

COMPANY INC.  
GAME DISTRIBUTION AND PROMOTION AGREEMENT

This Game Distribution and Promotion Agreement (this "Agreement") is effective as of \_\_\_\_\_ (the "Effective Date"), by and between \_\_\_\_\_, a \_\_\_\_\_ corporation further described below ("Licensor"), and Company, Inc., a Washington corporation, located at 00000 1st Ave, Seattle, Washington 98111 ("COMPANY"), and describes the terms and conditions relating to COMPANY's distribution and promotion of Licensor's game software.

Licensor:  
Name:  
Address:  
Country:  
Telephone:  
Main Contact:  
FAX:  
Email:  
URL:

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

**1. DEFINITIONS**

The following capitalized terms will have the meanings set forth below:

**"Confidential Information"** means the confidential or proprietary technical or business information of a party, including without limitation: (a) proposals or research related to possible new products or services; (b) financial statements and other financial information; (c) reporting information; (d) the material terms of this Agreement and the relationship between the parties; and (e) launch dates; provided, however, that all of the information will be considered confidential only if it is conspicuously designated as "Confidential," or if provided orally, identified at the time of disclosure as confidential.

**"Demo Version(s)"** means a version of the Program with a feature set that limits the amount of playtime or number of plays by a User of the Full Version.

**"First Party Net License Fees"** means the total gross fees received by COMPANY for the sale of any of the Programs directly via COMPANY's e-commerce services, less any amounts paid for taxes, refunds, royalties paid to Wholesale Program Distributors, and contested credit card transactions.

**"Full Version(s)"** means a version of the Programs that is enabled with full features and functionality pursuant to Licensor's documentation and specifications.

**"Game Page"** means the destination web page that is hosted by COMPANY and branded with COMPANY and/or and Licensor Marks, from where a User may link to, access and play Web Versions that are hosted by Licensor.

**"General Information"** means all information that is not Personally Identifiable Information, which is tracked in connection with a User's use of the Programs. Examples of "General Information" include, without limitation, statistical usage information, browser and video settings of a User's computer, and the language of the User's computer systems.

**"Internet Protocol"** means any protocol used to route data on the Internet or on any portion of the Internet, including all versions currently in existence or developed or implemented in the future.

entwa m HughesNyeB.doc

**“Launch Date”** means the earliest calendar date on which a Program is first made available for sale to the general public under the terms and conditions of this Agreement.

**“Licensor Marks”** means the trademarks, service marks, logos and trade names of Licensor.

**“Licensor Material”** means the marketing material pertaining to Licensor and the Programs provided by Licensor to COMPANY.

**“Licensor Sites”** means the Internet web site located at Licensor’s URL listed above, including all related web pages, owned or operated by Licensor.

**“Net License Fees”** means, collectively, First Party Net License Fees and Wholesale Program Distributor Net License Fees.

**“Personally Identifiable Information”** means any information collected from Users that could be used to identify the identity of such User including, without limitation, name, email, address, and payment information.

**“Program(s)”** means the object code, including all Updates thereto, of each of Licensor’s software game program(s) listed on Exhibit A, together with all Licensor documentation and related files. As used herein, “Program(s)” includes Demo Versions, Full Versions, and all Program Enhancements. The parties may modify the list of Programs pursuant to the procedure set forth on Exhibit A.

**“Program Enhancement”** means material that is related, directly or indirectly to the Program or any aspect thereof and includes, without limitation: (a) any version of a Program that has been translated into a language other than English and modified to accommodate cultural expectations and customs including technical modification necessary to ensure compatibility with computer equipment in such country (“Localized Version”); (b) subsequent versions of the Program setting, environment, structure, characters, plot, theme, name, location or similar elements (“Sequels”); (c) separate products which enhance or modify the appearance or performance of the Program (“Add-Ons”); (d) utilities that enable Users to create a new level of play, or modify existing levels of play of the Program (“Editors”); (e) additional levels of play for the Program (“Level Packs”); (f) suggestions and strategies for better success in operating the Program, made available as manuals or strategy guides in any electronic or print format (“Hints”); (g) Web Versions (as defined below); and (h) Wireless Versions (as defined below).

