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Development and Publishing Agreement

This agreement has been used by a multimedia publisher for external major development deals in which the publisher is paying virtually the entire cost of the development.

DEVELOPMENT AND PUBLISHING AGREEMENT

This Agreement is entered into on the ____ day of _____, 2____, by and between Publisher, a Corporation with offices at _____ (“Publisher”) and, a _____ corporation with a place of business at _____ (“Developer”).

Recitals:

Developer has proposed development of the interactive multimedia product described in Appendix A with the working name “_____,” which Developer is desirous of producing and distributing in interactive CD-ROM or other interactive form (“Title”);

Publisher is in the business of developing, publishing and distributing CD-ROM-based and other electronic products;

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

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

1. Definitions

1.1 “Add-On Products” shall mean electronic software/multimedia products related to and intended to work with the Title;

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

1.3 “Bundled Copies” shall mean copies of the Title or Add-On Products distributed bundled with hardware, software or other products of Publisher or a third party.

1.4 “Confidential Information” shall mean the information of either party which is disclosed to the other party pursuant to this Agreement, in written form marked “confidential”, or if disclosed orally, confirmed in a writing summarizing such information within thirty (30) days of disclosure and marked “confidential.” By way of example and without limiting the generality of the foregoing, Confidential Information shall include trade secrets, know-how, inventions, algorithms, structure and organization of software programs, source code, schematics, contracts, customer lists, financial information, sales and marketing plans, and business plans.

1.5 “Cost of Goods” shall mean Publisher’s actual cost of manufacturing and packaging copies of the Title or Add-On

Products up to the time of shipment into the distribution channel, including the duplication costs for copies of the Title or Add-On Products on optical or magnetic media, packaging materials, manuals and other collateral materials and program components.

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

1.7 "Delivery Schedule" shall mean the schedule of Deliverable Items set forth in Exhibit B.

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

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

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

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

1.12 "Specifications" shall mean the functional specifications and description of features and content of the Title as set forth in Exhibit A.

1.13 "Territory" shall mean the entire world.

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

2. Advances.

2.1 Advances. Publisher agrees to pay to Developer an advance against royalties of United States dollars (US\$_____), to be paid in installments upon approval of deliverables on the schedule set forth in Exhibit B. Developer agrees that this advance shall be sufficient to produce a complete game without live action video. The amount of this advance may be adjusted as follows:

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

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

2.2 Advances for Video. Publisher shall have the option, in its sole discretion, to add live action video to the present specifications and budget. It is presently anticipated that the additional cost of such video would be approximately US\$_____ US\$_____. It is also agreed by the parties that the exercise of this option by Publisher shall not result in an extension of the delivery dates for the overall Title. To the extent that, at the time of exercise of the option, Developer believes that the schedule will slip as a result, Developer shall inform Publisher of this fact and the parties shall meet and confer regarding any adjustment to the Delivery Schedule. Developer shall investigate actual costs relating to such video, and shall rework the script to include such video, and shall submit a final cost estimate and script including such video at the time that game play is implemented and demonstrated on the target machine. Publisher shall make a decision within a reasonable time thereafter as to whether to include such video. If Publisher decides to do so, the parties shall mutually agree on a schedule of milestone deliverables and Advances relating to such video.

3. Proprietary Rights and Grant of License.

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

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

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

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

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

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

3.7 **Developer's First Option.** Developer shall have a first option to develop any Add-On Products and/or derivative interactive works which Publisher desires to have developed by an outside developer. For purposes of this section, "first option" shall mean that Publisher will promptly notify Developer in writing of the nature of such proposed Add-On Product or derivative interactive work. Publisher shall give Developer the right to develop such Add-On Product and shall negotiate the terms and conditions of such development in good faith. If Publisher and Developer are unable to agree upon the terms and conditions within thirty (30) days of Publisher's written notice, then Publisher shall be free to approach any other developer or third party regarding development of such Add-On Product or derivative interactive work.

