within thirty (30) days of entering into an agreement or other arrangement with the third party.

4. Limitations on Licenses; Reservation of Rights.

4.1 Reverse Engineering Prohibited. Other than as expressly permitted by SCEA in writing, Publisher shall not directly or indirectly disassemble, decrypt, electronically scan, peel semiconductor components, decompile, or otherwise reverse engineer in any manner or attempt to reverse engineer or derive source code from, all or any portion of the Sony Materials, or permit, assist or encourage any third party to do so. Other than as expressly permitted by SCEA in writing, Publisher shall not use, modify, reproduce, sublicense, distribute, create derivative works from, or otherwise provide to third parties, the Sony Materials, in whole or in part, other than as expressly permitted by SCEA. SCEA shall permit Publisher to study the performance, design and operation of the Development Tools solely for the limited purposes of developing and testing Publisher's software applications, or to build tools to assist Publisher with the development and testing of software applications for Licensed Products. Any tools developed or derived by Publisher resulting from the study of the performance, design or operation of the Development Tools shall be considered as derivative products of the Sony Materials for copyright purposes, but may be treated as trade secrets of Publisher. In no event shall Publisher patent any tools created, developed or derived from Sony Materials. Publisher shall not make available to any third party any tools developed or derived from the study of the Development Tools without the express written permission of SCEA. Use of such tools shall be strictly limited to the creation or testing of Licensed Products and any other use, direct or indirect of such tools is strictly prohibited. Publisher shall be required in all cases to pay royalties in accordance with Section 8 hereto to SCEA on any of Publisher's products utilizing any Sony Materials or derivative works made therefrom. Moreover, Publisher shall bear all risks arising from incompatibility of its Licensed Product and the System resulting from use of Publisher-created tools. The burden of proof under this Section shall be on Publisher, and SCEA reserves the right to require Publisher to furnish evidence satisfactory to SCEA that Publisher has complied with this Section.

4.2 Reservation of SCEA's Rights.

4.2.1 Limitation of Rights to Licenses Granted. The licenses granted in this Agreement extend only to the publication, development, manufacture, marketing, distribution and sale of Licensed Products for use on the System, in such formats as may be designated by SCEA. Without limiting the generality of the foregoing and except as otherwise provided herein, Publisher shall not distribute or transmit the Executable Software or the Licensed Products via electronic means or any other means now known or hereafter devised, including without limitation, via wireless, cable, fiber optic means, telephone lines, microwave and/or radio waves, or over a network of computers or other devices. Notwithstanding this limitation, Publisher may electronically transmit Executable Software from site to site, or from machine to machine over a computer network, for the sole purpose of facilitating development; provided that no right of retransmission shall attach to any such transmission, and provided further that Publisher shall use reasonable security measures customary within the high technology industry to reduce the risk of unauthorized interception or retransmission of such transmissions. This Agreement does not grant any right or license, under any SCEA Intellectual Property Rights or otherwise, except as expressly provided herein, and no other right or license is to be implied by or inferred from any provision of this Agreement or the conduct of the parties hereunder.

4.2.2 Other Use of Sony Materials and SCEA Intellectual Property Rights. Publisher shall not make use of any Sony Materials or any SCEA Intellectual Property Rights (or any portion thereof) except as authorized by and in compliance with the provisions of this Agreement. Publisher shall not use the Executable Software, Sony Materials or SCEA's Confidential Information in connection with the development of any software for any emulator or other computer hardware or software system. No right, license or privilege has been

granted to Publisher hereunder concerning the development of any collateral product or other use or purpose of any kind whatsoever which displays or depicts any of the Licensed Trademarks. The rights set forth in Section 2.1(v) hereto are limited to the right to sublicense such rights to end users for non-commercial use; any public performance relating to the Licensed Product or the System is prohibited unless expressly authorized in writing by SCEA.

4.3 Reservation of Publisher's Rights. Separate and apart from Sony Materials and other rights licensed to Publisher by SCEA hereunder, as between Publisher and SCEA, Publisher retains all rights, title interest in and to the Product Software, and the Product Proposals and Product Information related thereto, including without limitation Publisher Intellectual Property Rights therein, as well as Publisher's rights in any source code and other underlying material such as artwork and music related thereto and any names used as titles for Licensed Products and other trademarks used by Publisher. Nothing in this Agreement shall be construed to restrict the right of Publisher to develop, distribute or transmit products incorporating the Product Software and such underlying material (separate and apart from the Sony Materials) for any hardware platform or service other than the System, or to use Printed Materials or Advertising Materials approved by SCEA as provided herein (provided that such Printed Materials and/or Advertising Materials do not contain any Licensed Trademarks) as Publisher determines for such other platforms. SCEA shall not do or cause to be done any act or thing in any way impairing or tending to impair or dilute any of Publisher's rights, title or interests hereunder. Notwithstanding the foregoing, Publisher shall not distribute or transmit Product Software which is intended to be used with the System via electronic means or any other means now known or hereafter devised, including without limitation, via wireless, cable, fiber optic means, telephone lines, microwave and/or radio waves, or other a network of computers or other devices, except as otherwise permitted in Section 4.2.1 hereto.

4.4 Additions to and Deletions from Licensed Territory. SCEA may, from time to time, add one or more countries to the Licensed Territory by providing written notice of such addition to Publisher. SCEA shall also have the right to delete, and intends to delete any countries from the Licensed Territory if, in SCEA's reasonable judgment, the laws of enforcement of such laws in such countries do not protect SCEA Intellectual Property Rights. In the event a country is deleted from the Licensed Territory, SCEA shall deliver to Publisher a notice stating the number of days within which Publisher shall cease distributing Licensed Products, and retrieve any Development Tools located, in any such deleted country. Publisher shall cease distributing Licensed Products, and retrieve any Development Tools, directly or through subcontractors, by the end of the period stated in such notice.

4.5 SourceBook 2 Requirement. Publisher shall be required to comply with all the provisions of the SourceBook 2, including without limitation the Technical Requirements Checklist therein, when published, or within a commercially reasonable time following its publication to incorporate such provisions, as if such provisions were set forth in this Agreement.

5. Quality Standards for the Licensed Products.

5.1 Quality Assurance Generally. The Licensed Products (and all portions thereof) and Publisher's use of any Licensed Trademarks shall be subject to SCEA's prior written approval, which shall not be unreasonably withheld or delayed and which shall be within SCEA's sole discretion as to acceptable standards of quality. SCEA shall have the right at any stage of the development of a Licensed Product to ensure that it meets SCEA's quality assurance standards. All Licensed Products will be developed to substantially utilize the particular capabilities of the System's proprietary hardware, software and graphics. No approval by SCEA of any element or stage of development of any Licensed Product shall be deemed an approval of any other element or stage of such Licensed Product, nor shall any such approval be deemed to constitute a waiver of any of SCEA's rights under this Agreement. In addition, SCEA's approval of any element or any stage of development of any Licensed Product shall not release Publisher from any of its representations and warranties in Section 9.2 hereunder.

5.2 Product Proposals.

5.2.1 Submission of Product Proposal. Publisher shall submit to SCEA for SCEA's written approval or disapproval, which shall not be unreasonably withheld or delayed, a written proposal (the "Product Proposal"). Such Product Proposal must contain all information specified in the SourceBook 2, as well as any additional information that SCEA may deem to be useful in evaluating the proposed Licensed Product.

5.2.2 Approval of Product Proposal. After SCEA's review of Publisher's Product Proposal, Publisher will receive written notice from SCEA of the status of the Product Proposal, which may range from "Approved" to "Not Approved." Such conditions shall have the meanings ascribed to them in the SourceBook 2, and may be changed from time to time by SCEA. If a Product Proposal is "Not Approved", then neither Publisher nor any other Licensed Developer or Licensed Publisher may re-submit such Product Proposal without significant, substantive revisions. SCEA shall have no obligation to approve any Product Proposal submitted by Publisher. Any development conducted by or at the direction of Publisher and any legal commitment relating to development work shall be at Publisher's own financial and commercial risk. Publisher shall not construe approval of a Product Proposal as a commitment by SCEA to grant final approval to such Licensed Product. Nothing herein shall restrict SCEA from commercially exploiting any coincidentally similar concept(s) and/or product(s),

which have been independently developed by SCEA, an Affiliate of SCEA or any third party.

5.2.3 Changes to Product Proposal. Publisher shall notify SCEA promptly in writing in the event of any material proposed change in any portion of

the Product Proposal. SCEA's approval of a Product Proposal shall not obligate Publisher to continue with development or production of the proposed Licensed Product, provided that Publisher must immediately notify SCEA in writing if it discontinues, cancels or otherwise delays past the original scheduled delivery date the development of any proposed Licensed Product. In the event that Publisher licenses a proposed Licensed Product from another Licensed Publisher or a Licensed Developer, it shall immediately notify SCEA of such change and must re-submit such Licensed Product to SCEA for approval in accordance with the provisions of Section 5.2.1 above.

5.3 Work-in-Progress.

5.3.1 Submission and Review of Work-in-Progress. SCEA shall require Publisher to submit to SCEA work-in-progress on Licensed Products at certain intervals throughout their development and, upon written notice to Publisher, at any time during the development process. Upon approval of the Product Proposal, Publisher must within the time frame indicated in the approval letter, communicate with SCEA and mutually agree on a framework for the review of such Licensed Product throughout the development process ("Review Process"). Once the Review Process has begun, Publisher shall be responsible for submitting work-in-progress to SCEA in accordance with such Review Process. Failure to submit work-in-progress in accordance with any stage of the Review Process may, at SCEA's discretion, result in revocation of approval of such Product Proposal.

5.3.2 Approval of Work in Progress. SCEA shall have the right to approve, reject or require additional information with respect to each stage of the Review Process. SCEA shall specify in writing the reasons for any such rejection or request for additional information and shall state what corrections and/or improvements are necessary. If any stage of the Review Process is not provided to SCEA or is not successfully met after a reasonable cure period agreed to between SCEA and Publisher, SCEA shall have the right to revoke the approval of Publisher's Product Proposal.

5.3.3 Cancellation or Delay; Conditions of Approval. Licensed Products which are canceled by Publisher or are late in meeting the final Executable Software delivery date by more than three (3) months (without agreeing with SCEA on a modified final delivery date) shall be subject to the termination provisions set forth in Section 14.3 hereto. In addition, failure to make changes required by SCEA to the Licensed Product at any stage of the Review Process, or making material changes to the Licensed Product without SCEA's approval, may subject Publisher to the termination provisions set forth in Section 14.3 hereto.

5.4 Approval of Executable Software. On or before the date specified in the Product Proposal or as determined by SCEA pursuant to the Review Process, Publisher shall deliver to SCEA for its inspection and evaluation, a final version of the Executable Software for the proposed Licensed Product. SCEA will evaluate such Executable Software and notify Publisher in writing of its approval or disapproval, which shall not be unreasonably withheld or delayed. If such Executable Software is disapproved, SCEA shall specify in writing the reasons for such disapproval and state what corrections and improvements are necessary. After making the necessary corrections and improvements, Publisher shall submit a new version of such Executable Software for SCEA's approval. SCEA shall have the right to disapprove Executable Software if it fails to comply with SCEA's corrections or improvements or one or more conditions as set forth in the SourceBook 2 with no obligation to review all elements of any version of Executable Software. All final versions of Executable Software shall be submitted in the format prescribed by SCEA and shall include such number of Master Discs as SCEA may require from time to time. Publisher hereby (i) warrants that all final versions of Executable Software are fully tested; (ii) shall use its best efforts to ensure such Executable Software is fully debugged prior to submission to SCEA; and (iii) warrants that all versions of Executable Software comply or will comply with standards set forth in the SourceBook 2 or other documentation provided by SCEA to Publisher. In addition, prior to manufacture of Executable Software, Publisher must sign an accountability form stating that (x) Publisher approves the release of such Executable Software for manufacture in its current form and (y) Publisher shall be fully responsible for any problems related to such Executable Software.

5.5 Printed Materials.

5.5.1 Compliance with Guidelines. For each proposed Licensed Product, Publisher shall be responsible, at Publisher's expense, for creating and developing Printed Materials. All Printed Materials shall comply with the Guidelines, which may be amended from time to time, provided that Publisher shall, except as otherwise provided herein, only be required to implement amended Guidelines in subsequent orders of Printed Materials and shall not be required to recall or destroy previously manufactured Printed Materials, unless such Printed Materials do not comply with the original requirements in the Guidelines or unless explicitly required to do so in writing by SCEA.

5.5.2 Submission and Approval of Printed Materials. No later than submission of final Executable Software for a proposed Licensed Product, Publisher shall also deliver to SCEA, for review and evaluation, the proposed

final Printed Materials and a form of limited warranty for the proposed Licensed Product. Failure to meet any scheduled release dates for a Licensed Product is solely the risk and responsibility of Publisher, and SCEA assumes no responsibility for Publisher failing to meet such scheduled release dates due to this submission process. The

quality of such Printed Materials shall be of the same quality as that associated with other commercially available high quality software products. If any of the Printed Materials are disapproved, SCEA shall specify the reasons for such disapproval and state what corrections are necessary. SCEA shall have no liability to Publisher for costs incurred or irrevocably committed to by Publisher for production of Printed Materials that are disapproved by SCEA. After making the necessary corrections to any disapproved Printed Materials, Publisher must submit new Printed Materials for approval by SCEA. SCEA shall not unreasonably withhold or delay its review of Printed Materials.

5.6 Advertising Materials.

5.6.1 Submission and Approval of Advertising Materials. Pre-production samples of all Advertising Materials shall be submitted by Publisher to SCEA, at Publisher's expense, prior to any actual production, use or distribution of any such items by Publisher or on its behalf. SCEA shall evaluate and approve such Advertising Materials, which approval shall not be unreasonably withheld or delayed, as to the following standards: (i) the content, quality, and style of the overall advertisement; (ii) the quality, style, appearance and usage of any of the Licensed Trademarks; (iii) appropriate references of any required notices; and (iv) compliance with the Guidelines. If any of the Advertising Materials are disapproved, SCEA shall specify the reasons for such disapproval and state what corrections are necessary. SCEA may require Publisher to immediately withdraw and reprint any Advertising Materials that have been published but have not received the written approval of SCEA. SCEA shall have no liability to Publisher for costs incurred or irrevocably committed to by Publisher for production of Advertising Materials that are disapproved by SCEA. For each Licensed Product, Publisher shall be required to deliver to SCEA an accountability form stating that all Advertising Materials for such Licensed Product comply or will comply with the Guidelines for use of the Licensed Trademarks. After making the necessary corrections to any disapproved Advertising Materials, Publisher must submit new proposed Advertising Materials for approval by SCEA.

5.6.2 Failure to Comply; Three Strikes Program. Publishers who fail to obtain SCEA's approval of Advertising Materials prior to broadcast or publication shall be subject to the provisions of the "Three Strikes" program outlined in the SourceBook 2. Failure to obtain SCEA's approval of Advertising Materials could result in termination of this LPA or termination of approval of the Licensed Product, or could subject Publisher to the provisions of Section 14.4 hereto. Failure to meet any scheduled release dates for Advertising Materials is solely the risk and responsibility of Publisher, and SCEA assumes no responsibility for Publisher failing to meet such scheduled release dates due to approval requirements as set forth in this Section.

5.6.3 SCEA Materials. Subject in each instance to the prior written approval of SCEA, Publisher may use advertising materials owned by SCEA pertaining to the System or to the Licensed Trademarks on such Advertising Materials as may, in Publisher's judgment, promote the sale of Licensed Products.

5.7 Rating Requirements. If required by SCEA or any governmental entity, Publisher shall submit each Licensed Product to a consumer advisory ratings system designated by SCEA and/or such governmental entity for the purpose of obtaining rating code(s) for each Licensed Product. Any and all costs and expenses incurred in connection with obtaining such rating code(s) shall be borne solely by Publisher. Any required consumer advisory rating code(s) procured hereby shall be displayed on the Licensed Product and in the associated Printed Materials and Advertising Materials, at Publisher's cost and expense, in accordance with the SourceBook 2 or other documentation provided by SCEA to Publisher.

5.8 Publisher's Additional Quality Assurance Obligations. If at any time or times subsequent to the approval of Executable Software and Printed Materials, SCEA identifies any material defects (such materiality to be determined by SCEA in its sole discretion) with respect to the Licensed Product, or in the event that SCEA identifies any improper use of its Licensed Trademarks or Sony Materials with respect to the Licensed Product, or any such material defects or improper use are brought to the attention of SCEA, Publisher shall, at no cost to SCEA, promptly correct any such material defects, or improper use of Licensed Trademarks or Sony Materials, to SCEA's commercially reasonable satisfaction, which may include, if necessary in SCEA's judgment, the recall and re-release of such Licensed Product. In the event any Units of Licensed Products create any risk of loss or damage to any property or injury to any person, Publisher shall immediately take effective steps, at Publisher's sole liability and expense, to recall and/or to remove such defective Units from any affected channels of distribution, provided, however, that if Publisher is not acting as the distributor and/or seller for the Licensed Products, its obligation hereunder shall be to use its best efforts to arrange removal of such Licensed Product from channels of distribution. Publisher shall provide all end-user support for the Licensed Products and SCEA expressly disclaims any obligation to provide end-user support on Publisher's Licensed Products.

6. Manufacture of the Licensed Products.

6.1 Manufacture of Units. Upon approval of Executable Software and associated Printed Materials pursuant to Section 5, and subject to Sections 6.1.2, 6.1.3 and 6.1.4 below, the Designated Manufacturing Facility

will, in accordance with the terms and conditions set forth in this Section 6, and at Publisher's expense (a) manufacture PlayStation 2 Format Discs for Publisher; (b) manufacture Publisher's Packaging and/or Printed Materials; and/or (c) assemble the PlayStation 2 Format Discs with the Printed Materials and the Packaging. Publisher shall comply with all Manufacturing Specifications related to the particular terms set forth herein. SCEA reserves the right to insert or require the Publisher to insert certain Printed Materials relating to the System or Licensed Trademarks into each Unit.

6.1.1 Manufacture of PlayStation 2 Format Discs.

6.1.1.1 Designated Manufacturing Facilities. To insure compatability of the PlayStation 2 Format Discs with the System, consistent quality of the Licensed Product and incorporation of anti-piracy security systems, SCEA shall designate and license a Designated Manufacturing Facility to reproduce PlayStation 2 Format Discs. Publisher shall purchase [*] of its requirements for PlayStation 2 Format Discs from such Designated Manufacturing Facility during the term of the Agreement. Any Designated Manufacturing Facility shall be a third party beneficiary of this Agreement.

6.1.1.2 Creation of Master CD-ROM or DVD-ROM. Pursuant to Section 5.4 in connection with final testing of Executable Software, Publisher shall provide SCEA with the number of Master Discs specified in the SourceBook 2. A Designated Manufacturing Facility shall create from one of the fully approved Master Discs provided by Publisher the original master CD-ROM or DVD-ROM, from which all other copies of the Licensed Product are to be replicated. Publisher shall be responsible for the costs, as determined by the Designated Manufacturing Facility, of producing such original master. In order to insure against loss or damage to the copies of the Executable Software furnished to SCEA, Publisher will retain duplicates of all Master Discs, and neither SCEA nor any Designated Manufacturing Facility shall be liable for loss of or damage to any Master Discs or Executable Software.

6.1.2 Manufacture of Printed Materials.

6.1.2.1 Manufacture by Designated Manufacturing Facility. If Publisher elects to obtain Printed Materials from a Designated Manufacturing Facility, Publisher shall deliver all SCEA-approved Printed Materials to that Designated Manufacturing Facility, at Publisher's sole risk and expense, and the Designated Manufacturing Facility will manufacture such Printed Materials in accordance with this Section 6. In order to insure against loss or damage to the copies of the Printed Materials furnished to SCEA, Publisher will retain duplicates of all Printed Materials, and neither SCEA nor any Designated Manufacturing Facility shall be liable for loss of or damage to any such Printed Materials.

6.1.2.2 Manufacture by Alternate Source. Subject to SCEA's approval as provided in Section 5.5.2 hereto and in this Section, Publisher may elect to be responsible for manufacturing its own Printed Materials (other than any Artwork which may be placed directly upon the PlayStation Disc, which Publisher will supply to the Designated Manufacturing Facility for placement), at Publisher's sole risk and expense. Prior to production of each order, Publisher shall be required to supply SCEA with samples of any Printed Materials not produced or supplied by a Designated Manufacturing Facility, at no charge to SCEA or Designated Manufacturing Facility, for SCEA's approval with respect to the quality thereof. SCEA shall have the right to disapprove any Printed Materials that do not comply with the Manufacturing Specifications. Manufacturing Specifications for Printed Materials shall be comparable to manufacturing specifications applied by SCEA to its own software products for the System. If Publisher elects to supply its own Printed Materials, neither SCEA nor any Designated Facility shall be responsible for any delays arising from use of Publisher's own Printed Materials.

6.1.3 Manufacture of Packaging.

6.1.3.1 Manufacture by Designated Manufacturing Facility. To ensure consistent quality of the Licensed Products, SCEA may designate and license a Designated Manufacturing Facility to reproduce proprietary Packaging for the System. If SCEA creates proprietary Packaging for the System, then Publisher shall purchase [*] of its requirements for such proprietary Packaging from a Designated Manufacturing Facility during the term of the Agreement, and the Designated Manufacturing Facility will manufacture such Packaging in accordance with this Section 6.

