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*Counsel to Aston Martin Lagonda Limited*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	:	Chapter 11
	:	
<b>ATARI, INC., et al.,</b>	:	Case No: 13-10176 (JMP)
	:	
Debtors. <sup>1</sup>	:	(Jointly Administered)

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**ASTON MARTIN LAGONDA LIMITED’S OBJECTION AND RESERVATION OF  
RIGHTS TO DEBTORS’ NOTICE OF ATTEMPT TO ASSUME AND  
ASSIGN CERTAIN EXECUTORY CONTRACTS**

Aston Martin Lagonda Limited (“**Aston Martin**”), by its attorneys, Honigman Miller Schwartz and Cohn LLP, files this Objection (this “**Objection**”) to the *Notice of Attempt to Assume and Assign Certain Executory Contracts* [Docket No. 296] (the “**Assumption Notice**”) filed by Atari, Inc. (“**Atari**”) and its affiliates (collectively, the “**Debtors**”).<sup>2</sup> In support of its Objection, Aston Martin states as follows:

**Background**

1. On January 21, 2013 (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate

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<sup>1</sup> The Debtors are Atari, Inc., Atari Interactive, Inc., Humongous, Inc., and California U.S. Holdings, Inc.

<sup>2</sup> Capitalized terms used but not defined herein have the meanings given to them in the Assumption Notice.

business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. By order entered on January 24, 2013, the Debtors' chapter 11 cases were consolidated for procedural purposes only and are being jointly administered.

3. On May 22, 2013, the Debtors filed a Sale Motion to, among other things, (i) establish auction and bid procedures (the "**Bid Procedures**") with respect to the sale of substantially all of their Assets (the "**Sale Transaction**"); (ii) schedule an auction and sale hearing; and (iii) approve the sale of the Assets and the assumption and assignment of certain contracts related thereto free and clear of all liens, claims, encumbrances, and other interests.

4. On June 14, 2013, the Court entered the Bid Procedures Order approving the Bid Procedures and setting a date for the Sale Hearing. The Sale Hearing is scheduled for July 24, 2013.

5. Prior to the Petition Date, on or about February 10, 2010, Aston Martin and Atari entered into a Trade Mark License Agreement (the "**License**"), under which Aston Martin granted Atari a limited non-exclusive license to use certain Aston Martin trademarks (the "**Marks**") in the development, manufacture and sale of Atari's video game entitled Test Drive Unlimited 2. A redacted copy of the License is attached as Exhibit A.

6. Subject to an exception that is not relevant to this Objection, the License provides that the Atari may not assign, encumber or transfer any of its rights, licenses or obligations under the License without the prior written approval of Aston Martin. License at §§ 11.9 and 21.4.

7. The License is governed by and to be construed in accordance with the laws of England, without regard to conflicts-of-law principles. *See* License § 20.1.

8. On July 11, 2013, the Debtors' filed the Assumption Notice seeking, among other things, authorization to assume and assign certain executory contracts (the "**Executory Contracts**") upon consummation of the Sale Transaction to a successful bidder. The Assumption Notice identifies the License as an Executory Contract to be assumed and assigned to a successful bidder at the Auction on Exhibit 1 to the Assumption Notice.

### **Objection**

#### **A. The License Cannot be Assumed or Assigned without Aston Martin's Consent**

9. Section 365(c) of the Bankruptcy Code prevents the Debtors from assuming or assigning a contract where "applicable law" excuses the nondebtor party to the contract from accepting performance from an entity other debtor. *See* 11 U.S.C. § 365(c)(1)(A) (A debtor may not assume or assign an executory contract if "applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor."); *In re Adelphia Commc'ns Corp.*, 359 B.R. 65, 73-74 (Bankr. S.D.N.Y. 2007) (holding the section 365(c) of the Bankruptcy Code bars the assignment of executory contracts if "applicable law" bars assignment).

10. Under Section 365(c), "applicable law" is any nonbankruptcy law applicable to the contract. *See In re XMH Corp.*, 647 F.3d 690, 695 (7th Cir. 2011) (explaining under section 365(c)(A)(1) "[t]he term 'applicable law' means any law applicable to a contract, other than bankruptcy law.").

11. The License is governed by the laws of England and the Marks are registered trademarks in England subject to English law. Under the laws of England, specifically the Trade Marks Act of 1994 (the "**Trade Marks Act**"), the owner of registered trademarks has certain exclusive rights in and to its trademarks. *See* Trade Marks Act § 9. One of those enumerated

rights is that a trademark cannot be licensed and, therefore cannot be assigned, without the owner's consent. *See e.g. id.* at § 28(2) ("A licence is not effective unless it is in writing signed by or on behalf of the grantor."). As the Trade Mark Act is the "applicable [nonbankruptcy] law" governing the contract, the Debtors are prohibited from assuming or assigning the License without the consent of Aston Martin, which Aston Martin has not provided.

12. Even if English law did not apply to the License, which it does, some or all of the Marks are also federally registered trademarks in the U.S. and, therefore, protected by U.S. federal trademark law. *See, e.g.,* 15 U.S.C. § 1127 (Lanham Trade-Mark Act).

13. Federal trademark law is "applicable law" under section 365(c) of the Bankruptcy Code and, in accordance therewith, the License cannot be assumed or assigned without Aston Martin's consent. *See In re Kazi Foods of Michigan Inc.*, 473 B.R. 887, 889-90 (Bankr. E.D. Mich. 2011) (finding federal trademark law to be "applicable law" and holding that trademark law prohibits the assignment of nonexclusive trademark licenses to a third party without owner's consent); *In re XMH Corp.*, 647 F.3d at 695 ("[T]he universal rule is that trademark licenses are not assignable in the absence of a clause expressly authorizing it.") (internal citations omitted); *Tap Publications, Inc. v. Chinese Yellow Pages (New York) Inc.*, 925 F. Supp. 212, 218 (S.D.N.Y. 1996). ("[T]he general rule is that unless the license states otherwise, the licensee's right to use the licensed [trade] mark is personal and cannot be assigned to another.") (internal citations omitted); *In re Travelot Co.*, 286 B.R. 447, 455 (Bankr. S.D. Ga. 2002) ("The grant of a non-exclusive [trademark] license is 'an assignment in gross,' that is, one personal to the assignee and thus not freely assignable to a third party."); *In re N.C.P. Mktg. Grp., Inc.*, 337 B.R. 230, 237 (D. Nev. 2005) ("[W]e find that under applicable trademark law, trademarks are personal and non-assignable without the consent of the licensor.")

14. Aston Martin has not agreed to accept performance under the License from any party other than the Debtor. Accordingly, the License cannot be assumed and assigned by the Debtor to any third party and Aston Martin objects to the Assumption Notice to the extent it purports to assume and assign the License to a buyer of Debtors' Assets.

**B. The License Cannot Be Assigned until Atari Provides Adequate Assurance of Future Performance to Aston Martin**

15. Even if the Court determines that the License could be assumed by the Debtors and assigned to a buyer without Aston Martin's consent, pursuant to Section 365(f) of the Bankruptcy Code the Debtors are required to provide adequate assurance of future performance to Aston Martin in connection with any assignment. *See* 11 U.S.C. § 365(f)(2)(B) (A debtor "may assign an executory contract or unexpired lease of the debtor *only if* . . . adequate assurance of future performance by the assignee of such contract or lease is provided.") (emphasis added)

16. As of the filing of this Objection, the identity of the successful bidder, if any, has not been determined. Therefore, Aston Martin cannot determine whether that unknown party is capable of performing under the License or providing Aston Martin with adequate assurance of future performance. Aston Martin reserves its right to file a further or supplemental objection based on the identity of the successful bidder and the successful bidder's ability to provide adequate assurance of future performance.

**C. Reservation of Rights**

17. Aston Martin reserves its right to file a further or supplemental objection to the Assumption Notice for any reason, including, but not limited to, those reasons set forth in Aston Martin's June 24, 2012 letter to Atari.

**Conclusion**

WHEREFORE, Aston Martin respectfully requests that the Court enter an order denying the Debtors' request to assume and assign the License and granting Aston Martin such other relief as is just and proper.

HONIGMAN MILLER SCHWARTZ AND COHN LLP  
Counsel for Aston Martin Lagonda Limited

Date: July 19, 2013

By: /s/ Joseph R. Sgroi  
Joseph R. Sgroi (Michigan Bar # P68666)  
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**EXHIBIT A**  
**LICENSE AGREEMENT**

12888751.2

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THIS IS NOT AN OFFER CAPABLE OF ACCEPTANCE NOR IS IT AN INTENTION TO  
ENTER INTO AN AGREEMENT, AND HAS NO OPERATIVE EFFECT UNTIL SIGNED  
BY BOTH PARTIES. NO PARTY SHOULD ACT IN RELIANCE ON THIS  
AGREEMENT; ANY VERBAL REPRESENTATIONS OF LICENSOR; OR ANY  
PAYMENT OF CONSIDERATION; TO DEVELOP, SHIP, OR SELL PRODUCTS,  
UNTIL THIS AGREEMENT IS FULLY EXECUTED.

ASTON MARTIN LAGONDA LIMITED

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**TRADE MARK LICENSE AGREEMENT**

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**ASTON MARTIN LAGONDA LIMITED  
TRADE MARK LICENSE AGREEMENT  
COVER SHEET**

<b>Licensee Information</b> <b>Name:</b> <b>Address:</b> <b>City/State or Province:</b> <b>Country:</b> <b>Where Incorporated:</b>	Atari, Inc. 417 5 <sup>th</sup> Avenue New York, NY 10016 United States of America Delaware
<b>Licensee Contact Information</b> <b>Contact Person at Licensee:</b> <b>Title:</b> <b>Address:</b> <b>Phone:</b> <b>Fax:</b> <b>e-mail:</b>	Will Treves, Director of Strategic Planning Director of Strategic Planning See Above +1 (310) 595 2100 +1 (310) 595-2185 will.treves@atari.com
<b>Licensed Properties:</b>	1. the phrase, "Aston Martin Official Licensed Product"; 2. The name "Aston Martin"; and 3. The Aston Martin Wings Device logo as displayed in Schedule A, 4. such Aston Martin owned or controlled trademarks and trade dress as may be used by Aston Martin on or in connection with the following vehicle(s) 2010 One-77 2009 DBS Coupe 2008 DB9 Volante 2009 V12 Vantage 2009 DB9 Coupe 2009 V8 Vantage  in each case only in connection with the Licensed Products and subject to and strictly in accordance with the terms of this Agreement and not further or otherwise.
<b>Licensed Products:</b>	<b>The following products as developed by the Licensee and approved by the Licensor in accordance with this Agreement:-</b>  <b>Category 1:</b> Interactive video game tentatively titled "Test Drive Unlimited 2" for the <i>Sony Playstation 2, Sony Playstation 3; Microsoft Xbox, Microsoft Xbox 360; Nintendo Wii, Nintendo Gamecube; PC Version, Apple Macintosh Version, and successor platforms to the foregoing.</i>  <b>Category 2:</b> Any version of the interactive game tentatively titled "Test Drive Unlimited 2" developed for handheld and portable game devices including mobile phones, PDAs and other portable

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	electronic or wireless devices, including iPod touch, iPhone, Android, etc., Nintendo DS and Sony PSP.  <b>Category 3:</b> Electronic downloads of Licensed Property within Category 1 and 2 formats (including additional downloadable content), including game related micro-transactions specifically related to the video game version of the Licensed Product for any platform (e.g. wallpaper themes, gamerpics, etc).  <b>Category 4:</b> Strategy guides provided by the Licensee exclusively in connection with promoting and enhancing use of the Licensed Products by purchasers of such products.	
<b>Territory:</b>	Worldwide.	
<b>Initial Term:</b>	Sept 01 <sup>st</sup> 2010 – Dec 31 <sup>st</sup> 2015	
<b>Renewal Term(s):</b>	None	
<b>Royalty Rate:</b> (Clause 3.1)	<b>Category 1:</b> [REDACTED]  <b>Category 2:</b> [REDACTED]  <b>Category 3:</b> • [REDACTED] • [REDACTED]  <b>Category 4:</b> • [REDACTED]	
<b>Guarantee Minimum Royalties</b>	<b>Due Date</b>	<b>Description</b>
[REDACTED]		

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One-77	Terms and Royalty
<b>Cross-Collateralization Not Permitted, Except:</b> (Clause 3.5)	No cross-collateralization permitted between separate games but cross collateralization is permitted among skus of a game within each royalty Category.
<b>Channels of Trade:</b> (Clause 2.6)	Computer Software/Supply Stores, Electronic & Computer Gaming Stores, Internet, Electronic Speciality Stores, Mass Merchandisers, Toy Speciality Retailers, Video Stores, Department Stores, Catalogues/Mail Order, Mobile Phone Content Service Providers, Wholesale to Retail Outlets, Wholesale to Distributors, Direct Sales to Consumers, National Discount/Regional Discount/Mass Retailers, Warehouse clubs, kiosks, including Digital Download Distribution and Channels, subject to the provisions of Clause 11.8. Any other channels through which the Licensee regularly markets and distributes its products.
<b>Distribution Start Date:</b> (Clause 9.2)	Sept 2010 (estimated)
<b>Exclusivity</b> - unless otherwise specified, this licence shall be non-exclusive (Clause 2.1)	Non-exclusive.