4. Royalties.

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

4.1.1 % of Net Revenue on the Title up to _____ dollars (US\$ _____);

4.1.2 % of Net Revenue on the Title from _____ dollars (US\$ _____);

4.1.3 % of Net Revenue on the Title above _____ dollars (US\$ _____);

4.1.4 % of Net Revenue on Add-On Products if the Add-On Product is created by a developer other than Developer;

4.1.5 % of Net Revenue on Add-On Products if the Add-On Product is created by Developer.

4.2 **Royalties from Developer to Publisher.** Developer will pay Publisher a royalty based on all revenues generated from Developer's uses of the Title under the license granted by Publisher above. The amount of such royalty will be

negotiated by the parties in good faith at the time Developer determines the nature of the ancillary product.

4.3 All royalty payments shall be made in U.S. dollars by a check drawn on a U.S. bank.

4.4 The above royalty rates shall include all royalties to be paid to third parties (“content royalties”). It will be Developer’s responsibility to insure that all content and other third party royalties are paid when due.

4.5 Publisher shall render to Developer on a quarterly basis, within forty-five (45) days after the end of each calendar quarter during which the Title or Add-On Product is sold, a written statement of the royalties due to Developer with respect to such Title or Add-On Product. Such statement shall be accompanied by a remittance of the amount due, if any. Developer shall have the right, upon reasonable request, to review those records of Publisher necessary to verify the royalties paid no more than once per calendar year. Any such audit will be conducted at Developer’s expense, by certified public accountants, and at such times and in such a manner as to not unreasonably interfere with Publisher’s normal operations, and Developer and its auditor shall be required to treat information revealed during the audit as Confidential Information; provided, however, that if any such audit reveals an error of at least 5% in the payment of royalties, then Publisher shall pay the costs of the audit. If a deficiency is shown by such audit, Publisher shall immediately pay that deficiency. Non-payment of any deficiency within thirty (30) business days of the date on which Publisher receives notice of such deficiency shall constitute a material breach of this Agreement. Once royalties become due from Developer to Publisher pursuant to section 4.2, statements and remittance of royalties from Developer to Publisher shall also be made according to the terms of this paragraph.

5. Development and Approval Process.

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

5.2 Upon receipt of each Deliverable Item except the alpha, beta, or golden master of a Title, Publisher shall, within ten (10) business days, provide Developer with either:

5.2.1. written approval of the Deliverable Item; or

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

Failure to approve or provide a written list of changes within ten (10) days shall constitute approval of the Deliverable Item.

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

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

5.4.1 The initial alpha candidates must be delivered on or before the date set forth in Exhibit B, and must be fully feature and content complete, according to the description set forth in the Specifications.

5.4.2. The initial beta candidates must be delivered on or before the date set forth in Exhibit B and shall be feature frozen and contain all agreed upon changes from alpha and implement all corrections of any bugs or errors identified during QA testing of alpha that cause system or program crashes, or otherwise significantly interfere with the user’s ability to use and enjoy the Title (priority 1 bugs).

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

5.5 Upon receipt of the initial alpha, beta and golden master candidates, Publisher shall, within ten (10) business days,

provide Developer with either:

5.5.1 written acceptance into QA testing of the alpha or beta candidates, which will trigger Publisher's payment obligations, if any, as set forth in Exhibit B; or

5.5.2. written acceptance of the golden master; or

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

5.5.4 Publisher's failure to approve or reject the candidate or golden master in writing within ten (10) business days of receipt shall constitute approval.

