SOFTWARE DEVELOPMENT AND

****

PUBLISHING AGREEMENT

This Software Development and Publishing Agreement takes effect on [DATE],

**BETWEEN: [YOUR COMPANY NAME]** (the "Company"), a company organised and existing under the laws of [COUNTRY], with its head office located at:

[YOUR COMPLETE ADDRESS]

**AND: [COMPANY NAME]** (the "Developer"), a company organised and existing under the laws of [COUNTRY], with its head office located at:

[COMPLETE ADDRESS]

RECITALS

The company is in the business of developing and publishing multimedia software programmes and desires to have the Developer develop a multimedia software programme for the Company to publish;

The Developer is skilled in the development of multimedia software programmes and desires to develop a multimedia software programme for the Company and to have the Company publish such program;

THEREFORE, the Company and the Developer agree as follows:

1. **AGREEMENT**

**Definitions**

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

"**Work**" shall mean the multimedia software programme known as [SPECIFY], and its documentation and related items as more fully described in Annexure [SPECIFY] hereto.

"**Specifications**" shall mean the description of the Work as outlined in Annexure [SPECIFY] hereto.

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

"**Derivative Products**" shall mean any product or medium other than a computer program, board game or electronic game which is based on or derived from the Work or any audiovisual effects produced by the Work or any characters or themes therein. Derivative Products include, without limitation, [SPECIFY].

"**Net Receipts**" shall mean the Company's gross receipts (exclusive of sales, use, excise and other taxes reimbursed by customers, interest, finance charges, insurance and shipping costs) from all sales, licences or other transactions described in Section 8.1 below, less (a) sales commissions paid to independent sales representatives; (b) the amount of any credits or refunds for returns; (c) any credits, discounts, rebates and promotional allowances to customers; and (d) the amount of any sales or use taxes required to be paid or withheld by the Company with respect to the payments due to the Developer hereunder. The amounts deducted under items (a) through (d) above shall be reasonable and consistent with the amounts customarily paid in the industry for such items.

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

"**Subsidiary**" shall mean any company, which is controlled, directly or indirectly, by the Company.

"**Affiliate**" shall mean any company, which controls, is controlled by or is under common control with the Company.

"**Control**" shall mean possession of more than [PERCENTAGE %] of the equity interest or voting power of the Company.

1. **DEVELOPMENT OF WORK FOR THE COMPANY NAME**

The Developer shall develop the Work for the Company as a customer program. The operation, capabilities and performance of the Work shall be as described in the Specifications.

1. **LICENCE OF WORK**

Upon acceptance of the Work, Company shall have, and the Developer hereby grants to the Company the exclusive, worldwide rights and licence to (a) prepare Derivative Works and Derivative Products based on the Work and licence others to do so, and (b) copy, edit, publish, sell, licence and distribute, with full rights to sub-license others to copy, edit, publish, sell, licence and distribute, the Work and all Derivative Works and Derivative Products.

1. **DEVELOPER'S WARRANTIES AND INDEMNITIES**
   1. **Representations**

The Developer represents and warrants to the Company that

4.1.1 the Work, and all Derivative Works developed by the Developer, will be original and will not infringe upon any patent, copyright, trade secret or other proprietary rights of others;

4.1.2 the Developer is the sole and exclusive owner of all rights in the Work subject only to the rights herein granted to the Company;

4.1.3 the Developer has not previously granted and will not grant any rights in the Work to any third party which are inconsistent with the rights granted to the Company herein; and

4.1.4 the Developer has full power to enter into this Agreement, to carry out its obligations herein contained and to grant the rights herein granted to the Company.

* 1. **Indemnification**

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

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

4.2.3 The Company shall not agree to the settlement of any such claim, demand or suit before a final judgement  thereon without the consent of the Developer, whose consent shall not be unreasonably withheld. The Company and the Developer shall bear equally the costs of any such settlement.

* 1. **Scope and Survival**

The Company shall have the right to extend the Developer's representations, warranties and indemnities contained herein to the Company's customers, and sub-licences and the Developer shall be liable to the same extent as if such representations and warranties were made by the Developer directly to such customers and sub-licences. The representations, warranties and indemnities stated in this paragraph shall survive the expiration or termination of this Agreement.