**“COMPANY Information”** means the information and metadata to be incorporated into the Programs by Licensor as reasonably requested by COMPANY from time to time throughout the Term, including, but not limited to, branding information relating to distribution via Wholesale Program Distributors and COMPANY distribution channels.

**“COMPANY Sites”** means the Internet web sites owned and operated by COMPANY from where COMPANY promotes and licenses the Programs, including informational web pages pertaining to the Programs.

**“Updates”** means: (a) subsequent releases of the Programs that (i) add new features, functionality, and/or improved performance, (ii) operate on new or other databases, operating systems, or client or server platforms, or (iii) add new foreign language capabilities; (b) bug or error fixes, patches, workarounds and maintenance releases; (c) new point releases, including those denoted by a change to the right of the first decimal point, and (d) new major version releases, regardless of the version name or number, but including those denoted by (i) a change to the left of the first decimal point and/or (ii) the addition of a date designation or a change in an existing date designation.

**“User”** means the entity or person to whom the Programs are distributed by COMPANY or a Wholesale Program Distributor for personal use.

**“User Data”** means, collectively, Personally Identifiable Information and General Information.

**“Web Version(s)”** means a version of the Programs designed to perform on the PC or Mac platforms with a feature set for play only while a User is connected to the Internet.

*CONFIDENTIAL*

“**Wholesale Program Distributor(s)**” means any third party that COMPANY authorizes to market, merchandise, distribute support and otherwise perform transaction services for individual Programs in accordance with the terms of this Agreement.

“**Wholesale Program Distributor Net License Fees**” means the total gross fees received by COMPANY from a Wholesale Program Distributor for the sale of any of the Programs via such Wholesale Program Distributor, less any amounts paid for taxes, refunds, Internet and contested credit card transactions.

“**Wholesale Program Distributor Sites**” means the Internet web sites and related web pages owned and/or operated by a Wholesale Program Distributor from where the Programs are marketed and/or offered for distribution.

“**Wireless Version(s)**” means a Program developed to perform on any wireless platform, including but not limited to J2ME and SmartPhone.

“**Wrapper**” means a security function that, without modifying or altering the Programs in any manner, unlocks the restrictions of the Demo Version into the Full Version as described in 4.1.

## **2. LICENSE GRANT**

**2.1 Grant of License.** Licensor hereby grants to COMPANY the worldwide right and license to, directly and through Wholesale Program Distributors, reproduce, distribute and market the Programs: (a) through electronic distribution via Internet Protocol; (b) as part of any bundle with COMPANY software products or services whether distributed electronically via Internet Protocol; or (c) through tangible media such as CD-ROMs, DVDs, diskettes, or hard disc drives. COMPANY is not obligated in any way to market or distribute the Programs and may discontinue such activities at any time.

**2.2 Exclusivity.** During the Term, Licensor shall not license or distribute the Programs: (a) to any third party for inclusion in a product or service distributed via internet Protocol that makes game software available to individuals on a subscription basis through a one-time or recurring billing process, whether monthly, quarterly, annually or other billing time frame; or (b) to [any] [the following] third party[ies] for distribution via the internet: [COMPANY TO LIST RESTRICTED THIRD PARTIES HERE in the event of a partially exclusive deal]. Notwithstanding the foregoing, Licensor may distribute, market and promote the Programs via the Licensor Site. Six (6) months after the Launch Date, Licensor may notify COMPANY of its intention to distribute the Program via a particular third party and if such third party is not a Wholesale Program Distributor as defined in this Agreement, COMPANY will notify Licensor and Licensor will be free to distribute the Program via such entity free of the exclusivity in this Section 2.2. In the event that Licensor breaches the foregoing exclusivity requirements, COMPANY may, at its sole discretion, continue to distribute the Programs and retain one hundred percent (100%) of all Net License Fees until such time that the breach is cured or the Agreement expires or is terminated.

