

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K/A

Current report filing [amend]

Filing Date: **2004-10-29** | Period of Report: **2004-10-29**
SEC Accession No. **0000950136-04-003624**

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FILER

MAJESCO HOLDINGS INC

CIK: **1076682** | IRS No.: **061529524** | State of Incorporation: **DE** | Fiscal Year End: **1230**
Type: **8-K/A** | Act: **34** | File No.: **333-70663** | Film No.: **041106624**
SIC: **7372** Prepackaged software

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K/A

CURRENT REPORT PURSUANT
TO SECTION 13 OR 15(D) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of report (Date of earliest event reported): October 29, 2004

Majesco Holdings Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State or Other Jurisdiction of Incorporation)

333-70663

06-1529524

(Commission File Number)

(IRS Employer Identification No.)

160 Raritan Center Parkway, Edison, New Jersey

08837

(Address of Principal Executive Offices)

(Zip Code)

(732) 225-8910

(Registrant's Telephone Number, Including Area Code)

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

ITEM 8.01 - OTHER EVENTS

This Amendment to our Current Report on Form 8-K is being filed for the purpose of filing the agreements set forth as exhibits under Item 9.01 below.

ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS

(c) The following exhibits are furnished with this report:

Exhibit No.	Description
10.1	License Agreement, dated June 30, 2000, by and between Activision Publishing, Inc. and Majesco Sales Inc.
10.2	License Agreement for Game Boy Advance, dated May 10, 2001, by and between Nintendo of America Inc. and Majesco Sales Inc.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Majesco Holdings Inc.
(Registrant)

Date: October 29, 2004

By: /s/ Carl J. Yankowski

Carl J. Yankowski
Chief Executive Officer

LICENSE AGREEMENT

This License Agreement (this "Agreement") is entered into effective as of the 30th day of June, 2000 (the "Effective Date") by and between Activision Publishing, Inc., a Delaware corporation with offices at 3100 Ocean Park Boulevard, Santa Monica, California 90405 ("Activision"), and Majesco Sales, Inc. with offices at 244 Fernwood Avenue, Edison, New Jersey 08837 ("Licensee").

RECITALS

A. Activision is engaged in the business of developing, publishing, licensing and distributing entertainment software products, and owns and holds the rights to develop, manufacture, publish, and distribute an entertainment software product known as Soldier of Fortune, the description of which is set forth on Schedule A attached hereto (the "Activision Property").

B. Licensee is engaged in the business of developing, producing, manufacturing, distributing and selling video games and entertainment software products.

C. Licensee desires to convert the Activision Property to a format for use with the Sony Play Station 2 console platform, and to develop, produce, manufacture, advertise, promote and distribute such converted Activision Property, on the terms and conditions set forth herein.

NOW, THEREFORE, the parties do hereby agree as follows:

1. GRANT OF RIGHTS:

- 1.1 Activision grants to Licensee a limited, exclusive non-transferable right and license to: (a) convert the Activision Property to a format for use solely with the Sony PlayStation 2 operating system (collectively, the "Converted Platform") (such converted version of the Activision Property for use with the Converted Platform being hereinafter referred to collectively as the "Product"); and (b) develop, produce, manufacture and have manufactured by a third party, advertise, promote and distribute the Product (i) in the Territory (as defined in Section 3.1), (ii) throughout the Term (as defined in Section 4.1), (iii) only for use on the Converted Platform set forth above, (iv) for sale solely in retail channels (i.e., to retailers or end users via retail outlets, or to

subdistributors who will then sell the Product solely to retailers or end users via retail outlets), and (v) only pursuant to one or more end-user license agreements approved in advance by Activision. Activision also grants to Licensee a limited, non-exclusive, non-transferable right and license to use Activision's trademarks and logo in accordance with the terms and conditions of Section 9.1.

1.2 Licensee shall not have the right to: (a) license or sublicense the Activision Property or the Product, except for sublicensing of the Product which is required in conjunction with the retail distribution of the Product in those parts of

the Territory where sublicensing is appropriate; (b) enter into an agreement for the bundling of the Product with an OEM manufacturer; (c) disclose or reverse engineer the Activision Property or any part thereof, or authorize or permit any of its customers to do so; or (d) except as otherwise provided in this Agreement in connection with the development of the Product, copy or modify the distribute or sell any other products or version of products based on the Activision Property. Activision expressly reserves and retains any and all rights that are expressly excluded from or not specifically granted to Licensee pursuant to this Agreement.