1. **DELIVERY AND ADVANCE PAYMENTS**
   1. **Deliverable Items**

The Developer shall deliver the Work to the Company in accordance with the Specifications, and the Developer shall test the Work and all deliverable items thoroughly as outlined in the Specifications before delivery to the Company. The Work shall include the following items:

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

5.1.2 User instructions, development aids, materials, know-how and instructions as outlined in the Specifications.

5.1.3 Any other deliverable items outlined in Annexure [SPECIFY].

* 1. **Manner of Delivery**

All deliverable items shall be transmitted by the Developer or the Developer's agent to the Company electronically via telephone at the Developer's expense or such other means as the Company shall designate at the Company's expense. THE DEVELOPER SHALL NOT DELIVER ANY OF THE DELIVERABLE ITEMS IN ANY TANGIBLE MEDIUM UNLESS SPECIFICALLY AGREED BY THE PUBLISHER.

Upon either party's reasonable request, the Developer and the Company shall execute such certificates or other documents as the Company may request attesting that such items were transmitted electronically as specified herein. The Developer shall give the Company written notice of each delivery identifying the deliverable item, and delivery shall not be considered complete until the Company has received such notice.

* 1. **Schedule of Milestones and Advance Payments**

The Developer shall deliver the deliverable items to the Company in conformance with the Specifications and accordance with the schedule outlined in Annexure [SPECIFY]. The Company shall make advance payments to the Developer as specified in Annexure [SPECIFY] upon verification of such deliveries. In addition to the advances outlined in Annexure [SPECIFY], the Company shall provide the Developer with the assistance and equipment described in Annexure [SPECIFY], and the value of such assistance and equipment as outlined in Annexure [SPECIFY] shall be considered to be an advance payment. The advance payments shall not be refundable and shall be recovered by the Company only from amounts payable to the Developer under Section 7 of this Agreement.

* 1. **Failure to Deliver**

If the Developer fails to deliver any deliverable item by its specified delivery date or fails to deliver the completed Work in conformance with the Specifications by its specified delivery date, the Company shall have the option, by giving the Developer written notice within [NUMBER] days thereafter, either

* + 1. to terminate this Agreement upon notice to the Developer or

5.4.2 to supply, correct or complete the Work and deduct an amount equal to the Company's costs thereof (including royalties, if any, paid to others) from any payments due to the Developer under this Agreement.

1. **ACCEPTANCE OF WORK**

The Work and each Derivative Work developed by the Developer shall be deemed accepted by the Company, unless within [NUMBER] days after delivery of the completed Work or Derivative Work (and written notice thereof) to the Company, the Company gives the Developer written notice either that the Work or any Derivative Work does not conform to its specifications or that in the Company's subjective judgement  the Work or any Derivative Work is not marketable as submitted. In such event, the Developer shall have [NUMBER] days from receipt of such notice to make and submit to the Company such changes as shall be reasonably required to correct the deficiencies outlined in the notice. If such changes are submitted to the Company by the Developer, the Company shall have an additional [NUMBER] day period in which to reexamine and retest the Work or such Derivative Work.

If no changes are submitted, or the changes submitted do not correct the deficiencies, the Company may terminate this Agreement by written notice to the Developer, or, at its option, Company may, after written notice to the Developer, correct or complete the Work or such Derivative Work and deduct an amount equal to the sum of Company's costs thereof (including royalties, if any, paid to others) from any payments due to the Developer under this Agreement. The [NUMBER] day acceptance periods specified in this paragraph shall be extended by any delay caused by the Developer or by any other cause beyond the Company's control.

1. **MARKETING**
   1. **Commencement of Marketing**

The Company shall commence marketing of the Work within [NUMBER] months after its acceptance or completion of the Work, and the Company will make a reasonable effort to distribute the Work through sales and/or licences. The Company and the Developer shall cooperate to permit the Company to commence marketing as set forth above, and the time for the Company to commence marketing shall be extended by any delay caused by the Developer or by any other cause beyond the Company's control. The Company makes no representations or warranties, however, that the Work or any Derivative Work will be successfully marketed or that any minimum level of sales or licencing will be achieved.

* 1. **Marketing Rights**

The Company shall have the right to prepare, copy, edit, publish, sell, distribute and licence the Work and all Derivative Works and Derivative Products throughout the world:

* + 1. in any form, including, without limitation, human and machine readable forms, source and object code forms, magnetically recorded forms such as cassettes, tapes and disks, and solid-state forms such as read-only memories,
    2. by any methods, including, without limitation, distribution of copies (either separately or with other works), licencing or sub-licencing and offering the use of the Work and Derivative Works through time-sharing or videotext service and
    3. for use with any computer, video game, board game, coin-operated game or other medium. All aspects of the distribution and marketing of the Work, Derivative Works and Derivative Products shall be in the Company's sole control, including, without limitation, determining which Derivative Works and Derivative Products, if any, to be prepared and marketed, the methods of marketing, pricing, naming, packaging, labelling and identification, protection, advertising, terms and conditions of sale and/or licence, collection of customers' names and use of warranty or user registration procedures.