6.1.3.2 Manufacture by Alternate Source. If SCEA elects to use standard, non-proprietary Packaging for the System, then Publisher may elect to be responsible for manufacturing its own Packaging (other than any proprietary labels and any portion of a container containing Licensed Trademarks, which Publisher must purchase from a Designated Manufacturing Facility). Publisher shall assume all responsibility for the creation of such Packaging at Publisher's sole risk and expense. Publisher shall be responsible for encoding and printing proprietary edge labels provided by a Designated Manufacturing Facility with information reasonably specified by SCEA from time to time and will apply such labels to each Unit of the Licensed Product as

reasonably specified by SCEA. Prior to production of each order, Publisher shall be required to supply SCEA with samples of any Packaging not produced or supplied by a Designated Manufacturing Facility, at no charge to SCEA or Designated Manufacturing Facility, for SCEA's approval with respect to the quality thereof. SCEA

[*] Confidential portion omitted and filed separately with the Commission

shall have the right to disapprove any Packaging that does not comply with the Manufacturing Specifications. Manufacturing Specifications for Packaging shall be comparable to manufacturing specifications applied by SCEA to its own software products for the System. If Publisher procures Packaging from an alternate source, then it must also procure assembly services from an alternate source. If Publisher elects to supply its own Packaging, neither SCEA nor any Designated Manufacturing Facility shall be responsible for any delays arising from use of Publisher's own Packaging.

6.1.4 Assembly Services. Publisher may either procure assembly services from a Designated Manufacturing Facility or from an alternate source. If Publisher elects to be responsible for assembling the Licensed Products, then the Designated Manufacturing Facility shall ship the component parts of the Licensed Product to a destination provided by Publisher, at Publisher's sole risk and expense. SCEA shall have the right to inspect any assembly facilities utilized by Publisher in order to determine if the component parts of the Licensed Products are being assembled in accordance with SCEA's quality standards. SCEA may require that Publisher recall any Licensed Products that do not contain proprietary labels or other material component parts or that otherwise fail to comply with the Manufacturing Specifications. If Publisher elects to use alternate assembly facilities, neither SCEA nor any Designated Manufacturing Facility shall be responsible for any delays or missing component parts arising from use of alternate assembly facilities.

6.2 Price, Payment and Terms.

6.2.1 Price. The applicable price for manufacture of any Units of Licensed Products ordered hereunder shall be provided to Publisher by the Designated Manufacturing Facility. Purchase shall be subject to the terms and conditions set out in any purchase order form supplied to Publisher by the Designated Manufacturing Facility.

6.2.2 Orders. Publisher shall issue to a Designated Manufacturing Facility a written Purchase Order(s) in the form set forth and containing the information required in the Manufacturing Specifications, with a copy to SCEA. All orders shall be subject to approval by SCEA, which shall not be unreasonably withheld or delayed. Purchase Orders issued by Publisher to a Designated Manufacturing Facility for each Licensed Product approved by SCEA shall be non-cancelable and be subject to the order requirements of the Designated Manufacturing Facility.

6.2.3 Payment Terms. Purchase Orders will be invoiced as soon as reasonably practical after receipt, and such invoice will include both manufacturing price and royalties payable pursuant to Section 8.1 and 8.2 hereto for each Unit of Licensed Products ordered. Each invoice will be payable either on a cash-in-advance basis or pursuant to a letter of credit, or, at SCEA's sole discretion, on credit terms. Terms for cash-in-advance and letter of credit payments shall be set forth in the SourceBook 2. All amounts hereunder shall be payable in United States dollars. All associated banking charges with respect to payments of manufacturing costs and royalties shall be borne solely by Publisher.

6.2.3.1 Credit Terms. SCEA may at its sole discretion extend credit terms and limits to Publisher. SCEA may also revoke such credit terms and limits at its sole discretion. If Publisher qualifies for credit terms, then orders will be invoiced upon shipment of Licensed Products and each invoice will be payable within thirty (30) days of the date of the invoice. Any overdue sums shall bear interest at the rate of one and one-half (1 - 1/2%) percent per month, or such lower rate as may be the maximum rate permitted under applicable law, from the date when payment first became due to and including the date of payment thereof. Publisher shall be additionally liable for all costs and expenses of collection, including without limitation, reasonable fees for attorneys and court costs.

6.2.3.2 General Terms. No deduction may be made from remittances unless an approved credit memo has been issued by a Designated Manufacturing Facility. Neither SCEA nor a Designated Manufacturing Facility shall be responsible for shortage or breakage with respect to any order if component parts and/or assembly services are obtained from alternate sources. Each shipment to Publisher shall constitute a separate sale, whether said shipment be whole or partial fulfillment of any order. Nothing in this Agreement shall excuse or be construed as a waiver of Publisher's obligation to timely provide any and all payments owed to SCEA and Designated Manufacturing Facility.

6.3 Delivery of Licensed Products. Neither SCEA nor any Designated Manufacturing Facility shall have an obligation to store completed Units of Licensed Products. Publisher may either specify a mode of delivery or allow Designated Manufacturing Facility to select a mode of delivery.

6.4 Ownership of Master Discs. Due to the proprietary nature of the mastering process, neither SCEA nor a Designated Manufacturing Facility shall under any circumstances release any original master CD-ROM, Master Discs or other in-process materials to Publisher. All such materials shall be and remain the sole property of SCEA or Designated Manufacturing Facility. Notwithstanding

the foregoing, Publisher Intellectual Property Rights contained in Product Software that is contained in such in-process materials is, as between SCEA and Publisher, the sole and exclusive property of Publisher or its licensors (other than SCEA and/or its affiliates).

7. Marketing and Distribution.

7.1 Marketing Generally. In accordance with the provisions of this Agreement and at no expense to SCEA, Publisher shall, and shall direct its distributors to, diligently market, sell and distribute the Licensed Products, and shall use commercially reasonable efforts to stimulate demand for such Licensed Products in the Licensed Territory and to supply any resulting demand. Publisher shall use its reasonable best efforts to protect the Licensed Products from and against illegal reproduction and/or copying by end users or by any other persons or entities.

7.2 Samples. Publisher shall provide to SCEA, at no additional cost, for SCEA's internal use, [*] sample copies of each Licensed Product. Publisher shall pay any manufacturing cost to the Designated Manufacturing Facility in accordance with Section 6.2, but shall not be obligated to pay royalties, in connection with such sample Units. In the event that Publisher assembles any Licensed Product using an alternate source, Publisher shall be responsible for shipping such sample Units to SCEA at Publisher's cost and expense. SCEA shall not directly or indirectly resell any such sample copies of the Licensed Products without Publisher's prior written consent. SCEA may give sample copies to its employees, provided that it uses its reasonable efforts to ensure that such copies are not sold into the retail market. In addition, subject to availability, Publisher shall sell to SCEA additional quantities of Licensed Products at the Wholesale Price for such Licensed Products. Any changes to SCEA's policy regarding sample Units shall be set forth in the SourceBook 2.

7.3 Marketing Programs of SCEA. From time to time, SCEA may invite Publisher to participate in promotional or advertising opportunities that may feature one or more Licensed Products from on or more Licensed Publishers. Participation shall be voluntary and subject to terms to be determined at the time of the opportunity. In the event Publisher elects to participate, all materials submitted by Publisher to SCEA shall be submitted subject to Section 10.2 hereunder and delivery of such materials to SCEA shall constitute acceptance by Publisher of the terms of the offer. Moreover, SCEA may use the Generic Line on all multi-product marketing materials, unless otherwise agreed in writing.

7.4 Demonstration Disc Programs. SCEA may, from time to time, provide opportunities for Publisher to participate in SCEA Demo Disc programs. In addition, SCEA may, from time to time, grant to Publisher the right to create Third Party Demo Discs pursuant to SCEA Established Third Party Demo Disc Programs. The specifications with respect to the approval, creation, manufacture, marketing, distribution and sale of any such demo disc programs shall be set forth in the SourceBook 2 or in other documentation to be provided by SCEA to Publisher. Except as otherwise specifically set forth herein, in the SourceBook 2 or in other documentation, Third Party Demo Discs shall be considered "Licensed Products" and shall be subject in all respects to the terms and conditions of this Agreement pertaining to Licensed Products. In addition, the following procedures shall also apply to SCEA Demo Discs and Third Party Demo Discs.

7.4.1 SCEA Demo Discs.

7.4.1.1 License. SCEA may, but shall not be obligated to, invite Licensed Publishers to participate in any SCEA Demo Disc program. Participation by Publisher in an SCEA Demo Disc program shall be optional. If Publisher elects to participate in an SCEA Demo Disc program and provides Product Information to SCEA in connection thereto, Publisher shall thereby grant to SCEA a royalty-free license during the term of this Agreement in the Licensed Territory to manufacture, use, sell, distribute, market, advertise and otherwise promote Publisher's Product Information as part of such SCEA Demo Disc program. In addition, Publisher shall grant SCEA the right to feature Publisher and Licensed Product names in SCEA Demo Disc Advertising Materials and to use copies of screen displays generated by the code, representative video samples or other Product Information in such SCEA Demo Disc Advertising Materials. All decisions relating to the selection of first and third party Product Information and all other aspects of SCEA Demo Discs shall be in the sole discretion of SCEA.

7.4.1.2 Submission and Approval of Product Information. Upon receipt of written notice that SCEA has tentatively chosen Publisher's Product Information for inclusion in an SCEA Demo Disc, Publisher shall deliver to SCEA such requested Product Information by no later than the deadline set forth in such notice. Separate notice will be sent for each SCEA Demo Disc, and Publisher must sign each notice prior to inclusion in such SCEA Demo Disc. Publisher shall include its own Legal Copy on the title screen or elsewhere in the Product Information submitted to SCEA. SCEA shall only provide the Generic Line on the SCEA Demo Disc title screen and packaging. Publisher's Product Information shall comply with SCEA's technical specifications provided to Publisher. SCEA reserves the right to review and test the Product Information provided and request revisions prior to inclusion on the SCEA Demo Disc. If SCEA requests changes to the Product Information and Publisher elects to continue to participate in such Demo Disc, Publisher shall make such changes as soon as possible after receipt of written notice of such requested changes from SCEA, but not later than the deadline for receipt of Product Information. Failure to

make such changes and provide the modified Product Information to SCEA by the deadline shall result in the Product Information being removed from the SCEA Demo Disc. Costs associated with preparation of Product Information supplied to SCEA shall be borne solely by Publisher. Except as otherwise provided in this Section. SCEA shall not edit or modify Product

[*] Confidential portion omitted and filed separately with the Commission

Information provided to SCEA by Publisher without Publisher's consent, not to be unreasonably withheld. SCEA shall have the right to use subcontractors to assist in the development of any SCEA Demo Disc. With respect to Product Information provided by Publisher in demo form, the demo delivered to SCEA shall not constitute the complete Licensed Product and shall be, at a minimum, an amount sufficient to demonstrate the Licensed Product's core features and value, without providing too much information so as to give consumers a disincentive to purchase the complete Licensed Product.

7.4.1.3 No Obligation to Publish. Acceptance of Product Information for test and review shall not be deemed confirmation that SCEA shall include the Product Information on any SCEA Demo Disc, nor shall it constitute approval of any other element of the Licensed Product. SCEA reserves the right to choose from products submitted from other Licensed Publishers and first party products to determine the products to be included in SCEA Demo Discs, and Publisher's Licensed Products will not be guaranteed prominence or preferential treatment on any SCEA Demo Disc. Nothing herein shall be construed as creating an obligation of SCEA to publish Product Information submitted by Publisher in any SCEA Demo Disc, nor shall SCEA be obligated to publish, advertise or promote any SCEA Demo Disc.

7.4.1.4 SCEA Demo Discs Sold at Retail. Publisher is aware and acknowledges that certain SCEA Demo Discs may be distributed and sold by SCEA in the retail market. If Publisher elects to participate in any SCEA Demo Disc program which is sold in the retail market, as notified by SCEA to Publisher, Publisher acknowledges prior to participation in any such SCEA Demo Disc that it is aware of no limitations regarding Product Information provided to SCEA pursuant to the terms of this Agreement which would in any way restrict SCEA's ability to distribute or sell such SCEA Demo Disc at retail, nor does Publisher or its licensors (other than SCEA and/or its affiliates) have any anticipation of receiving any compensation from such retail sales. In the event that SCEA institutes a SCEA Demo Disc in which a fee and/or royalty is charged to Publisher, SCEA and Publisher will enter into a separate agreement regarding such SCEA Demo Disc.

7.4.2 Third Party Demo Discs.

7.4.2.1 License. Publisher may participate in any SCEA Established Third Party Demo Disc Program. Publisher shall notify SCEA of its intention to participate in any such program, and upon receipt of such notice, SCEA shall grant to Publisher the right and license to use Licensed Products in Third Party Demo Discs and to use, distribute, market, advertise and otherwise promote (and, if permitted in accordance with the terms of any SCEA Established Third Party Program or otherwise permitted by SCEA, to sell) such Third Party Demo Discs in accordance with the SourceBook 2, which may be modified from time to time at the sole discretion of SCEA. Unless separately agreed in writing with SCEA. Third Party Demo Discs shall not be used, distributed, promoted, bundled or sold in conjunction with other products. In addition, SCEA hereby consents to the use of the Licensed Trademarks in connection with Third Party Demo Discs, subject to the approval procedures set forth in this Agreement. If any SCEA Established Third Party Demo Disc Program is specified by SCEA to be for promotional use only and not for resale, and such Third Party Demo Disc is subsequently discovered to be for sale, Publisher's right to produce Third Party Demo Discs shall thereupon be automatically revoked, and SCEA shall have the right to terminate any related Third Party Demo Discs in accordance with the terms of Section 14.3 or 14.4 hereto.

7.4.2.2 Submission and Approval of Third Party Demo Discs. Publisher shall deliver to SECA, for SCEA's prior approval, a final version of each Third Party Demo Disc in a format prescribed by SCEA. Such Third Party Demo Disc shall comply with all requirements provided to Publisher by SCEA in the SourceBook 2 or otherwise. In addition, SCEA shall evaluate the Third Party Demo Disc in accordance with the approval provisions for Executable Software and Printed Materials set forth in Sections 5.4 and 5.5, respectively. Furthermore, Publisher shall obtain the approval of SCEA in connection with any Advertising Materials relating to the Third Party Demo Discs in accordance with the approval provisions set forth in Section 5.6. Costs associated with Third Party Demo Discs shall be borne solely by Publisher. No approval by SCEA of any element of any Third Party Demo Disc shall be deemed an approval of any other element thereto, nor does any such approval constitute final approval for the related Licensed Product. Unless otherwise permitted by SCEA, Publisher shall clearly and conspicuously state on all Third Party Demo Disc Packaging and Printed Materials that the Third Party Demo Disc is for promotional purposes only and not for resale.

7.4.2.3 Manufacture and Royalty of Third Party Demo Discs. Publisher shall comply with all Manufacturing Specifications with respect to the manufacture and payment for manufacturing costs of Third Party Demo Discs, and Publisher shall also comply with all terms and conditions of Section 6 hereto. No costs incurred in the development, manufacture, licensing, production, marketing and/or distribution (and if permitted by SCEA, sale) of the Third Party Demo Disc shall be deducted from any amounts payable to SCEA hereunder. Royalties on Third Party Demo Discs shall be as provided in Section

8.2.

7.5 Contests and Sweepstakes of Publisher. SCEA acknowledges that, from time to time, Publisher may conduct contests and sweepstakes to promote Licensed Products. SCEA shall permit Publisher to include contest or sweepstakes materials in Printed

Materials and Advertising Materials, subject to compliance with the approval provisions of Section 5.5 and 5.6 hereunder, compliance with the provisions of Section 9.2 and 10.2 hereunder, and subject to the following additional terms and conditions:

(i) Publisher represents that it has retained the services of a fulfillment house to administer the contest or sweepstakes and if it has not retained the services of a fulfillment house, Publisher represents and warrants that it has the expertise to conduct such contests or sweepstakes, and in any event, Publisher shall assume full responsibility for all aspects of such contest or sweepstakes;

(ii) Publisher warrants that each contest, sweepstakes, and promotion, comply with local, state and federal laws or regulations;

(iii) Publisher represents and warrants that it has obtained the consent of all holders of intellectual property rights required to be obtained in connection with each contest or sweepstakes including, but not limited to, the consent of any holder of copyrights or trademarks relating to any Advertising Materials publicizing the contest or sweepstakes, or the prizes being awarded to winners of the contest or sweepstakes; and

(iv) Publisher shall make available to SCEA all contest and sweepstakes material prior to publication in accordance with the approval process set forth in Section 5.5 or 5.6.

Approval by SCEA of contest or sweepstakes materials for use in the Printed Materials or Advertising Materials (or any use of the System or Licensed Products as prizes in such contest or sweepstakes) shall not constitute an endorsement by SCEA of such contest or sweepstakes, not shall such acceptance be construed as SCEA having reviewed and approved such materials for compliance with any federal or state law, statute, regulations, order or the like, which shall be Publisher's sole responsibility.

7.6 PlayStation Website. All Licensed Publishers shall be required to provide Product Information for a web page for each of its Licensed Products for display on the PlayStation promotional website, or other website or websites as may be operated by SCEA from time to time in connection with the promotion of the PlayStation brand. Specifications for Product Information for such web pages shall be as provided in the SourceBook 2. Publisher shall provide SCEA with such Product Information for each Licensed Product upon submission of Printed Materials to SCEA for approval in accordance with Section 5.5.2 hereto. Publisher shall also provide updates to such web page in a timely manner as required by SCEA in updates to the SourceBook 2.

7.7 Distribution.

7.7.1 Distribution Channels. Publisher may use such distribution channels as Publisher deems appropriate, including the use of third party distributors, resellers, dealers and sales representatives. In the event that Publisher elects to have one of its Licensed Products distributed and sold by another Licensed Publisher, Publisher must provide SCEA with advance written notice of such election, the name of the Licensed Publisher and any additional information requested by SCEA regarding the nature of the distribution services provided by such Licensed Publisher prior to manufacture of such Licensed Product.

7.7.2 Limitation on Distribution. Notwithstanding any other provisions in this Agreement, Publisher shall not, directly or indirectly, solicit orders from or sell any Units of the Licensed Products to any person or entity outside of the Licensed Territory. In addition, Publisher shall not directly or indirectly solicit orders for or sell any Units of the Licensed Products in any situation where Publisher knows or reasonably should know that such Licensed Products may be exported or resold outside of the Licensed Territory.

8. Royalties.

8.1 Applicable Royalties on Licensed Products.

8.1.1 Initial Orders. Publisher shall pay SCEA, either directly or through its designee, a per title royalty in United States dollars for each Unit of the Licensed Products manufactured based on the initial Wholesale Price of the Licensed Product as follows:

	Wholesale Price	Per Title Royalty
[*]	[*]	[*]
[*]	[*]	[*]
[*]	[*]	[*]
[*]	[*]	[*]
[*]	[*]	[*]
[*]	[*]	[*]

In the absence of satisfactory evidence to support the WSP, the royalty rate that shall apply will be [*] per Unit.

8.1.2 Reorders and Other Programs. Royalties on additional orders to manufacture a specific Licensed Product shall be royalty determined by the initial Wholesale Price as reported by Publisher for that Licensed Product regardless of the wholesale price of the Licensed Product at the time of reorder, except in the event that the Wholesale Price increases for such Licensed Product, in which case the royalty shall be adjusted upwards to reflect the higher Wholesale Price. Licensed

[*] Confidential portion omitted and filed separately with the Commission

Products qualifying for SCEA's "Greatest Hits" programs or other programs offered by SCEA shall be subject to the royalties applicable for such programs. Publisher acknowledges that as of the date of execution of this Agreement no "Greatest Hits" program exists for the PlayStation 2 Third Party licensing program.

8.2 Third Party Demo Disc Program Royalties: Publisher shall pay SCEA a per Unit royalty in United States dollars of [*] for each Third Party Demo Disc Unit manufactured. The quantity of Units ordered shall comply with the terms of such SCEA Established Third Party Demo Disc Program.

8.3 Payment. Payment of royalties under Sections 8.1 and 8.2 shall be made to SCEA through its Designated Manufacturing Facility concurrent with the placement of an order to manufacture Licensed Product and payment of manufacturing costs in accordance with the terms and conditions set forth in Section 6.2.3, unless otherwise agreed in writing with SCEA. At the time of placing an order to manufacture a Licensed Product, Publisher shall submit to SCEA an accurate accounting statement setting out the number of units of Licensed Product to be manufactured, projected initial wholesale price, applicable royalty, and total amount due SCEA. In addition, Publisher shall submit to SCEA prior to placing the initial order for each Licensed Product a separate certification, in the form provided by SCEA in the SourceBook 2, signed by officers of Publisher that certifies that the Wholesale Price provided to SCEA is accurate and attaching such documentation supporting the WSP as requested by SCEA. Payment shall be made prior to manufacture unless SCEA has agreed to extend credit terms to Publisher in writing pursuant to Section 6.2.3.3. Nothing herein shall be construed as requiring SCEA to extend credit terms to Publisher. The accounting statement due hereunder shall be subject to the audit and accounting provisions set forth in paragraph 16.2 below. No costs incurred in the development, manufacture, marketing, sale and/or distribution of the Licensed Products shall be deducted from any royalties payable to SCEA hereunder. Similarly, there shall be no deduction from the royalties otherwise owed to SCEA hereunder as a result of any uncollectible accounts owed to Publisher, or for any credits, discounts, allowances or returns which Publisher may credit or otherwise grant to any third party customer of any Units of the Licensed Products, or for any taxes, fees, assessments or expenses of any kind which may be incurred by Publisher in connection with its sale or distribution of any Units of the Licensed Products or arising with respect to the payment of royalties hereunder. In addition to the royalty payments provided to SCEA hereunder, Publisher shall be solely responsible for and bear any cost relating to any withholding taxes or other such assessments which may be imposed by any governmental authority with respect to the royalties paid to SCEA hereunder; provided, however, that SCEA shall not manufacture Licensed Products outside of the United States without the prior consent of Publisher. Publisher shall provide SCEA with official tax receipts or other such documentary evidence issued by the applicable tax authorities sufficient to substantiate that any such taxes or assessments have in fact been paid.