1.3 Activision (or as applicable, its licensor in connection with the Activision Property) has and shall retain all rights, title and ownership interest in and to the Activision Property, any and all modifications, enhancements and, subject to the provisions of Section 8.3, derivative works thereof and all Intellectual Property Rights (as defined in Section 8.1) embodied therein and related thereto. Licensee shall not by any act, or omission to act impair or prejudice the Intellectual Property Rights of Activision (or, as applicable, its licensor) in the Activision Property or violate any moral rights or deal with the Activision Property so that any third party might obtain any lien or other right of whatever nature incompatible with the Intellectual Property Rights of Activision (or, as applicable, its licensor). Licensee agrees to notify Activision of any known or suspected violation or infringement of Activision's Intellectual Property Rights in the Activision Property that comes to Licensee's attention and to assist Activision at Activision's expense, in the prosecution of any such infringement claims.

2. DEVELOPMENT OF THE PRODUCT:

2.1 Licensee agrees to create the product at its sole cost and expense pursuant to the terms and conditions of this

Agreement. Subject to Activision's approval rights set forth in Section 2 hereof, Licensee shall assume full responsibility for the creation and development of the Product. Activision agrees to cooperate with and assist Licensee in the development of the Product by providing Licensee, to the extent necessary, with audio and visual assets and computer code for the Activision Property solely to assist Licensee in developing the Product.

2.2 Licensee agrees that it shall treat all information received hereunder as confidential in accordance with Section 12 of this Agreement. Licensee represents that it has caused or will cause each of its employees having access to Activision's information and materials hereunder to execute a non-disclosure/confidentiality agreement sufficient to protect Activision's confidential information. Licensee also shall require all independent contractors having access to any Activision information and materials in connection herewith to become subject to and be bound by the confidentiality provisions of this Agreement and to execute a confidentiality agreement, the form of which is set forth on Schedule E attached hereto. In the event that any employee or independent contractor of Licensee breaches its confidentiality obligations with respect to Activision's information and materials hereunder, Licensee will not be deemed to be in breach of its obligations under this Agreement, provided that Licensee timely proceeds to

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enforce such confidentiality obligations against the employee or independent contractor. Licensee agrees that in the event any employee or contractor of Licensee having access to any Activision information and materials in connection herewith breaches confidentiality obligations undertaken by Licensee pursuant to this Agreement, and Licensee does not timely commence an action to prevent the unauthorized dissemination of confidential information, Activision shall have the right to proceed on behalf of Licensee against the party engaged in such unauthorized disclosure of information, including, without limitation, the right to seek injunctive and other equitable relief. In connection therewith, Licensee agrees to assign to Activision its legal right to proceed against the party engaged in such unauthorized disclosure of information, and will execute any documents reasonably required by Activision to evidence such assignment.

2.3 Licensee agrees to develop the Product in conformance with commonly accepted standards for high-quality computer and

video game software. Licensee and Activision acknowledge and agree that the conversion of the Activision Property may require certain modifications to the gameplay of the Activision Property to accommodate the features and limitations of the Converted Platform, which modifications shall be subject to the prior written approval of Activision, which shall not be unreasonably withheld. Licensee will perform all development and other services required hereunder at its offices. Licensee's development team assigned to the development of the Product will consist of fully-qualified employees of Licensee, who will devote such time to the development of the Product as is necessary to complete such Product on time and in a manner which conforms to the standards required by this Agreement. In the event Licensee wishes to utilize the services of a third party developer ("Outside Developer") in connection with the development of the Product, then the following shall apply: (a) such Outside Developer shall be subject to the prior written approval of Activision, which shall not be unreasonably withheld; (b) Licensee's engagement of such Outside Developer shall be subject to all terms and conditions of this Agreement and (c) Licensee shall remain primarily liable to Activision at all times for Outside Developer's conduct and for the completion of the development of the Product.

- 2.4 Licensee agrees to use its commercially reasonable efforts to complete the Product promptly following the execution of this Agreement, but will complete the Product by no later than fifteen (15) months following the Effective Date in any event, provided that this fifteen (15) month deadline shall be subject to the timely fulfillment by Activision of its obligations relating to cooperation, assistance and approvals as specifically set forth in this Agreement. For the purpose of facilitating Activision's approval of the Product as set forth in Section 2.5 below, Licensee shall submit process reports as may be reasonably requested by Activision during the development and production of the Product, and shall submit for Activision's review and approval current "builds" (as such term is commonly understood in the entertainment software industry) of the Product as set forth in Section 7. Licensee shall incorporate any changes requested by Activision after review of such "builds" into the Product, provided however that

Activision shall not request changes which are inconsistent with the design document which is approved by Activision pursuant to Section 2.5. All progress reports, "builds" and

other material and information submitted to Activision by Licensee under this Section 2.4 shall constitute confidential information of Licensee subject to the provisions of Section 12.