**2.3 Use of Licensor Marks and Licensor Material.** Licensor hereby grants to COMPANY the right to use the names, trademarks, trade names, drawings, logos and symbols associated with Licensor and/or the Programs to market, identify and distribute the Programs in all COMPANY distribution channels in the manner contemplated herein. COMPANY will refer to the Programs with the Licensor Material and Licensor Marks as provided by Licensor to COMPANY. COMPANY may sublicense the foregoing rights to Wholesale Program Distributors and to third parties for marketing purposes provided that such Wholesale Program Distributors and third parties, as applicable, use of the Licensor Material and Licensor Marks is in accordance with this Agreement.

**2.4 Program Enhancements.** In the event that Licensor makes a Program Enhancement available during the Term, Licensor hereby grants to COMPANY a non-exclusive, worldwide right and license directly and through Wholesale Program Distributors to market and promote the Program Enhancements from the COMPANY Sites and via Wholesale Program Distributors Sites pursuant to the terms and conditions of this Agreement.

## **3. LICENSOR RIGHTS AND OBLIGATIONS**

**3.1 COMPANY Information.** From time to time throughout the Term, COMPANY Information may need to be implemented or modified in a Program for a specific distribution channel. Within ten (10) business days of

entwa m HughesNyeB.doc

*CONFIDENTIAL*

COMPANY's request, Licensor will at Licensor's expense, incorporate into the Programs COMPANY Information as specified by COMPANY. All COMPANY Information is owned by, and is proprietary to, either COMPANY or a Wholesale Program Distributor and is deemed Confidential Information for the purposes specified herein.

**3.2 Delivery of Programs.** Licensor will provide COMPANY with all new Programs for COMPANY's distribution hereunder no later than the first date such Program becomes available anywhere on the COMPANYet, including directly on the Licensor Site. Licensor will deliver to COMPANY the Programs in the form and by the date set forth on Exhibit A. Throughout the term, all Programs and will be free of: (i) bugs or any other operational defects that limit the usability of the Programs by Users; and (ii) links to Licensor's own web site or third party web sites that distribute or promote the Programs.

**3.3 Web Versions.** If Licensor develops a Web Version, Licensor will be solely responsible for: (a) hosting, serving and distributing the Web Versions to Users via the Game Pages; (b) acquiring the necessary hardware and software as well as communication links required to deploy and operate the Web Versions; and (c) providing and maintaining, at its expense, the Web Versions and any Upgrades thereto, including integration of any advertising URL tags required by COMPANY to incorporate the Web Version into the COMPANY service. Licensor will not require any User to provide Personally Identifiable Information in connection with such User's use of the Web Versions without COMPANY's prior approval.

**3.4 Technical Support and Program Updates.** Throughout the Term, Licensor will provide COMPANY with: (a) reasonable technical support as COMPANY may require from time to time; (b) all reasonable assistance necessary for COMPANY to perform its obligations hereunder; and (c) Updates as soon as they are available. COMPANY will provide technical support to Users in accordance with COMPANY's published policies.

**3.5 Development of Program Enhancements.** If Licensor has not made a particular Program Enhancement available pursuant to Section 2.4 above, upon COMPANY's request, the parties will negotiate in good faith to develop such Program Enhancement under a separate addendum to this Agreement. If a Program Enhancement is developed by COMPANY or is developed by Licensor or any third party at COMPANY's expense, COMPANY will have the exclusive right to distribute, market and promote such Program Enhancements and COMPANY may recoup one hundred percent (100%) of the Program Enhancement costs from the payments due to Licensor under this Agreement.

**3.6 Title.** Except as provided in Section 4.5 below, Licensor will retain all title and ownership in the Programs, and nothing in this Agreement will be construed to affect such Licensor rights. Licensor, and not COMPANY, will be solely responsible for the content, quality and performance of the Programs and for any warranty, support, maintenance or other obligations related to the Programs. COMPANY acknowledges that the Licensor Marks and Licensor Material are owned solely by Licensor and except as expressly provided above, COMPANY does not hereby acquire any ownership or other rights in the Licensor Marks and Licensor Material. COMPANY will not remove, alter, or add to any Licensor Marks, copyright notices, or other proprietary rights notices from the Programs without Licensor's express consent.