<b>Dates to be Proved:</b>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
<b>Insurance:</b> \$3,000,000 combined single limit minimum	<b>Insurance Deductible:</b> \$250,000 maximum amount

<b>Address for all Written Confirmations, Reports and Payments by Licensee, including Royalty Payments to be sent to:</b>	
Aston Martin Lagonda Limited Banbury Road Gaydon Warwick CV35 0DB United Kingdom	If Payment by Wire Transfer: Lloyds TSB Plc 25 Gresham Street London
Main Fax Line: +44 (0)1926 644 002 Office Telephone: +44 (0)1926 644 235	Beneficiary: Aston Martin Lagonda Limited Pounds Sterling: GBP £: Account: 00057008 Sort Code: 30-00-02 Swift Code: LOYDGB2L IBAN: GB53 LOYD 3000 0200 0570 08
If Payment by Cheque: Aston Martin Lagonda Limited Banbury Road Gaydon Warwick CV35 0DB United Kingdom	Euro: EUR €: Account: 86301499 Sort Code: 30-12-18 Swift Code: LOYDGB2L IBAN: GB59 LOYD 3012 1886 3014 99
Payable to: Aston Martin Lagonda Limited	United States Dollars: USD \$: Account: 11571109 Sort Code: 30-12-18

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Attn: Accounting Department	Swift Code: LOYDGB2L IBAN: GB18 LOYD 3012 1811 5711 09
<b>Addresses for Legal Notices Under the Agreement:</b>	
Licensor Aston Martin Lagonda Limited Banbury Road Gaydon Warwick CV35 0DB United Kingdom	Licensee Atari Inc. 417 5 <sup>th</sup> Avenue New York, NY 10016 USA Attn: Vice President and General Counsel

The undersigned agrees to become a licensee of Aston Martin Lagonda Limited under the terms and conditions specified in this Trade Mark License Agreement Cover Sheet and the attached License Agreement terms and conditions (including any schedules thereto), which are incorporated by reference. Until such time as this Agreement has been executed by both parties: (i) neither its terms and conditions nor any discussion relating to it, shall be binding or enforceable upon either party; and (ii) no provision contained in this Agreement, or payment of consideration, should be construed as an inducement to act or to withhold an action, or be relied upon as such.

ATARI, INC.

Signed for and on behalf of Licensee by: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Aston Martin Lagonda Limited

Signed for and on behalf of Licenser by: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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Date:

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**ASTON MARTIN LAGONDA LIMITED  
NON-EXCLUSIVE TRADE MARK LICENSE AGREEMENT**

This License Agreement ("**Agreement**") is entered into as of February \_\_, 2010 by and between Aston Martin Lagonda Limited, a corporation organized and existing under the laws of England, whose address is Banbury Road, Gaydon, Warwick, CV35 0DB, United Kingdom ("**Licensor**"), and Atari, Inc., a corporation whose registered address is 417 5<sup>th</sup> Avenue, New York, NY10016, USA ("**Licensee**"). This Agreement includes the Trade Mark License Cover Sheet (the "**Cover Sheet**") attached hereto, these License Agreement terms and conditions, and any schedules attached hereto.

**RECITALS**

Licensor owns and/or has the right to license the Licensed Properties (defined below) and other intellectual properties contained in, used with, or associated with the Licensed Products (defined below). Licensee wishes to use the Licensed Properties in association with the development, manufacture, sourcing, distribution, marketing, advertising, promotion and sale of Licensed Products. Licensor agrees to grant such a license to Licensee on the terms and conditions in this Agreement.

**THE PARTIES AGREE THAT:**

**1. INTERPRETATION**

**1.1 Definitions**

"**Affiliate(s)**" means any corporation, partnership or other entity that directly or indirectly Controls, is Controlled by, or is under common Control with any such other corporation, partnership, or other entity.

"**Authorized Manufacturer**" means a third party that, under contract with Licensor and Licensee pursuant to Schedule E, manufactures Licensed Products for sale and distribution by Licensee.

"**Collateral Materials**" means packaging, wrapping, labels, catalogues, brochures, advertising, promotional materials and the like for the Licensed Products.

"**Confidential Information**" means all information which relates to the business of Licensor (or an Affiliate of Licensor) or Licensee (or an Affiliate of Licensee) and its business and technical affairs, products, developments, trade secrets, know-how, personnel, marketing strategies and methods, suppliers and customers (whether or not designated as 'confidential information' by the disclosing party) disclosed by whatever means by Licensor either directly or through any person associated with Licensor, to Licensee, or by Licensee either directly or through any person associated with Licensee, to Licensor, together with all information derived from the above and all information designated as confidential or commercially sensitive or which ought reasonably to be considered as such.

"**Contract Year**" means, for the first Contract Year, the period beginning with the date of this Agreement until December 31 of the same year, unless otherwise specified in this Agreement. The second Contract Year, if any, will commence on the first January 1 following the end of the first Contract Year and will continue until the end of the calendar year, unless otherwise specified in this Agreement. Subsequent Contract Years, if any, will also commence on the January 1 anniversary date and will continue until the end of their respective calendar years, unless otherwise specified in this Agreement.

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**"Control"** of any entity shall mean the power, directly or indirectly: (a) direct or indirect ownership of more than 50% of voting share capital for the election of that entity's directors; or (b) to direct or cause the direction of the management and policies of that entity whether by voting power, contract or otherwise.

**"Distributor"** means an entity that is authorized under Clause 11.8 to purchase Licensed Products from Licensee for resale to an entity other than the end user, and which is authorized to advertise, market, and/or promote the Licensed Products.

**"Distribution Start Date"** has the meaning specified in the Cover Sheet.

**"Dumping"** means the distribution of product at volume levels significantly above Licensee's prior sales practices with respect to the Licensed Products, and at price levels so far below Licensee's prior sales practices with respect to the Licensed Products as to disparage the Licensed Products.

**"Intellectual Property"** means all property rights and interests incorporated in, or used in association with Licensed Products, that are entitled to statutory, common law, or other legal protection including patents, design patents, process patents, trade marks, service marks, trade dress, trade names, trade secrets, copyrights, imprints, moral rights, rights of publicity, domain names, and the like (including such forms of intellectual property right that may come into existence during the Term). Intellectual Property includes also any other personal or property right obtained or obtainable or otherwise protected or protectable, including rights, registrations, grants, renewals and extensions and all applications, divisions, substitutions, continuations and replacements and the like.

**"Licensed Products"** means the products listed in the Cover Sheet to this Agreement and which bear one or more Licensed Properties.

**"Licensed Properties"** means the trade marks (whether registered or not), trade mark registrations, trade mark applications, domain names, domain name registrations, and other Intellectual Properties, whether or not registered, listed in the Cover Sheet and/or Schedule A to this Agreement.

**"Licensor's Style Guide"** means the style guide attached at Schedule H (if any).

**"Net Sales"** means gross sales less customary trade quantity discounts and allowances and returns (the aggregate of which will not exceed ten percent (10%) of gross sales on an annual basis) and less separately listed applicable taxes. Except for those deductions expressly provided for above, there will be no deductions of any sort or kind, including deductions for cash discounts, early payment discounts, mark down allowances, defective goods allowances or allowances taken by customers in lieu of returning goods, costs or expenses incurred in the manufacture, distribution, sale or advertisement of the Licensed Products, or for uncollected bills. As used in this paragraph, "customary trade quantity discounts" means quantity discounts and other discounts from the invoice price unilaterally imposed in the regular course of business from Licensee's customers, so long as Licensee documents such discounts to Licensor's satisfaction. All sales made by Licensee to an Affiliate shall be treated as provided in Clause 3.3.

**"Quality Standards"** means the quality standards contained in Schedule B.

**"Royalty"** is defined in Clause 3.1.



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**"Royalty Payment Date"** means the date falling 45 days after each of 31 March, 30 June, 30 September and 31 December.

**"Sell-Off Period"** is defined in Clause 15.8.

**"Term"** is the period specified in the Cover Sheet unless earlier terminated in accordance with Clause 14.

**"Territory"** means the geographic areas identified in the Cover Sheet under the heading **"Territory"**

1.2 In this Agreement:

- 1.2.1 a reference to "including" means "including without limitation";
- 1.2.2 a reference to a "person" includes an individual, a corporate body (wherever incorporated), an unincorporated association, a partnership, a government or a governmental body;
- 1.2.3 the headings are inserted for convenience only and do not affect the construction of the Agreement;
- 1.2.4 a reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be amended, modified, consolidated or re-enacted;
- 1.2.5 reference to a clause or schedule, is a reference to a clause or schedule, respectively, of this Agreement; and
- 1.2.6 references to "trade mark" include trade marks and service marks.

2. **GRANT OF LICENSE**

2.1 Subject to the terms of this Agreement, Licensor grants to Licensee, during the Term, a non-transferable, revocable licence to use the Licensed Properties solely to:

- 2.1.1 Design, develop and manufacture Licensed Products anywhere in the world;
- 2.1.2 appoint Authorized Manufacturers to manufacture Licensed Products on its behalf; and
- 2.1.3 distribute, advertise, promote, rent, sell and offer for sale Licensed Products in the Territory.

The licence granted under this clause 2.1 is non-exclusive unless otherwise indicated in the Cover Sheet. For clarity, Licensor acknowledges that Licensee has the right to feature the Licensed Properties on box covers (and similar packaging) for the Licensed Product and in all advertising and marketing materials for the Licensed Products subject always to Licensor's prior written approval of such materials and Licensee's compliance with the terms of this Agreement.

- 2.2 Nothing herein shall prohibit the Licensor, or any other licensee of Licensor, to exercise the same rights regarding the Licensed Properties during the Term.
- 2.3 Licensee may not grant sublicenses except as permitted under Clause 11.