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

5.7 If Developer has not provided an acceptable Deliverable Item or alpha, beta, or golden master candidate within four (4) weeks of the date the Deliverable Item or candidate was originally due to be delivered, or if Publisher reasonably believes that the development of the Title is or will be at any time more than five percent (5%) over budget, Publisher shall be entitled to terminate this Agreement or exercise its completion rights as follows: If Publisher chooses to complete the Title, then Developer shall deliver to Publisher within five (5) business days of receipt of notice from Publisher the most current version of the source code for the Title, together with all related development and production materials, including video and audio master tapes, scripts, documentation, notes, hint sheets, and bug reports, and Developer shall cooperate fully with Publisher's efforts to complete the Title. Any amount spent by Publisher to complete the Title shall be considered an additional Advance, to be recouped from the royalties that would otherwise be paid to Developer relating to the Title. Such additional advance shall be recouped at the relevant rate for the Title from Net Revenues until fully recouped. In addition, if Publisher completes the Title under the terms of this section, the royalty to be paid to Developer relating to the Title shall be reduced by five percent (5%). Publisher shall have sole discretion as to whether it chooses to complete the title, if Publisher terminates under this section.

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

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

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

5.11 Incentives/Over budget.

5.11.1 If the development of the Title is over budget, Developer shall have the obligation to pay for the overage. If

Developer fails to do so, Publisher may in its sole discretion cover the overage, but if Publisher chooses to do so, the salaries of Developer's Executive Producer and Producer will be cut 50% beginning immediately upon Publisher first obtaining information which would lead a reasonable person to believe that a budget overage will occur, and the amount not paid as salary shall be used to reduce such overage until such overage (or the grounds for belief that such overage will occur) is eliminated. If Publisher covers the overage and the project remains over budget at the time the golden master is accepted by Publisher, the royalties to be paid to Developer will be reduced one percent (1%) for every \$25,000 or portion thereof that the Title is over budget. Any amount paid by Publisher to reduce a budget overage (or in any event in addition to the Advances set forth above) shall be fully recoupable from royalties which would otherwise be paid to Developer.

5.11.2 In the event that the Title is delivered before the time it is due and on or under budget as of the delivery date of the relevant deliverable item and for the Title as a whole, incentive payment(s) may be awarded to Developer in Publisher's sole discretion. This incentive payment or payments shall be limited at a maximum to the following: (a) If the Title is finished in acceptable form, under budget and early, Publisher may pay Developer the remaining amounts in the budget for Developer salaries, which amount shall count as an Advance to be recouped hereunder; (b) If the alpha, beta, golden master, and demo deliverables are delivered on or before the dates that they are due and on or under budget, Publisher may pay to Developer a bonus of up to \$2,000 for each of these deliverables (to a maximum of \$8,000), which amounts shall count as an additional Advance to be recouped hereunder; and (c) For each top rating that the Title receives from reviews in reputable industry-recognized publications, Publisher may pay Developer an incentive bonus of up to \$2,000 which shall not count as an Advance, provided, however, that the maximum amount payable to Developer under this subsection shall be \$10,000, and such bonuses shall be paid only if all of the relevant deliverables are completed on or before the date that they are due and on or under budget.

5.12 Reports. Developer shall provide Publisher with monthly status reports, including updates of budget versus actual expenditures, and progress against the Delivery Schedule, on the first of each month within the term of the development of the Title. In addition, Developer shall inform Publisher promptly as soon as Developer becomes aware that there is a risk as to: (a) exceeding the budget, (b) failing to meet the schedule, (c) inability of the Title to perform up to the technical requirements contemplated in the Specifications or any other design materials or documents, or (d) inability to provide the feature functionality contemplated in the Specifications or any other related design materials or documents.

5.13 Equipment. Equipment purchased by Developer using funds from the Advances shall be owned by Publisher until such time as all Advances are recouped. The equipment presently owned by Developer is listed in Exhibit D. It shall be presumed that any equipment purchased by Developer from the effective date of this Agreement until the date development of the Title is completed is owned by Publisher pursuant to the terms of this section.

6. Product Name, Marketing and Promotion, and Credits.

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

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

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

6.2.2. to provide Publisher with demonstration videos, interactive and non-interactive demonstration discs or diskettes, photos or screen shots and abstracts of story lines of each Title, as reasonably requested by Publisher.