8.4 Rebate Programs. Publisher shall be eligible to participate in one of three rebate programs offered by SCEA: the Standard Rebate program, the Level 1 Rebate program, or the Level 2 Rebate program. If Publisher qualifies for such rebates as set forth herein, rebates shall be credited to Publisher's account as provided below:

Units Ordered	Standard	Level 1	Level 2
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]

8.4.1 Standard Rebate Program. All Publishers qualify for the Standard Rebate program. Rebates will be offered on an individual title basis. Rebates will be given to any individual Licensed Product that exceeds the above numbers of Units during the first year after first commercial shipment of such Licensed Product. The rebate in effect at the end of such year for the Licensed Product will remain in effect for as long as Publisher continues to sell such Licensed Product, but Publisher will not receive further rebates if sales of such Licensed Product hit additional thresholds as specified above after such year. The Standard Rebate may not be used in conjunction with a Third Party Demo Disc program or any promotional program of SCEA, with Licensed Products that qualify for any "Greatest Hits" program of SCEA or with Licensed Products that qualify for the [*].

8.4.2 Level 1 Rebate program: To be eligible for the Level 1 Rebate program, Publisher must ship over [*] Units of certain Licensed Products in a single Fiscal Year. Level 1 Rebates shall be credited to Publisher on an individual title basis. Other terms of the Level 1 Rebate are as follows:

(i) Only Publisher's titles (as determined below) that meet the following conditions shall count toward the [*] Unit threshold: Publisher must order at least [*] Units of the

[*] Confidential portion omitted and filed separately with the Commission

Licensed Product both within the first year of commercial release of such Licensed Product and during the qualifying Fiscal Year.

(ii) Any Licensed Products, including "Greatest Hits" titles and products for the original PlayStation game console, but excluding all demo discs, shall count toward the [*] Unit threshold (provided they meet the conditions set forth in Section 8.4.2(i) above). For purposes of determining Level 1 Rebate thresholds and the conditions set forth in Section 8.4.2(i), full priced Licensed Products and "Greatest Hits" Licensed Products shall be considered separate Licensed Products, with separate Unit minimums and release dates.

(iii) Level 1 Rebates shall apply only to Licensed Products (not including "Greatest Hits" titles, Licensed Products qualifying for the [*] royalty and products for the original PlayStation game console) ordered in the Fiscal Year following the Fiscal Year in which the [*] Unit threshold is met. Units of Licensed Products that qualified Publisher for inclusion in the Level 1 Rebate program in the previous Fiscal Year shall not be entitled to receive the Level 1 Rebate.

(iv) Publisher must re-qualify for the Level 1 Rebate Program each Fiscal Year. If a Publisher fails to requalify for any Fiscal Year, then the Standard Rebate shall apply in such Fiscal Year. The first Fiscal Year for which a Publisher may qualify for the Level 1 Rebate shall be the Fiscal Year ending March 31, 2000, and if the Publisher qualifies for the Level 1 Rebate, it will apply to Licensed Products ordered in the Fiscal Year commencing April 1, 2000.

(v) Licensed Products eligible for the Level 1 Rebate program shall not be eligible for Standard Rebates, and Level 1 Rebates shall supersede Standard Rebates with respect to any individual Licensed Product. If a Licensed Product qualifies for the Standard Rebate in one Fiscal Year, and Publisher qualifies for the Level 1 Rebate in the next Fiscal Year, Units of such Licensed Product ordered in the next Fiscal Year will receive the Level 1 Rebate commencing on April 1 of the next Fiscal Year going forward, but such Level 1 Rebate will not be credited retroactively to Units of the Licensed Product ordered in the previous Fiscal Year. For example, Publisher orders [*] Units of Product X in Fiscal Year 2001, receiving a Standard Rebate of [*]. Publisher qualifies for the Level 1 Rebate in Fiscal Year 2002. Publisher will receive the Level 1 Rebate of [*] commencing with Units ordered on April 1, 2001, but will not receive a retroactive credit for Units ordered prior to April 1, 2001. When Publisher reaches the [*] Unit threshold, it will receive a retroactive credit of [*] on all Level 1 Rebate Units ordered, as well as a retroactive credit of [*] on Standard Rebate Units ordered in the previous Fiscal Year, and Publisher will receive the Level 1 Rebate of [*] going forward.

8.4.3 Level 2 Rebate Program: To be eligible for the Level 2 Rebate program, Publisher must ship over [*] Units of certain Licensed Products in any Fiscal Year. Level 2 Rebates shall be credited to Publisher on an individual title basis. Other terms of the Level 2 Rebate are as follows:

(i) Only Publisher's titles (as determined below) that meet the following conditions shall count toward the [*]. Unit threshold: Publisher must order at least [*] Units of the Licensed Product both within the first year of commercial release of such Licensed Product and during the qualifying Fiscal Year.

(ii) Any Licensed Products, including "Greatest Hits" titles and products for the original PlayStation game console, but excluding all demo discs, shall count toward the [*] Unit threshold (provided they meet the conditions set forth in Section 8.4.3(i) above). For purposes of determining Level 2 Rebate thresholds and the conditions set forth in Section 8.4.2(i), full priced Licensed Products and "Greatest Hits" Licensed Products shall be considered separate Licensed Products, with separate Unit minimums and release dates.

(iii) Level 2 Rebates shall apply only to Licensed Products (not including "Greatest Hits" titles, Licensed Products qualifying for the [*] royalty and products for the original PlayStation game console) ordered in the Fiscal Year following the Fiscal Year in which the [*] Unit threshold is met. Units of Licensed Products that qualified Publisher for inclusion in the Level 2 Rebate program in the previous Fiscal Year shall not be entitled to receive the Level 2 Rebate.

(iv) Publisher must re-qualify for the Level 2 Rebate Program each Fiscal Year. If Publisher fails to requalify for any Fiscal Year then the Standard Rebate or Level 1 Rebate, as the case may be, shall apply in such Fiscal Year. The first Fiscal Year for which a Publisher may qualify for the Level 2 Rebate shall be the Fiscal Year ending March 31, 2000, and if the Publisher qualifies for the Level 2 Rebate, it will apply to Licensed Products ordered in the Fiscal Year commencing April 1, 2000.

(v) Licensed Products eligible for the Level 2 Rebate program shall not be eligible for Standard Rebates or Level 1 Rebates, and Level 2 Rebates shall supersede Standard Rebates and Level 1 Rebates with respect to any individual

Licensed Product. If a Licensed Product qualifies for the Standard Rebate or Level 1 Rebate in one Fiscal Year, and Publisher qualifies for the Level 2 Rebate in the next Fiscal Year, Units of such Licensed Product ordered in the next Fiscal Year will receive the Level 2 Rebate going forward, but such Level 2 Rebate will not be credited retroactively to Units of the Licensed Product ordered in the previous Fiscal Year. See Section 8.4.2(v) for an example.

[*] Confidential portion omitted and filed separately with the Commission

8.5 Calculation and Use of Rebates. Rebate percentages for all rebate programs shall be credited against royalties owed SCEA and shall have no other monetary value. All rebates, whether under the Standard Rebate, Level 1 Rebate or Level 2 Rebate Programs shall be issued by SCEA as a credit to Publisher for use against future royalty payments. It is Publisher's responsibility to inform SCEA when it reaches any rebate threshold. In no event shall Publisher take a deduction off royalties owed SCEA or deduction off an invoice payable to SCEA on current production unless and until SCEA issues a credit to Publisher in writing or unless otherwise agreed in writing. From time to time SCEA may allow Publisher to use credits in other manners on terms and conditions to be determined by SCEA. Publisher may use rebate credits to procure Development Tools. Units of Licensed Products shall be considered "ordered" when Units first begin to ship from a Designated Manufacturing Facility.

8.6 Rebate Credits. Subject to Sections 8.4.2(v) and 8.4.3(v), all rebate programs are [*], such that Publisher receives a credit for each rebate percentage against [*] Units when it reaches the Unit threshold for the next rebate percentage. SCEA shall credit Publisher's account with respect to [*] rebates as follows: (A) if Publisher's initial order for a Licensed Product is less than any rebate threshold provided above, then SCEA shall [*] credit Publisher's account sixty (60) days following the date that Publisher notifies SCEA that orders of a Licensed Product exceed any rebate threshold, subject to SCEA's right to confirm such information; and (B) if Publisher's initial order for a Licensed Product reaches or exceeds any rebate threshold provided above, then Publisher may credit the rebate amount set forth above as a separate line item on the Purchase Order with respect to such Licensed Product, subject to SCEA's confirmation right.

9. Representations and Warranties.

9.1 Representations and Warranties of SCEA. SCEA represents and warrants solely for the benefit of Publisher that SCEA has the right, power and authority to enter into this Agreement and to fully perform its obligations hereunder.

9.2 Representations and Warranties of Publisher. Publisher represents and warrants that:

(i) There is no threatened or pending action, suit, claim or proceeding alleging that the use by Publisher of all or any part of the Product Software, Product Proposals, Product Information, Printed Materials, Advertising Materials or any underlying work or content embodied therein, or any name, designation or trademark used in conjunction with the Licensed Products infringes or otherwise violates any Intellectual Property Right or other right or interest of any kind whatsoever of any third party, or otherwise contesting any right, title or interest of Publisher in or to the Product Software, Product Proposals, Product Information, Printed Materials, Advertising Materials or any underlying work or content embodied therein, or any name, designation or trademark used in conjunction with the Licensed Products;

(ii) The Product Software, Product Proposals, Product Information, Printed Materials and Advertising Materials and their contemplated use under this Agreement do not and shall not infringe any person's or entity's rights including without limitation, patents, copyrights (including rights in a joint work), trademarks, trade dress, trade secret, rights of publicity, privacy, performance, moral rights, literary rights and any other third party right;

(iii) Publisher has the right, power and authority to enter into this Agreement, to grant SCEA the rights granted hereunder and to fully perform its obligations hereunder;

(iv) The making of this Agreement by Publisher does not violate any separate agreement, rights or obligations existing between Publisher and any other person or entity, and, throughout the term of this Agreement, Publisher shall not make any separate agreement with any person or entity that is inconsistent with any of the provisions of this Agreement;

(v) Publisher has not sold, assigned, leased, licensed or in any other way disposed of or encumbered the rights granted to Publisher hereunder, and Publisher will not sell, assign, lease, license or in any other way dispose of or encumber any of such rights except as expressly permitted hereunder or as consented to by SCEA in writing;

(vi) Publisher has obtained the consent of all holders of intellectual property rights required to be obtained in connection with use of any Product Information by SCEA as licensed hereunder, and Product Information when provided to SCEA in accordance with the terms of this Agreement may be published, marketed, distributed and sold by SCEA in accordance with the terms and conditions of this Agreement and without SCEA incurring any royalty, residual, union, guild or other fees;

(vii) Publisher shall not make any representation or give any warranty to any person or entity expressly or implicitly on SCEA's behalf, or to the effect that the Licensed Products are connected in any way with SCEA (other than

that the Executable Software and/or Licensed Products have been developed, marketed, sold and/or distributed under license from SCEA);

(viii) In the event that Executable Software is delivered to other Licensed Publishers or Licensed Developers by Publisher in source code form, Publisher will take all precautions consistent with the protection of

[*] Confidential portion omitted and filed separately with the Commission

valuable trade secrets by companies in high technology industries to ensure the confidentiality of such source code;

(ix) The Executable Software and any Product Information delivered to SCEA shall be in a commercially acceptable form, free of significant bugs, defects, time bombs or viruses which could disrupt, delay, destroy the Executable Software or System or render either of them less than fully useful, and shall be fully compatible with the System and any peripherals listed on the Printed Materials as compatible with the Licensed Product;

(x) Each of the Licensed Products, Executable Software, Printed Materials and Advertising Materials shall be developed, marketed, sold and distributed by or at the direction of Publisher in an ethical manner and in full compliance with all applicable federal, state, provincial, local and foreign laws and any regulations and standards promulgated thereunder (including but not limited to federal and state lottery laws as currently interpreted and enforced) and will not contain any obscene or defamatory matter;

(xi) Publisher's policies and practices with respect to the development, marketing, sale, and/or distribution of the Licensed Products shall in no manner reflect adversely upon the name, reputation or goodwill of SCEA;

(xii) Publisher has, or will contract with a Licensed Developer for, the technical expertise and resources necessary to fulfill its obligations under this Agreement; and

(xiii) Publisher shall make no false, misleading or inconsistent representations or claims with respect to any Licensed Products, the System or SCEA.

10. Indemnities; Limited Liability.

10.1 Indemnification by SCEA. SCEA shall indemnify and hold Publisher harmless from and against any and all third party claims, losses, liabilities, damages, expenses and costs, including, without limitation, reasonable fees for attorneys, expert witnesses and litigation costs, and including costs incurred in the settlement or avoidance of any such claim which result from or are in connection with a breach of any of the representations or warranties provided by SCEA herein; provided, however, that Publisher shall give prompt written notice to SCEA of the assertion of any such claim, and provided, further, that SCEA shall have the right to select counsel and control the defense and settlement thereof. SCEA shall have the exclusive right, at its discretion, to commence and prosecute at its own expense any lawsuit or to take such other action with respect to such matters as shall be deemed appropriate by SCEA. Publisher shall provide SCEA, at no expense to Publisher, reasonable assistance and cooperation concerning any such matter; and Publisher shall not agree to the settlement of any such claim, action or proceeding without SCEA's prior written consent.

10.2 Indemnification By Publisher. Publisher shall indemnify and hold SCEA harmless from and against any and all claims, losses, liabilities, damages, expenses and costs, including, without limitation, reasonable fees for attorneys, expert witnesses and litigation costs, and including costs incurred in the settlement or avoidance of any such claim, which result from or are in connection with (i) a breach of any of the provisions of this Agreement; or (ii) infringement of a third party's intellectual property rights by Publisher; or (iii) any claims of or in connection with any personal or bodily injury (including death) or property damage, by whomever such claim is made, arising out of, in whole or in part, the development, marketing, sale, distribution and/or use of any of the Licensed Products (or portions thereof) unless due directly to the breach of SCEA in performing any of the specific duties and/or providing any of the specific services required of it hereunder, or (iv) any federal, state or foreign civil or criminal actions relating to the development, marketing, sale and/or distribution of Licensed Products. SCEA shall give prompt written notice to Publisher of the assertion of any such indemnified claim, and, with respect to third party claims, actions or proceedings against SCEA, SCEA shall have the right to select counsel for SCEA and reasonably control the defense and/or settlement thereof. Subject to the above, Publisher shall have the right, at its discretion, to select its own counsel, to commence and prosecute at its own expense any lawsuit, to reasonably control the defense and/or settlement thereof or to take such other action with respect to claims, actions or proceedings by or against Publisher. SCEA shall retain the right to approve any settlement. SCEA shall provide Publisher, at no expense to SCEA, reasonable assistance and cooperation concerning any such matter; and SCEA shall not agree to the settlement of any such claim, action or proceeding (other than third party claims, actions or proceedings against SCEA) without Publisher's prior written consent.

10.3 LIMITATION OF LIABILITY.

10.3.1 LIMITATION OF SCEA'S LIABILITY. IN NO EVENT SHALL SCEA OR OTHER SONY AFFILIATES AND THEIR SUPPLIERS, OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS BE LIABLE FOR LOSS OF PROFITS, OR ANY SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF, RELATING TO OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE BREACH OF THIS AGREEMENT

BY SCEA, THE MANUFACTURE OF THE LICENSED PRODUCTS AND THE USE OF THE LICENSED PRODUCTS, EXECUTABLE SOFTWARE AND/OR THE SYSTEM BY PUBLISHER OR ANY END-USER, WHETHER UNDER THEORY OF CONTRACT, TORT

(INCLUDING NEGLIGENCE), INDEMNITY, PRODUCT LIABILITY OR OTHERWISE. IN NO EVENT SHALL SCEA'S LIABILITY ARISING UNDER, RELATING TO OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY LIABILITY FOR DIRECT OR INDIRECT DAMAGES, AND INCLUDING WITHOUT LIMITATION ANY LIABILITY UNDER SECTION 10.1 HERETO, EXCEED THE TOTAL AMOUNT PAID BY PUBLISHER TO SCEA UNDER THIS AGREEMENT. EXCEPT AS EXPRESSLY SET FORTH HEREIN, NEITHER SCEA NOR ANY SONY AFFILIATE, NOR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS, SHALL BEAR ANY RISK, OR HAVE ANY RESPONSIBILITY OR LIABILITY, OF ANY KIND TO PUBLISHER OR TO ANY THIRD PARTIES WITH RESPECT TO THE QUALITY, OPERATION AND/OR PERFORMANCE OF ANY PORTION OF THE SONY MATERIALS, THE SYSTEM OR ANY LICENSED PRODUCT.

10.3.2 LIMITATION OF PUBLISHER'S LIABILITY. IN NO EVENT SHALL PUBLISHER OR ITS AFFILIATED COMPANIES AND THEIR SUPPLIERS, OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS BE LIABLE TO SCEA FOR ANY LOSS OF PROFITS, OR ANY SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF, RELATED TO OR IN CONNECTION WITH (i) THIS AGREEMENT OR (ii) THE USE OR DISTRIBUTION IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT OF ANY CODE PROVIDED BY SCEA, IN WHOLE OR IN PART, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), INDEMNITY, PRODUCT LIABILITY OR OTHERWISE, PROVIDED THAT SUCH LIMITATIONS SHALL NOT APPLY TO DAMAGES RESULTING FROM PUBLISHER'S BREACH OF SECTIONS 4, 10.2, 11 OR 13 OF THIS AGREEMENT, AND PROVIDED FURTHER THAT SUCH LIMITATIONS SHALL NOT APPLY TO AMOUNTS WHICH PUBLISHER MAY BE REQUIRED TO PAY TO THIRD PARTIES UNDER SECTIONS 10.2 OR 16.10.

10.4 DISCLAIMER OF WARRANTY. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, NEITHER SCEA NOR ITS AFFILIATES AND SUPPLIERS MAKE, NOR DOES PUBLISHER RECEIVE, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SONY MATERIALS, SCEA'S CONFIDENTIAL INFORMATION THE SYSTEM, THE UNITS OF THE LICENSED PRODUCTS MANUFACTURED HEREUNDER AND/OR PUBLISHER'S PRODUCT INFORMATION INCLUDED ON SCEA DEMO DISCS. SCEA SHALL NOT BE LIABLE FOR ANY INJURY, LOSS OR DAMAGE, DIRECT, INDIRECT OR CONSEQUENTIAL, ARISING OUT OF THE USE OR INABILITY TO USE ANY UNITS AND/OR ANY SOFTWARE ERRORS AND/OR "BUGS" IN PUBLISHER'S PRODUCT INFORMATION WHICH MAY BE REPRODUCED ON SCEA DEMO DISCS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SCEA AND ITS AFFILIATES AND SUPPLIERS EXPRESSLY DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THEIR EQUIVALENTS UNDER THE LAWS OF ANY JURISDICTION, REGARDING THE SONY MATERIALS, SCEA'S CONFIDENTIAL INFORMATION, LICENSED PRODUCTS, SCEA DEMO DISCS AND THE SYSTEM. ANY WARRANTY AGAINST INFRINGEMENT THAT MAY BE PROVIDED IN SECTION 2-312(3) OF THE UNIFORM COMMERCIAL CODE AND/OR IN ANY OTHER COMPARABLE STATUTE IS EXPRESSLY DISCLAIMED.

11. SCEA Intellectual Property Rights.

11.1 Licensed Trademarks. The Licensed Trademarks and the goodwill associated therewith are and shall be the exclusive property of SCEA or Affiliates of SCEA. Nothing herein shall give Publisher any right, title or interest in or to any of the Licensed Trademarks or any other trademarks of SCEA, other than the non-exclusive license provided herein. Publisher shall not do or cause to be done any act or thing in any way impairing or tending to impair or dilute any of SCEA's rights, title or interests in or to any of the Licensed Trademarks or any other trademarks of SCEA, nor shall Publisher register any trademark in its own name or in the name of any other person or entity, or obtain rights to employ Internet domain names of addresses, which are similar to or are likely to be confused with any of the Licensed Trademarks or any other trademarks of SCEA.

11.2 License of Sony Materials and System. All rights with respect to the Sony Materials and System, including, without limitation, all of SCEA Intellectual Property Rights therein, are and shall be the exclusive property of SCEA or Affiliates of SCEA. Nothing herein shall give Publisher any right, title or interest in or to the Sony Materials or the System (or any portion thereof), other than the non-exclusive license provided herein. Publisher shall not do or cause to be done any act or thing in any way impairing or tending to impair any of SCEA's rights, title or interests in or to the Sony Materials or the System (or any portion thereof).

12. Infringement of SCEA Intellectual Property Rights By Third Parties.

In the event that Publisher discovers or otherwise becomes aware that any of the SCEA Intellectual Property Rights have been or are being infringed upon by any third party, then Publisher shall promptly notify SCEA. SCEA shall have the sole right, in its discretion, to institute and prosecute lawsuits against third parties for such infringement of SCEA Intellectual Property Rights. Any lawsuit shall be prosecuted solely at the cost and expense of SCEA and all sums recovered in any such lawsuits, whether by judgment, settlement or otherwise shall belong solely to SCEA. Upon request of SCEA, Publisher shall execute all papers, testify on all matters and otherwise cooperate in every way necessary and desirable for the prosecution of any such lawsuit. SCEA shall reimburse Publisher for the reasonable expenses incurred as a result of such cooperation, but unless authorized by other provisions of this Agreement, not costs and expenses attributable to the conduct of a cross-claim or third party action.