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- 2.4 Any use of the Licensed Properties by Licensee must be approved in advance in writing by Licensor and must conform to the quality controls in Clause 6. Any other use of the Licensed Properties by Licensee will constitute an act of wilful and intentional trade mark infringement.
- 2.5 Unless expressly provided in this Agreement, Licensor grants Licensee no rights in the name, likeness, signature, or other attributes of any driver, race car livery, race team, race car constructor, race car sponsor, or racing venue ("**Racing Car Rights**"). Licensee shall be responsible for securing any Racing Car Rights that it requires. Licensee shall not exercise its rights under this Agreement in any manner that might imply that Licensee has obtained any Racing Car Rights without authorization from the appropriate driver, race team, race car constructor, or racing venue.
- 2.6 Licensee agrees to sell and distribute the Licensed Products, and to use the Licensed Properties, only in the Channels of Trade identified in the Cover Sheet or as otherwise authorized by the Licensor and in accordance with the terms of this Agreement.

3. **ROYALTIES**

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**4. ROYALTY REPORT AND PAYMENTS**

- 4.1 On or before each Royalty Payment Date, Licensee shall provide to Licensors:
- 4.1.1 a Royalty report in respect of the previous calendar quarter substantially as set forth in Schedule C (or as may otherwise be reasonably requested by the Licensors) and broken down by region and product upon request by Licensors; and
  - 4.1.2 a Royalty payment, being the Royalty due for the previous calendar quarter calculated in accordance with Clause 3.
- 4.2 Any payments to Licensors payable by the Licensee under this Agreement are to be made:
- 4.2.1 subject to the Cover Sheet, in U.S. currency;
  - 4.2.2 in respect of the first Royalty payment only, by cheque or wire transfer and thereafter by cheque or wire transfer; and
  - 4.2.3 in full and without deduction of any sort, such as wire transfer costs or conversion costs.
- 4.3 The Royalty due upon sales made in non-U.S. currency will be converted to U.S. currency using the New York commercial selling rate (quoted by the Bankers Trust Company in The Wall Street Journal at 3:00 p.m., Eastern Standard Time), on the day Royalties are due, such conversion costs to be at the expense of Licensee including any cost of conversion built into a bank's exchange rate.
- 4.4 Written confirmation of each Royalty payment and all Royalty reports and any other reports of payments required by this Agreement shall be sent by express delivery on or before the due date to the address identified for such materials in the Cover Sheet, such Royalty reports to be in a form similar to that in Schedule C, as amended from time to time. Licensee shall use the latest version of the form in Schedule C and shall comply with all instructions supplied by Licensors for completing such forms.
- 4.5 Licensee will provide Licensors with summary reports as requested by Licensors from time to time, with details of Royalties broken down by Licensed Properties, or on any other basis reasonably requested by Licensors.
- 4.6 Receipt by Licensors of any Royalty report of any Royalty payment (including the cashing of any Royalty cheque) shall not preclude Licensors from questioning the correctness of any Royalty report or any Royalty payment at any time. Licensee shall immediately rectify any inconsistency or mistake that is discovered.

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- 4.7 Without prejudice to Licensor's other rights, if the Royalty payment reaches Licensor after the relevant Royalty Payment Date, Licensee shall pay a late payment charge of six percent (6%) of the Royalty due for that quarter (or the maximum amount permissible by law).
- 4.8 If Licensee invoices, ships or sells Licensed Products without Licensor's written consent either:
  - 4.8.1 prior to execution of this Agreement by Licensor;
  - 4.8.2 in breach of Clause 2.6;
  - 4.8.3 without Licensor's approval as set forth in Clause 6 or 8.1; or
  - 4.8.4 in breach of Clause 12;

such invoicing, shipment, or sale shall (for the avoidance of doubt) be deemed a material breach of this Agreement, subject to notice and an opportunity for Licensee to cure as provided in Clause 14.2, provided that Licensor shall be entitled to serve written notice to terminate with immediate effect only if (i) in Licensor's reasonable good faith business judgment such breach is not capable of cure; and (ii) failure to immediately terminate would cause irreparable harm to Licensor.

#### 5. **INSURANCE AND INDEMNIFICATION**

- 5.1 Licensee shall indemnify Licensor from all damages, loss, expenses or costs (including legal costs) in connection with any act or omission by the Licensee, its Affiliates, employees, agents and sub-contractors or any Authorized Manufacturer in breach of this Agreement, including for any alleged or actual defect in Licensed Products.
- 5.2 Except as set forth in Clauses 5.9 and 16.1, Licensor gives no representation, warranty or indemnity with respect to any liability or expense arising from any claim that use of the Licensed Properties in connection with the Licensed Products hereunder infringes any third party rights and Licensee is responsible for any other investigations that it deems appropriate in this regard.
- 5.3 Licensee will acquire and maintain at its sole expense throughout the Term Commercial General Liability insurance, including advertising injury, product liability and contractual liability coverage, ("**Commercial General Liability Insurance**"), underwritten by an insurance company which:
  - 5.3.1 has been rated at least A-VI by the most recent edition of Best's insurance report; and
  - 5.3.2 if located outside of the United States, whose financial status meets a minimum S&P rating of A-, and be otherwise acceptable to Licensor.
- 5.4 Commercial General Liability Insurance shall provide protection of not less than the amount in the Cover Sheet as a combined single limit for bodily injury, including death, personal injury and property damage, and with a deductible no greater than that in the Cover Sheet against and all claims, demands, causes of action, or damages, including attorneys' fees, arising out of any alleged defect in the Licensed Products, or any use of the Licensed Products.

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- 5.5 The Commercial General Liability Insurance shall name Licensor as an additional insured party.
- 5.6 All applicable excess or umbrella policies carried by Licensee (together with Commercial General Liability Insurance, the "**Licensee's Insurance**") will follow in form to the commercial General Liability Policy but will not name Licensor as an additional insured.
- 5.7 As it relates to Licensee's indemnification obligations, all self-insurance, risk financing techniques and/or insurance policies maintained by Licensee shall be primary to and not excess or contributory with respect to any insurance or self-insurance maintained by Licensor.
- 5.8 Within thirty (30) days after the date of this Agreement (and thereafter at least thirty (30) days prior to the expiration of coverage as evidenced by a certificate of insurance), Licensee will provide Licensor with a certificate of insurance evidencing the Licensee's Commercial General Liability Insurance.
- 5.9 If the Licensee exercises its option as set out in the Cover Sheet and in accordance with this Agreement to feature the One-77 car as the leading front cover hero car (either alone or in a group of no more than 3 world renown cars) the Licensor shall indemnify and defend the Licensee against all claims, damages, and losses suffered or incurred by the Licensee arising directly out of any claim made against the Licensee for actual or alleged infringement of a third party's intellectual property rights arising out of the use by the Licensee in accordance with this Agreement and/or any instructions from the Licensor of the image, trademark or trade dress of the One-77 on the cover of the Licensed Product or in the game that is the subject of the Licensed Product. If any third party makes a claim, or notifies an intention to make a claim, against the Licensee, which may reasonably be considered likely to give rise to a liability under this indemnity, the parties shall act in accordance with clause 8.7.
6. **QUALITY CONTROL, APPROVALS AND MARKETING PLAN**
- 6.1 The Licensee shall ensure that Licensed Products and Collateral Materials sold or distributed by Licensee shall meet the Quality Standards set out in Schedule B or such Licensed Products and Collateral Materials will be deemed unapproved, even if previously approved by Licensor, and may not be shipped until they comply with the Quality Standards.
- 6.2 Prior to execution of the Agreement, any product development done by Licensee is at Licensee's sole risk. Under no circumstances may Licensee sell or ship products bearing the Licensed Properties prior to the full execution of this Agreement, except with Licensor's express prior written consent.
- 6.3 Before manufacture, advertising, sale or distribution of the Licensed Products, Licensee will provide free to Licensor all items including products, packaging, labelling, point of sale materials, trade show displays, sales materials and advertising, bearing any of the Licensed Properties for Licensor's written approval (such approval not to be unreasonably withheld) together with certified translations of any materials not in English prior to sale or distribution. Specifically, Licensee shall submit the "alpha" version (as that term is commonly understood in the interactive software industry) of the Licensed Product to Licensor as part of the approval process and shall allow Licensor to play a prototype of the Licensed Product in order to verify the performance specifications of the Licensed Properties before approval is given. Licensee

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agrees to comply with the specifications provided by Licensor for the vehicles in the Licensed Product.

- 6.4 Licensee shall comply with Licensor's Style Guide for use of the products, packaging and marketing materials. Licensor shall provide to Licensee, promptly upon execution of this Agreement or, if not yet in existence, as soon as they are available, such models, photos, specifications, digital files and any other information that the Licensor can reasonably make available and which may aid Licensee in reproduction the Licensed Properties (collectively, the "Deliverables"). Licensor shall, upon reasonable prior notice, in addition provide reasonable access to Licensee and make available to Licensee access to the Licensed Properties during normal business hours to enable Licensee to record sounds so long as any associated costs incurred are borne by Licensee.
- 6.5 Approval of quality and style of Licensed Products and Collateral Materials must be in writing (email is sufficient) and the terms of approval may not be departed from in any material respect without Licensor's prior written approval.
- 6.6 Unapproved Licensed Products and/or Collateral Materials shall not be sold and, unless otherwise agreed by Licensor in writing, must be promptly destroyed, such destruction to be attested to in a certificate signed by one of Licensee's officers.
- 6.7 Licensor may request a reasonable number of additional samples of Licensed Products and Collateral Materials during the Term of the Agreement, to be provided to it at Licensee's expense, subject to reasonable notice.
- 6.8 Licensed Products must conform in all respects to the corresponding approved sample, and if in Licensor's reasonable judgment the quality of a Licensed Product originally approved has deteriorated in later production runs, or if the Licensed Product has been otherwise altered, Licensor may by written notice require such Licensed Product to be immediately withdrawn from the market.
- 6.9 If Licensor has inadvertently approved a sample of a product that is not included as a Licensed Product under this Agreement, or if Licensor has inadvertently approved a Licensed Product using artwork, trade marks or trade dress not included in this Agreement, such approval may be revoked at any time.
- 6.10 If any of the Licensed Products and/or Collateral Materials do not meet the quality level initially approved by Licensor for sale (excluding a limited number of defective Licensed Products representing a proportion no greater than would normally be found in the relevant industry), Licensor may require Licensee to discontinue the use of the Licensed Properties or Collateral Materials containing the Licensed Properties in connection with the sale of such Licensed Products, unless modifications satisfactory to Licensor are made within thirty (30) days after the receipt of notice of disapproval. If modifications satisfactory to Licensor are not made within thirty (30) days after receipt of such notice, and Licensor so notifies Licensee, Licensee will use its commercially reasonable efforts to recall and destroy the Licensed Products and/or Collateral Materials from the market.
- 6.11 Licensee will allow Licensor or its agents to enter Licensee's premises and will use commercially reasonable efforts to secure access rights from the Authorized Manufacturers to allow Licensor or its agents to enter the premises where the Licensed Products are being manufactured and/or packaged during regular business hours for the purpose of inspecting the Licensed Products and the promotional and packaging material relating to the Licensed Products in order that Licensor may determine that

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the terms of the Agreement are being observed by Licensee. Licensor's inspection may include inventory of Licensed Products, Licensee's and Authorized Manufacturer's manufacturing operations, materials, labelling and packaging methods, advertising materials, or making notes from copies or compilations of records.

6.12 If any Distributor or Authorized Manufacturer of the Licensed Products uses the Licensed Properties for any unauthorized purpose, or in an unauthorized manner, Licensee will immediately notify Licensor of the use, and will cooperate fully in stopping such use. If Licensor suffers injury or is subjected to any penalty or expense by reason of Licensee's failure to immediately notify Licensor of such use, Licensee will indemnify Licensor for any injury, expense, cost (including legal fees) or loss Licensor sustains.