2.5 Licensee agrees that the Product shall be of the standard customary to high-quality products in the entertainment software industry and of such style, appearance and quality as shall, in the judgment of Activision, be adequate and suited to its exploitation to the best advantage and to the protection and enhancement of the Activision Property and the goodwill pertaining thereto; that the Product shall be manufactured, packaged, sold, distributed, advertised and serviced in accordance with all applicable laws; that the policy of sale, distribution, and/or exploitation by Licensee shall be of the equivalent standard customary to high-quality products in the entertainment industry; and that the same shall in no manner reflect adversely upon the Activision Property or Activision. Licensee further agrees that all rights granted herein shall be exploited or exercised so as not to interfere with, detract from, or alter in any respect the concepts used by Activision or known to the public in connection with the Activision Property, and that Licensee shall use its best efforts to preserve such concepts therein. Accordingly, Licensee agrees to submit the Product, all associated packaging and documentation, and all marketing materials to be utilized in connection with the advertising, marketing and promotion of the Product to Activision for Activision's prior approval or disapproval. Licensee shall submit "builds" of the Product for Activision's approval at: (a) the initial concept and design document stage (it being understood that at such stage, Activision shall have the right to approve such concept and the final design document); (b) upon implementation of the art constituting the main gameplay elements of the Product; (c) Licensee's alpha and beta development stages; and (d) at its final pre-gold master stage (as such terms & c commonly understood in the entertainment software industry). Any version of the Product created by Licensee shall not be distributed or otherwise utilized by Licensee without first obtaining the written approval of Activision (and, as necessary, the third parties set forth in Section 2.6 as to the final form, content and quality of the Product and all associated packaging and documentation therefor as well as the title to be used by Licensee in connection with the distribution of the Product. Activision shall use reasonable efforts to approve materials submitted by Licensee within ten (10) business days after receipt, which approval shall not be unreasonably withheld. Licensee agrees to make such changes as will be reasonably required to correct any deficiencies noted by Activision promptly upon receipt of such notice. This procedure will be repeated with each

submission until Activision determines that its request for changes has been met.

- 2.6 Activision and Licensee acknowledge and agree that the Product, including any packaging and marketing materials created by Licensee to be used in connection with the Product, shall also be subject to the approval of Sony Electronic Publishing Co. and/or any of its affiliates, parent companies, or subsidiaries

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(collectively "Sony") and NNP, Inc. and/or its affiliates, parent companies, licensors or subsidiaries ("NNP"), Activision's licensor of the "Soldier of Fortune" property on which the Activision Property is based, and Licensee agrees to make and/or implement any and all changes to the Product that may be required by Sony and NNP. Licensee further agrees that all materials relating to the Product requiring NNP's approval will be processed solely through Activision for submission to NNP, rather than directly from Licensee to NNP.

- 2.7 The packaging and the written documentation for the Product shall contain a notice indicating that the Product is produced by Licensee under license from Activision and shall contain proper legal notices approved by Activision indicating Activision's ownership of the Intellectual Property Rights in and to the Product
- 2.8 Promptly upon Licensee's receipt of its initial shipment of the Product, Licensee shall provide to Activision twenty-five (25) units of the Product for its internal use.

3. TERRITORY:

- 3.1 Licensee shall be entitled to exercise the rights granted hereunder only in the territory described in Schedule B attached hereto (the "Territory").

4. TERM:

- 4.1 The rights granted hereunder shall be effective as of the Effective Date and shall expire as of the date specified in Schedule C attached hereto, unless sooner terminated in accordance with the terms and conditions hereof (the "Term")

5. ROYALTIES:

- 5.1 In consideration of the rights granted to Licensee pursuant to

this Agreement, Licensee shall pay to Activision the Advance (as defined below) and Royalties (as defined below) as set forth in this Section 5. Activision shall be solely responsible for any payments that may become due and payable to any of Activision's licensors of the Activision Property (if any) in connection with Licensee's exploitation of its rights granted in this Agreement

5.2 Licensee shall pay to Activision a non-refundable advance (the "Advance") in the amount set forth on Schedule D attached hereto immediately upon execution of this Agreement by both parties, which Advance shall be fully recoupable from the Royalties payable to Activision pursuant to Section 5.3 below.