13. Confidentiality.

13.1 SCEA's Confidential Information.

13.1.1 Definition of SCEA's Confidential Information. "SCEA's Confidential Information" shall mean:

(i) the System, Sony Materials and Development Tools;

(ii) other documents and materials developed, owned, licensed or under the control of Sony, including all processes, data, hardware, software, inventions, trade secrets, ideas, creations, improvements, designs, discoveries, developments, research and know-how, including without limitation the SourceBook 2 and SCEA Intellectual Property Rights relating to the System, Sony Materials or Development Tools; and

(iii) information and documents regarding SCEA's finances, business, marketing and technical plans, business methods and production plans.

SCEA's Confidential Information may consist of information in any medium, whether oral, printed, in machine-readable form or otherwise, including information apprised to Publisher and reduced to tangible or written form at any time during the term of this Agreement. In addition, the existence of a relationship between Publisher and SCEA for the purposes set forth herein shall be deemed to be SCEA's Confidential Information unless otherwise agreed to in writing by the parties or until publicly announced by SCEA.

13.1.2 Term of Protection of SCEA's Confidential Information. The term for the protection of SCEA's Confidential Information shall commence on the Effective Date first above written and shall continue in full force and effect as long as any of SCEA's Confidential Information continues to be maintained as confidential and proprietary by SCEA and/or Sony. During such term, Publisher shall, pursuant to Section 13.1.3 below, safeguard and hold in trust and confidence and not disclose or use (except for the purposes herein specified) any and all of SCEA's Confidential Information.

13.1.3 Preservation of SCEA's Confidential Information. Publisher shall, with respect to SCEA's Confidential Information:

(i) not disclose SCEA's Confidential Information to any person or entity, other than those employees or directors of the Publisher whose duties justify a "need-to-know" and who have executed a confidentiality agreement in which such employees or directors have agreed not to disclose and to hold confidential all confidential information and materials (inclusive of those of third parties) which may be disclosed to them or to which they may have access during the course of their duties. At SCEA's request, Publisher shall provide SCEA with a copy of such confidentiality agreement between Publisher and its employees or directors, and shall also provide SCEA with a list of employee and director signatories. Publisher shall not disclose any of SCEA's Confidential Information to third parties, including without limitation to consultants or agents. Any employees or directors who obtain access to SCEA's Confidential Information shall be advised by Publisher of the confidential nature of SCEA's Confidential Information, and Publisher shall be responsible for any breach of this Agreement by its employees or directors.

(ii) take all measures necessary to safeguard SCEA's Confidential Information in order to avoid disclosure, publication, or dissemination, using as high a degree of care and scrutiny, but at least reasonable care, as is consistent with the protection of valuable trade secrets by companies in high technology industries.

(iii) ensure that all written materials relating to or containing SCEA's Confidential Information be maintained in a restricted access area and plainly marked to indicate the secret and confidential nature thereof.

(iv) at SCEA's request, return promptly to SCEA any and all portions of SCEA's Confidential Information, together with all copies thereof.

(v) not use, modify, reproduce, sublicense, copy, distribute, create derivative works from, or otherwise provide to third parties, SCEA's Confidential Information, or any portion thereof, except as provided herein, nor shall Publisher remove any proprietary legend set forth on or contained within any of SCEA's Confidential Information.

13.1.4 Exceptions. The foregoing restrictions shall not apply to any portion of SCEA's Confidential Information which:

(i) was previously known to Publisher without restriction on disclosure or use, as proven by written documentation of Publisher; or

(ii) is or legitimately becomes part of the public domain through no fault of Publisher or its employees; or

(iii) is independently developed by Publisher's employees who have not had access to SCEA's Confidential Information, as proven by written documentation of Publisher; or

(iv) is required to be disclosed by administrative or judicial action; provided that Publisher must attempt to maintain the confidentiality of SCEA's Confidential Information by asserting in such action the restrictions set forth in this Agreement, and, immediately after receiving notice of such action or any notice of any threatened action, Publisher must notify SCEA to give SCEA the maximum opportunity to seek any other legal remedies to maintain such SCEA's Confidential Information in confidence as herein provided; or

(v) is approved for release by written authorization of SCEA.

13.1.5 No Obligation to License. Disclosure of SCEA's Confidential Information to Publisher shall not constitute any option, grant or license from SCEA to Publisher under any patent or other SCEA Intellectual Property Rights now or hereinafter held by SCEA. The disclosure by SCEA to Publisher of SCEA's Confidential Information hereunder shall not result in any obligation on the part of SCEA to approve any materials of Publisher hereunder or otherwise, nor shall such disclosure by SCEA give Publisher any right to, directly or indirectly, develop, manufacture or sell any product derived from or which uses any of SCEA's Confidential Information, other than as expressly set forth in this Agreement.

13.1.6 Publisher's Obligations Upon Unauthorized Disclosure. If at any time Publisher becomes aware of any unauthorized duplication, access, use, possession or knowledge of any SCEA's Confidential Information, it shall notify SCEA as soon as reasonably practicable, and shall promptly act to recover any such information and prevent further breach of the confidentiality obligations herein. Publisher shall provide any and all reasonable assistance to SCEA to protect SCEA's proprietary rights in any of SCEA's Confidential Information that it or its employees or permitted subcontractors may have directly or indirectly disclosed or made available, and that may be duplicated, accessed, used, possessed or known in a manner or for a purpose not expressly authorized by this Agreement, including but not limited to enforcement of confidentiality agreements, commencement and prosecution in good faith (alone or with the disclosing party) of legal action, and reimbursement for all reasonable attorneys' fees, costs and expenses incurred by SCEA to protect its proprietary rights in SCEA's Confidential Information. Publisher shall take all steps requested by SCEA to prevent the recurrence of any unauthorized duplication, access, use, possession or knowledge of SCEA's Confidential Information. In addition, SCEA shall have the right to pursue any actions at law or in equity, including without limitation the remedies set forth in Section 16.10 hereto.

13.2 Publisher's Confidential Information.

13.2.1 Definition of Publisher's Confidential Information. "Publisher's Confidential Information" shall mean:

(i) any Product Software as provided to SCEA pursuant to this Agreement and all documentation and information relating thereto, including Product Proposals, Printed Materials and Advertising Materials (other than documentation and information intended for use by and release to end users, the general public or the trade);

(ii) other documents and materials developed, owned, licensed or under the control of Publisher, including all processes, data, hardware, software, inventions, trade secrets, ideas, creations, improvements, designs, discoveries, developments, research and know-how; and

(iii) information and documents regarding Publisher's finances, business, marketing and technical plans, business methods and production plans.

Publisher's Confidential Information may consist of information in any medium, whether oral, printed, in machine-readable form or otherwise, including information apprised to SCEA and reduced to tangible or written form at any time during the term of this Agreement.

13.2.2 Term of Protection of Publisher's Confidential Information. The term for the protection of Publisher's Confidential Information shall commence on the Effective Date first above written and shall continue in full force and effect as long as any of Publisher's Confidential Information continues to be maintained as confidential and proprietary by Publisher.

13.2.3. Preservation of Confidential Information of Publisher. SCEA shall, with respect to Publisher's Confidential Information:

(i) hold all Publisher's Confidential Information in confidence, and shall take all reasonable steps to preserve the confidentiality of Publisher's Confidential Information, and to prevent it from falling into the public domain or into

the possession of persons other than those persons to whom disclosure is authorized hereunder.

(ii) not disclose Publisher's Confidential Information to any person other than an SCEA employee or subcontractor who needs to know or have access to such Confidential Information for the purpose of this Agreement, and only to the extent necessary for such purposes.

(iii) ensure that all written materials relating to or containing Publisher's Confidential Information be maintained in a secure area and plainly marked to indicate the secret and confidential nature thereof.

(iv) at Publisher's request, return promptly to Publisher any and all portions of Publisher's Confidential Information, together with all copies thereof.

(v) not use Publisher's Confidential Information, or any portion thereof, except as provided herein, nor shall SCEA remove any proprietary legend set forth on or contained within any of Publisher's Confidential Information.

13.2.4 Exceptions. The foregoing restrictions will not apply to any portion of Publisher's Confidential Information which:

(i) was previously known to SCEA without restriction on disclosure or use, as proven by written documentation of SCEA; or

(ii) is or legitimately becomes part of information in the public domain through no fault of SCEA, its employees or its subcontractors; or

(iii) is independently developed by SCEA's employees or affiliates who have not had access to Publisher's Confidential Information, as proven by written documentation of SCEA; or

(iv) is required to be disclosed by administrative or judicial action; provided that SCEA attempted to maintain the confidentiality of Publisher's Confidential Information by asserting in such action the restrictions set forth in this Agreement, and immediately after receiving notice of such action, notified Publisher of such action to give Publisher the opportunity to seek any other legal remedies to maintain such Publisher's Confidential Information in confidence as herein provided; or

(vi) is approved for release by written authorization of Publisher.

13.2.5 SCEA's Obligations Upon Unauthorized Disclosure. If at any time SCEA becomes aware of any unauthorized duplication, access, use, possession or knowledge of any of Publisher's Confidential Information, it shall notify Publisher as soon as is reasonably practicable. SCEA shall provide any and all reasonable assistance to Publisher to protect Publisher's proprietary rights in any of Publisher's Confidential Information that it or its employees or permitted subcontractors may have directly or indirectly disclosed or made available and that may be duplicated, accessed, used, possessed or known in a manner or for a purpose not expressly authorized by this Agreement including but not limited to enforcement of confidentiality agreements, commencement and prosecution in good faith (alone or with the disclosing party) of legal action, and reimbursement for all reasonable attorney's fees, costs and expenses incurred by Publisher to protect its proprietary rights in Publisher's Confidential Information. SCEA shall take all reasonable steps requested by Publisher to prevent the recurrence of any unauthorized duplication, access, use, possession or knowledge of Publisher's Confidential Information.

13.3 Confidentiality of Agreement. The terms and conditions of this Agreement shall be treated as SCEA's Confidential Information and Publisher's Confidential Information; provided that each party may disclose the terms and conditions of this Agreement:

(i) to legal counsel;

(ii) in confidence, to accountants, banks and financing sources and their advisors;

(iii) in confidence, in connection with the enforcement of this Agreement or rights arising under or relating to this Agreement; and

(iv) if required, in the opinion of counsel, to file publicly or otherwise disclose the terms of this Agreement under applicable federal and/or state securities or other laws, the disclosing party shall be required to promptly notify the other party such that the other party has a reasonable opportunity to contest or limit the scope of such required disclosure, and the disclosing party shall request, and shall use its best efforts to obtain, confidential treatment for such sections of this Agreement as the other party may designate.

14. Terms and Termination.

14.1 Effective Date; Term. This Agreement shall not be binding on the parties until it has been signed by each party, in which event it shall be effective from the Effective Date until March 31, 2003, unless earlier terminated pursuant to Section 14.2. The term shall be automatically extended for additional one-year terms thereafter, unless either party provides the other with written notice of its election not to so extend on or before January 31 of the applicable year. Notwithstanding the foregoing the term for the protection of SCEA's Confidential Information and Publisher's Confidential

Information shall be as set forth in Sections 13.1.2 and 13.2.2 respectively.

14.2 Termination by SCEA. SCEA shall have the right to terminate this Agreement immediately, by providing written notice of such election to Publisher, upon the occurrence of any of the following:

(i) If Publisher breaches (A) any of its obligations hereunder; or (B) any other agreement entered into between SCEA or Affiliates of SCEA and Publisher.

(ii) The liquidation or dissolution of Publisher or a statement of intent by Publisher to no longer exercise any of the rights granted by SCEA to Publisher hereunder.

(iii) If during the term of this Agreement, a controlling interest in Publisher or in an entity which directly or indirectly has a controlling interest in Publisher is transferred to a party that (A) is in breach of any agreement with SCEA or an Affiliate of SCEA; (B) directly or indirectly holds or acquires a controlling interest in a third party which develops any interactive device or product which is directly or indirectly competitive with the System; or (C) is in litigation with SCEA or Affiliates of SCEA concerning any proprietary technology, trade secrets or other SCEA Intellectual Property Rights or SCEA's Confidential Information. As used in this Section 14.2, "controlling interest" means, with respect to any form of entity, sufficient power to control the decisions of such entity.

(iv) If during the term of this Agreement, Publisher or an entity that directly or indirectly has a controlling interest in Publisher enters into a business relationship with a third party with whom Publisher materially contributes to develop core components to an interactive device or product which is directly or indirectly competitive with the System.

Publisher shall immediately notify SCEA in writing in the event that any of the events or circumstances specified in this Section occur.

14.3 Product-by-Product Termination by SCEA. In addition to the events of termination described in Section 14.2 above, SCEA, at its option, shall be entitled to terminate, on a product-by-product basis, the licenses and related rights herein granted to Publisher in the event that (a) Publisher fails to notify SCEA promptly in writing of any material change to any materials previously approved by SCEA in accordance with Section 5 or 6.1 hereto, and such breach is not corrected or cured within thirty (30) days after receipt of written notice of such breach; (b) Publisher uses a third party that fails to comply with the requirements of Section 3 in connection with the development of any Licensed Product; (c) any third party with whom Publisher has contracted for the development of Executable Software breaches any of its material obligations to SCEA pursuant to such third party's agreement with SCEA with respect to such Licensed Product; or (d) Publisher cancels a Licensed Product or fails to provide SCEA in accordance with the provisions of Section 5 above, with the final version of the Executable Software for any Licensed Product within three (3) months of the scheduled release date according to the Product Proposal (unless a modified final delivery date has been agreed to by the parties), or fails to provide work in progress to SCEA in strict accordance with the Review Process in Section 5.3.

14.4 Options of SCEA in Lieu of Termination. As alternatives to terminating this Agreement or a particular Licensed Product as set forth in Sections 14.2 and 14.3 above, SCEA may, at its option and upon written notice to Publisher, take the following actions in lieu of terminating this Agreement. In the event that SCEA elects either of these options, Publisher may terminate this Agreement upon written notice to SCEA rather than allowing SCEA to exercise these options. Election of these options by SCEA shall not constitute a waiver of or compromise with respect to any of SCEA's rights under this Agreement and SCEA may elect to terminate this Agreement with respect to any breach.

14.4.1 Suspension of Agreement. SCEA may suspend this Agreement, entirely or with respect to a particular Licensed Product or program, for a set period of time which shall be specified in writing to Publisher upon the occurrence of any breach of this Agreement.

14.4.2 Liquidated Damages. Whereas a minor breach of any of the events set out below may not warrant termination of this Agreement, but will cause SCEA damages in amounts difficult to quantify, SCEA may require Publisher to pay liquidated damages of [*] per event as follows:

(i) Failure to submit Advertising Materials to SCEA for approval (including any required resubmission);

(ii) Broadcasting or publishing Advertising Materials without receiving the final approval or consent of SCEA;

(iii) Failure to make SCEA's requested revisions to Advertising Materials; or

(iv) Failure to comply with the SourceBook 2, Manufacturing Specifications or Guidelines which relates in any way to use of Licensed Trademarks.

Liquidated damages shall be invoiced separately or on Publisher's next invoice for Licensed Products. SCEA reserves the right to terminate this Agreement for breach in lieu of seeking liquidated damages or in the event that liquidated damages are unpaid.

[*] Confidential portion omitted and filed separately with the Commission

14.5 No Refunds. In the event of the termination of this Agreement in accordance with any of the provisions of Sections 14.2 through 14.4 above, no portion of any payments of any kind whatsoever previously provided to SCEA hereunder shall be owed or be repayable to Publisher.

15. Effect of Expiration or Termination.

15.1 Inventory Statement. Within thirty (30) days of the date of expiration or the effective date of termination with respect to any or all Licensed Products or this Agreement, Publisher shall provide SCEA with an itemized statement, certified to be accurate by an officer of Publisher, specifying the number of unsold Units of the Licensed Products as to which such termination applies, on a title-by-title basis, which remain in its inventory and/or under its control at the time of expiration or the effective date of termination. SCEA shall be entitled to conduct at its expense a physical inspection of Publisher's inventory and work in process upon reasonable written notice during normal business hours in order to ascertain or verify such inventory and inventory statement.

15.2 Reversion of Rights. Upon expiration or termination and subject to Section 15.3 below, the licenses and related rights herein granted to Publisher shall immediately revert to SCEA, and Publisher shall cease from any further use of SCEA's Confidential Information, Licensed Trademarks and Sony Materials and any SCEA Intellectual Property Rights therein, and, subject to the provisions of Section 15.3 below, Publisher shall have no further right to continue the development, publication, manufacture, marketing, sale or distribution of any Units of the Licensed Products, or to continue to use any Licensed Trademarks; provided, however, that for a period of one year after termination, and subject to all the terms of Section 13, and provided this Agreement is not terminated due to a breach or default of Publisher, Publisher may retain such portions of Sony Materials and SCEA's Confidential Information as SCEA in its sole discretion agrees are required to support end users of Licensed Products but must return these materials at the end of such one year period. Upon expiration or termination, the licenses and related rights herein granted to SCEA by Publisher shall immediately revert to Publisher, and SCEA shall cease from any further use of Product Information and any Publisher Intellectual Property Rights therein; provided that SCEA may continue the manufacture, marketing, sale or distribution of any SCEA Demo Discs containing Publisher's Product Information which Publisher had approved prior to termination.

15.3 Disposal of Unsold Units. Provided that this Agreement is not terminated due to a breach or default of Publisher, Publisher may, upon expiration or termination of this Agreement, sell off existing inventories of Licensed Products, on a non-exclusive basis, for a period of ninety (90) days from the date of expiration or termination of this Agreement, and provided such inventories have not been manufactured solely or principally for sale during such period. Subsequent to the expiration of such ninety (90) day period, or in the event this Agreement is terminated as a result of any breach or default of Publisher, any and all Units of the Licensed Products remaining in Publisher's inventory shall be destroyed by Publisher within five (5) business days of such expiration or termination. Within five (5) business days after such destruction, Publisher shall provide SCEA with an itemized statement, certified to be accurate by an officer of Publisher, indicating the number of Units of the Licensed Products which have been destroyed (on a title-by-title basis), the location and date of such destruction and the disposition of the remains of such destroyed materials.

15.4 Return of Sony Materials and Confidential Information. Upon the expiration or earlier termination of this Agreement, Publisher shall immediately deliver to SCEA, or if and to the extent requested by SCEA destroy, all Sony Materials and any and all copies thereof, and Publisher and SCEA shall, upon the request of the other party, immediately deliver to the other party, or if and to the extent requested by such party destroy, all Confidential Information of the other party, including any and all copies thereof, which the other party previously furnished to it in furtherance of this Agreement. Within five (5) working days after any such destruction, Publisher and/or SCEA, as appropriate, shall provide the other party with an affidavit of destruction and an itemized statement, each certified to be accurate by an officer of Publisher, indicating the number of copies and/or units of the Sony Materials and/or Confidential Information which have been destroyed, the location and date of such destruction and the disposition of the remains of such destroyed materials. In the event that Publisher fails to return the Sony Materials or Confidential Information and SCEA must resort to legal means (including without limitation any use of attorneys) to recover the Sony Materials or Confidential Information or the value thereof, all costs, including SCEA's reasonable attorney's fees, shall be borne by Publisher, and SCEA may, in addition to SCEA's other remedies, withhold such amounts from any payment otherwise due from SCEA to Publisher under any agreement between SCEA and Publisher.

15.5 Extension of this Agreement; Termination Without Prejudice. SCEA shall be under no obligation to extend this Agreement notwithstanding any actions taken by either of the parties prior to the expiration of this Agreement. Upon the expiration of this Agreement, neither party shall be liable to the other for any damages (whether direct, indirect, consequential or

incidental, and including, without limitation, any expenditures, loss of profits or prospective profits) sustained or arising out of or alleged to have been sustained or to have arisen out of such expiration. The expiration or termination of this Agreement shall be without prejudice to any rights or remedies which one party may otherwise have against the

other party, and shall not excuse either party from any such expiration or termination.

16. Miscellaneous Provisions.

16.1 Notices. All notices or other communications required or desired to be sent to either of the parties shall be in writing and shall be sent by registered or certified mail, postage prepaid, or sent by recognized international courier service, telegram or facsimile, with charges prepaid. The address for all notices or other communications required to be sent to SCEA or Publisher, respectively, shall be the mailing address stated in the preamble hereof, or such other address as may be provided by written notice from one party to the other on at least ten (10) days' prior written notice. Any such notice shall be effective upon the date of actual or tendered delivery, as confirmed by the sending party.

16.2 Audit Provisions. Publisher shall keep full, complete, and accurate books of account and records covering all transactions relating to this Agreement. Publisher shall preserve such books of account, records, documents, and material for a period of twenty-four (24) months after the expiration or earlier termination of this Agreement. Acceptance by SCEA of an accounting statement, purchase order, or payment hereunder will not preclude SCEA from challenging or questioning the accuracy thereof at a later time. In the event that SCEA reasonably believes that the Wholesale Price provided by Publisher with respect to any Licensed Product is not accurate, SCEA shall be entitled to request additional documentation from Publisher to support the listed Wholesale Price for such Licensed Product. In addition, during the Term and for a period of two (2) years thereafter and upon the giving of reasonable written notice to Publisher, representatives of SCEA shall have access to, and the right to make copies and summaries of, such portions of all of Publisher's books and records as pertain to the Licensed Products and any payments due or credits received hereunder. In the event that such inspection reveals an under-reporting of any payment due to SCEA, Publisher shall immediately pay SCEA such amount. In the event that any audit conducted by SCEA reveals that Publisher has under-reported any payment due to SCEA hereunder by [*] or more for that audit period, then in addition to the payment of the appropriate amount due to SCEA, Publisher shall reimburse SCEA for all reasonable audit costs for that audit and any and all collection costs to recover the unpaid amount.