**7.3. Cooperation by the Developer**

The Company shall have the right to use, publish and permit others to use and publish the Developer's name (including any professional name adopted by the Developer), likeness, voice, biographical material, or any reproduction or simulation thereof in connection with the marketing, sale, advertising, distribution, exploitation, production and manufacture of the Work, Derivative Works and Derivative Products. The Company agrees to place the name of the Developer, as set forth in Annexure [SPECIFY], on the exterior of the package in which the Work is distributed. The Developer will from time-to-time, at the Company's request and subject to the Developer's consent which will not be unreasonably withheld whenever the same will not unreasonably interfere with the Developer's other professional engagements:

* + 1. appear for photography, artwork and similar reasons under the direction of the Company or its authorised agent;
    2. appear for interviews which the Company may arrange and confer and consult with the Company concerning the promotion of the Work;
    3. appear on radio, television and elsewhere; and
    4. record taped interviews, spot announcements and electrical transcriptions for advertising, promoting, publicising and exploiting the Work, Derivative Works and Derivative Products.

The Company shall consult with the Developer, and the Developer shall have the right to reasonably approve all photographs of and biographical material concerning the Developer not furnished by the Developer, provided:

* + 1. once the Developer has approved any particular photograph or biographical material, the Developer shall be deemed to have approved such photograph or material for all subsequent uses unless the Developer timely notifies the Company in writing to the contrary and
    2. upon written request by the Company, the Developer shall have [NUMBER] calendar days to approve or disapprove a particular photograph or biographical material, it is agreed that the Developer shall be deemed to have approved a photograph or biographical material if within such [NUMBER]-day period the Developer fails to approve it or supply an acceptable substitute photograph or substitute biographical material.

**7.4. Termination of Marketing Efforts**

Notwithstanding paragraph 7.1 above, if the Company determines that due to changes in market conditions or for any other reason the Company will not market or will not continue to market or distribute the Work or any Derivative Work, the Company shall have the right, without further liability to the Developer except as specified below, to terminate this Agreement by giving written notice to the Developer. If the Company removes from its published price lists the Work and all Derivative Works and makes no further effort to market the Work or any Derivative Works, the Developer may terminate this Agreement by giving written notice to the Company, unless within [NUMBER] after such notice, the Company restores the Work or at least one Derivative Work to the Company's price lists or otherwise commences marketing efforts. Upon termination of this Agreement under this Paragraph, the Developer shall retain all advances paid by the Company hereunder, and the Company and the Developer shall have the rights outlined in Section 18 below.

1. **ROYALTY PAYMENTS TO THE DEVELOPER**
   1. **Royalties**

The Company shall, except as described in this Section 7, credit against any advance payments made to the Developer under Section 4 hereof and against any reimbursable costs incurred under Sections 4, 5 or 9 hereof, and, after such amounts have been fully reimbursed, pay to the Developer royalties equal to the percentages specified in Annexure D of the "Net Receipts" actually received by the Company with respect to all sales, licences or other transactions pursuant to which customers are permitted to use or market the Work, Derivative Works or Derivative Products.

* 1. **Combination with Other Works**

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

* 1. **Replacement and Promotional Copies**

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

* 1. **Deposits or Advances**

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

* 1. **Foreign currencies**

Amounts received by the Company in foreign currencies shall be deemed converted into [COUNTRY] [CURRENCY] at the average exchange rates used by the Company in its financial statements for the month of receipt, except that "blocked funds" which cannot be remitted to the [COUNTRY] in [CURRENCY] shall not be deemed received until they can be so remitted, provided that, at the Developer's request and if reasonably practicable, the Company shall deposit in a foreign bank account established by the Developer the amount in the foreign currency of the royalties that would be due to the Developer with respect to such blocked funds.

1. **PAYMENTS; REPORTS; INSPECTION**
   1. **Payments**

Payments due to the Developer under Section 7 hereof shall be calculated on a calendar quarter, and shall be made within [NUMBER] days after the close of each calendar quarter to the Developer at the address listed above or such other address as the Developer may direct in writing.

* 1. **Reports**

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

* 1. **Inspection and Audit**

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

1. **DERIVATIVE WORKS AND DERIVATIVE PRODUCTS**
   1. **Development by the Developer**

The Company shall have the exclusive rights outlined in Section 2 hereof with respect to any Derivative Works or Derivative Products that are developed, or the rights to which are acquired, by the Developer during the term of this Agreement. The Developer shall promptly inform the Company of any Derivative Works and Derivative Products which are developed, or the rights to which are acquired, by the Developer during the term of this Agreement, and the Developer shall deliver copies thereof to the Company upon the Company's request.