6.13 If in the reasonable opinion of Licensor any Licensed Product or Collateral Material:

6.13.1 poses a safety threat to the consumer;

6.13.2 become the subject of a claim or inquiry by any person, governmental agency or commission with competent authority in the Territory because of quality or safety concerns; or

6.13.3 is the subject of negative publicity due to a substantial safety issue,

Licensee will, upon Licensor's request, immediately recall such Licensed Product from the marketplace, and take any other measures Licensor may reasonably demand. In any case of a potential recall under this Section 6, Licensor will consult with Licensee to formulate remedial measures other than a recall, but if in Licensor's reasonable opinion such remedial measures will not fully resolve such threats or problems, Licensor may require the Licensee to take such reasonable steps including recall.

6.14 Intentionally deleted.

6.15 Licensee will provide Licensor with written notice of and documentation evidencing the first shipping date of each Licensed Product.

6.16 Licensee's name, trade name and Licensee's address will appear on permanently affixed labelling on each Licensed Product, or, if the Licensed Product is sold to the public in packaging or a container, printed on such packaging or container so that the public can identify the supplier of the Licensed Product. On soft goods, "permanently affixed" means sewn on or affixed in some other permanent fashion.

6.17 Approvals granted by the Licensor extend only to Licensee's use of the Licensed Properties, and the indemnification provisions set forth elsewhere in this Agreement shall not be waived by Licensor's approval of any Licensed Product.

6.18 Intentionally deleted.

6.19 Damage to Vehicles. With respect to damage, Licensor acknowledges that automobiles, including the cars licensed hereunder as a portion of the Licensed Properties, may collide with various objects or other player's vehicles and sustain visual marks to indicate the severity of the collisions. The damage will not extend into the car beyond a rigid roll cage that encapsulates the entire cabin including the passengers, and no harm or injury to the passengers will be depicted. Body damage may include breaking lights, flapping bonnets, boots and bumpers as well as denting body work and crumple zones. Automobiles may be restored to their original status at the beginning of each race. The level of damage displayed shall NEVER imply that

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the Licensed Properties have collided due to technical problems with said licensed vehicles, that the damage sustained has been caused by or illustrates safety deficiencies inherent with the licensed vehicles or that damage has rendered the vehicle unsafe due to a breach of the licensed vehicles' structural integrity. Licensor retains the approval rights to the level of damage to the licensed vehicle as provided in this Agreement.

**7. ACKNOWLEDGEMENT OF OWNERSHIP OF INTELLECTUAL PROPERTY**

**7.1 Licensee agrees that:**

7.1.1 the Licensed Properties and other Intellectual Property rights associated with the Licensed Products are owned or rightfully licensed by Licensor, except as provided in Clause 7.6;

7.1.2 the Licensed Properties and Intellectual Property are valid;

7.1.3 Licensee has no right, title or interest in or to the Licensed Properties and any other Intellectual Property of Licensor, except in accordance with the terms of this Agreement;

7.1.4 all use of the Licensed Properties and Intellectual Property by the Licensee, and the associated goodwill generated by such use shall, as between Licensee and Licensor, accrue to the benefit of Licensor; and

7.1.5 at Licensor's request, Licensee will promptly execute any documents that Licensor determines, in its sole discretion, are necessary or desirable to confirm Licensor's ownership in the Licensed Properties, or their related goodwill.

7.2 Licensee shall not apply to register anywhere in the world any of the Licensed Properties or any Intellectual Property right which contains (whether an element or in its entirety), or is confusingly similar to, the Licensed Properties.

7.3 Licensee shall not by any act or omission, diminish, disparage or tarnish the image and/or reputation of any of the Licensed Properties.

7.4 Licensee acknowledges that the Licensed Properties are inherently distinctive or have acquired distinctiveness as a result of their use, and are unique, well known and famous in the Territory and that any action or omission that damages the Licensed Properties may seriously damage the business and operations of Licensor.

7.5 Except as expressly provided, no other right or licence with respect to any copyrights, patent rights, trade mark rights or other proprietary right is granted under this Agreement. All rights not expressly granted hereunder by a party are expressly reserved to such party and its Affiliates.

7.6 Licensee warrants that any materials created by Licensee in connection with the Licensed Products, or by any third party Licensee has engaged, excluding the Licensed Properties are original to Licensee or such third party or properly licensed and do not violate the rights of any other person or entity. Licensor's rights shall not include that portion of Licensee's displays, catalogues, promotional materials, Licensed Products and the like that do not contain the Licensed Properties or reference to the Licensed Products. Notwithstanding any other term in this Agreement, Licensee shall retain ownership of its trade marks and trade names that may appear on the Licensed Products provided that such trade marks and trade names are not identical or



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confusingly similar to any of Licensor's trade marks, as well as all software, object codes, source codes, tools, engines and technology belonging to Licensee that may be used in connection with the Licensed Products.

7.7 Except as expressly provided herein, Licensor excludes any warranty that it owns trade mark registrations in respect of all of the Licensed Properties in all of the jurisdictions in the Territory. Except as provided in Clauses 5.9 and 16.1, Licensee expressly releases Licensor from any other claim arising from the absence of any rights in respect of any of the Licensed Properties in any of the jurisdictions in the Territory.

7.8 Sections 7.1 – 7.7 are effective only in those jurisdictions where such Sections are not legally prohibited.

**8. USES, PROTECTION AND MAINTENANCE OF THE LICENSED PROPERTIES**

8.1 In addition to its obligations in Clause 7, Licensee shall only use Licensed Properties as follows:

8.1.1 in the form in which they are registered (shown as registered as at the date of this Agreement, in Schedule A) or as Licensor has expressly approved;

8.1.2 in accordance with any guidelines in Schedules B and H;

8.1.3 in accordance with any trade mark or corporate identity manuals that Licensor may supply to Licensee;

8.1.4 in a manner which, when looked at reasonably and objectively, is not detrimental in any way to that goodwill or to the reputation of Licensor (provided that Licensor cannot claim detriment with respect to materials that have been approved by Licensor).

8.2 At Licensor's discretion, Licensor may apply to register any of the Licensed Properties in the Territory. Licensor will have no obligation to file any such applications or to continue to prosecute such applications to completion.

8.3 Licensee shall not use any of the Licensed Properties in combination with any other trade mark, name, logo, device or design without the prior written approval of Licensor. For the avoidance of doubt, however, this shall not prevent the Licensee using in accordance with applicable law or agreements such other trade marks, names, logos, devices or designs of persons or entities that have made a legitimate contribution to the Licensed Products (such as vehicle licensors, platform manufacturers, developers, technology licensors, etc.), without the prior written approval of Licensor, provided always the presentation of such marks is not likely to cause confusion, or damage the Licensor's brand.

8.3 Licensee shall not register or attempt to register any intellectual property relating to the Licensed Properties and agrees that Licensor will make all decisions concerning the registration and legal protection of the Licensed Properties and other intellectual property in its sole discretion. Licensee agrees to promptly provide Licensor any assistance Licensor requests for the purpose of registering or maintaining registrations for the Licensed Properties throughout the world including providing evidence of advertisements, products and sales within the Territory.

8.4 Without Licensor's prior written approval, Licensee will not:

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- 8.4.1 use any trade name, domain name, email address, or other type of identification, website or address that includes Licensed Properties, or includes any derivation thereof or term confusingly similar thereto or dilutive of the Licensed Properties; or
- 8.4.2 use Licensed Properties on business cards, letterhead or similar materials, and any approved use to be consistent with Licensor's then-current corporate identity standards. Licensee may request a copy of the then-current corporate identity standards from time-to-time.
- 8.5 Licensee agrees to provide reasonable assistance to Licensor, at Licensor's request and expense, to record this Agreement, and other related documents such as a registered user agreement. Licensor agrees that recordation of the Agreement (or other similar action) will be undertaken only by Licensor and will be at Licensor's sole discretion.
- 8.6 Licensee will promptly notify Licensor in writing of any potentially conflicting or infringing use of any of the Licensed Properties or intellectual properties that may come to its attention. In this regard:
  - 8.6.1 Licensor has the exclusive right, at its absolute discretion, and its own expense, to determine what action is to be taken;
  - 8.6.2 if Licensor decides to take any action, Licensee shall, if so reasonably requested by Licensor, become a party to such action and cooperate with Licensor at Licensor's cost in the prosecution of any such action; provided that Licensor shall be responsible for all of Licensee's costs, damages, expenses or other liability reasonably incurred as a result of any such action; and
  - 8.6.3 all damages or other monetary relief recovered in such action by reason of a judgment or settlement will be paid to Licensor irrespective of whether all or part of such amounts are intended to cover losses sustained by Licensee.
- 8.7 If any action for infringement is threatened or brought against Licensee relating to Licensee's use of the Licensed Properties, Licensee shall immediately notify Licensor who shall have the right at its absolute discretion to handle such an action in any manner whatsoever, and Licensee shall cooperate with Licensor in defending or settling any such action at Licensor's cost. With Licensor's prior written consent, Licensee may handle such an action in a manner agreed upon by the parties, and unless ordered otherwise by a court of the Territory, Licensor may participate in the handling of the action, at Licensor's absolute discretion.
- 8.8 Licensee has no cause of action against Licensor for Licensor's failure to prosecute an alleged act of counterfeiting, infringement, imitation, unfair competition or dilution. Licensee bears the risk that there may be counterfeit and/or infringing articles of manufacture in the Territory.
- 8.9 Licensee agrees that it will display clearly the registered status of each Licensed Property (e.g., "®" or "TM"), and refer to guidance in the Licensor's Style Guide where such guidance is given.

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9. **LICENSEE'S OTHER DUTIES, COVENANTS AND ACKNOWLEDGEMENTS**

- 9.1 Licensee will use its commercially reasonable efforts to manufacture (or have manufactured for Licensee) and actively offer for sale all of the Licensed Products and to actively exercise the rights granted by this Agreement in accordance with market demand.
- 9.2 Intentionally deleted.
- 9.3 Licensee will use its commercially reasonable efforts to service the demand for Licensed Products, including promptly addressing customer inquiries, orders and complaints, and maintaining adequate personnel, inventory and facilities to fulfil the terms and conditions of this Agreement.
- 9.4 Licensee will not advertise in any publication or communications medium that could damage the goodwill of the Licensed Properties, as determined by Licensor in its sole discretion.
- 9.5 All press releases and/or public announcements mentioning or featuring Licensor and/or the Licensed Properties by Licensee in connection with the subject matter of this Agreement shall be subject to prior written approval by Licensor, and Licensee shall have no rights against Licensor for damages or other remedy by reason of Licensor's failure or refusal to grant approval of any press release.
- 9.6 The Licensee shall fully and completely comply with any laws, regulations or rules of any government body, agency, or other body with competent authority in the Territory, and any international treaties.
- 9.7 Licensee will comply with any and all governmental requirements in the Territory that relate to the sale of any Licensed Product, including product specifications or labelling requirements. Licensee will give Licensor immediate written notice of any information, circumstances or events that indicate the Licensed Products present any actual or potential danger to consumers or that the Licensed Products breach any law, rule, or regulation.
- 9.8 All labels, hangtags, and other Collateral Materials will indicate the country of origin for the relevant Licensed Products if required by the laws of the Territory, or if Licensor requests. Licensee represents and warrants that any Licensed Products that are marked "Made in U.S.A." (or words of similar meaning) or by virtue of their design or packaging imply that they are made in the USA shall comply with in all respects with the Federal Trade Commission Rules and/or Guidelines of all or virtually all domestic content. Licensee shall comply with all similar requirements in other jurisdictions.
- 9.9 Licensee agrees that it will conduct its business associated with the Licensed Products and the Licensed Properties in a manner consistent with Licensor's "Criteria for Engagement of Licensees and Authorized Manufacturers" in Schedule D.