16.3 Force Majeure. Neither SCEA nor Publisher shall be liable for any loss or damage or be deemed to be in breach of this Agreement if its failure to perform or failure to cure any of its obligations under this Agreement results from any event or circumstance beyond its reasonable control, including, without limitation, any natural disaster, fire, flood, earthquake or other Act of God; shortage of equipment, materials, supplies or transportation facilities; strike or other industrial dispute; war or rebellion; shutdown or delay in power, telephone or other essential service due to the failure of computer or communications equipment or otherwise; provided, however, that the party interfered with gives the other party written notice thereof promptly, and, in any event, within fifteen (15) business days of discovery of any such Force Majeure condition. If notice of the existence of any Force Majeure condition is provided within such period, the time for performance or cure shall be extended for a period equal to the duration of the Force Majeure event or circumstance described in such notice, except that any such cause shall not excuse the payment of any sums owed to SCEA prior to, during or after any such Force Majeure condition. In the event that the Force Majeure condition continues for more than sixty (60) days, SCEA may terminate this Agreement for cause by providing written notice to Publisher to such effect.

16.4 No Agency, Partnership or Joint Venture. The relationship between SCEA and Publisher, respectively, is that of licensor and licensee. Both parties are independent contractors and are not the legal representative, agent, joint venturer, partner or employee of the other party for any purpose whatsoever. Neither party has any right or authority to assume or create any obligations of any kind or to make any representation or warranty on behalf of the other party, whether express or implied, or to bind the other party in any respect whatsoever.

16.5 Assignment. SCEA has entered into this Agreement based upon the particular reputation, capabilities and experience of Publisher and its officers, directors and employees. Accordingly, Publisher may not assign this Agreement or any of its rights hereunder, nor delegate or otherwise transfer any of its obligations hereunder, to any third party unless the prior written consent of SCEA shall first be obtained. This Agreement shall not be assigned in contravention of Section 14.2 (iii). Any attempted or purported assignment, delegation or other such transfer, directly or indirectly, without the required consent of SCEA shall be void. Subject to the foregoing, this Agreement shall inure to the benefit of the parties and their respective successors and permitted assigns (other than under the conditions set forth in Section 14.2 (iii). SCEA shall have the right to assign any and all of its rights and obligations hereunder to any Sony affiliate(s).

16.6 Subcontractors. Publisher shall not sell, assign, delegate, subcontract, sublicense or otherwise transfer or encumber all or any portion of

the licenses herein granted without the prior written approval of SCEA, provided, however, that Publisher may retain those subcontractors who provide services which do not require access to Sony Materials or SCEA's Confidential Information without such prior approval. Publisher may retain those subcontractor(s) to assist with the development, publication and marketing of Licensed

[*] Confidential portion omitted and filed separately with the Commission

Products (or portions thereof) which have signed (i) an LPA or LDA with SCEA (the "PlayStation 2 Agreement") in full force and effect throughout the term of such development and marketing; or (ii) an SCEA-approved subcontractor agreement ("Subcontractor Agreement"); and SCEA has approved such subcontractor in writing, which approval shall be in SCEA's sole discretion. Such Subcontractor Agreement shall provide that SCEA is a third-party beneficiary of such Subcontractor Agreement and has the full right to bring any actions against such subcontractors to comply in all respects with the terms and conditions of this Agreement. Publisher shall provide a copy of any such Subcontractor Agreement to SCEA prior to and following execution thereof. Publisher shall not disclose to any subcontractor any of SCEA's Confidential Information, including, without limitation, any Sony Materials, unless and until either a PlayStation 2 Agreement or a Subcontractor Agreement has been executed and approved by SCEA. Notwithstanding any consent which may be granted by SCEA for Publisher to employ any such permitted subcontractor(s), or any such separate agreement(s) that may be entered into by Publisher with any such permitted subcontractor, Publisher shall remain fully liable for its compliance with all of the provisions of this Agreement and for the compliance of any and all permitted subcontractors with the provisions of any agreements entered into by such subcontractors in accordance with this Section. Publisher shall use its best efforts to cause its subcontractors retained in furtherance of this Agreement to comply in all respects with the terms and conditions of this Agreement, and hereby unconditionally guarantees all obligations of its subcontractors. SCEA may subcontract any of its rights or obligations hereunder.

16.7 Compliance with Applicable Laws. The parties shall at all times comply with all applicable regulations and orders of their respective countries and other controlling jurisdictions and all conventions and treaties to which their countries are a party or relating to or in any way affecting this Agreement and the performance by the parties of this Agreement. Each party, at its own expense, shall negotiate and obtain any approval, license or permit required in the performance of its obligations, and shall declare, record or take such steps to render this Agreement binding, including, without limitation, the recording of this Agreement with any appropriate governmental authorities (if required).

16.8 Governing Law; Consent to Jurisdiction. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, excluding that body of law related to choice of laws, and of the United States of America. Any action or proceeding brought to enforce the terms of this Agreement or to adjudicate any dispute arising hereunder shall be brought in the Superior Court of the County of San Mateo, State of California or the United States District Court for the Northern District of California. Each of the parties hereby submits itself to the exclusive jurisdiction and venue of such courts for purposes of any such action and agrees that any service of process may be effected by delivery of the summons in the manner provided in the delivery of notices set forth in Section 16.1 above. In addition, each party hereby waives the right to a jury trial in any action or proceeding related to this Agreement.

16.9 Legal Costs and Expenses. In the event it is necessary for either party to retain the services of an attorney or attorneys to enforce the terms of this Agreement or to file or defend any action arising out of this Agreement, then the prevailing party in any such action shall be entitled, in addition to any other rights and remedies available to it at law or in equity to recover from the other party its reasonable fees for attorneys and expert witnesses, plus such court costs and expenses as may be fixed by any court of competent jurisdiction. The term "prevailing party" for the purposes of this Section shall include a defendant who has by motion, judgment, verdict or dismissal by the court, successfully defended against any claim that has been asserted against it.

16.10 Remedies. Unless expressly set forth to the contrary, either party's election of any remedies provided for in this Agreement shall not be exclusive of any other remedies, and all such remedies shall be deemed to be cumulative. Any breach of Sections 3,4,5,6.1, 11 and 13 of this Agreement would cause significant and irreparable harm to SCEA, the extent of which would be difficult to ascertain. Accordingly, in addition to any other remedies including without limitation equitable relief to which SCEA may be entitled, in the event of a breach by Publisher or any of its employees or permitted subcontractors of any such Sections of this Agreement, SCEA shall be entitled to the immediate issuance without bond of ex parte injunctive relief or, if a bond is required under applicable law, on the posting of a bond in an amount not to exceed [*] enjoining any breach or threatened breach of any or all of such provisions. In addition, if Publisher fails to comply with any of its obligations as set forth herein, SCEA shall be entitled to an accounting and repayment of all forms of compensation, commissions, remuneration or benefits which Publisher directly or indirectly realizes as a result of or arising in connection with any such failure to comply. Such remedy shall be in addition to and not in limitation of any injunctive relief or other remedies to which SCEA may be entitled under this Agreement or otherwise at law or in equity. In addition, Publisher shall indemnify SCEA for all losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees and all reasonable related costs) which SCEA may sustain or incur as a result of any breach under this Agreement.

16.11 Severability. In the event that any provision of this Agreement (or portion thereof) is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable, such provision (or portion thereof) shall be enforced to the extent possible

[*] Confidential portion omitted and filed separately with the Commission

consistent with the stated intention of the parties, or, if incapable of such enforcement, shall be deemed to be deleted from this Agreement, while the remainder of this Agreement shall continue in full force and remain in effect according to its stated terms and conditions.

16.12 Sections Surviving Expiration or Termination. The following sections shall survive the expiration or earlier termination of this Agreement for any reason: 4, 5.8, 6.2, 6.4, 8, 9, 10, 11, 13, 14.5, 15, and 16.

16.13 Waiver. No failure or delay by either party in exercising any right, power or remedy under this Agreement shall operate as a waiver of any such right, power or remedy. No wavier of any provision of this Agreement shall be effective unless in writing and signed by the party against whom such wavier is sought to be enforced. Any waiver by either party of any provision of this Agreement shall not be construed as a waiver of any other provision of this Agreement, nor shall such waiver operate or be construed as a waiver of such provision respecting any future event or circumstance.

16.14 Modification and Amendment. No modification or amendment of any provision of this Agreement shall be effective unless in writing and signed by both of the parties. Notwithstanding the foregoing, SCEA reserves the right to modify the SourceBook 2 from time to time upon reasonable notice to Publisher.

16.15 Headings. The section headings used in this Agreement are intended primarily for reference and shall not by themselves determine the construction or interpretation of this Agreement or any portion hereof.

16.16 Integration. This Agreement, together with the SourceBook 2, constitutes the entire agreement between SCEA and Publisher and supersedes all prior or contemporaneous agreements, proposals, understandings and communications between SCEA and Publisher, whether oral or written, with respect to the subject matter hereof including any PlayStation 2 Confidentiality and Nondisclosure Agreement and Materials Loan Agreement between SCEA and Publisher.

16.17 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and together shall constitute one and the same instrument.

16.18 Construction. This Agreement shall be fairly interpreted in accordance with its terms and without any strict construction in favor of or against either of the parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first written above.

SONY COMPUTER ENTERTAINMENT AMERICA INC.

By: /s/ Phil Harrison

Phil Harrison
Vice President
Third Party Relations and
Research and Development
May 1, 2000
NOT A VALID AGREEMENT UNTIL
EXECUTED BY BOTH PARTIES

TAKE 2 INTERACTIVE SOFTWARE

By: /s/ Anthony R. Williams

Print Name: Anthony R. Williams
Title: Co-Chairman
Date: April 18, 2000

EXHIBIT 10.2

PUBLISHING AGREEMENT
(Equity Partners)

For

MAX PAYNE

By

And

Between

GATHERING OF DEVELOPERS I, LTD.

And

APOGEE SOFTWARE, LTD./3D REALMS

Effective May 8,1998

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GATHERING OF DEVELOPERS 1, LTD.

PUBLISHING AGREEMENT
(Equity Partners)

This Agreement (this "Agreement") is made this 29th day of March, 1999 and deemed effective as of May 8, 1998, by and between Gathering of Developers I, Ltd., a Texas limited partnership, having its principal place of business at 2700 Fairmount Street, Dallas, Texas 75201 ("Gathering"), and Apogee Software, Ltd./3D Realms, a Texas limited partnership, having its principal place of business at 3960 Broadway, Garland, Texas 75043 ("Developer").

WITNESSETH:

WHEREAS, Gathering is a publisher of interactive video games and related products; and

WHEREAS, Developer is a developer of interactive video games and related products as well as a limited partner in Gathering; and

WHEREAS, Gathering and Developer are parties to that certain Amended and Restated Agreement Regarding Rights to Computer Games executed in 1998, as amended (the "Rights Agreement"), pursuant to which Gathering has exercised its option to publish the video game and related products described herein; and

WHEREAS, pursuant to the Rights Agreement, upon exercise by Gathering of its option to publish a particular video game developed by or on behalf of Developer, the parties are to enter into a publishing agreement;

NOW, THEREFORE, in consideration of the premises, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of Gathering and Developer hereby agrees as follows:

ARTICLE 1
DEFINITIONS

When used in this Agreement, the terms in this Article 1 shall be defined as follows:

1.1 "Add-Ons" shall have the meaning assigned to such term in Section 2.3

1.2 "Advance Adjustment" shall have the meaning assigned to such term in Section 6.1.

1.3 "Alternative Sales" shall mean all methods or means pursuant to which the Game is sold by or on behalf of Gathering outside of the standard retail channels, as such term is used in accordance with prevailing industry standard. Alternative Sales shall include without limitation Online sales; direct sales via telephone, mail or fax; electronic delivery; shareware containing the encryption of the full version of the Game unlocks; bundling/OEM sales; specialty mail order catalogs; etc.

1.4 "Advance Royalty" shall have the meaning assigned to such term in Section 6.1.

1.5 "Alternative Sale Royalty" shall have the meaning assigned to such term in Section 6.2(a)(ii).

1.6 "Collateralized Units" shall have the meaning assigned to such term in Section 6.2(C).

1.7 "Confidential Information" shall have the meaning assigned to such term in Article 12.

1.8 "Beta Testing" shall have the meaning assigned to such term in Section 3.3.

1.9 "Defaulting Party" shall have the meaning as assigned to such term in Section 18.1.

1.10 "Deliverables" means the binary code for the Game together with Developer's notes, plans, artwork and any other documentation (including (i) the Manual Deliverables as set forth in Section 5.2; and (ii) other deliverables as set forth on the Development Schedule), media or other materials developed by or on behalf of Developer, in conjunction with the Game and which may be necessary or useful to Gathering in connection with the Use (as defined in Section 2.1) of the Game by or on behalf of Gathering.

1.11 "Derivative Work" means a work that is derived from the Game such that the Use thereof would infringe upon the intellectual property rights in the Game; provided, however, that a work shall not be deemed a Derivative Work solely because it uses a character or likeness included in the Game but owned by a party other than Developer.

1.12 "Developer Testing" shall have the meaning assigned to such term in Section 3.2.

1.13 "Development Schedule" means the planned schedule for the development of the Game and the Deliverables, Delivery Dates and milestones associated therewith, as agreed upon in writing by Gathering and Developer in accordance with Article 3.5, 3.6, and as more specifically outlined on the Development Schedule or, if applicable, Exhibit B hereto.

1.14 "Equity Developer" means a Developer that holds an equity interest in Gathering.

1.15 "Game Unit(s)" means the physical media by which the Game, or any Ports or Add-Ons related thereto, as the case may be, are distributed to consumers. Game Units include, but are not limited to, Game cartridges, tapes, CD ROMs, DVD ROMs, or any other media utilized for a particular Platform now or in the future.

1.16 "Game" means the electronic interactive computer software and/or video game developed by or on behalf of Developer, as more fully described on Exhibit A hereto, and any translations or portions thereof derived therefrom, and the underlying intellectual property, including, but not limited to, binary code, patents, trademarks, trade names, likenesses and licenses. For purposes of this Agreement, in the event that any Ports and/or Add-Ons derived from the Game are developed pursuant to Article 10 and published by or on behalf of Gathering, such Port and/or Add-On will be referred to herein as a "Game;" provided, however, that in the event that the terms of this Agreement conflict with the terms and conditions set forth in the Development Schedule, Marketing Plan and/or Marketing Budget for such Port or Add-On, as agreed upon by the parties hereto (collectively, the "New Plans"), the terms and conditions set forth in the New Plans shall control so that this Agreement and the New Plans are read together as one contract.

1.17 "Initial Wholesale Price" shall have the meaning assigned to such term in Section 6.6.

1.18 "Interest Rates" shall have the meaning assigned to such term in Section 7.3.

1.19 "Manual Deliverables" shall have the meaning assigned to such term in Section 5.2.

1.20 "Marketing Budget" shall have the meaning assigned to such term in Section 8.1(A).

1.21 "Manual" shall mean a document which describes in English the operation and functions of the Game and contains instructions related thereto. The Manual shall be written in a style reasonably calculated to be understood by an English reading end-user with reasonable computer experience and shall contain readable information sufficient to enable such end-user to use the Game as it was intended to be used.

1.22 "Net Revenues" shall have the meaning set forth in Sections 6.2(B), as the case may be.

1.23 "Non-Collateralized Units" shall have the meaning assigned to such term in Section 6.2(C).

1.24 "Non-Defaulting Party" shall have the meaning assigned to such term in Section 18.1.

1.25 "Platform" shall mean the hardware/software platform device on which Game Units are played, including but not limited to (i) personal computers (with each operating system, including, but not limited to, Windows(TM) and Macintosh(TM), constituting a Platform); (ii) game console platforms (including, but not limited to, Sega Genesis(TM), Sega Dreamcast(TM), Nintendo(TM) and Sony Playstation(TM); (iii) arcade machines (whether stand-alone, dedicated or networked); and (iv) any method whereby the Game is accessed and/or played over the Internet, cable or satellite distribution service. "Initial Platform" shall mean the Platform for which a Game is first developed.

1.26 "Port" means a modification of the Game so that it will run on a Platform other than the Initial Platform, including without limitation the creation of an "on-line" version of the Game to be played over the Internet.

1.27 "Reserve Basket" shall have the meaning assigned to such term in Section 6.5.

1.28 "Rights Agreement" shall have the meaning assigned to such term in the preamble of this Agreement.

1.29 "Royalty" shall have the meaning assigned to such term in Section 6.2(A).

1.30 "Standard Royalty" shall have the meaning assigned to such term in Section 6.2(A)(i).

1.31 "Translation" means a modification of the Game for play in a language other than English.

1.32 "Unapproved Deliverables" shall have the meaning assigned to such term in Section 3.4(A).

ARTICLE 2
LICENSES

2.1 Subject to the terms of this Agreement, Developer hereby grants to Gathering the exclusive worldwide right and license (including the right to sublicense) to, on its behalf or at its direction, use, reproduce, manufacture, package, Port, advertise, publish, market, modify, sell, distribute, bundle/OEM sales, and display (publicly or otherwise) (collectively, "Use") the Game and any Translations thereof and any Add-Ons related thereto for use on any Platform. The foregoing license includes the right and license to distribute the Game utilizing any Game Unit or via any method of distribution, electronic or otherwise, including, but not limited to dedicated machines, satellite, cable and the Internet.

2.2 Subject to the terms of this Agreement, Developer hereby grants to Gathering a nonexclusive, worldwide right and license (with right to sublicense) to utilize the copyrights, trademarks, patents and other proprietary information owned or licensed by Developer in connection with the Game.

2.3 Subject to the terms of this Agreement, Subject to the provisions of Article 10 hereof, Developer hereby grants to Gathering the exclusive, worldwide right and license (including right to sublicense) to develop, have developed, use, reproduce, manufacture, Port, package, market, publish, advertise, modify, sell, distribute and display add-ons, expansion packs, mission packs, level packs and/or edited levels (collectively, "Add-Ons") for, or related to the Game, as more fully described in Article 10; provided, however, that such Use must be, in accordance with the prior approval of Developer.

2.4 Subject to the terms of this Agreement, Developer hereby grants to Gathering the exclusive, worldwide right and license (including right to sublicense) to develop and Use the Manual Deliverables, as provided to Gathering by or on behalf of Developer pursuant to Section 5.2, in such a way as to create (including layout, printing, etc.) a Manual, or any translation thereof, to be used in conjunction with the Game; provided, however, that Developer shall have the right to approve the final version of the Manual, such approval not to be unreasonably withheld.

2.5 Subject to the terms of Agreement, Developer hereby grants to Gathering the rights as to merchandising, hint books and strategy guides as set forth in Article 11.

2.6 Subject to the terms of Agreement, Developer hereby grants to Gathering the exclusive, worldwide right and license (including right to sublicense) to Use, on its behalf or at its direction, a sequel to the Game in accordance with the terms and conditions of the most current, standard form of publishing agreement then used by Gathering with other game developers; provided, however, that the right to such sequel shall terminate on and must be exercised by Gathering by the later to occur of (a) the fifth (5th) anniversary of the execution date of the Rights Agreement; or (b) the third (3rd) anniversary of the actual release date of the Game. Notwithstanding anything to the contrary in this Section 2.6, Developer only grants to Gathering the rights set forth in this Section 2.6 for the initial sequel to Game referred to on Exhibit A to this Agreement, not any additional sequels thereto.

2.7 Notwithstanding Gathering's rights in Section 2.1 through 2.3, Developer reserves the following rights, which may be exercised in Developer's sole discretion:

(A) With Respect to Shareware.

(i) Developer may develop shareware versions of a Game and distribute such shareware versions, prior to and after the release of the Game, to end-users by non-retail shareware distribution through electronic distribution and distribution by magazine cover disk, shareware catalog and similar methods typical of the shareware industry; provided, however, that in no event shall (x) the shareware version distributed by Developer include more than 20% of the levels of the Game included on the Gold Master Version of the Game; and (y) such shareware shall be offered free of charge and result in no financial benefit to Developer or any other party.

(ii) In the event Developer wishes to bundle or undertake OEM sales of a shareware version of the Game, with respect to each bundling/OEM sales agreement of such shareware, Developer shall notify Gathering in writing of the terms and conditions regarding such opportunity. Gathering shall have ten (10) business days from receipt of such notice to either (i) agree to undertake the bundling/OEM sales of such shareware version as Alternative Sales, pursuant to the same terms and conditions as set forth in Developer's notice, or (ii) allow Developer on its own behalf to undertake the bundling/OEM sales of such shareware version in accordance with the terms and conditions as set forth in Developer's notice; provided, however, that such sales by Developer shall not cause Gathering (or any of its affiliates) to be in violation of any of its co-publishing or distribution agreements, including without limitation, any agreement between Gathering and Take Two Interactive Software, Inc. (or any of its affiliates).

(B) With Respect to Direct Sales by Developer.