**3.7 Privacy.** Licensor will: (a) comply with all then-current legal obligations related to privacy; (b) post its privacy statement applicable to the Programs on Licensor's web site; (c) clearly disclose to Users information it collects from such User or information transmitted to Licensor or COMPANY from the Programs; (d) receive informed consent from each User for any Personally Identifiable Information collected from such User (if any) or transmitted to Licensor or third parties by the Programs; and (e) protect each User's personal information against resale, disclosure or other use without informed consent from such User.

**3.8 User Support.** Licensor will provide all Users with a substantially similar level of online support for the Programs as offered by Licensor to other individuals who have access to the Programs. Licensor will, at a minimum, provide email User support and will use commercially reasonable efforts to respond to User emails within one (1) business day during Licensor's normal business hours.

#### **4. COMPANY RIGHTS AND OBLIGATIONS**

*CONFIDENTIAL*

**4.1 Security.** COMPANY and Wholesale Program Distributors will use Wrappers to enable Users to upgrade to Full Versions from Demo Versions. By way of example, a Wrapper may work as follows: (a) when User downloads a Demo Version, a window will be displayed that includes information relating to the Full Version such as the remaining amount of time the user is authorized to play the Demo Version, a field for a Full Version registration code, and/or other information; (b) when a User purchases a Full Version, the Wrapper will be unlocked by way of secure files (for example, an unlock file or equivalent and in some cases one or more related text files) that a User obtains via download from secure e-commerce servers; and (c) once the User downloads the secure files described above, the Full Version will be “unlocked,” and the Wrapper will no longer be displayed.

**4.2 Program Listings on COMPANY Sites.** COMPANY and Wholesale Program Distributors will, at their individual sole editorial discretion, advertise or list the Programs on the COMPANY Sites or in COMPANY’s marketing channels or on the Wholesale Program Distributor Sites, respectively. COMPANY and Wholesale Program Distributors may refuse, suspend, or cease advertising, distributing or licensing any Programs if they determine, in their sole discretion, that such action is commercially appropriate. COMPANY will notify Licensor within ten (10) business days of any permanent suspension or cessation of advertising, distribution or licensing of any Programs by COMPANY or Wholesale Program Distributors, but in no event will COMPANY or Wholesale Program Distributors be liable to Licensor for any damages of any nature arising from refusing, suspending or ceasing advertising or listing of any Program. In the event that Licensor offers Web Versions, COMPANY will maintain links to the Game Pages from the COMPANY Sites in order to enable Users to access the Web Versions electronically directly from the Game Pages. COMPANY may also enable Wholesale Program Distributors to maintain links to the Game Pages. All Game Pages will be presented without a navigation bar and will only contain links relevant to playing the Web Versions selected by the User.

**4.3 Privacy.** COMPANY will: (a) comply with all then-current legal obligations related to privacy; (b) post its privacy statement applicable to the COMPANY’s web site; (c) clearly disclose to Users information it collects from the User or information transmitted to COMPANY from the distribution of Programs; (d) receive informed consent from each User for any Personally Identifiable Information collected from such User; and (e) protect each User’s Personally Identifiable Information against resale, disclosure or other use without informed consent from such User.