* 1. **Development at Company Request**

If the Company desires to prepare or have a third party prepare a Derivative Work, the Company shall first give the Developer written notice and give the Developer the opportunity to prepare the Derivative Work. If the Developer does not agree within [NUMBER] days to prepare the Derivative Work, if the Developer and the Company do not agree within [NUMBER] days to specifications and a delivery schedule for the Derivative Work, or if the Developer fails to prepare the Derivative Work in accordance with the mutually agreed upon specifications and delivery schedule, then the Company shall have the right, after giving the Developer written notice, to prepare or cause a third party to prepare the Derivative Work. If the Developer prepares the Derivative Work, the Company shall pay the Developer the normal royalties specified in Annexure [SPECIFY]. If the Company prepares the Derivative Work, the Company shall pay the Developer the reduced royalty rate specified in Annexure [SPECIFY] for Derivative Works prepared by the Company.

* 1. **Derivative Products**

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

* 1. **Development Aids**

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

* 1. **Consulting services**

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

1. **MAINTENANCE**

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

1. **PROTECTION OF PROPRIETARY RIGHTS**

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

* 1. In the case of the Work or any Derivative Work or Derivative Product developed by the Developer;

Copyright ([NUMBER])\_\_[Developer]

* 1. In the case of any Derivative Work or Derivative Product developed by the Company :

Copyright [NUMBER]\_\_ [Developer and the Company]

The Company shall be the owner of the copyright and all other proprietary rights in all Derivative Works and Derivative Products developed by the Company, subject to the Developer's copyright in the original Work.

1. **NONDISCLOSURE**

The Developer agrees that the trade secrets and technology embodied in the Work and any Derivative Work or Derivative Product to which the Company acquires the exclusive rights hereunder, any information disclosed by the Company to the Developer or the Developer's accountants or attorneys under Section 9, and any other information concerning the Company's marketing plans, the Company's existing or future products (including the Work and Derivative Works or Derivative Products), the existing or future products of hardware manufacturers, any methods of protection employed by the Company or such manufacturers to prevent unauthorised duplication of software programs, the terms of this Agreement, and any other confidential business or technical information disclosed by the Company to the Developer in the furtherance of this Agreement shall be held in strict confidence and shall not be disseminated or disclosed to any other party without the express written consent of the Company. The obligations of this Paragraph shall survive the expiration or termination of this Agreement. This Paragraph shall not apply to algorithms or programming techniques of general applicability, which were developed by the Developer before entering into this Agreement.

1. **TRADEMARKS**

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

1. **INFRINGEMENT BY OTHERS**
   1. **Notification**

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

* 1. **First Option Rights of the Company**

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

* 1. **Rights of the Developer**

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

1. **TERM**

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

1. **BREACH BY [COMPANY NAME]**
   1. **Triggering Events**

In the event of the bankruptcy of the Company or a material breach of a material provision hereof by the Company prior to the payment of the Maximum Amount specified in Section 8 herein, which breach is not cured within ([NUMBER]) days after written notice thereof by the Developer, the Developer may, effective ([NUMBER]) days after written notice thereof to the Company, terminate this Agreement, and all rights granted to the Company hereunder shall thereupon automatically revert to the Developer as provided below in this Paragraph.

* 1. **Good Fair Dispute**

A good faith dispute as to the determination or calculation of payments due to the Developer hereunder shall not be considered a breach of this Agreement provided that the Company deposits the disputed amount in an interest-bearing escrow account with a commercial bank and offers to arbitrate the dispute in accordance with the Commercial Rules of the [SPECIFY CODE/RULE] in [COUNTRY/COUNTRY].

* 1. **Additional Rights**

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

1. **BREACH BY DEVELOPER**

In the event of a material breach by the Developer of a material provision hereof, which breach is not cured within ([NUMBER]) days after written notice thereof by the Company, the Company may, effective ([NUMBER]) days after written notice thereof to the Developer, terminate this Agreement, and the rights granted to the Company hereunder shall revert to the Developer as provided in Section 19 hereof. In addition to or in lieu of its rights to terminate this Agreement upon a material breach by the Developer, the Company shall have the right to pursue any remedies at [YOUR COUNTRY LAW] or equity, and the Company may pay into an interest-bearing escrow account with a commercial bank any payments due to the Developer hereunder as security for payment of any damages arising from any material breach by the Developer of any provision of this Agreement. Upon resolution of the claim, the amounts in escrow including interest thereon shall be distributed to the Developer after deduction of the amounts, if any, required to be paid to the Company. Except as provided in Section 4, the Developer shall not be liable to the Company for incidental or consequential damages or the loss of anticipated profits arising from any breach of this Agreement by the Developer.