(i) In addition to Gathering's rights to undertake, on its own behalf, client sales, in the event Developer wishes to market, distribute, license and sell the Game, Add-Ons and/or other products developed by Developer or Publisher pursuant to this Agreement, by direct mail distribution worldwide ("Direct Sales"), Developer shall notify Gathering in writing of its intent to undertake Direct Sales, and Gathering shall have ten (10) business days from receipt of such notice to either (y) undertake such Direct Sales on behalf of Developer as Alternative Sales (i.e., Developer, at its sole cost, shall undertake the advertising and marketing of the Direct Sales efforts and shall route all inquiries, responses, orders and/or payments in response thereto to Gathering, and Gathering shall sell the item via Alternative Sales; or (y) allow Developer to undertake such Direct Sales on its own behalf in accordance with the prices set forth in Section 2.7(B)(ii); provided, however, that such sales by Developer shall not cause Gathering (or any of its affiliates) to be in violation of any of its co-publishing or distribution agreements, including without limitation, any agreement between Gathering and Take Two Interactive Software, Inc. (or any of its affiliates).

(ii) In the event Gathering exercises its rights as set forth in Section 2.7(B)(i)(y), then upon written request and at Developer's sole, cost and expense, Gathering shall provide Developer with Units of such Game, Add-On or other product published by or on behalf of Gathering pursuant to this Agreement at Gathering's cost of goods sold plus $2.00 per Unit. In no event shall Direct Sales made by Developer in accordance with Section 2.7(B)(i)(y) or payments made to Gathering by Developer therefor be included in any Royalty or Alternative Sale Royalty calculations under this Agreement.

(C) With respect to any Game which contains a level editor, Gathering may distribute such level editor only on the same media with the Game as provided or approved by Developer. Gathering shall only authorize and sub-license end-users to create levels or Add-Ons for a Game using such level editor.

(D) No license is granted with respect to the Game engine by Developer other than in connection with the license to a Game, Port or Add-On hereunder.

2.8 No other rights, express or implied, are granted by one party to the other party other than the license rights specified in this Agreement,

ARTICLE 3
GAME DEVELOPMENT, TESTING AND ACCEPTANCE PROCEDURE

3.1 Developer will use reasonable commercial efforts to develop and finalize the Game pursuant to the delivery dates or milestones identified in the Development Schedule. If so requested by or on behalf of Gathering, Developer shall provide Gathering with a written monthly report summarizing the status of Game development which shall include information reasonably requested by Gathering, including without limitation a rolling forecast of the dates upon which the remaining milestones will be met by or on behalf of Developer. Developer shall provide to Gathering at any reasonable time, upon Gathering's request, demonstration materials for the Game to be used by or on behalf of Gathering for purposes of facilitating Gathering's Use of the Game pursuant to this Agreement.

3.2 Developer, at its sole cost and expense, shall conduct reasonable "bug testing" and "game play testing", specifically excluding translation errors, of each version of the Game, prior to such version being delivered to Gathering, and provide to Gathering, with delivery of such version of the Game, a written report of (a) any "bugs" or problems with the "game play" found during testing; (b) features known to be missing or inoperative from such version; and (c) a report of the number of hours spent testing the delivered version (the "Developer Testing"). Notwithstanding anything to the contrary in this Section 3.2, Developer may, in writing, request Gathering to conduct the Developer Testing on Developer's behalf. In the event that Gathering accepts Developer's request, such acceptance not to be unreasonably withheld, Gathering shall conduct, or have conducted, all reasonable Developer Testing and Developer shall, upon written request, repay any and all of Gathering's reasonable direct and indirect costs associated therewith to the extent that such costs exceed (i) Gathering's ordinary overhead and operating costs for the month immediately preceding such request, less (ii) any costs associated with Developer Testing that Gathering may, from time to time, undertake on behalf of other developers or for other games. In the event that Developer fails to repay Gathering for such costs, Gathering, at its sole discretion, may deduct an amount equal to such due and unpaid amount from any Royalty or other payments otherwise due Developer pursuant to this Agreement. .

3.3 Gathering shall reasonably test the Beta Version of the Game delivered to it by or on behalf of Developer for compatibility evaluation and, if requested in writing by Developer, may test the Beta Version of the Game for bugs (the "Beta Testing"). Gathering shall conduct reasonable compatibility evaluation of the Game at its sole cost and expense. If applicable and in the event the reasonable costs for the Beta Testing conducted by or do behalf of Gathering exceed Gathering's normal costs and expenses with respect to product support technicians and materials that Gathering may, from time to time, employ on a regular basis, Developer shall pay to Gathering an amount equal to such reasonable additional costs incurred by or on behalf of Gathering as are reasonably necessary to hire additional personnel or obtain additional equipment or services in accordance with prevailing market price to undertake the Beta Testing for the Game (the "Testing Costs").

3.4 (A) After delivery to Gathering by Developer of the Beta version or Gold Master version of the Game, as applicable (collectively "Unapproved Deliverables"), Gathering will have thirty (30) calendar days to examine and test such Unapproved Deliverable to determine whether it conforms to its specifications and whether it is, in Gathering's reasonable and sole judgment, complete and free from material error. Gathering will notify Developer of Gathering's acceptance or rejection of the Unapproved Deliverable and, in case of any rejection, will provide Developer with a reasonably detailed list of deficiencies in the Unapproved Deliverable. If Gathering fails to notify Developer of Gathering's acceptance or rejection within such period, Developer may request Gathering to provide it with written acceptance or rejection of such Unapproved Deliverable. If Gathering does not provide such written acceptance or rejection no later than ten (10) business days after receipt of Developer's request, such Unapproved Deliverable automatically will be deemed accepted.

(B) In the event of a rejection, Developer will use its good faith, best efforts to correct the deficiencies (including, without limitation, any material bugs and deficiencies that affect "game play" and/or compatibility) and will resubmit such Unapproved Deliverable, as corrected, within thirty (30) calendar days of Gathering's rejection. Gathering will either accept or reject the corrected Unapproved Deliverables in accordance with subparagraph 3.4(A). This procedure will continue until Gathering either accepts the Unapproved Deliverable or elects to terminate this Agreement pursuant to Section 18.3(A).

3.5 Upon execution of this Agreement, Gathering and Developer shall in good faith negotiate and agree in writing upon the Development Schedule for the Game which shall set forth, among other things, the planned schedule for the development of the Game and the Deliverables, Delivery Date and milestones associated therewith. In the event that Developer and Gathering cannot agree upon a Development Schedule on or before the sixth month following execution of this Agreement, the Default Game Development Schedule set forth in Exhibit B hereto shall automatically become the Development Schedule for purposes of this Agreement.

3.6 Notwithstanding anything to the contrary in this Agreement, with respect to the review and assessment of the Deliverables and Developer's compliance with the milestones set forth on the Development Schedule, the Board of Developers of Gathering shall review and determine the status/acceptability of the design document for the game (or similar materials) provided to Gathering by Developer, the Alpha version of the Game, the Beta version of the Game and the Gold Master version of the Game. The Executive Committee of Gathering's general partner, Gathering of Developer, Inc., shall review and determine the status/acceptability of the other Deliverables and Developer's compliance with the milestones set forth in the Development Schedule. In the event that the Executive Committee reasonably determines that the Board of Developer's input is required in order to adequately review or comment as to the status or acceptability of a Deliverable or Developer's compliance with a milestone, the Executive Committee may confer with the Board of Developer's with respect to such other milestones or Deliverable, as it deems necessary. Notwithstanding anything to the contrary in this Agreement, any person involved in the review of the Deliverables and/or Developer's compliance with milestones set forth in the Development Schedule shall be bound by the confidentiality provisions set forth in this Agreement.

ARTICLE 4
GATHERING DEVELOPMENT ASSISTANCE

4.1 Subject to Developer's payment of any applicable fee, as described below, Gathering will make available to Developer, on an as available basis, use of any sound recording facilities, motion capture studios, CAD tools, test or simulation equipment owned or operated by or on behalf of Gathering and made available generally to Equity Developers.

4.2 The fees to be paid by Developer, if any, for the assistance provided by or on behalf of Gathering pursuant to this Article 4 shall be as set by or on behalf of Gathering for all Equity Developers from time to time. Developer shall be primarily responsible for and shall indemnify, defend and hold harmless Gathering and its partners, directors, officers, employees, agents and/or contractors from and against any and all costs, damages, liabilities and expenses incurred by or on behalf of Gathering and resulting from Developer's use of facilities, other than normal wear and tear, provided by or on behalf of Gathering pursuant to Section 4.1.

4.3 Developer's access to the facilities and assistance listed in Section 4.1 shall be subject to the scheduling and reasonable restrictions on access as may be imposed by or on behalf of Gathering from time to time. Developer acknowledges that other parties may be contemporaneously utilizing Gathering's facilities and agrees to cooperate with Gathering in the scheduling of access to and use of Gathering's facilities.

4.4 Gathering shall provide product testing of the Game as set forth in Article 3.

ARTICLE 5
DELIVERABLES

5.1 Developer shall deliver to Gathering all Deliverables pursuant to the Development Schedule. Pursuant to Section 3.4, Developer shall promptly correct at its sole cost and expense any material bugs affecting Game play and/or other deficiencies identified by the testing of the Game and shall conduct at its sole expense any other reasonable rectification requested by or on behalf of Gathering, and promptly provide Gathering with the de-bugged, rectified version of the Game. For a period of one (1) year after first commercial sale of the Game, Developer shall continue to diligently fix, at its sole cost and expense, any bugs that materially affect the Game or "Game Play".

5.2 Developer, at its sole cost and expense, shall deliver on a timely basis to Gathering all reasonable and adequate text (unformatted) and any supporting pictures, screen shots, animes and other graphics (the "Manual Artwork") as may be reasonably requested, from time to time, by Gathering to be used by or on behalf of Gathering to create a manual that will be distributed in conjunction with the Game (the "Manual Deliverables"). Additionally, Developer shall have the option, but not the obligation, to create and provide to Gathering all of the printed advertising, final packaging of the Game and materials related thereto (the "Advertising Materials") as are necessary, as determined by Gathering, for Gathering to properly Use the Game; provided, however, that Developer (i) must notify Gathering of its election to create and provide all of such Advertising Materials not less than nine (9) months prior to the scheduled delivery (pursuant to the Development Schedule) of the Gold Master version of the Game, and (ii) deliver the Advertising Materials not less than sixty (60) days thereafter. If Developer does not timely (x) notify Gathering of its intent to create and supply the Advertising Materials, or (y) supply the Advertising Materials to Gathering pursuant to this Section, Developer shall be have deemed to have declined its option to provide such materials and Gathering shall have the sole right to provide the Advertising Materials, the format and content of which shall be subject to the approval of Developer, such approval not to be unreasonably withheld.

5.3 In the event that Developer fails to deliver a Deliverable referred to in this Agreement to Gathering on or before the Delivery Date specified for such Deliverable pursuant to the Development Schedule and Gathering or some other party has entered or enters into an obligation whereby Gathering, either directly or indirectly (e.g., via indemnification or contribution) will be fined, assessed, lose royalties or otherwise be financially punished as a result of the Deliverable not being delivered (collectively, the "Late Payments"), Gathering may, at its sole discretion, deduct the Late Payments from Net Revenues, as a Cost of Goods Sold. Gathering must provide Developer written notification of such Late Payments and of its intent to deduct them from Net Revenues as a Cost of Good Sold. Notwithstanding anything to the contrary in this Section, Gathering and Developer may, upon mutual written agreement, consent to change the Delivery Date for a Deliverable and waive any Late Payment deductions from Net Revenues. Unless otherwise agreed to in writing by the parties hereto, in the event that Developer fails to deliver to Gathering a Deliverable on or before a date which is sixty (60) days after the Delivery Date, Gathering may, until such Deliverable is delivered, exercise its rights under Section 18.3 with respect to undelivered Deliverables. Nothing in this Section shall be interpreted to limit in any way any other rights or remedies that Gathering may otherwise have pursuant to this Agreement.

ARTICLE 6
ADVANCE ROYALTY, ROYALTIES, SUBLICENSING FEES

6.1 Subject to the Advance Adjustment and approval by the Development Board of Gathering, Gathering shall pay to Developer a recoupable advance royalty in the amount of [*] (the "Advance Royalty"). Upon mutual agreement of the parties hereto and subject to the aforementioned approval, the Advance Royalty may be increased to the aggregate amount of [*] or decreased to the aggregate amount of [*] (the "Advance Adjustment"); provided, however, in no event may the Advance Adjustment occur later than sixty (60) days after the execution date of this Agreement without the prior written consent of Gathering, such consent to be given at the sole and absolute discretion of Gathering. Subject to the Advance Adjustment, the Advance Royalty shall be paid to the Developer as set forth in the Development Schedule.

*Confidential portion omitted and filed separately with the commission.

6.2 Upon commencement of distribution of the Game by or on behalf of Gathering (whether by sale of Game Units, by Alternative Sales or otherwise, but excluding shareware), Gathering shall pay the Royalty to Developer in accordance with the following:

(A) Subject to Sections 6.4 and 6.5,

(i) with respect to all sales of Game Units made through means other than Alternative Sales, Gathering shall pay to Developer a royalty calculated in accordance with Schedule I hereto based on Net Revenues actually received by Gathering as a direct result of the selling through of the Game Units through means other than Alternative Sales (the "Standard Royalty"). The Royalty shall be retroactive with regard to all Net Revenues actually received by Gathering as a direct result of the Game Units sold through; provided, however, that with respect to any retroactive increase of Royalties due to Developer on sales of past Game Units sold through by or on behalf of Gathering (the "Retroactive Royalty Payments"), such Retroactive Royalty Payments shall be paid to Developer by Gathering at a rate of [*] per month of the aggregate amount of the total Retroactive Royalty Payment due to Developer until such time as all Retroactive Royalty Payments due to Developer are paid in full.

(ii) with respect to all Game Units sold via Alternative Sales, Gathering shall pay to Developer a royalty of [*] of the Net Revenues actually received by Gathering as a direct result of the selling through of the Game Units via Alternative Sales (the "Alternative Sale Royalty").

For purposes of this Agreement, the Standard Royalty together with the Alternative Sale Royalty and any royalty due to Developer pursuant to Section 11.3 collectively shall be referred to herein as "Royalty" or "Royalties".

(B) With respect to all Game Units and other items sold through by or on behalf of Gathering pursuant to this Agreement, "Net Revenues" is defined as the total invoice amount for all Game Units (or other items) sold through, or the total license fees for all licenses of the Game (or other items) or other payments actually received by Gathering, less the Cost of Goods Sold paid on behalf of Gathering that Gathering must reimburse or actually paid or to be paid by Gathering for such Game Units (or other items). Gathering shall not accept consideration other than cash (e.g., stock, warrants or stock options) without the agreement of Developer as to the cash value of such consideration, such agreement not to be unreasonably withheld. For purposes of this Agreement, and subject to the terms of this Agreement, with respect to the Game (or other items), "Cost of Goods Sold" is defined as the aggregate costs of:

(i) direct manufacturing costs. Late Payments (if applicable), Manual costs and fulfillment;

(ii) shipping and freight;

(iii) distribution expenses in the case of Alternative Sales;

(iv) discounts and markdowns;

(v) bad credit, replacements not otherwise recovered from the Reserve Basket;

*Confidential portion omitted and filed separately with the commission.

(vi) applicable duties, value-added taxes and other taxes that may be incurred by or on behalf of Gathering as a result of sale, distribution and/or placement of the Game; and

(vii) manufacturing license fees due to platform manufacturers (i.e., Sony, Nintendo, etc.) and related costs, if any, incurred by or on behalf of Gathering.

(C) With respect to determining Net Revenue pursuant to this Section 6.2, for each Port, Platform and/or Add-On related to the Game and published by or on behalf of Gathering pursuant to this Agreement, the Net Revenues (i) from sales of Game Units made through means other than Alternative Sales and the Standard Royalty related thereto shall be cross-collateralized with respect to Game Units developed pursuant to this Agreement and sold through, by or on behalf of Gathering, for personal computer and/or Apple Macintosh systems (including Add-Ons, but not including sequels) (collectively, the "Collateralized Units"); and (ii) and the Royalty for Game Units other than the Collateralized Units shall be calculated and shall be determined independently of any other Ports, Platforms and/or Add-Ons related thereto published pursuant to this Agreement and the Net Revenues attributable thereto (collectively, the "Non-Collaterized Units"). Thus, the Net Revenues and Royalty shall start over at zero for each new Port, Platform or Add-On of a Non-Collateralized Unit that is published by or on behalf of Gathering pursuant to this Agreement when calculating the Royalty for such item.

6.3 Gathering shall be entitled to distribute [*] Game Units on a promotional basis without payment of any Royalty. Gathering will keep records of the number of Game Units so distributed and, upon written request, provide such information to Developer as part of any Royalty report.

6.4 Gathering may recoup the Advance Royalty as a credit against current Royalty payments at a rate not to exceed one hundred percent (100%) of any Royalty payment due to Developer pursuant to this Agreement.

6.5 Gathering may establish a reserve out of the Royalty payment to be paid to Developer for a calendar quarter (the "Reserve Basket"), which reserve shall be used to offset bad debts/credits, returns and replacements related to Game Unit sales or distributions for the previous calendar quarter. In no event shall the Reserve Basket exceed [*] of the Royalty otherwise due to Developer as a result of Game Units sold through during such previous calendar quarter. At the conclusion of each calendar quarter, any remaining portion of the funds in the Reserve Basket from the previous quarter's Royalties after application of funds in the Reserve Basket shall be paid to Developer by Gathering as and when the next Royalty payment is paid in accordance with Section 7.2.

6.6 Gathering shall determine the initial wholesale price at which each Game Unit shall be sold (the "Initial Wholesale Price"). Upon initial shipment of the Game and for a period of ninety (90) days thereafter, Gathering shall not discount or otherwise reduce the Initial Wholesale Price of a Game Unit without the prior written consent of Developer, such consent not to be unreasonably withheld; provided, however, that such restriction shall not apply to (i) OEM/bundling arrangements including Game Units or portions or levels thereof, (ii) Game Units used in marketing and/or direct sales conducted by or on behalf of Gathering or (iii) Game Units distributed pursuant to Section 6.3.

*Confidential portion omitted and filed separately with the commission.

ARTICLE 7
PAYMENTS, REPORTS

7.1 Gathering shall keep sufficient records of all sales and promotional distributions of Game Units in order to verify the payment of Royalties due hereunder, and shall furnish Developer with a report for each calendar quarter in which such Royalties accrue no later than forty-five (45) days following the end of such calendar quarter, setting forth with reasonable specificity the number of Game Units sold through, the Net Revenues attributable thereto, and a listing of all deductions and offsets from Royalties, whether due to recoupment of the Advance Royalty or otherwise.

7.2 Royalties on each Game Unit sold shall accrue when revenues therefor are actually received by Gathering, and shall be paid quarterly to Developer in the form of a check delivered within 45 days after the end of the quarter in respect of which such royalties are due, together with each quarterly report or in such other reasonable manner as Developer may, from time to time, request. Notwithstanding anything to the contrary in this Agreement, the payment of the Retroactive Royalty Payment shall be made to Developer by Gathering as set forth in Section 6.2(A)(i).

7.3 Any past due payments to be made by either party hereunder shall bear interest from the date due until the date paid at the lesser of (i) the prime lending rate as quoted by Citibank, N.A. of New York from time to time plus [*], or (ii) the maximum rate permitted by law (the "Interest Rate").

7.4 Gathering shall maintain the records upon which each quarterly Royalty report is based for at least three (3) years from the date of such report. Developer, at its sole cost, shall have the right to have a nationally recognized independent accounting firm audit such books and records upon reasonable advance notice in writing, but in no event more than once per year, and in no event may more than one audit be performed in respect of any one quarter. All of the books and records of Gathering and the information obtained therefrom shall be held by such auditors as Confidential Information of Gathering (as defined below), and may only be disclosed to Developer in summary form identifying the amount of any under- or over-payment. In the event it is determined that Gathering has underpaid Royalties to Developer, Gathering shall promptly remit the unpaid amounts to Developer together with interest thereon at the Interest Rate. In the event it is determined that Gathering has overpaid Royalties to Developer, Developer shall promptly remit the overpaid amounts to Gathering. If Developer does not object to the contents of a quarterly report and cause its auditors to commence an audit of such report during the aforementioned three (3) year period, such report shall be deemed final and determinative for all purposes.

*Confidential portion omitted and filed separately with the commission.

ARTICLE 8
MARKETING EFFORTS

8.1 (A) Gathering shall use reasonable efforts, in accordance with prevailing industry standards, to market and sell the Game and, in connection therewith, shall establish both a marketing plan (the "Marketing Plan") and a marketing budget (the "Marketing Budget") to market the Game Units for use on the personal computer Platform in the United States and Canada (including, without limitation, a market development fund for retail programs, etc.). The Marketing Budget shall not be less than [*]. The Marketing Plan shall contain, among other things, a specific timetable for expenditure of the Marketing Budget. The Marketing Plan shall be subject to the prior approval of Developer, such approval not to be unreasonably withheld. Notwithstanding anything to the contrary in this Section 8.1, the Marketing Budget shall only apply to the "Game", for purposes of Section 8.1 only, the term Game shall not include Ports, Platforms or Add-Ons. Each Port, Platform or Add-On shall have its own Development Schedule, Marketing Plan and Marketing Budget, as determined in accordance with Section 8.1 (B) and Article 10 of this Agreement.

(B) With respect to any Add-Ons developed pursuant to Article 10, Gathering shall use reasonable efforts, in accordance with prevailing industry standards, to market and sell such items and, in connection therewith, shall establish a marketing budget for each Add-On of no less than [*], to be spent in such a manner as Gathering shall deem appropriate to market units of such items for use on the personal computer Platform in the United States and Canada; provided, however, that the general marketing plans and strategies therefor employed by or on behalf of Gathering shall have the prior approval of Developer, such approval not to be unreasonably withheld.