10. **INTERNET USE**

- 10.1 Licensee may cause or allow the Licensed Products to be used on the Internet (including on websites or in metatags). For the avoidance of doubt, and subject always to payment of the applicable royalty under the Cover Sheet, the Licensor consents to sales of the Licensed Products by the Licensee (at the Licensee's risk and expense) via the Internet, including downloading the Licensed Products and versions thereof, provided always Licensee will ensure that any use of the Licensed Properties on the

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internet is not displayed on a site with material, or on a site with any links to material, that:

10.1.1 infringes the intellectual property rights, or other rights, of a third party;

10.1.2 is obscene, defamatory or offensive (acting reasonably) to actual or potential users of the site; or

10.1.3 is likely to give rise to civil or criminal liability; or

10.1.4 promotes or provides tobacco, alcohol, pork, or goods or services related to gambling or pornography or financial services offering conventional debt ("Prohibited Products").

10.2 Licensee will ensure that any reference on the Internet to the Licensed Properties or the Licensed Products that Licensee causes to occur, and the operation of any web site on which Licensee causes Licensed Properties or Licensed Products to appear, including any contests or promotions featured on the web sites, will comply with any laws, regulations or rules of any governmental body, agency, on line tribunal or other body with competent authority in the Territory, and any international treaties.

10.3 Licensee agrees to the following:

10.3.1 For any web site operated or authorized by Licensee that involves the Licensed Products or Licensed Properties ("**Licensee's Web Site**"), Licensee will use standard Internet encryption technologies to provide a secure environment for conducting transactions and/or transferring personal information to and from Licensee's Web Site. Licensee will promptly remedy any security risks or breaches of security as Licenser may identify.

10.3.2 Licensee will ensure that Licensee's Web Site features an easy to understand privacy policy that fully describes Licensee's collection, use and disclosure of information collected from visitors to Licensee's Web Site, including Licensee's disclosure of visitor information to Licenser which will be clearly and conspicuously featured on each page of Licensee's Web Site, such policy to be compliant with all laws in the Territory and any guidelines Licenser may supply from time to time; provided, however, that nothing herein will imply or create any liability or responsibility on Licenser's part for Licensee's privacy policy or use of web site visitor information as above.

## 11. **AUTHORIZED MANUFACTURERS AND DISTRIBUTORS**

11.1 Licenser may, at its sole discretion, approve or disapprove any proposed Authorized Manufacturer. Other than Licensee, only Authorized Manufacturers may manufacture Licensed Products. Licensee agrees that all Authorized Manufacturers will conduct any business on behalf of Licenser or Licensee in a manner consistent with Licenser's Criteria for Engagement of Licensees and Authorized Manufacturers, a copy of which is attached as Schedule D. Licenser may amend Schedule D, at its sole discretion, at any time upon reasonable written notice. Such amendments will be effective upon written notice to Licensee and will apply to Licensee and all Authorized Manufacturers. Licensee will promptly report any amendment to Schedule D to all Authorized Manufacturers. Notwithstanding the terms of this Section 11, Licenser hereby pre-approves Sony, Nintendo and Microsoft, and their manufacturers as Authorized Manufacturers hereunder without the need for executing the Consent for Third Party Manufacturer Agreement or the Agreement by Authorized Manufacturer

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set forth in Schedule E. Licensee shall use its commercially reasonable efforts to procure compliance of such pre-approved Authorized Manufacturers with any applicable obligations on Licensee under this agreement and Licensee agrees that it shall be primarily responsible for all acts, omissions, activities and obligations of all pre-approved Authorized Manufacturers with respect to the Licensed Products. For the avoidance of doubt, distributors of digital versions of the Licensed Product shall not be considered Authorized Manufacturers hereunder but are treated as distributors under Clause 11.8 below.

- 11.2 Except as expressly set forth herein, Licensee will not permit any third party to manufacture anything bearing any of the Licensed Properties until:
- 11.2.1 the manufacturer has been designated an Authorized Manufacturer by Licenser pursuant to this Clause 11;
  - 11.2.2 the manufacturer, Licensee and Licenser first execute the Consent for Third Party Manufacturer Agreement in the form shown on the first page of Schedule E; and
  - 11.2.3 the third party manufacturer executes the Agreement by Authorized Manufacturer in the form shown on the second page of Schedule E.
- 11.3 Licensee will provide to Licenser a copy of the Consent for Third Party Manufacturer Agreement signed by the Authorized Manufacturer before submitting any orders or production requests to the Authorized Manufacturer.
- 11.4 If Licenser requests, Licensee will ensure that each Authorized Manufacturer places a permanent symbol or code on each item of manufacture which will identify that Authorized Manufacturer as the source of each item it manufactures bearing any of the Licensee Properties. Licensee will ensure that no Authorized Manufacturer sells or distributes any item bearing any of the Licensed Properties to anyone other than Licenser or Licensee, without Licenser's express, prior, written approval. Licensee will use its best efforts to ensure that any goods manufactured by an Authorized Manufacturer, which Licensee does not accept, are promptly destroyed in a manner acceptable to Licenser.
- 11.5 If an Authorized Manufacturer breaches any part of Clause 6, the Quality Standards in Schedule B or any other quality control standards promulgated by Licenser, and fails to remedy the deficiency within 30 days of receiving notice, Licensee will immediately cease ordering from that Authorized Manufacturer, will cancel outstanding orders, and any Agreement with the Authorized Manufacturer may be terminated immediately by Licenser. Licensee will use its best efforts to ensure that any Licensed Products manufactured by an Authorized Manufacturer which Licensee does not accept are promptly destroyed in a manner reasonably acceptable to the Licenser.
- 11.6 Licensee will be fully and solely liable for payment to each Authorized Manufacturer for the purchase price of each item ordered by Licensee, including any and all applicable taxes and duties on tariffs related to such payments. Licensee will promptly provide to Licenser copies of all documentation that Licenser requests, including purchase orders, pro-forma invoices, letters of credit and other negotiable instruments, bills of lading, forwarders' cargo receipts, and brokers' delivery orders related to Licensee's purchases from Authorized Manufacturers.
- 11.7 Licenser will not be liable for any loss of profits or damages suffered, if an Authorized Manufacturer fails to produce the items ordered within the time requested or scheduled, cancels or makes any errors in filing any orders, fails to deliver Licenses

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Products as agreed, fails to meet Licensor's quality standards, or otherwise fails to perform. Licensee will be responsible for all freight, handling, and similar charges.

- 11.8 Licensee may appoint Distributors for the Licensed Products provided that Licensee guarantees all such Distributors' full performance of this Agreement. All online and digital distribution channels (for example, BestBuy.com, Gamestop.com, Boonty, Digital River, Direct2Drive.com etc.) are also hereby permitted by Licensor with the exception that Licensee may not distribute through any websites promoting or providing Prohibited Products. If in the reasonable, good faith business judgment of Licensor, the continued distribution of any Licensed Product through an online distribution channel damages the name of Licensor, then Licensor shall provide written notice to Licensee including details of the alleged damage and Licensee shall, within thirty (30) days of receiving notice, require such online distributor to cease distribution of the Licensed Products.
- 11.9 Licensee shall have the right to assign all of its rights hereunder, and to sublicense any or all of the rights granted hereunder, to any entity controlling, controlled by, or under common control of Licensee (a "Atari Affiliate"), and to sublicense such rights hereunder as appropriate in the ordinary course of business (e.g., development, localization, manufacture, distribution (by all means/channels), sale, advertisement, etc.). Any assignment or sublicense by Licensee hereunder shall not relieve Licensee of its obligations to Licensor. In addition, Licensee shall have the right to sublicense its right to modify, manufacture, distribute and sell the Licensed Products to any entity in a country where neither Licensee nor an Atari Affiliate has a business presence and distribution network. Licensee acknowledges and agrees that Licensee's use of any such distributor/sublicensee shall in no way derogate from or relieve Licensee of any of its obligations under this Agreement. Licensee further acknowledges and agrees that it shall be responsible and primarily liable for all activities and obligations of all such distributor/sublicensee with respect to the Licensed Products.

## 12. TERRITORIAL RESTRICTIONS

- 12.1 Licensee agrees that the Territory is a mutually agreeable Territory for the sale and promotion of Licensed Products and agrees to restrict the distribution and sale of the Licensed Products bearing the Licensed Properties to the Territory, and will not authorize the distribution, advertising, or sale of the Licensed Products, or distribution or sale of any packaging, containers, labels, labelling or product literature bearing the Licensed Properties, in any area other than the Territory.
- 12.2 Licensee will not, directly or indirectly, knowingly sell or distribute or facilitate the sale or distribution, of any Licensed Product outside the Territory, nor to any person inside the Territory if Licensee reasonably expects that such person intends to resell or facilitate the sale of the Licensed Products outside the Territory.
- 12.2.1 in this regard if Licensee becomes aware that one of its customers is selling or facilitating the sale of Licensed Products outside the Territory, Licensee will immediately notify Licensor of the identity of that customer; and
- 12.2.2 if Licensee becomes aware or is notified by Licensor that one of Licensee's customers is selling or facilitating the sale of the Licensed Products outside the Territory, Licensee will either immediately cease to supply such customer with any Licensed Products, or will immediately obtain, and enforce if necessary, an

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undertaking from such customer not to sell or facilitate the sale of  
Licensed Products outside the Territory.

- 12.3 If the Territory includes any Member State of the European Union, this Clause 12 will not apply to Licensee's sale or distribution of products within the European Union, except that to the extent that Licensee's Territory includes a Member State and Licensee makes sales or promotes the Licensed Product in any Member State within the European Union then:

12.3.1 Licensee agrees within the European Union not to:

- (a) advertise the Licensed Products outside of the named Territory;
- (b) establish branches or maintain distribution depots for Licensed Products outside of the Territory, or
- (c) solicit or otherwise promote the sale of Licensed Products to any person, firm, company or corporation for shipment outside of the Territory; and

12.3.2 Licensee will comply with Clause 12.1 and 12.2 for any territory outside the European Union.

### 13. RECORDS, AUDITS

- 13.1 Licensee will keep in its possession or under its control accurate records covering all transactions relating to this Agreement during the Term (and any renewal(s) thereof) and for at least three (3) years after the expiry of the Term (or longer where required by law), Licensee will retain such records in a readily accessible place allowing Licensor access within ten (10) business days.
- 13.2 Records will include, but not be limited to, invoices (and any other forms of payment obligations), correspondence, financial information, inventory records, manufacturing, quality control and approvals.
- 13.3 Licensee will consistently use a separate symbol or number to identify all Licensed Products.
- 13.4 Such records will be kept confidential, but will be promptly made available for inspection and audit by Licensor or its agent, or its agent's designee upon Licensor's request.
- 13.5 Licensor, its agent, or its agent's designee may make and retain extracts of such records to assist the inspection and audit and will hold Licensee's audit information in confidence.
- 13.6 Audit information so retained will only be used for purposes of this Agreement, including judicial enforcement of the obligations of Licensee.
- 13.7 Licensor has the right not more than once per calendar year to have an independent public accountant reasonably acceptable to Licensee, examine Licensee's relevant books, records and accounts for the purpose of verifying the accuracy of payments made to Licensor as required under this Agreement.