**4.4 Reservation of Rights.** COMPANY may offer the Programs through all COMPANY distribution channels, including via Wholesale Program Distributors. COMPANY may create and maintain third party sales and marketing relationships to attract, acquire and retain Users. To enable all Users to have access to the Programs, the Programs may be distributed in whole or in part via internal Protocol in a manner that enables the Programs to be used on personal computers and other consumer digital devices including, without limitation, wireless devices, PC-based set top boxes, and personal digital assistants, as determined by COMPANY in its sole discretion. Additionally, COMPANY may, at its sole discretion: (a) name, re-name, modify, or change the COMPANY Marks, the user interface, functionality, features or any other aspect of COMPANY’s software products or distribution methods at any time; (b) use third party software, products, or services to provide any of the services described herein, including billing and customer service; (c) establish and change the retail price of the Programs; (d) provide a reasonable number of complimentary Full Versions to its employees, potential business partners and press for evaluation purposes, such complimentary Programs of which shall not be subject to Section 5 below.

**4.5 Title.** COMPANY will retain all title and ownership in and to COMPANY Information, COMPANY Sites, COMPANY trademarks, COMPANY’s products and services and all intellectual property developed by COMPANY (excluding Licensor Material and Licensor Marks) directly related to COMPANY’s development of Program Enhancements (“COMPANY Material”). Licensor acknowledges that the COMPANY Materials are owned solely by COMPANY and that Licensor does not hereby acquire any ownership or rights in the COMPANY Materials. Licensor will not remove, alter, or add to any COMPANY Materials, copyright notices, or other proprietary rights notices from the COMPANY Materials without the express consent of COMPANY.

## **5. PAYMENT TERMS**

**5.1 Net License Fees for Sales of the Program.** COMPANY will pay to Licensor the percentages listed on Exhibit A of Net License Fees attributable to the sale of a Program hereunder.

**5.2 Web Version Advertising.** COMPANY will retain one hundred percent (100%) advertising inventory within the COMPANY Sites and the Game Pages, including interstitial advertising, and will collect all revenue associated therewith.

**5.3 Payment.** In order to offset COMPANY's expenses incurred for quality assurance, testing pass, and marketing of the Programs, COMPANY's payments to Licensor shall not begin until COMPANY has collected a total of two thousand dollars (\$2,000) per Program in Net License Fees attributable to the sale of one or more Programs hereunder. Thereafter, COMPANY will pay to Licensor the percentage of Net License Fees stated in Sections 5.1 above. Payments will be made to Licensor within forty-five (45) days of the end of each month in which Net License Fees are collected by COMPANY. If the amount payable to Licensor is less than one thousand dollars (\$1,000) for any one month, COMPANY may, at its sole discretion and upon notification to Licensor, elect to pay Licensor on a quarterly basis for the remainder of the Term, payments of which will be made within forty-five (45) days of the end of the quarter. All payments made hereunder will be made by check and in U.S. Dollars. COMPANY will provide Licensor with a report of Full Version sales each month (or quarter if applicable). In the event COMPANY becomes aware of an actual or possible breach of Licensor's warranties specified in Section 7.1, COMPANY may withhold any payments due to Licensor hereunder and apply such amounts toward any liabilities, damages, costs or expenses incurred by COMPANY as part of Licensor's indemnification obligations under Section 7.4. COMPANY will not owe Licensor any fees for Demo Versions or Web Versions.

**5.4 Taxes.** With respect to the Net License Fees, COMPANY will collect and remit to the appropriate taxing authority, or require the purchaser to pay, all sales, use or similar taxes applicable. Except for the foregoing, each party is solely and separately responsible for its own taxes, user fees, or similar levies. Each party agrees to assist the other party in claiming exemption from any deductions or withholdings under any double taxation or similar agreement or treaty from time to time in force with respect to the royalties payable hereunder.

## **6. TERM**

**6.1 Term.** The Agreement will commence on the Effective Date and will continue for twenty-four (24) consecutive calendar months. The Agreement will renew for additional terms of twelve (12) months each upon the anniversary of the Effective Date, unless either party notifies the other party in writing of its intent not to renew at least thirty (30) days prior to the end of the initial term or then current renewal term. As used herein the "Term" will mean the initial term and any subsequent renewal term.