(C) Notwithstanding anything to the contrary in the Agreement, with respect to different Ports of the Game developed pursuant to this Agreement, Gathering shall use reasonable efforts, in accordance with prevailing industry standard, to market and sell such Ports and, in connection therewith, shall establish a marketing budget that Gathering, in good faith, believes will enable it to appropriately market units of such Ports in the United States and Canada; provided, however, that the general marketing plans, strategies and budget for such Port(s) employed by or on behalf of Gathering shall have the prior approval of Developer, such approval not to be unreasonably withheld.

(D) Nothing in this Agreement will prevent Gathering from marketing any other work or product, whether or not similar to or competitive with the Game, the Manual or any Derivative Works; provided, however, that such work or product does not infringe upon any intellectual property rights of Developer granted hereunder.

8.2 Gathering may sell or have sold on its behalf, Game Units alone or bundled together (i.e. with one price being charged for two or more Game Units) with other games. In the event a Game Unit is bundled with other game units, for the purpose of Alternate Sale Royalty calculation, the sales price attributable to such Game Unit shall be the product obtained by multiplying (i) the percentage that Gathering's suggested retail price of the Game Unit bears to the aggregate suggested retail price of all games in the bundle by (ii) the actual sales price of the bundle of games. (By way of example, if the suggested retail price of a Game is twenty-five percent of the suggested retail price of all games in the bundle, and the bundle is sold for $100, then $25 of such $100 shall be attributed to the Game.) Notwithstanding anything else in this Section 8.2, neither Gathering nor any person on Gathering's behalf may sell or otherwise bundle Game Units with any other games without the prior written consent of Developer, such consent not to be unreasonably withheld.

ARTICLE 9
INTELLECTUAL PROPERTY

9.1 Developer shall be the owner of all intellectual property rights in the Game and the deliverables related thereto created or developed by Developer, including without limitation, all copyrights, trademarks, patents, trade secrets, and other proprietary rights. The Game and the deliverables related thereto shall not be considered works made for hire under the Copyright Act. Gathering shall be the owner of all intellectual property rights in all products and materials created by Gathering, subject to any underlying rights of Developer.

9.2 Gathering shall have the right to use all of Developer's intellectual property rights in the Game and the deliverables related thereto, including without limitation, all of Developer's patents, copyrights, and trademarks, in connection with the publication, distribution, marketing, promotion, and advertising of the Game and/or the deliverables related thereto, as provided in the license granted in Section 2.2 of this Agreement; provided, however, that before Gathering uses such intellectual property rights publicly, Gathering must obtain the approval of Developer for such public use, such approval not to be unreasonably withheld. Developer further grants to Gathering the nonexclusive right to publicly use the names, images, and likenesses of any of Developer's artists in connection with the publication, distribution, marketing, promotion, and advertising of the Game and/or the deliverables related thereto. The term of the licenses and rights granted in this Section 9.2 shall be co-extensive with the term of this Agreement as defined in Article 17.

9.3 Gathering shall place on each Game Unit, packaging thereof, and the Manual, notices of all patents, copyrights, and trademarks listed on Exhibit C or otherwise provided in writing to Gathering by or on behalf of Developer on or before the projected delivery date for the Alpha Version of the Game as set forth in the Development Schedule. In the event of electronic distribution of the Game, Gathering shall place notices of all such patents, copyrights, and trademarks in a manner adequate to place third parties on notice of Developer's intellectual property rights.

9.4 Gathering shall include either in the packaging material of the Game, the Manual, and/or as a "pop-up" installation menu to be included in the Game, an end-user limited license and warranty agreement containing substantially the same terms and provisions set forth on Exhibit D hereto or as otherwise deemed necessary by Gathering and Developer. In the event of electronic distribution of the Game, Gathering shall include such end-user limited license and warranty agreement as a "pop-up" installation menu to be included in the Game.

ARTICLE 10
PORTS, ADD-ONS AND TRANSLATIONS

10.1 (A) Gathering shall have the right, but not the obligation, to propose the development of a Port or Add-On for the Game for any Platform. In the event Gathering wishes to develop a Port or Add-On for the Game to any Platform, Gathering shall notify Developer in writing of its desire to create such Port or Add-On. Developer shall have fifteen (15) calendar days from receipt of such notice to elect one of the following three options: (i) disapprove of the creation of such Port or Add-On, in which event it will not be created by Developer, Gathering or any other party, (ii) elect to develop such Port or Add-On on its own, in which event the Port or Add-On shall be treated as a new Game, subject to the terms and conditions of this Agreement but with a separate Development Schedule, Marketing Plan, Marketing Budget and Advance Royalty to be negotiated in good faith between and agreed to in writing by the parties, or (iii) elect to have Gathering develop (or have developed) the Port or Add-On, in which event Gathering shall propose both a Development Schedule, Marketing Plan and Marketing Budget for such Port or Add-On and terms for recoupment of the Development expense, either by offset or adjustment to the Development Schedule or otherwise, which shall be negotiated in good faith between and agreed to in writing by Developer and Gathering (the "Subsequent Development Schedule").

(B) In the event Developer wishes to Port the Game or create an Add-On, Developer shall notify Gathering in writing of its intent to create such Port or Add-On and Gathering shall have thirty (30) days from receipt of such notice to either (i) exercise its right to publish such Port or Add-On for the Game pursuant to the terms of this Agreement or (ii) allow Developer to publish or have published on its behalf the Port or Add-On. .

10.2 Gathering shall be responsible for creating Translations of the Game for other markets; provided, however, that Developer agrees to support (i.e. incorporate the Translation into the Game) up to seven (7) single byte Translations, upon Gathering's request, at no additional cost to Gathering; provided further, however, that Developer shall only be responsible for supporting Translations that are essential to game play and product integrity. For purposes of this Section 10.2, the term "essential to game play and product integrity" shall specifically exclude text that is used in scripting, program interfacing, cheats, game tools (i.e., level editors) and high level console commands, as the definitions of such terms are generally understood in accordance with prevailing industry standards. Developer shall have the option, but not the obligation, of supporting any additional single byte or any double byte Translations of the Game. If Developer elects not to support such additional single byte or any double byte Translations of the Game, Gathering may do so directly or have it done by a third party, and the cost of such support shall be included in the Cost of Goods Sold for Royalty calculation purposes. Notwithstanding anything else in this Section 10.2, Gathering shall undertake all reasonable and necessary configuration testing for each Translation at Gathering's sole cost. Notwithstanding anything to the contrary in this Section 10.2, in the event a Translation is undertaken for any Game, (i) Developer shall provide all reasonable and necessary access to its intellectual property and other proprietary information in order to enable such Translation to occur, including, without limitation, immediately providing to Gathering a complete copy of all source code and documentation (including source code comments, in appropriate format), then in existence; and (ii) such access shall be granted pursuant and subject to Article 12 and shall not unnecessarily compromise Developer's rights in such Game.

10.3 In no event shall a Port or Add-On be developed pursuant to Section 10.1(A) or 10.1(B) without the prior written agreement of Developer and Gathering on (i) the terms of the Development Schedule, Marketing Plan, Marketing Budget, Advance Royalty, and Royalty rate pertaining to such Port or Add-On; and (ii) if applicable, the third party developer then selected to complete such Port or Add-On. During the development of an Add-On, Port or other product developed by a third party pursuant to this Article (a "Third Party Product"), Gathering and such third party responsible for the development of the Third Party Product shall consult with Developer during key stages of development of such product and shall include all reasonable design and technical suggestions made by Developer to such Third Party Product. Gathering shall deliver the final version of the Third Party Product to Developer for its approval prior to release thereof. Gathering may not release a Third Party Product without Developer's prior approval, such approval not to be unreasonably withheld. If Developer approves the Third Party Product, Gathering may use Developer's copyright trademarks, patents or other proprietary information on packaging, advertisements and other marketing materials as preapproved by Developer. Gathering may not incorporate any of Developer's copyrights, trademarks, patents or other proprietary information so as to create confusion that such Third Party Product originated with or is developed by Developer, but Gathering may state that the Third Party Product is an "Authorized" product of Developer and Gathering.

10.4 For purposes of this Agreement, each Port and/or Add-On shall be treated as a new and separate Game, as defined herein, subject to the terms of this Agreement; provided, however, that such item shall be subject to its own Marketing Plan, Marketing Budget and the Subsequent Development Schedule or analogous documentation as agreed to in writing by Developer and Gathering.

ARTICLE 11
MERCHANDISE, NON-INTERACTIVE MEDIA DERIVATIVES

11.1 Gathering shall have the exclusive right and license (and right to sublicense), but not the obligation, to develop and Use hint books, strategy guides and similar materials for the Game; provided, however, that such items shall be subject to the prior approval of Developer, such approval not to be unreasonably withheld. In the event Gathering elects not to develop and sell any of such materials, Gathering shall so notify Developer in writing, in which event the rights of Gathering to publish such materials shall revert to Developer.

11.2 Subject to Article 9, other rights in merchandise (tee shirts, posters, key chains, cups, frisbees, clothing, etc.), non-interactive or linear media such as movies or videos are reserved to Developer; provided, however, that such items (i) may be developed and (A) used by or on behalf of Gathering in conjunction with the marketing, sale and distribution of the Game pursuant to this Agreement and (B) sold, pursuant to a non-exclusive, world-wide license, via direct sales; and (ii) shall meet the prior approval of Developer, such approval not to be unreasonably withheld.

11.3 With respect to any items sold by or on behalf of Gathering pursuant to this Article 11, Gathering shall pay to Developer a royalty of [*] of the Net Revenues (as defined in Section 6(B)) actually received by Gathering as a result of the sale of such items. Notwithstanding anything to the contrary in this Agreement, no items referenced in this Article and sold by or on behalf of Gathering shall be, in any way, factored in or otherwise deemed attributable to the calculation of any Standard Royalty or Alternative Sale Royalty otherwise due to Developer pursuant to Section 6.2 of this Agreement.

ARTICLE 12
CONFIDENTIAL INFORMATION

12.1 As used in this Agreement "Confidential Information" shall mean any and all information disclosed by Developer and Gathering, either directly or indirectly, to the other and which if written is marked as confidential or if disclosed orally or otherwise, is designated as confidential and confirmed in writing as such within thirty (30) days of such oral or other disclosure. Notwithstanding the foregoing all source code disclosed hereunder shall be deemed Confidential Information, whether marked or indicated as such.

12.2 Confidential Information shall not include any information:

(i) That the receiving party can show by documentary evidence was known to the receiving party on or prior to the date of its disclosure to the receiving party by the disclosing party; or

(ii) That becomes publicly known, by publication or otherwise, not due to any unauthorized act or omission of the receiving party; or

(iii) That is subsequently disclosed by the disclosing party to any person, firm or corporation on a nonconfidential basis; or

(iv) That the receiving party can conclusively show by documentary evidence that such information was developed independent of any access to the Confidential Information.

12.3 Confidential Information will be disclosed hereunder solely for the purpose of developing the Game and the Use of the Game Units as authorized under this Agreement.

12.4 The receiving party agrees to accept disclosure of the Confidential Information and to exercise the same degree of care to maintain the Confidential Information secret and confidential as is employed by the disclosing party to preserve and safeguard its own materials and confidential information.

12.5 Nothing contained herein shall be deemed to limit the right of Gathering to use, develop or market ideas or games similar to or competitive with the Game so long as such action taken by or on behalf of Gathering does not infringe upon any copyright, trademark or patent of Developer or use the Confidential Information of Developer without Developer's prior written consent.

*Confidential portion omitted and filed separately with the commission.

12.6 Confidential Information shall remain the property of the disclosing party and shall not be disclosed or revealed by the receiving party or to anyone else except employees of the receiving party (or in the case of Gathering, members of its Board) who have a need to know the information in connection with development of the Game and the Use of the Game Units, and who have entered into a secrecy agreement with the receiving party under which such employees are required to keep confidential the Confidential Information of the disclosing party, and such employees shall be advised by the receiving party of the confidential nature of the information and that the information shall be treated accordingly. The receiving party shall be liable for any improper disclosure of the Confidential Information by its employees.

12.7 Notwithstanding anything in this Agreement to the contrary, it shall not be a breach of this Article 12 for either party to disclose Confidential Information required to be disclosed in connection with an administrative, regulatory or judicial process or proceeding; provided, however, that prompt notice to the non-disclosing party is given of the possibility of such disclosure and that the party which may be compelled to disclose shall use reasonable good faith efforts to resist such disclosure.

ARTICLE 13
REPRESENTATIONS AND WARRANTIES

13.1 Developer represents, warrants, covenants and agrees to Gathering that:

(A) Except for any materials created or developed by Gathering or a third party on behalf of Gathering, the Game is the original work of Developer and/or Developer holds full right and title to the Game and the Use of the Game by or on behalf of Gathering will not infringe upon or misappropriate any goodwill, patent, copyright, trade secret, trademark, privacy or publicity or other proprietary rights of any other parties.

(B) Developer has not granted nor shall it grant any rights to the Game or any underlying rights to any other parties that conflict with the rights granted to Gathering pursuant to this Agreement and the Rights Agreement.

(C) None of Developer's equity holders, directors, officers, employees, consultants, contractors or agents have any rights to the Game or any element thereof that have not been assigned or licensed to Developer to the extent such rights would conflict with the rights granted to Gathering pursuant to this Agreement and the Rights Agreement.

(D) Developer has authority to enter into and to become legally bound by this Agreement. Developer has all necessary consents to enter into this Agreement and to grant the rights and licenses granted and perform its obligations hereunder.

(E) This Agreement has been duly and validly authorized by Developer and is a valid and binding commitment of Developer enforceable in accordance with its terms, except for the effect of bankruptcy or other laws for the protection of debtors.

(F) Developer represents and warrants that, to the best of its knowledge there are not; and/or no negligent or intentional, act or omission by or on behalf of Developer has caused there to be, any other patents, copyrights, trademarks or other proprietary information underlying, utilized in or contained in the Game other than as set forth on Exhibit C hereto. If Developer notifies Gathering of any alleged infringement after the delivery of the Game to Gathering by or on behalf of Developer but prior to the first shipment of the Game by or on behalf of Gathering, Gathering shall have the right but not the obligation to (i) terminate this Agreement in accordance with Section 18.3, (ii) defend itself, Developer and/or the Game against any claims or procedures arising from or as a result of such alleged infringement or (iii) act otherwise in accordance with the terms and provisions of this Agreement.

(G) Developer has no other arrangement or interest which is inconsistent or in conflict with this Agreement, or which would prevent, limit, or impair, in any way, (i) Developer's performance of any of its covenants or duties herein set forth or (ii) Gathering's right to Use the Game.

13.2 Gathering represents and warrants to Developer as follows:

(A) This Agreement has been duly and validly authorized by Gathering and is a valid and binding commitment of Gathering enforceable in accordance with its terms, except for the effect of bankruptcy or other laws for the protection of debtors.

(B) Gathering as authority to enter into and to become legally bound by this Agreement. Gathering has all necessary consents to enter into this Agreement and fulfil its obligations hereunder.

ARTICLE 14
INDEMNIFICATION

14.1 Developer shall indemnify, defend and hold harmless Gathering, and its partners, officers, employees, agents, successors and assigns ("Gathering Indemnitees") against any and all demands, claims, damages, judgments, costs, (including reasonable attorneys' fees), penalties and liabilities ("Claims") based upon, relating to, or arising out of a breach or failure of any of Developer's agreements, representations or warranties herein. Upon notice from Gathering of any such Claim being advanced or commenced, Developer agrees to adjust, settle or defend the same at Developer's sole cost; provided, however, that no such settlement or adjustment shall occur without the prior written consent of Gathering, such consent not to be unreasonably withheld. Each Gathering Indemnitee shall have the right, but not the obligation, to participate, at its own expense and by its own counsel, in the defense of any such claim, and, in such event, the parties hereto shall cooperate with each other in the defense of any such action, suit or proceeding hereunder. Developer shall not be obligated to indemnify the Gathering Indemnitees to the extent:

(A) the Claims are based upon or relate to compliance with Gathering's designs, specifications, or instructions or incorporation of technology, text, graphics or other material provided by Gathering;

(B) the Claims are based upon the Use of the Game in combination with software, hardware, data or other materials supplied by Developer (other than the combination thereof with the other programs and equipment required to enable the Game to be used as reasonably foreseeable by Developer) and but for such combination, the Game and its Use would be non-infringing;

(C) the Claims are based upon or relate to any modification to the Game by any person or entity other than Developer and which modification was not authorized by Developer;

(D) the Claims are based on or relate to the unreasonable continuing use of an allegedly infringing version of the Game by Gathering if such alleged infringement could have been reasonably avoided by Gathering through its Use of a different version of the Game made available to Gathering by Developer, which different version is substantially similar in form and function to the allegedly infringing Game, but which different version is non-infringing.

14.2 Gathering shall indemnify, defend and hold harmless Developer, and its officers, employees, agents, publishers, successors and assigns against any and all Claims based upon, relating to, or arising out of a breach or failure of any of Gathering's agreements, representations or warranties herein. Upon notice from Developer of any such Claim being advanced or commenced, Gathering agrees to adjust, settle or defend the same at Gathering's sole cost; provided, however, that no such settlement or adjustment may occur without the prior written consent of Developer, such consent not to be unreasonably withheld. Developer shall have the right, but not the obligation, to participate, at its own expense and by its own counsel, in the defense of any such claim, and, in such event, the parties hereto shall cooperate with each other in the defense of any such action, suit or proceeding hereunder.

14.3 Each of the agreements to defend, indemnify, or hold harmless contained in Sections 14.1 and 14.2 shall apply irrespective of whether the subject Claim is based, in whole or in part, upon the sole or contributory negligence (whether active, passive or gross), breach of contract or breach or violation of any duty imposed by any law or regulation, on the part of the beneficiary of the agreement to indemnify, except as otherwise specifically provided herein.

14.4 Should any Game, Add-On or Port become, or in Developer's reasonable opinion be likely to become, the subject of an actual or threatened claim of infringement or misappropriation of third party rights, then Gathering, upon receipt of written notice from Developer, shall postpone the release or cease further sales of the Game and Developer shall, at Developer's option and expense, perform any, or any combination, of the following: (i) procure for Gathering the right to continue to Use the Game; (ii) as is practicable, immediately replace or modify the Game so that the Game becomes non-infringing; or (iii) refund to Gathering all costs incurred by or on behalf of Gathering related directly thereto and all payments made by Gathering to Developer for such Game hereunder.

ARTICLE 15
DISCLAIMER/LIMITATION OF LIABILITY

NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OTHER THAN THOSE EXPRESSLY SET FORTH IN ARTICLE 13 HEREOF. NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER OR TO ANY OTHER PARTY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT FOR INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, REGARDLESS OF WHETHER THE POSSIBILITY OF SUCH DAMAGES IS FORESEEABLE.

ARTICLE 16
THIRD PARTY INFRINGEMENT

16.1 In the event either party becomes aware of an infringement of the Game, Derivative Work or any component thereof by a third party it will promptly notify the other party in writing. Developer shall have the first right to pursue any infringement action, and Gathering hereby grants Developer the right to sue in Gathering's name. Such action shall be at Developer's sole expense. Any recovery resulting from such an action shall be paid first to recoupment of Developer's expenses with interest thereon at the Interest Rate, and thereafter shall be shared between Gathering and Developer as follows: Developer seventy percent (70%); Gathering thirty percent (30%).

16.2 In the event Developer does not elect to pursue such an infringement action, Gathering shall be entitled to do so at its sole expense with any recovery being applied first to recoupment of Gathering's expenses with interest thereon at the Interest Rate, and thereafter shared between Gathering and Developer as follows: Developer thirty percent (30%); Gathering seventy percent (70%).

ARTICLE 17
TERM

17.1 The term of this Agreement shall be from the date of execution through the later to occur of (i) the fifth anniversary of the date of the first shipment of any Game Units published by or on behalf of Gathering pursuant to this Agreement or (ii) the third anniversary of the first date of Shipment of any subsequent Port, Add-Ons or Translation of the Game, unless otherwise terminated as provided in Article 18.

17.2 Notwithstanding anything to the contrary in this Agreement but subject to Article 18, at the conclusion of the term of this Agreement pursuant to Section 17.1, (i) Gathering's duties and obligations as set forth in Sections 6.2, 6.4 and 6.5 shall survive termination; and (ii) Gathering shall be entitled to complete any work in progress and sell all of its existing inventory of unsold Game Units, subject to Gathering's duties and obligations to pay Developer any Royalty pursuant to this Agreement.

ARTICLE 18
DEFAULT/TERMINATION

18.1 In the event either party believes the other party is in default hereunder, such party (the "Non-defaulting Party") shall give written notice to the other party (the "Defaulting Party") setting forth with reasonable specificity the nature of the claimed default. In the event that the Defaulting Party is Gathering, Developer shall deliver such notice to each of Gathering and Take Two Interactive Software, Inc. Subject to Section 7.4, in the event the default is for payment of monies owed, the Defaulting Party shall have fifteen (15) business days to cure such default; for any other default the Defaulting Party shall have thirty (30) days from the date of receipt of such notice to cure such default.

18.2 Subject to Section 7.4, in the event there is a bona-fide dispute between the parties as to the calculation of any sums due hereunder, neither party may exercise any of the options set forth in this Article 18 during the pendency of any proceeding to resolve such dispute; provided, however, that if the dispute involves the payment of monies and the amount alleged to be owed has been determined in accordance with Section 7.4, and exceeds [*], such amount shall be placed in an interest bearing escrow account by the party allegedly owing such amount pending resolution of the dispute pursuant to the provisions of Section 20.3 hereof.