13.7.1 The above examination may include a physical inventory count of  
Licensed Products in production and/or storage;

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13.7.2 Each party acknowledges and agrees that such accountant will not have access to the books, records, and accounts relating to other products or services except as such books, records and accounts also directly relate to the payments due hereunder;

13.7.3 Each audit will be conducted at Licensee's place of business, or other place agreed to by the parties during Licensee's normal business hours and with at least thirty (30) days prior written notice to Licensee but not within thirty (30) days of the close of any Licensee fiscal quarter;

13.7.4 Licenser will pay the fees and expenses of the auditor for the examination; provided, however, that if any examination discloses either a royalty underpayment of five percent (5%) or more due the Licenser for the period being audited, or that any Licensed Products were sold during the audit period without final approval, then Licensee will pay:

(a) the reasonable fees and expenses of the auditor for that examination, up to the amount of the documented underpayment, as well as any unpaid royalties; and

(b) the reasonable fees and expenses of an auditor to perform, up to the amount of the documented underpayment, at Licenser's request, a follow-up audit examination of Licensee to be commenced at a time of Licenser's choosing within twenty-four (24) months of completion of the original audit, such audit to be invoiced by Licenser and paid by Licensee within thirty (30) days; and

13.7.5 Licenser or its agent may make and retain extracts of the records to assist the audit.

13.7A Notwithstanding the foregoing, Licenser shall not exercise its rights under clause 13.7 more than once every two calendar years unless Licensee breaches this Agreement or a discrepancy is identified in an audit.

13.8 Upon Licenser's request, and in the event Licenser is required by a governmental agency to submit annual trademark reports, Licensee will provide an annual report documenting the use of the Licensed Properties in the Territory and will use the form, if any, supplied by Licenser for this purpose.

#### 14. TERM AND TERMINATION

14.1 The Term of this Agreement shall commence on the date of this Agreement and, unless earlier terminated in accordance with this Clause 14, the license shall continue in effect for the period of time specified in the Cover Sheet. Without prejudice to any other rights, Licenser may terminate this Agreement upon written notice at any time, if:

14.1.1 Licensee fails to perform any of its obligations under this Agreement or is otherwise in material breach of this Agreement;

14.1.2 Licensee transfers, by operation of law or otherwise, or attempts to transfer, without Licenser's prior written consent, any interest in, or right, privilege or obligation under this Agreement, or transfers by operation of law or otherwise, any of the principal assets of Licensee that are required



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for the conduct of its business in order to perform its obligations under this Agreement;

14.1.3 there is a material change in the direct or indirect ownership or operating management of Licensee without Licensor's prior written consent, which in the reasonable opinion of Licensor, impairs Licensee's ability to perform its obligations under this Agreement;

14.1.4 Licensee manufactures or sells Licensed Products that, in the reasonable determination of Licensor, do not conform to the quality and safety standards acceptable to Licensor;

14.1.5 Licensee sells or facilitates the sale of Licensed Products outside the Territory in violation of Clause 12 or sells or facilitates the sale of Licensed Products outside of the authorized Channels of Trade in violation of Clause 2.6;

14.1.6 Licensee does not affix or otherwise display the Licensed Properties as prescribed by Licensor;

14.1.7 Licensee:

- (a) is unable to pay its debts or becomes insolvent;
- (b) is the subject of any form of seizure or an order made or a resolution passed for the administration, winding-up or dissolution (otherwise than for the purpose of a solvent amalgamation or reconstruction);
- (c) has an administrative or other receiver, manager, trustee, liquidator, administrator, or similar officer appointed over all or any substantial part of its assets;
- (d) enters into or proposes any composition or arrangement with, or assignment for the benefit of, its creditors generally; or
- (e) is the subject of any events or circumstances or analogous to the foregoing in any applicable jurisdiction;

14.1.8 Licensee conducts its business in a manner that, in the reasonable opinion of Licensor, adversely affects the value, goodwill or reputation of Licensor, the Licensed Products, or the Licensed Properties;

14.1.9 Licensee purchases Licensed Products from an unauthorized source or continues to purchase Licensed Products after Licensor has withdrawn its approval of that Authorized Manufacturer; or

14.1.10 Licensee defaults under the terms of any other agreement it had entered into with Licensor, or any of Licensor's Affiliates,

provided that in such circumstances, Licensor reserves the right to terminate the licence granted to Licensee under this Agreement in respect of specific Licensed Properties, Licensed Products or jurisdictions.

14.2 Licensee will have a period of sixty (60) days after receipt of written notice to cure any breach to the satisfaction of the Licensor (provided the breach is capable of cure) save that where Licensor, acting reasonably, believes that the breach could bring the

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Licensed Properties or the Licensor into disrepute then the period to cure the breach shall be twenty (20) days. If Licensee fails to do so, Licensor may immediately terminate the License.

- 14.3 If Licensee engages in repeated acts of default that are cured upon written notice, Licensor may serve written notice that there will be no cure period for future acts of default.
- 14.4 If, during any twelve (12) month period, Licensor gives more than two (2) termination notices to Licensee pursuant to this Clause, then, regardless of whether Licensee cures the underlying breaches or defaults, Licensor may immediately terminate this Agreement.
- 14.5 Without prejudice to any other rights, Licensor shall also have the right to terminate this Agreement upon written notice to Licensee at any time if:

14.5.1 Licensee fails to make any payment (including any payment for artwork or other allowable expenses) due under the Agreement or to deliver on time any of the statements or any Royalty reports under the Agreement, and if such default continues for a period of ten (10) business days after written notice of such default is sent by Licensor via certified or registered mail to Licensee;

14.5.2 Licensee does not provide customer service for the Licensed Products at the same standard as it provides customer service for other products similar to the Licensed Products and this is not rectified within ten (10) business days after notice from Licensor. In this regard Licensee will:

- a) exercise its best efforts promptly to resolve any consumer complaints regarding the quality or performance of any Licensed Products, and will periodically report such complaints and their resolution to Licensor; and
- b) Licensee will notify Licensor immediately of any complaints regarding the Licensed Products that involve bodily injury, death or serious property damage and will cooperate with Licensor in the resolution of all complaints, but the exercise of such right will not relieve Licensee of its indemnification obligations in this Agreement;

provided that in such circumstances, Licensor reserves the right to terminate the licence granted to Licensee under this Agreement in respect of specific Licensed Properties, Licensed Products or jurisdictions.

- 14.6 Sections 4.6, 5, 6.11, 6.13, 6.17, 7, 8.7, 8.8, 11.6, 11.7, 13.1-13.2, 15, 17, 18, 19, 20 and 21 and shall survive expiration or termination of this Agreement, as shall any other provision which by its nature should survive or expiration or termination of this Agreement.
- 14.7 Upon the termination of the license granted under this Agreement, notwithstanding anything to the contrary contained in this Agreement:
- (a) all royalties on sales previously made shall become immediately due and payable;
  - (b) no previously paid Guaranteed Minimum Royalties will be repayable to Licensee; and

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- (c) any balances owing on the Guaranteed Minimum Royalties for the balance of the Term will be immediately due and payable.
- 14.8 Notwithstanding any termination or expiration of this Agreement, Licensors reserves all rights and remedies, to enjoin the unlawful or unauthorized use of the Licensed Properties.
- 14.9 Termination of this Agreement shall not affect Licensors accrued rights, obligations and liabilities as at the date of Termination.
- 15. **POST EXPIRATION AND TERMINATION**
- 15.1 Upon the expiration or termination of this Agreement, all rights granted to Licensee will revert to Licensors, and Licensee will have no claim against Licensors for compensation of loss of business or goodwill, or for any other damages that may result from the expiration or termination of this Agreement.
- 15.2 Any unpaid portion of any Royalty payment or Minimum Guaranteed Royalties will be immediately due and payable, and Licensors will be entitled to retain all Royalties and other things of value paid or delivered to Licensors.
- 15.3 Licensee agrees that the Licensed Products will be manufactured during the Term of this Agreement in quantities consistent with anticipated demand therefore so as not to result in an excessive inventory build-up immediately prior to expiration or termination of this Agreement.
- 15.4 Licensee agrees that upon the expiration or termination of this Agreement Licensee will neither manufacture nor have manufactured for Licensee any Licensed Products or other materials bearing the Licensed Properties.
- 15.5 Licensee will deliver to Licensors all artwork, tooling, and copyright created works which may have been used or created by Licensee in connection with the subject matter of this Agreement and except as provided under Clause 15.8, Licensee will immediately cease selling the Licensed Products.
- 15.6 Any unauthorized sale or distribution of Licensed Products after the expiration or termination of this Agreement will constitute an infringement of Licensors rights.
- 15.7 Upon expiration or termination of this Agreement, Licensee will immediately cease and desist from all use of the Licensed Properties in any way. At Licensors option, Licensee will destroy (and deliver proof of such destruction) or deliver up to Licensors, or its duly authorized representatives, all advertising, promotional materials, catalogues, packaging, containers, labels, labelling, and the like upon which the Licensed Properties appear.
- 15.8 Upon expiration or termination of this Agreement, Licensee will provide to Licensors a full statement of the type and quantity of all the Licensed Products unsold as of the date of termination. If Licensee is not in material breach of the Agreement on the expiration or termination date, Licensee will have the right for a limited period of: (i) one hundred twenty (120) days to sell off and deliver its then remaining physical inventory of Licensed Products; and (ii) thirty (30) days to sell and wind down downloadable distribution of the Licensed Products (the "**Sell-Off Period**").
- 15.9 If Licensee has not fully complied with the terms of the Agreement on the expiration or termination date, any remaining inventory of Licensed Products must be promptly

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delivered up to Licensor or its duly authorized representatives at no expense to Licensor.

- 15.10 Upon expiration or termination of this Agreement, Licensee will not adopt or use any words or marks that are similar to, derivative of or likely to be confused with the Licensed Properties.
- 15.11 Licensee shall refrain from "dumping" the Licensed Products in the market during any Sell-Off Period granted to Licensee under this Clause 15.8. After expiration or termination, Licensee will delete or cause to be deleted from all signs, catalogues, telephone directories, web sites and the like all references to the Licensed Properties or the Licensed Products, unless directed otherwise by Licensor.

## 16. WARRANTIES

### 16.1 Licensor warrants that:

- 16.1.1 it has not granted any third party any rights in respect of the Licensed Properties that conflict with the rights granted to the Licensee hereunder; and
- 16.1.2 it has not received, and is not aware of, any claims that the use of the Licensed Properties in respect of the Licensed Products would infringe any third party rights.

### 16.2 Except as expressly provided herein, Licensor:

- 16.2.1 does not make any other warranties to any person or entity with respect to any information, content or other materials provided or made available by it in this Agreement; and
- 16.2.2 disclaims any implied warranties, including warranties of merchantability and fitness for a particular purpose and non-infringement; and
- 16.2.3 does not warrant or represent that it is the exclusive owner of the Licensed Properties and other Intellectual Property rights.

- 16.3 In respect of all indemnities provided to Licensor such indemnities are given in addition to any other legal or equitable remedies available to Licensor under this Agreement, or otherwise.

## 17. LIMITATION OF LIABILITY

Expressly excluding Licensor's indemnification under Clause 5.9 and its warranties in Clause 16.1, Licensor's total liability under this Agreement will not exceed the amount of the Guaranteed Minimum Royalties received by Licensor from Licensee under this Agreement.

## 18. CONFIDENTIAL INFORMATION

- 18.1 Each party agrees to keep the terms and conditions of this Agreement confidential, and to not disclose such terms and conditions to any third party without the other party's prior written consent; provided, however, that this Agreement may be disclosed on a need-to-know basis to the agents, attorneys and accountants who agree to be bound by this Clause 18, or as required by law. When Confidential Information must be disclosed by law, the disclosing party will immediately notify the non-disclosing party, and will use all reasonable efforts to maintain the confidentiality of, and redact, that information to the extent possible.

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- 18.2 All Confidential Information or advice furnished by Licensor to Licensee pursuant to this Agreement will, except as otherwise required by law or as required to satisfy its financial reporting obligations, be treated as confidential by Licensee, and, upon termination of this Agreement, Licensee will return all material containing Confidential Information, including all copies thereof and will hold in confidence all notes or memoranda based thereon, to Licensor. Licensor has a similar obligation of confidentiality with respect to information furnished by Licensee to Licensor pursuant to this Agreement that is in fact confidential and is so marked as being confidential.