**6.2 Termination.** Either party may terminate this Agreement if the other party materially breaches a term or condition of this Agreement and fails to cure such breach within thirty (30) days of written notice specifying the breach. Either party may also terminate this Agreement without cause upon one hundred eighty (180) days prior written notice. Additionally, COMPANY may terminate this Agreement upon thirty (30) days notice if: (a) in COMPANY's discretion, the Programs are incompatible with commonly used operating systems or technologies; (b) the content contained in the Programs is inappropriate or objectionable; or (c) the total amount payable to Licensor during any consecutive three (3) month period during the Term is less than one thousand dollars (\$1000).

**6.3 Effect of Termination.** Upon termination of the Agreement, the licenses granted to COMPANY herein will terminate, provided however, that COMPANY may continue to distribute Full Versions, individually or as part of a bundle for a wind-down period of up to six (6) months from the date of termination. All Net License Fees due to Licensor during such six (6) month period will be payable to Licensor within forty five (45) days of the end of such six (6) month period but COMPANY may, at COMPANY's discretion, continue to pay Licensor on a monthly (or quarterly as applicable) basis. COMPANY will destroy all Program Enhancements developed by COMPANY upon termination including all Licensor Material provided to COMPANY by Licensor for the creations and maintenance of such Program Enhancements. All User license agreements relating to the Programs will continue in perpetuity after the termination or expiration of this Agreement for whatever reason. Sections 3.5, 4.4, 4.5, 5.3, 6.3, 7 and 8 will survive the termination of this Agreement for any reason.

## **7. WARRANTIES, LIABILITIES AND INDEMNIFICATION**

**7.1 Licensor Warranties.** Licensor hereby represents and warrants to COMPANY that: (a) it is authorized to enter into this Agreement; (b) it is the exclusive owner of all rights and interests in the Programs and has the right to

*CONFIDENTIAL*

grant the rights granted to COMPANY herein; (c) neither the Programs nor the marketing or sale of the Programs as described herein infringes any copyright, patent, trademark, license or other proprietary right of any person or entity; (d) the Programs do not contain any material that is libelous or defamatory or that discloses private or personal matters concerning any person, obscene, indecent or pornographic material or any computer virus or other contaminating or destructive feature; (e) the Programs will perform in accordance with Licensor's specifications and documentation and marketing materials; (f) the master media on which the Programs are delivered to COMPANY is free from defects in material and workmanship and does not contain any computer virus or other contaminating or destructive feature; and (g) the Programs do not contain any cryptographic device or interface that allows or facilitates the implementation of data encryption (e.g., the Programs do not contain user accessible commands, callable routines or any dynamic interface that would allow a User to implement his or her own data encryption algorithm) or other features that would make distribution of any Programs a violation of United States law. In the event COMPANY or a Wholesale Program Distributor becomes aware of a breach or potential breach of the warranties specified herein, in addition to any other rights and remedies available to COMPANY, COMPANY and/or the Wholesale Party Distributor may immediately discontinue distributing and marketing the Programs without further liability to Licensor.

**7.2 Disclaimer of Warranty.** UNLESS SPECIFIED IN THIS AGREEMENT, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED, EXCEPT TO THE EXTENT SUCH DISCLAIMERS ARE HELD TO BE LEGALLY INVALID. IN THE EVENT THAT COMPANY, AT ITS SOLE DISCRETION, PROVIDES LICENSOR WITH FEEDBACK RELATING TO THE PROGRAMS INCLUDING, WITHOUT LIMITATION, TIPS, SUGGESTIONS, COMMENTS AND OTHER IDEAS (COLLECTIVELY, "COMPANY FEEDBACK") LICENSOR ACKNOWLEDGES AND AGREES THAT SUCH COMPANY FEEDBACK IS PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND. FURTHER, COMPANY DISCLAIMS ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES ARISING OUT OF OR IN CONNECTION WITH SUCH COMPANY FEEDBACK, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSOR'S USE OF COMPANY FEEDBACK IS AT LICENSOR'S SOLE RISK AND ANY SUCH USE OF COMPANY FEEDBACK SHALL NOT UNDER ANY CIRCUMSTANCES AFFECT OR DIMINISH LICENSOR'S INDEMNIFICATION OBLIGATIONS DESCRIBED IN SECTION 7.4 BELOW.