1. **EFFECT OF TERMINATION**

Upon termination of this Agreement:

* 1. The licences granted in Section 2 shall terminate, and the Company shall promptly return to the Developer copies of the Work and all Derivative Works and Derivative Products developed by the Developer, including all master copies, and production materials relating thereto in the Company's possession;
  2. the Company shall promptly execute and deliver to the Developer all documents necessary to assign to the Developer Company's interest in any patent and copyright in such works as originally delivered to the Company by the Developer;
  3. the Developer shall have no rights to any Derivative Works or Derivative Products developed by the Company;
  4. All rights and licences granted by the Company to third parties shall continue in full force and effect;
  5. the Company shall, in any event, have the right to retain copies of any version of the Work for the Company's use and to provide support to its then existing customers;
  6. and the Company's obligation to pay the Developer royalties due or which may thereafter become due under Section 8 with respect to Net Receipts received by the Company shall continue.

1. **OPTIONS FOR OTHER WORKS**

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

* 1. **First Option**

The Developer shall promptly inform the Company of each computer software programme on which the Developer intends to develop for sale or licencing within such period and the Developer shall give the Company a written notice setting forth the specifications for each such program. The Developer shall offer the Company the right to market each such programme and shall negotiate the terms and conditions of such marketing in good faith. If the Company and the Developer are unable to agree upon the terms and conditions within ([NUMBER]) days of the Developer's written notice, then the Developer shall be free to market the programme directly to end-users, but prior to granting any marketing rights to such programme to any distributor, publisher or other party other than a retail dealer, the Developer shall offer such rights to the Company as set forth in subparagraph 20.2 below.

* 1. **The right of First Refusal**

Prior to entering into any agreement with any distributor, publisher or other party for the sale or licencing of the rights to market any programme which the Company has previously declined to market pursuant to subparagraph 20.1 above, the Developer shall give the Company written notice setting forth the specifications and terms and conditions under which such rights are proposed to be sold or licenced and the name and address of the party to whom such rights are to be offered. The Company shall then have ([NUMBER]) days in which to review the specifications for the work and the terms of the proposed sale or licence and to exercise a right of first refusal to accept or reject the offer. If during such thirty-day period, the Company gives the Developer written notice that the Company accepts such offer, the Developer shall promptly execute an agreement granting to the Company. The rights outlined in the notice on the terms and conditions set forth therein. If the Company rejects such offer, then the Developer shall be free for a period of ([NUMBER]) days thereafter to agree with the party named in the notice for sale or licencing of such rights on the same terms and conditions as outlined in the notice to the Company. If the Developer changes the terms and conditions or the party to whom the rights are offered, or if the Developer proposes to offer the same terms and conditions after ([NUMBER]) days have elapsed, the Developer shall again offer such rights to the Company as outlined in this subparagraph 20.2.

* 1. **No Waiver**

The Company's failure to exercise any of its rights under this Section 20 shall not operate as a waiver of any other rights the Company may subsequently have under this Section 20.

1. **GENERAL**
   1. **Entire Agreement**

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

* 1. **Independent Contractors**

The 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. The 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 the Developer hereunder.

* 1. **Equitable Relief**

The Developer acknowledges that the performance of the Developer's obligations hereunder and the rights and licences granted to the Company hereunder are of a special, unique, unusual, extraordinary and intellectual character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action at [YOUR COUNTRY LAW], that a material breach by the Developer of this Agreement will cause the Company great and irreparable injury and damage and, therefore, the Company shall be entitled to injunctive relief to prevent such injury and damage.

* 1. **Force Majeure**

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

* 1. **Assignment**

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

* 1. **Governing Law**

This Agreement shall be governed and interpreted in accordance with the substantive [YOUR COUNTRY LAW] of [COUNTRY]. The parties agree that any dispute arising under this Agreement shall be resolved in the courts within [COUNTRY] and the Developer expressly consents to jurisdiction therein.

* 1. **Severability**

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

* 1. **Notices**

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

IN WITNESS WHEREOF, each party to this agreement has caused it to be executed at [PLACE OF EXECUTION] on the date indicated above.

# COMPANY DEVELOPER

Authorised Signature Authorised Signature

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