19. **FOREIGN TAXES**

- 19.1 If any governmental authority of any foreign country, or any subdivision thereof, imposes any withholding taxes ("**Taxes**") by reason of the execution or performance of this Agreement, Licensee may deduct and withhold any such Taxes imposed on Licensor from the amounts otherwise due hereunder as required by applicable law and remit to Licensor the net amount, together with any tax receipts, certificates or vouchers from the tax authorities evidencing payment of such Taxes.
- 19.2 Licensor agrees to comply with any certification, information, documentation, or other reporting requirements necessary to obtain reduced rates under applicable income tax treaties. Notwithstanding the foregoing, if any governmental authority of any foreign country, or any subdivision thereof, imposes any stamp taxes, registration taxes, turnover taxes, or similar taxes, charges or levies ("**Other Taxes**") by reason of the execution or performance of this Agreement, Licensee will bear the burden of and pay such Other Taxes and Licensee will pay to Licensor such additional amounts as may be necessary to ensure that every net payment under this Agreement after withholding for any such Other Taxes will not be less than the amount provided for in this Agreement to be due and payable.
- 19.3 Licensee agrees to indemnify and hold harmless Licensor from all liability of whatever nature arising out of Licensee's failure to pay any such Other Taxes.

20. **DISPUTE RESOLUTION.**

- 20.1 This Agreement shall be governed by and construed in accordance with the laws of England, without regard to conflicts of law principles. For any and all disputes arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination ("**Dispute**"), the parties shall first attempt to resolve the Dispute through mediation, in accordance with the dispute resolution exhibit attached at Schedule F.
- 20.2 Subject to Clause 20.5 below, if the parties are not successful in resolving their Dispute(s) through mediation pursuant to Schedule F, then such Dispute(s) shall be finally resolved under the Arbitration Rules of the London Court of International Arbitration (LCIA);
- 20.3 The arbitral tribunal shall consist of one arbitrator. The seat of arbitration shall be London, England. The language of the arbitration shall be English.
- 20.4 For the purposes of arbitration pursuant to this Clause 20, the Parties waive any right of application to determine a preliminary point of law or appeal on a point of law under Sections 45 and 69 of the Arbitration Act 1996.
- 20.5 Notwithstanding Clause 20.2, either Party shall have the option, before a Party has filed a Request for Arbitration as defined in the Arbitration Rules of the LCIA (as the case may be), or at any point thereafter prior to the formation of the Arbitral Tribunal,

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to give notice in writing to the other Party and require that all Disputes or a specific Dispute arising out of or in connection with the Agreement, be heard by an English court of law. If a Party gives such notice, the Dispute(s) to which such notice refers shall be determined in accordance with Clause 20.6..

- 20.6 If either Party issues a notice pursuant to Clause 20.5, the provisions of this Clause 20.6 shall apply, namely that the Courts of England shall have exclusive jurisdiction to settle any Dispute(s) arising out of or in connection with the Agreement. The Parties expressly agrees and consents to venue in these courts, and will not seek to transfer or to change the venue of any claim brought in compliance with Clause 20.5; provided, however, that each Party retains the right to enforce any of its intellectual property rights in any jurisdiction or forum, whether in the Territory or elsewhere.

21. **MISCELLANEOUS PROVISIONS**

- 21.1 Nothing in this Agreement will be deemed or construed by Licensor, Licensee or any third party as creating a relationship of principal and agent, joint venture, or partnership between the parties hereto, and neither party will so hold itself out to the public.
- 21.2 All notices under this Agreement will be in the English language and to be delivered or sent by first class recorded delivery post, fax or emails to the addresses in the Cover Sheet. If not received sooner, notice by mail will be deemed received five (5) days after the date of posting.
- 21.3 Licensee acknowledges that a breach of any of its covenants, agreements, or undertakings related to the Intellectual Property or Licensed Properties may cause immediate, irreparable damage to Licensor that cannot be readily ascertained or remedied by damages in an action at law. Notwithstanding Clause 20, Licensor will at all times retain the right to seek interim relief, or any other equitable or judicial remedy in Schedule E. Equitable remedies available to Licensor include, but are not limited to, injunctive and declaratory relief to immediately enforce Licensor's intellectual property rights, in any jurisdiction throughout the world, reasonable attorney fees as well as the right to terminate this Agreement in accordance with its terms. Licensee's sole recourse in the event of such termination is to seek monetary damages.
- 21.4 Neither this Agreement nor any rights, licenses or obligations hereunder, may be assigned, encumbered or in anyway transferred by Licensee without the prior written approval of Licensor. Such approval shall not be unreasonably withheld or delayed by the Licensor in the case of, *WFE* ~~an assignment of all of the rights and obligations of the Licensee to [Infogrames Entertainment SA,] Atari Interactive, Inc. and Atari Europe SA~~ *Atari* which the Licensee warrants are Affiliates of the Licensee (such specified Affiliates being "Approved Affiliates") *PROVIDED ALWAYS* that the Licensee shall remain jointly and severally liable for all acts and omissions of such Approved Affiliates. The Licensee undertakes, warrants and represents that any such Approved Affiliate benefiting from this Agreement will comply with all the terms and conditions of this Agreement and Licensee assumes full liability for any action or omission of an Approved Affiliate arising in connection with this Agreement. Licensor may assign this Agreement at its discretion to any entity, including one controlled by, controlling or under common control with Licensor. Any attempted assignment or transfer by Licensee in violation of this Clause will be void and without effect. Subject to the foregoing, this Agreement will benefit and bind the parties' successors and assigns.

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- 21.5 If either party's ability to meet its obligations under this Agreement is prevented, restricted, or interfered with by reason of war, revolution, civil commotion, acts of public enemies, blockade, embargo, strike or other law, order, proclamation, regulation, ordinance, demand, or requirement of any government or any judicial authority or representative of any government, inability of an Authorized Manufacturer to supply Licensee with Licensed Products sufficient to meet minimum sales requirements, or any other act similar to those referred to in this clause which is beyond the reasonable control of the parties, then the party will, upon giving prior written notice to the other party, be excused from its performance to the extent of the prevention, restriction or interference; but the party claiming excuse will use its best efforts to avoid or remove the causes of non-performance and will continue its performance with the utmost dispatch when the causes are removed. If either party is unable to perform its obligations as a consequence of any of the above for a period of six months or more, either party may terminate this Agreement, which termination will relieve each party of any liability to the other based upon such termination; however, nothing in this Clause will release Licensee from its obligations to make any Royalty payment or any other payments to Licensor pursuant to the terms and conditions of this Agreement.
- 21.6 Except as otherwise expressly provided in this Agreement, no Clause of this Agreement may be amended or modified, or the observance of any Clause of this Agreement be waived (either generally or with respect to any particular instance and either retroactively or prospectively), except with the written consent of the parties. The failure of either party to enforce its rights under this Agreement at any time for any period will not be construed as a waiver of such rights.
- 21.7 A waiver by either party hereto of any right in this Agreement, or of any failure to perform, or of any breach by any party, will not be a waiver of any other right hereunder or of any subsequent breach or failure by the other party, whether of similar nature or otherwise.
- 21.8 If any of the Clauses of this Agreement are held by a court, arbitrator, arbitration panel, or other tribunal of competent jurisdiction to be unenforceable, such Sections will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.
- 21.9 This Agreement may be executed in counterparts, each of which will be deemed an original, but both of which together will constitute one and the same instrument.
- 21.10 Headings and captions are for convenience only and are not to be used in the interpretation of this Agreement.
- 21.11 The English language version of this Agreement will govern and control any translation of this Agreement into any other language.
- 21.12 This Agreement includes the Cover Sheet, these terms and conditions, and all schedules referred to in, and attached to the Cover Sheet and terms and conditions, which together constitute the entire Agreement between the parties and supersede all discussions, proposals, representations, documents, agreements and prior course of dealing, whether oral or written, and will not be effective until signed by both parties.
- 21.13 This Agreement may only be enforced by the parties to it and the Contracts (Rights of Third Parties) Act 1999 shall not apply.

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Signed by: MICHAEL F MARECKI  
a duly authorised GENERAL COUNSEL & COMPANY SECRETARY )  
representative of Licensor )  
for and on behalf of )  
ASTON MARTIN LAGONDA LIMITED )

Michael F Marecki

Signature

Signed by: )  
a duly authorised )  
representative of Licensee )  
for and on behalf of )  
ATARI, INC. )

James Wilson

Signature



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**SCHEDULE A**  
**LICENSED PROPERTIES**

As updated by the Licensor from time to time; provided that no material may be deleted.

**Trade mark**

**Registration/Application No.**



ASTON MARTIN

Please refer to  
[www.astonmartincorporateidentity.com](http://www.astonmartincorporateidentity.com) for  
which a password will be required or whose  
contents may alternatively be provided by the  
Licensor

**Domain name**

None.

**Other**

The Licensor's approved representations of  
the following Licensor vehicle models

One-77 (2010)  
DBS Coupe (2009)  
DB9 Volante (2008)  
V12 Vantage (2009)  
DB9 Coupe (2009)  
V8 Vantage (2009)

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**SCHEDULE B**  
**QUALITY STANDARDS**

Licensee will make sure the cars are of high quality comparable with other video games it develops and publishes.

The in-game assets featuring Aston Martin IP must always be a true representation of the actual Aston Martin design, with no modification from the specification / geometry sent through as reference material for the creation of such assets.

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**SCHEDULE C**  
**ROYALTY REPORT FORM**

\_\_\_\_ Quarter, 200\_\_

Product Description	Part or ID #	Unit Price	Unit Sales	Gross Sales \$	Deductions (Discounts, Returns, etc.)	Net Sales \$	Royalty Rate	Royalty Due \$
		<b>TOTAL</b>						

I certify the information provided above is accurate and meets the terms of our licensing AGREEMENT with Aston Martin Lagonda Limited.

Signature

Company Name

Name (please print)

Street Address

Title

City, State & Zip Code

(Cheques)

(Wire Transfer):

Please mail Royalty report and payment (payable to "Aston Martin Lagonda Limited") to:

Aston Martin Lagonda Limited  
Banbury Road  
Gaydon  
Warwick  
CV35 0DB  
United Kingdom

If Payment by Wire Transfer:  
Lloyds TSB Plc  
25 Gresham Street  
London  
Beneficiary: Aston Martin Lagonda Limited

Main Fax Line: +44 (0)1926 644 002  
Office Telephone: +44 (0)1926 644 235

Pounds Sterling: GBP £:  
Account: 00057008  
Sort Code: 30-00-02  
Swift Code: LOYDGB2L  
IBAN: GB53 LOYD 3000 0200 0570 08

If Payment by Cheque:  
Aston Martin Lagonda Limited  
Banbury Road  
Gaydon  
Warwick  
CV35 0DB  
United Kingdom

Euro: EUR €:  
Account: 86301499  
Sort Code: 30-12-18  
Swift Code: LOYDGB2L  
IBAN: GB59 LOYD 3012 1886 3014 99

Payable to: Aston Martin Lagonda Limited  
Attn: Accounting Department

United States Dollars: USD \$:  
Account: 11571109  
Sort Code: 30-12-18  
Swift Code: LOYDGB2L  
IBAN: GB18 LOYD 3012 1811 5711 09

Payments are due on or before the Royalty Payment Date as defined in the terms and conditions of the Trade Mark Licence Agreement. Payments not received within 45 days after the end of each quarter are subject to a 6% late charge for the Royalty due that quarter.