**7.3 Limitation of Liability.** EXCEPT FOR LICENSOR'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 7.4 BELOW, NEITHER PARTY NOR ANY WHOLESALE PROGRAM DISTRIBUTOR WILL BE LIABLE FOR ANY LOST PROFITS, LOST DATA OR ANY FORM OF SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE) EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO CIRCUMSTANCES SHALL COMPANY BE LIABLE TO LICENSOR FOR ANY DAMAGES (EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING FROM LICENSOR'S USE OR INCORPORATION OF COMPANY FEEDBACK INCLUDING, WITHOUT LIMITATION, DAMAGES ARISING OUT OF OR IN CONNECTION WITH INFRINGEMENT, PRODUCT LIABILITY, TORT OR CONTRACT (COLLECTIVELY, "DISCLAIMED DAMAGES"). IN NO EVENT WILL COMPANY'S TOTAL LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNTS ACTUALLY PAID TO LICENSOR BY COMPANY HEREUNDER DURING THE PREVIOUS SIX (6) MONTH PERIOD.

**7.4 Licensor Indemnification.** Licensor will defend, indemnify, and hold COMPANY, and its Wholesale Program Distributors and third party marketing partners, as third party beneficiaries, harmless from and against any and all liabilities, losses, damages, costs and expenses (including legal fees and expenses) associated with any claim or action brought against COMPANY or its Wholesale Program Distributors for: (a) actual or alleged infringement of any patent, copyright, trademark, service mark, trade secret, or other proprietary rights based upon the duplication, sale, license, or use of the Programs by COMPANY, Wholesale Program Distributors or any User; (b) a breach of Licensor's warranties as set forth on Section 7.1 above; (c) any User's use of the Programs including, without limitation, any actions or claims in product liability, tort, contract, or equity. Upon notice of an alleged infringement or if in Licensor's opinion such a claim is likely, Licensor will have the right, at its option, to obtain the right for COMPANY to continue to exercise the rights granted under this Agreement by substituting the Programs with non-infringing Programs that are of similar quality or modifying the Programs so that they are no

entwa m HughesNyeB.doc

longer infringing. In the event that none of the above options are reasonably available, Licensor may terminate this Agreement.

8. GENERAL PROVISIONS

8.1 Compliance With Laws. Both parties will comply with all material aspects of the laws and regulations applicable to its activities under this Agreement. Without limiting the foregoing, both parties will: (a) comply with all United States Department of Commerce and other United States export controls with respect to the subject matter hereof; and (b) not knowingly produce or distribute any software, products, or technical data in any country where such production or distribution would be unlawful.

8.2 Notices and Contact Information. All notices and demands under this Agreement will be in writing and will be delivered by personal service, express courier, or United States mail to the following addresses:

If to COMPANY:

Company, Inc.  
P.O. Box 00000  
Seattle, WA 98111-00000  
Attention:

If by Personal Delivery:

Company, Inc.  
00000 1<sup>st</sup> Avenue, Suite 0000  
Seattle, WA 98111  
Attention:

If to Licensor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Either party may change their address set forth above by providing written notice to the other party. Notice will be effective on receipt.

8.3 Confidentiality. Except as expressly and unambiguously allowed herein, each party will hold in confidence and not use or disclose any Confidential Information and will similarly bind its employees and contractors in writing. The receiving party will not be obligated under this Section 8.3 with respect to information the receiving party can document: (a) is or has become readily publicly available with restriction through no fault of the receiving party or its employees or contractors; (b) was received without restriction from a third party lawfully in possession of such information and lawfully empowered to disclose such information; (c) was rightfully in the possession of the receiving party without restriction prior to its disclosure by the disclosing party; (d) is independently developed by the receiving party by employees without access to the other party's similar Confidential Information; or (e) is required by law or order of a court, administrative agency or other governmental body to be disclosed by the receiving party. Notwithstanding the foregoing, subject to a non-disclosure or confidentiality agreement, COMPANY may disclose the content of Section 7 of this Agreement to any Wholesale Program Distributor or potential Wholesale Party Distributor without breaching this Section 8.3. The parties' obligations with respect to Confidential Information will continue for the shorter of two (2) years from the date of termination of this Agreement or until one of the above enumerated conditions becomes applicable. Each party acknowledges that its breach of this Section 8.3 will cause irreparable injury to the other for which monetary damages are not an adequate remedy. Accordingly, either party may be entitled to seek injunctions and other equitable remedies in the event of such breach by the other.