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

6.4 Developer shall include Publisher's title animation on the first screen to be viewed by end-users of the Title.

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

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

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

7. Developer Copies.

7.1 Developer shall be given a total of twenty five (25) copies of the Title for each platform free of charge at the time the Title is first shipped for a platform in commercial quantities in the retail channel.

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

8. Maintenance. Developer agrees to perform maintenance on the Title and Add-Ons created by Developer for as long as the Title is being offered for sale. Such maintenance shall include, but not be limited to, fixing any bugs or errors in the Titles within thirty (30) days of being notified of such a bug or error, and providing updated versions of the Title and source code containing such corrections. Such maintenance shall be provided at Developer's expense in the first ninety (90) days after commercial release of the Title for the initial platforms, and thereafter at Developer's reasonable and customary work for hire rates.

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

10. Customer Service and Information.

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

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

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

12. Warranties, Indemnification, and Remedies.

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

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

of any kind or nature of any third party.

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

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

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

12.6 Neither Developer nor Publisher shall agree to the settlement of any such claim, demand or suit prior to final judgment thereon without the consent of the other party, whose consent shall not unreasonably be withheld.

12.7 The parties' indemnification obligations set forth in the foregoing paragraphs shall survive termination of this Agreement.

13. Termination.

13.1 This Agreement will terminate on the thirtieth (30th) day after one party gives the other notice of a material breach by the other of any term of this Agreement, unless the breach is cured before that day; provided, however, that if the material breach relates only to a particular Add-On Product, then only the rights with respect to that Add-On Product shall be terminated. Publisher shall have the right to suspend payment for milestones or royalties from the time Publisher notifies Developer of a breach until the time such breach is cured by Developer.

13.2 This Agreement may be terminated by either party without prior notice if: (a) the other party files a petition for bankruptcy or is adjudicated a bankrupt, (b) a petition in bankruptcy is filed against the other party, (c) the other party becomes insolvent or makes an assignment for the benefit of its creditors or an arrangement for its creditors pursuant to any bankruptcy law, (d) the other party discontinues its business, or (e) a receiver is appointed for the other party or its business.

13.3 This Agreement also may be terminated by Publisher immediately upon notice pursuant to the terms of section 5.7 above.

13.4 In the event of any termination of this Agreement, Developer shall within five (5) days turn over to Publisher all copies of the source code, artwork, text files, graphics, design documents, bug reports and databases, and all other materials related in any way to development of the Title.

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

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

14. Confidential Information.

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

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

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

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

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

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

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

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

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

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

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

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

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

21. Force Majeure. If the performance of this Agreement or any obligation under it (except payment of monies due) is prevented, restricted or interfered with by reason of acts of God, acts of government, or any other cause not within the control of either party, the party so affected shall be excused from such performance, but only for so long as and to the extent that such a force prevents, restricts or interferes with that party's performance. Notwithstanding the foregoing, the non-affected party may terminate this Agreement immediately upon written notice if the force majeure circumstances continue for more than sixty (60) days.

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

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

24. No Brokers. All negotiations relative to this Agreement have been carried on by the parties directly, without the intervention of any person as a result of any act of either party (and, so far as known to either party, without the intervention of any such person) in such manner as to give rise to any valid claim against the parties hereto for brokerage commissions, finder's fees or other like payment.

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

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

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

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

Developer _____
Signature: _____
Title: _____
Date: _____

Publisher _____
Signature: _____
Title: _____
Date: _____

Exhibit A: SPECIFICATIONS (including Budget)

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

Exhibit B: DELIVERABLE ITEMS AND DELIVERY SCHEDULE

Delivery Schedule Date _____

Deliverable Item Amount To Be Paid Upon Acceptance Of Deliverable Item

C: Credits

Exhibit D: Developer Equipment