18.3 In the event Developer is the Defaulting Party and no cure or other resolution is effected as set forth in Sections 18.1 and 18.2, upon the affirmative vote by a majority of its Board of Directors excluding a representative of Developer, Gathering shall have the following options:

(A) If Default occurs prior to receipt by Gathering of the Gold Master of the Game as approved in writing by Gathering:

In addition to the right to recover from Developer any damages incurred by Gathering as a result of such breach, Gathering shall have the right, but not the obligation, to terminate this Agreement and recover from Developer all of the Advance Royalty, late fees due pursuant to Section 5.3(B) and out of pocket costs, fees and expenses paid by or on behalf of Gathering in connection with the Game (including without limitation, Cost of Goods Sold, marketing and advertising expenses and related legal fees), within one hundred eighty (180) days after notification by Gathering of Developer's default and of Gathering's intent to exercise its option under this Section 18.3(A); provided, however, that in the event that prior to the termination of such one hundred eighty (180) day period, Developer or another party publishes or otherwise distributes the Game on any Port or Add-On related thereto or devised therefor, Developer shall immediately repay to Gathering prior to such publishing or distribution all amounts due but unpaid pursuant to this Section 18.3(A).

*Confidential portion omitted and filed separately with the commission.

(B) If Default occurs after receipt by Gathering of any Deliverables:

In addition to recover from Developer any damages incurred by Gathering as a result of such breach,

(i) Gathering shall have the right, but not the obligation, to terminate this Agreement and receive from Developer an immediate refund of any and all of the Advance Royalty that has not yet been recouped by Gathering, and all costs and expenses incurred by, on behalf of or at the direction of Gathering related to the manufacturing, marketing, distribution or sale of the Game through the date of termination. Additionally, Gathering shall be entitled to complete any work in progress and sell all of its existing inventory of unsold Game Units, subject to Gathering's duty and obligation to pay Developer any Royalty pursuant to this Agreement, with respect to such Game Units; or

(ii) Gathering shall have the right to continue the Use of the Game. All sales of the Game shall be subject to the Royalty set forth herein.

18.4 In addition to the right to recover any damages incurred by Developer as a result of such breach, in the event Gathering is the Defaulting Party and no cure or other resolution is effected as set forth in Sections 18.1 and 18.2, Developer shall have the following rights:

(A) If Default occurs prior to receipt by Gathering of the Deliverables, Developer shall have the option but not the obligation to terminate this Agreement and retain any payments made by Gathering as of the date of termination.

(B) If Default occurs after receipt by Gathering of the Deliverables, Developer shall have the right, but not the obligation, to do any or any viable combination of the following: (A) terminate this Agreement, (B) require Gathering to refrain from beginning any new or unstarted work related to the Game, (C) retain all Advance Royalties, (D) purchase from Gathering, at cost, all work in progress and (E) at Developer's option, either (x) purchase from Gathering, at cost, any existing inventory of unsold Game Units or (y) require Gathering's to sell all of its existing inventory of unsold Game Units, and pay to Developer any Royalty in accordance with the terms of this Agreement with respect to such Game Units pursuant to the terms of this Agreement.

18.5 Termination for Convenience:

In the event that at any time prior to delivery of the Gold Master version of the Game Gathering, upon the affirmative vote by a majority of its Board of Directors, excluding any representative of Developer, in its sole and absolute discretion, determines that it does not wish to Use the Game, it may terminate this Agreement upon notice to Developer. In the event of such a termination Developer shall be entitled to (i) retain all Advance Royalties received by Developer from Gathering prior to the date of termination; and (ii) if applicable, the next unpaid portion of the Advance Royalty due to Developer on the Delivery Date immediately following the date of termination.

18.6 Termination of Employment of Certain Parties:

Notwithstanding anything to the contrary in this Agreement, in the event that, prior to delivery by Developer of the Gold Master version of the Game and acceptance and approval thereof by Gathering, both Michael S. Wilson and Harry A. Miller ceased to be employed by Gathering or its General Partner, regardless of the reason for the termination of such employment, Developer shall have the right, but not the obligation, within thirty (30) days from the date that both Wilson's and Miller's employment terminates (the "Employment Termination Date") to terminate this Agreement in accordance with this Section 18.6. If Developer fails to deliver written notice to Gathering of Developer's decision to exercise its right to terminate this Agreement pursuant to this Section within thirty (30) days of the Employment Termination Date, Developer shall automatically be deemed to have chosen not to have exercised its option pursuant to this Section and such option shall automatically terminate. In the event that Developer exercises its option pursuant to this Section 18.6, within one hundred eighty (180) days after delivery of its notification of termination, (i) Developer shall repay to Gathering all of the Advance Royalty and out-of-pocket costs, fees and expenses paid by or on behalf of Gathering in connection with the Game (including without limitation, Costs of Goods Sold, marketing and advertising expenses and related legal fees); and (ii) upon written request, Gathering shall return to Developer all Deliverables (and any copies or reproductions).

ARTICLE 19
TECHNICAL SUPPORT

Direct technical support for end-users shall be provided by Gathering in accordance with prevailing industry standard; provided, however, that Developer, upon written request by Gathering, shall provide reasonable and timely technical assistance to Gathering.

ARTICLE 20
MISCELLANEOUS

20.1 This Agreement shall inure to the benefit of, and shall be binding upon, the successors and assigns of each party hereto. Notwithstanding the foregoing, neither party shall assign any rights or obligations hereunder without the prior written consent of the other party.

20.2 Both parties shall keep this Agreement and all of its terms and conditions as Confidential Information.

20.3 Except for a suit seeking injunctive relief with respect to Confidential Information or infringement of intellectual property rights of a party hereto, any dispute hereunder shall be submitted to binding arbitration pursuant to the rules of the American Arbitration Association (the "AAA"), applying Texas law, without regard to choice of law provisions, with a single arbitrator appointed by AAA. Any such proceeding shall take place in Dallas, Texas.

20.4 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same document.

20.5 For the purposes of this Agreement, notices and all other communications provided for in this Agreement shall be in writing and shall be delivered by hand delivery, facsimile with overnight confirmation, reputable overnight delivery service or certified mail, return receipt requested, postage prepaid, to the address of a party as set forth on the signature page hereof, as the same may be changed upon written notice to the other party.

20.6 The expiration of this Agreement shall not impair the rights or obligations of either party hereto which shall have accrued hereunder prior to such expiration or termination. Without limiting the generality of the preceding sentence, the provisions of Articles 9, 12, 13, 14, 15, 16, 18 and 20 shall survive the termination of this Agreement.

20.7 Each of the parties hereto agrees to execute all such further instruments and documents and to take all such further action as the other party may reasonably require in order to effectuate the terms and purposes of this Agreement as stated herein.

20.8 If any provision of this Agreement shall be held or deemed to be invalid, inoperative or unenforceable in any jurisdiction, because of a conflict with any constitution, statute, rule or public policy or for any other reason, such circumstance shall not have the effect of rendering the provision in question unenforceable in any other jurisdiction or in any other case or circumstance or of rendering any other provisions herein contained unenforceable to the extent that such other provisions are not themselves actually in conflict with such constitution, statute or rule of public policy, but this Agreement shall be reformed and construed in any such jurisdiction or case as if such invalid, inoperative or unenforceable provision had never been contained herein and such provision reformed so that it would be enforceable to the maximum extent permitted in such jurisdiction or in such case.

20.9 The headings appearing at the beginning of the several Articles contained in this Agreement have been inserted for identification and reference purposes only. Neither those headings, nor their order or placement, shall be used in the construction and interpretation of this Agreement.

20.10 This Agreement and any exhibits or addendums hereto and the Rights Agreements represent the complete, full and exclusive statement of the agreement between the parties with respect to the subject matter hereof, which supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement. This Agreement is superior to any and all invoices or notices or other such documentation which may be generated after execution of this Agreement. In the event any conflict arises between the stipulations of this Agreement and any other documents or writings, the terms and conditions of this Agreement, read in conjunction with the Rights Agreement, shall control.

20.11 This Agreement may only be changed by written amendment signed by both parties or by their duly authorized agents having authority equal to, or higher than, that of the signers of the original Agreement.

20.12 All of the rights and remedies for each of the parties set forth in this Agreement shall be cumulative and shall not interfere with or prevent the exercise of any other right or remedy which may be available to such party.

20.13 With respect to all trademark licenses granted hereunder to any party, the owner thereof shall have the right to inspect and approve the quality of any goods or services produced in accordance with or subject to the license. Such approval shall not be unreasonably withheld; provided, however, that the quality of the goods or services produced by licensee is substantially similar to the quality of the goods and services produced under the same trademark by licensor.

20.14 Unless specifically stated otherwise in the applicable Section, in each instance that Developer must give its prior consent or approval (written or otherwise) to Gathering for a certain action, event, transaction or other activity to take place, such approval or consent shall (i) not be unreasonably withheld; and (ii) automatically be deemed to have been given by Developer ten (10) business days after Developer receives a request from or on behalf of Gathering for such approval or consent, unless Developer provides Gathering with written notification otherwise.

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

[Signature page to follow.]

IN WITNESS WHEREOF the parties have executed this Agreement on the 29th day of March, 1999 and is deemed to be effective as of May 8, 1998.

GATHERING OF DEVELOPERS I, LTD.

By: Gathering of Developers, Inc.
(a Texas corporation),
its general partner

Address:
2700 Fairmount Street
Dallas, Texas 75202
fax (214) 871-7934

By: /s/ Harry A. Miller

Harry A. Miller, IV,
President

APOGEE SOFTWARE, LTD./3D REALMS

Address:
3960 Broadway
Garland, Texas 75043
(fax) (214) 864-5540

By: Action Entertainment, Inc.,
(a Texas corporation)
its General Partner

By: /s/ Scott Miller

Scott Miller,
Vice President

SCHEDULE I

Pursuant to Article 6 of this Agreement, the following sets forth the Standard Royalty rate and calculation thereof for all products published by the Gathering pursuant to this Agreement:

A. For purposes of Schedule I to this Agreement, when used herein, the following terms shall have such meaning or value as set forth below:

1. "Developer Royalty Rate" shall mean the rate multiple applied to Net Revenues in order to ascertain the Standard Royalty.

2. "Developer Royalty Rate Increments" shall be assigned the value of [*]; provided, however, that in the event that Net Revenues divided by Publisher Risk (pursuant to Section (B) hereof) is less than the integer one (1), then the Developer Royalty Rate Increment shall automatically be assigned the value of zero (0).

3. "Maximum Developer Royalty Rate" shall be assigned the value of [*].

4. "Minimum Developer Royalty Rate" shall be assigned the value of [*].

5. "Publisher Risk" shall mean the aggregate sum of all Advance Royalty, Advance Adjustment, Marketing Budget and, if applicable, any and all management fees, costs and expenses incurred by or on behalf of Gathering in the event that Gathering elects the remedy set forth in Section 18.3(A)(ii) of this Agreement.

B. The following calculations shall be used to determine the Standard Royalty for all products published by Gathering pursuant to this Agreement:

1. Developer Royalty Rate shall be calculated by adding the Minimum Developer Royalty Rate to the product of (i) Net Revenues divided by Publisher Risk (ii) then multiplied by the Developer Royalty Rate Increments; provided, however, that in the event that Net Revenues divided by Publisher Risk is less than the integer one (1), the Developer Royalty Rate Increment shall automatically be assigned the value of zero (0).

2. Standard Royalty shall be determined by multiplying Net Revenues by Developer Royalty Rate.

3. Note: With respect to determining the Standard Royalty and Net Revenue pursuant to Schedule I for each Port, Platform and/or Add-on related to the Game and published by or on behalf of Gathering pursuant to this Agreement, the Net Revenue (i) from sales of Game Units made through means other than Alternative Sales and the Standard Royalty related thereto shall be cross-collateralized with respect to Game Units sold through, by or on behalf of Gathering, for personal computer and/or Apple Macintosh systems (including Add-Ons related thereto, but not sequels) (collectively the "Collateralized Units"); and (ii) and the Royalty for Game Units other than the Collateralized Units shall be calculated and shall be determined independently of any other Ports, Platforms and/or Add-Ons related thereto published pursuant to this Agreement and the Net Revenues attributable thereto. Thus, the Net Revenues and Royalty Rate related thereto start over at zero for each new Port, Platform or Add-On related thereto of a Non-Collateralized Unit that is published by or on behalf of Gathering pursuant to this Agreement when calculating the Standard Royalty for such item.

*Confidential portion omitted and filed separately with the commission.

EXHIBIT A

Description of Game:

Max Payne

EXHIBIT B

Default Game Development Schedule:

Deliverable:	Delivery Date to be Delivered by Developer to Gathering
Alpha Version of Game	
Unless otherwise agreed to in writing by Gathering and Developer, the Alpha Version of the Game is a complete running software program containing all the features of the product as described in the script and development plan with all software modules integrated and working together in a usable and testable fashion. The Alpha Version will not include the final software theft protection, title screen or demonstration mode. The Alpha Version is expected to undergo further test and revision for design tuning and elimination of program errors. Developer shall also deliver instructions necessary for normal and competent operation of all game features and basic permutations. Developer shall also provide a page of "designer's notes" outlining its views of the game and details about the Game's development and/or play, as well as a brief biography appropriate for use in the product package and public relations.	__ months after effective date hereof.
Beta Version of Game	
Unless otherwise agreed to in writing by Gathering and Developer, the Beta Version of the Game is the first complete version containing all features of the product as described in the script and development plan plus the inclusion of software theft protection, the title screen, demonstration mode and incorporation of improvements and corrections identified through testing of the Alpha Version of the Game. At Gathering's request, Developer shall deliver to Gathering a complete copy of the game code and any development aids.	__ months after effective date hereof.

Deliverable:	Delivery Date to be Delivered by Developer to Gathering
Developer is to prepare the Beta Version with the design goal that no changes or corrections will be required by Gathering, such that the Final Version will be taken directly from the Beta Version without further alteration.	
Gold Master of Game	
Unless otherwise agreed to in writing by Gathering and Developer, the Gold Master of the Game is the version which Gathering deems sufficiently complete and correct to be released into the final manufacturing process in preparation for commercial release and shipment. The Gold Master shall be the Beta Version with incorporation of any final improvements and correction of any program errors found in the testing of any and all elements of the Beta Version.	__ months after effective date hereof.
Manual Deliverables	__ months after effective date hereof.

EXHIBIT C

Copyrights, Trademarks and Patents:

I. Patents, Copyrights, Trademarks or other Proprietary Information, Underlined, Utilized or Contained in the Game:

II. Patents, Copyrights, Trademarks or other Proprietary Marks Developers wishes to appear on the Game and any packaging related thereto:

A. Developer's logos: _____.

B. Developer's name as it is to appear on product:

_____.

C. Game's name as it is to appear on product:

_____.

D. Game's logos as it is to appear on product, if applicable:

_____.

E. Other marks (including patents, trademarks, copyrights and other proprietary marks) that Developer wishes to appear on product:

_____.

EXHIBIT D

ATTENTION

Here is a brief summary of certain of the terms and conditions in our Limited Software Warranty and License Agreement. You must read the full text of the agreement before using this product so that You understand all of the terms and conditions of our agreement regarding this product.

WHAT IS OKAY FOR YOU TO DO:

- Playing and enjoying the shareware and/or registered/full retail version of the game, demo and/or level editor.

- Setting up a shareware, demo, level editor and/or registered/full retail version based server on a not-for-profit and non-commercially exploited basis.

- Playing the shareware, demo and/or registered/full retail version of the game and/or setting up a registered/full retail version of the game using user-developed levels on a not-for-profit and non-commercially exploited bases.

WHAT IS NOT OKAY FOR YOU TO DO:

- You cannot sell or otherwise commercially exploit or utilize the shareware, registered/full retail version, demo or level editor in any way or sell user-developed levels and/or tools. This includes any sale, "trade in" or other transfer of the shareware, registered/full retail version, demo or level editor to any third party, including without limitation a computer game retail store.

- Commercially exploiting or otherwise utilizing any copyrighted and/or trademarked property of Gathering of Developers, the developer of the product or any other party contained in or associated with the shareware, demo, level editor or registered/full retail version, demo, single player game and/or level editor, including without limitation game names, logos, graphics, characters, etc.

LIMITED SOFTWARE WARRANTY AND LICENSE AGREEMENT

This LIMITED SOFTWARE WARRANTY AND LICENSE AGREEMENT (this "Agreement"), including the Limited Warranty and other special provisions, is a legal agreement between You (either an individual or an entity) and Apogee Software, Ltd./3D Realms and Gathering of Developers I, Ltd., (collectively, the "Owner") regarding this software product and the materials contained therein and related thereto. Your act of downloading, installing and/or otherwise using the software constitutes Your agreement to be bound by the terms of this Agreement. If You do not agree to the terms of this Agreement cease loading or installing this product and, if applicable, promptly return the software packaging and the accompanying materials (including any hardware, manuals, other written materials and packaging) to the place You obtained them, along with Your receipt, for a full refund.

Grant of Limited Non-Exclusive License. (A) In the event that You are currently encountering this Agreement in conjunction with or as a result of Your downloading or otherwise installing the SOFTWARE (as defined herein), this Agreement permits You to use one (1) copy of the software program(s), in executable or object code form only, contained in the registered/full retail version of the game program entitled Max Payne, as contained in the disk(s) making up all or part of the registered/full retail software product, including without limitation the data files, images, level editors, death match levels, charters and screen displays (the "SOFTWARE"), included in this download for Your personal use on a single home or portable computer. This license also permits You to use the SOFTWARE's level editor to create new game levels, weapons, characters and/or entities for non-commercial personal use, and to non-commercially distribute such game levels, weapons, characters, and/or entities to personal acquaintances for non-commercial use via the Internet pursuant to subparagraph (C) below. This license does NOT authorize You to sell, lease or otherwise profit from or commercially distribute the SOFTWARE (see "Restrictions" below). The SOFTWARE is in "use" on a computer when it is loaded into temporary memory (i.e., RAM) or installed into the permanent memory (e.g., hard disk, CD-ROM, or other storage device) of that computer. Installation on a network server is strictly prohibited, except under a special and separate network license obtained from Owner; this Agreement shall not serve as such necessary special network license. Installation on a network server constitutes "use" that must comply with the terms of this Agreement. This license is not a sale of the original SOFTWARE or any copy thereof. YOU MAY NOT SELL, RENT, "TRADE IN", BARTER, LEND OR OTHERWISE TRANSFER THE SOFTWARE AND/OR ACCOMPANYING MATERIALS TO ANY OTHER INDIVIDUAL OR ENTITY.

(B) In the event that You are currently encountering this Agreement in conjunction with or as a result of Your downloading or otherwise installing a DEMO PRODUCT (as defined herein), this Agreement permits You to use the software program(s) included in and received solely as a result of the loaded or otherwise installed version of the demo, free standing level editor and/or shareware version of the game entitled Max Payne, as the case may be, for Your personal use (each such item referred to herein, individually as a "DEMO PRODUCT" and collectively as the "DEMO PRODUCTS"). This license also permits You to use the level editor, as contained in and received solely as a result of the downloading or other installation or utilization of such DEMO PRODUCT, to create new game levels, weapons, characters and/or entities for non-commercial personal use, and to non-commercially distribute such games levels, weapons, characters, and/or entities to personal acquaintances for non-commercial use via the Internet pursuant to subparagraph (C) below. This license does NOT authorize You to sell, lease or otherwise profit from or commercially exploit a DEMO PRODUCT (see "Restrictions" below). A DEMO PRODUCT is in "use" on a computer when it is loaded into temporary memory (i.e., RAM) or installed into the permanent memory (e.g., hard disk, CD-ROM, or other storage device) of that computer or accessed via the Internet. Installation of any DEMO PRODUCTS on a network server for profit or other commercial benefit to You or any other person is strictly prohibited, except under a special and separate network license obtained from Owner; this Agreement shall not serve as such necessary special network license. Installation on a network server constitutes "use" that must comply with the terms of this Agreement. This license is not a sale of the original DEMO PRODUCTS or any copy thereof.

(C) Subject to the terms and conditions of this Agreement, Owner grants to You the non-exclusive and limited right to create additional levels (the "USER LEVELS") which are operable with the SOFTWARE. You may include within the USER LEVELS certain textures and other images (the "Owner Images") from the SOFTWARE or DEMO PRODUCT, as the case may be. You agree that the USER LEVELS will not be shipped, transferred or exported into any country in violation of the U.S. Export Administration Act (or any other law governing such matters) by You or anyone at Your direction and that You will not utilize and will not authorize anyone to utilize, in any other manner, the USER LEVELS in violation of any applicable law. The USER LEVELS may not be downloaded or otherwise exported or reexported into (or to a national or resident of) any country to which the United States has embargoed goods or to anyone or unto any country who/which are prohibited by applicable law, from receiving such property. You shall not rent, sell, lease, lend, offer on a pay-per-play basis or otherwise commercially exploit or commercially distribute any USER LEVELS. You are only permitted to distribute for free, without any cost or charge, the USER LEVELS to other end-users. As noted below, in the event You commercially distribute or commercially exploit any USER LEVELS or commit any other breach of this Agreement, Your license, as granted in this Agreement, shall automatically terminate, without notice. IN ADDITION TO YOUR INDEMNIFICATION OBLIGATIONS AS SET FORTH BELOW, YOU HEREBY AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS OWNER AND OWNER'S RESPECTIVE OFFICERS, EMPLOYEES, DIRECTORS, AGENTS, LICENSEES (EXCLUDING YOU), SUBLICENSEES (EXCLUDING YOU), SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY AND ALL DIRECT AND/OR INDIRECT LOSSES, LAWSUITS, DAMAGES, CAUSES OF ACTIONS AND CLAIMS RELATING TO AND/OR ARISING FROM THE USER LEVELS AND/OR THE DISTRIBUTION OR OTHER USE OF ANY USER LEVELS.

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