8.4 Non-Assignment. Licensor may not assign, sublicense, transfer, encumber or otherwise dispose of this Agreement without the prior written approval of COMPANY. Any attempted assignment, sublicense, transfer, encumbrance or other disposal of this Agreement by Licensor in violation of this provision will constitute a material

CONFIDENTIAL

default and breach of this Agreement. Except as otherwise provided, this Agreement will be binding upon and inure to the benefit of the parties successors and lawful assigns.

**8.5 Press Releases and Public Statements.** Neither party will issue any press releases or make public statements relating to this Agreement or the relationship between the parties without the other party’s review of and written consent to such press release or public statement.

**8.6 Force Majeure.** No party shall be deemed in default hereunder for any cessation, interruption or delay in the performance of its obligations due to causes beyond its reasonable control, including but not limited to: earthquake, flood, or other natural disaster, act of God, labor controversy, civil disturbance, war (whether or not officially declared) or the inability to obtain sufficient supplies, transportation, or other essential commodity or service required in the conduct of its business, or any change in or the adoption of any law, regulation, judgment or decree (each a “Force Majeure Event”). Each party shall have the right to terminate this Agreement immediately upon written notice if any Force Majeure Event of another party continues for more than ten (10) days.

**8.7 Miscellaneous.** This Agreement together with Exhibit A constitutes the final agreement between the parties with regard to the subject matter herein, and supersedes and cancels all prior negotiations, understandings, correspondence and agreements, oral and written, express or implied between the parties with regard to the subject matter herein. No waiver, amendment or modification of any provision of this Agreement will be effective unless it is in a document that expressly refers to this Agreement and is signed by both parties. Failure or delay by either party in exercising any rights or remedy under this Agreement will not operate as a waiver of any such right or remedy. The parties are independent contractors. Neither party will be deemed to be an employee, agent, partner or legal representative of the other for any purpose and neither will have any right, power or authority to create any obligation or responsibility on behalf of the other. If for any reason a court of competent jurisdiction finds any provision or portion of this Agreement to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement will continue in full force and effect. This Agreement will be governed by the laws of the State of Washington, United States of America, excluding the Convention on Contracts for the international Sale of Goods, and without regard to conflict of laws provisions. Licensor hereby agrees to submit to the exclusive jurisdiction of an appropriate court within King County in the State of Washington. In any action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party will be entitled to recover its costs, including reasonable attorneys’ fees.

**IN WITNESS WHEREOF**, the parties have executed this Agreement by their duly authorized representatives.

**LICENSOR**

**COMPANY, INC.**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A  
PROGRAMS**

**Programs:**

Title	Percentage of First Party Net License Fees due to Licensor	Percentage of Wholesale Program Distributor Net License Fees due to Licensor	Delivery Date

**Program Enhancements:**

Type	Title	Percentage of First Party Net License Fees due to Licensor (if any)	Percentage of Wholesale Program Distributor net License Fees due to Licensor	Delivery Date

Procedure for adding Programs:

1. Licensor will notify COMPANY of a Program it wishes to add to the Programs listed in the table above and provide COMPANY with a completed Program for COMPANY's evaluation.
2. COMPANY will notify Licensor whether it wishes to include the Programs within thirty (30) business days of such initial notification.
3. In the event that COMPANY agrees to distribute and promote the Programs, such distribution and promotion shall be pursuant to the terms and conditions of this Agreement.