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**SCHEDULE D CRITERIA FOR ENGAGEMENT OF LICENSEES AND AUTHORIZED MANUFACTURERS**

*Workmanship Standards.* Licensee covenants that each Licensed Product distributed hereunder will be of good quality and free from defects in design, materials and workmanship, will comply with all applicable laws, and will conform to the samples approved by Licensor.

*Application of Labor and Employment Standards.* Licensee further covenants, and agrees to require all Authorized Manufacturers to covenant, as follows:

1. They will not use child labor in the manufacturing, packaging or distribution of Licensed Products. The term "Child" refers to a person younger than the local legal minimum age for employment or the age for completing compulsory education, but in no case will any child younger than sixteen (16) years of age be employed in the manufacturing, packaging or distribution of Licensed Products. Where employing young persons who do not fall within the definition of "Children", they agree also to comply with any laws applicable to such persons.
2. They will only employ persons whose presence is voluntary. They will not use any forced or involuntary labour, whether prison, bonded, indentured or otherwise.
3. They will treat each employee with dignity and respect, and not use corporal punishment, threats of violence, or other forms of physical, sexual, psychological or verbal harassment or abuse.
4. They will not discriminate in hiring and employment practices, including salary, benefits, advancement, discipline, termination or retirement, on the basis of race, religion, age, nationality, social or ethnic origin, sexual orientation, gender, political opinion or disability.
5. They will comply, at a minimum, with all applicable wage and hour laws, including minimum wage, overtime, maximum hours and other elements of compensation, and will provide legally mandated benefits. If local laws do not provide for overtime pay, they agree to pay at least regular wages for overtime work. Except in extraordinary business circumstances, they will not require employees to work more than the lesser of (a) 48 hours per week and 12 hours overtime or (b) the limits of regular and overtime hours allowed by local law, or, where local law does not limit the hours of work, the regular work week in such country plus 12 hours overtime. In addition, except in extraordinary business circumstances, employees will be entitled to at least one day off in every seven-day period. Where local industry standards are higher than applicable legal requirements, they will meet the higher standards.
6. They will provide employees with a safe and healthy workplace in compliance with all applicable laws, ensuring, at a minimum, reasonable access to potable water and sanitary facilities, fire safety, and adequate lighting and ventilation. They will ensure that the same standards for health and safety are applied in any housing they provide for employees. They will provide Licensor with any information Licensor may request about manufacturing, packaging and distribution facilities for the Licensed Products.
7. They will respect the rights of employees to associate, organize and bargain collectively in a lawful and peaceful manner, without penalty or interference, in accordance with applicable laws.

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8. They will comply with all applicable environmental laws.
9. They will comply with all applicable laws, including those pertaining to the manufacture, pricing, sale and distribution of the Licensed Products.
10. Except as otherwise provided in the Agreement, Licensee and Authorized Manufacturers agree that Licensor and its designated representatives may engage in monitoring activities to confirm compliance with these criteria for engagement, including unannounced on site inspections of manufacturing, packaging and distribution facilities, and employer provided housing, such inspections to include reviews of books and records relation to employment matters and private interviews with employees. Licensee and Authorized Manufacturers will provide Licensor with access to all sites reasonably requested by Licensor to perform and exercise its rights of inspection hereunder. Licensee and Authorized Manufacturers agree to maintain on site all documentation necessary to demonstrate compliance with these criteria, which Licensor and its agent may review, and make and retain extracts of, to assist the compliance monitoring.

*Licensee's Duty to Monitor Authorized Manufacturers.* Licensee agrees to take appropriate steps, in consultation with Licensor, to develop, implement and maintain procedures to evaluate and monitor the Authorized Manufacturers and to ensure compliance with this Agreement.

*Compliance with Product Safety Laws.* Licensee will follow all reasonable and proper procedures for testing that Licensed Products comply with all applicable product safety laws, and will permit Licensor's designees to inspect testing, manufacturing and quality control records and procedures and to test the Licensed Products for compliance with product safety and other laws. Licensee agrees to promptly reimburse Licensor for the actual costs of such testing. Licensed Products not manufactured, packaged or distributed in accordance with applicable laws will be deemed unapproved, even if previously approved by Licensor, and will not be shipped unless and until they have been brought into full compliance with the applicable laws.

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**SCHEDULE E**  
**CONSENT FOR THIRD PARTY MANUFACTURER**

Licensee:

Ladies and Gentlemen:

Reference is made to the Agreement dated \_\_\_\_\_ between Aston Martin Lagonda Limited, a corporation organized and existing under the laws of England, whose address is Banbury Road, Gaydon, Warwick, CV35 0DB, United Kingdom ("**Licensor**") and Atari, Inc ("**Licensee**"), for the territory of the world ("**License Agreement**"). Licensor hereby consents to the manufacture of the Licensed Products named below by the manufacturer named below upon the following conditions to which Licensee agrees:

1) that the said manufacturer will sign and agree to be bound by the Manufacturer's Agreement attached hereto;

(2) that said manufacturer will fully comply in all respects with the License Agreement; and

(3) that Licensee will continue to be bound by all the conditions and terms of the License Agreement, and will be responsible for ensuring compliance by the manufacturer with the conditions and terms of the License Agreement, including compliance with all of its quality control requirements. Failure by the manufacturer named below to comply with any of the said material conditions and terms will entitle Licensor to terminate the Manufacturer's Agreement and require that the portion of all copies, moulds, or other devices relating to the placement of the Licensed Properties on the Licensed Products in possession of Licensee or the named manufacturer be immediately delivered to Licensor or be destroyed to the satisfaction of Licensor.

Manufacturer:

Products:

Country of Manufacture:

LICENSEE:

LICENSOR:  
Aston Martin Lagonda Limited

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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**AGREEMENT BY AUTHORIZED MANUFACTURER**

**(for use where the Authorized manufacturer is not pre-authorized under clause 11.1)**

Name and Address of Manufacturer:

Country of Manufacturer:

Name and Address of Licensee:

Expiration Date of License:

Licensed Products:

Licensed Properties:

1. In order to induce Aston Martin Lagonda Limited to consent to the manufacture of the Licensed Products using the Licensed Properties by the undersigned (the "Manufacturer"), Manufacturer agrees that:
2. It will comply in all respects with the Aston Martin Lagonda Limited License Agreement dated \_\_\_\_\_ between Aston Martin Lagonda Limited ("Licensor") and \_\_\_\_\_ ("Licensee") expiring on \_\_\_\_\_ and it has been furnished a copy thereof.
3. Manufacturer will not manufacture the Licensed Products to the order of anyone except the Licensee, will only invoice the Licensee, will not ship to anyone other than the Licensee or Licensee's designees and will not ship after the expiration date of the License;
4. Manufacturer will hold strictly confidential all information related to the Licensed Products;
5. Manufacturer will not subcontract production of the Licensed Products;
6. Manufacturer will not manufacture any products or merchandise utilizing the Licensed Properties other than on the Licensed Products;
7. Manufacturer will permit an authorized representative of Licensor upon request and five (5) days notice to inspect its activities and premises, accounting books, and invoices relevant to its manufacture and supply of the Licensed Products;
8. Manufacturer will not publish or cause the publication of pictures of the Licensed Products in any publication or promotional material, nor promote or advertise the fact that it is permitted to manufacture the Licensed Products; and



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9. Upon expiration or termination of the License Agreement, or upon notification by Licensor, Manufacturer will immediately cease manufacturing the Licensed Products and deliver to Licensor or its authorized representative that portion of any and all moulds, plates, engravings, or other devices used to reproduce the Licensed Properties or will provide Licensor with evidence that the Licensed Properties have been removed.

[MANUFACTURER'S NAME]

Date: \_\_\_\_\_

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

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

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

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**SCHEDULE F**  
**DISPUTE RESOLUTION EXHIBIT**

If a Dispute arises between the parties relating to this Agreement the following procedure shall be implemented before either party pursues other available remedies except that either party may seek interim relief from a court where appropriate in order to maintain the status quo while this procedure is followed:

- (a) The parties shall hold a meeting promptly, attended by persons with decision making authority regarding the Dispute, to attempt in good faith to negotiate a resolution of the Dispute; provided, however, that no such meeting shall be deemed to vitiate or reduce the obligations and liabilities of the parties or be deemed a waiver by a party hereto of any remedies to which such party would otherwise be entitled.
- (b) If, within 30 days after such meeting, the parties have not succeeded in negotiating a resolution of the Dispute, they agree to submit the dispute to mediation in accordance with the then current Model Procedure for Mediation of Business Disputes of the CPR Institute for Dispute Resolution, Inc. and to bear equally the costs of the mediation.
- (c) The parties will jointly appoint a mutually acceptable mediator, seeking assistance in such regard from the CPR Institute for Dispute Resolution, Inc. if they have been unable to agree upon such appointment within 20 days from the conclusion of the negotiation period.
- (d) The parties agree to participate in good faith in the mediation and negotiations related thereto for a period of 30 days. If the parties are not successful in resolving the dispute through mediation within 30 days, then the parties can either agree to continue resolving the disputes through mediation or either party may seek to exercise its rights under Clause 20.2, including in the case of the Licensor, under Clause 20.5.
- (e) Mediation or arbitration shall take place in London, England unless otherwise agreed by the parties. The substantive law of England shall apply to the proceedings. Equitable remedies shall be available in any arbitration. Punitive damages shall not be awarded. This Schedule is subject to the Arbitration Act, 1996.

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#### SCEHDULE G RULES OF APPROVAL PROCESS

The following rules will apply to all material stages of the approval process:

Concept      Rough sketches or layout concepts;

Prototype    Prototypes or finished artwork; and

Final        Pre-production sample.

- (a)      Licensee will not make any use of, sell or distribute Licensed Products or Collateral Material, prior to Licensors granting final written approval.
- (b)      Licensors has ten (10) business days from Licensors's actual receipt to review and respond in writing to each of Licensee's submissions. If Licensors does not respond within ten (10) business days of receipt, submission shall be deemed disapproved. In the event an item is disapproved, Licensors shall promptly set forth with specificity in writing the reasons for such approval and instructions for making the item acceptable. In the event that Licensors does not approve the Licensed Product for release, Licensors shall promptly refund any Advance or other payments made by Licensee to Licensors.
- (c)      Licensors, at its sole discretion, reserves the right to reject an item approved at a prior stage if it departs from the approved sample.
- (d)      If any change is made to the quality of the items, whether during the approval process or after final approval has been granted, such items will be re-submitted for approval.
- (e)      Licensee will disclose all sources for any artwork depicting the Licensed Properties not supplied by Licensors.
- (f)      All submissions become the physical property of Licensors.
- (g)      Licensee shall return prototypes and final artwork to Licensee at Licensee's written request and at Licensee's expense, provided that Licensee supplies Licensors with photographs of the same.
- (h)      Licensee shall have no remedies against Licensors by reason of Licensors's failure or refusal to grant any approval referred to in this Clause.
- (i)      Licensee will supply Licensors with twelve (12) production samples of each Licensed Product, unless the cost and/or size of such samples require, in Licensors's sole discretion, that Licensee provide a smaller number of production samples.
- (j)      No facsimile transmissions will be accepted for approval; however, the parties agree the email submissions and approvals are acceptable.
- (k)      Licensee agrees to provide Licensors with its DHL, Federal Express and/or UPS numbers for Licensors to use for the purposes of transmitting samples.

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## **SCHEDULE H**

### **Aston Martin Style Guide**

To be provided by Aston Martin Lagonda Limited.

All in game representation of the Aston Martin corporate identity must comply with the guidelines available to download from;

[www.astonmartincorporateidentity.com](http://www.astonmartincorporateidentity.com)

**Please contact the AM Merchandise and Licensing team for confirmation of User name and password.**