5.3 Licensee shall pay Activision the respective per unit royalty amounts for each unit of the Product sold or licensed by Licensee hereunder ("Royalty" or "Royalties") according to Schedule D attached hereto. A unit of the Product shall be considered "sold" or "licensed" when the payment for such unit of the Product is paid or credited to Licensee's account, whichever occurs first.

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5.4 Payments of the Advance and all Royalties for all units of the Product distributed by Licensee shall be made in United States Dollars solely by wire transfer to a bank account designated by Activision. Payment of the Advance and all Royalties to Activision shall be made without deduction, reduction or set-off of any kind whatsoever, except solely that Licensee shall be entitled to deduct any unrecouped portion of the Advance from Royalties which may be due at the time such Royalties are otherwise due and payable to Activision.

5.5 Within thirty (30) days after the end of each calendar quarter during the Term of this Agreement, commencing with the calendar quarter during which the first unit of the Product is shipped by Licensee, Licensee shall furnish Activision with an accounting statement of the Royalties earned and an account of the manufacture and sale of the Product hereunder, together with payment for any amount shown thereby to be due to Activision. The Royalty statement shall be based upon distribution of units of the Product during the calendar quarter then ended, and shall be sufficient to discern how the Royalties, if any, due to Activision were computed.

5.6 For the avoidance of doubt the parties acknowledge and agree that Licensee shall not be entitled to withhold any portion of the Royalties as a reserve.

- 5.7 All payments of the Royalties to Activision will be made without deduction or withholding for any foreign, national, state or local sales, use, value added, withholding or other taxes, custom duties, or similar tariffs and fees. Should any tax or levy be made in connection therewith, Licensee agrees to pay such tax or levy and indemnify Activision for any claim for such tax or levy demanded.
- 5.8 Activision will have the right at least twice annually during the term of this Agreement to have independent auditors examine Licensee's books, records and accounts for the purpose of verifying payment to Activision hereunder. Each such examination will be upon at least five (5) business days prior written notice to Licensee and will not unreasonably interfere with Licensee's business. If any examination discloses a shortfall in any Royalty payment due Activision of more than five percent (5%), Licensee will pay the fee of the auditors for that examination, in addition to the payment of such shortfall, and Activision will be entitled to perform an additional examination within one (1) year from the date of the examination that disclosed such shortfall. All information (other than information pertaining to Royalties due to Activision) learned by, or disclosed to, Activision or its agent as a result of any such audit shall constitute Licensee's confidential information, and any person who conducts such audit will therefore, be required to execute a non-disclosure agreement reasonably satisfactory to Licensee, that prohibits the unauthorized use or disclosure to third parties of Licensee's confidential information.

6. CUSTOMER SUPPORT AND MARKETING COMMITMENTS:

- 6.1 Licensee shall commence marketing and public distribution of the Product immediately following the final approval thereof by Activision in accordance with the terms of this Agreement.
- 6.2 Licensee shall use diligent, good faith efforts to market and promote the distribution of the Product in the Territory. Subject to Activision's approval rights in connection with marketing materials set forth in Section 2.5, Licensee shall consult with Activision regarding the marketing and promotion of the Product. Licensee shall not distribute the Product as a premium or giveaway or in connection with the sale or promotion of any other products or services.
- 6.3 Activision will provide Licensee with a reasonable amount of artwork from the packaging and promotional materials utilized by Activision in connection with the Activision Property for

Licensee's use in the creation of packaging and promotional materials for the Product, subject to Activision's approval rights of such materials as set forth in Section 2.5 of this Agreement.

- 6.4 Licensee will be responsible for determining the suggested retail price at which the Product will be offered for sale to the general public.
- 6.5 Licensee shall provide technical support to all dealers and customers in the Territory who obtain the Product, the standard of such support to be commensurate with the generally accepted highest level of support in the entertainment software industry in the Territory, including without limitation telephone and fax support to be provided by Licensee via telephone numbers to which customers may call during Licensee's normal business hours or fax in order to have their technical questions about the Product answered. ACTIVISION SHALL NOT BE RESPONSIBLE FOR, NOR SHALL ACTIVISION PROVIDE, CUSTOMER SUPPORT OF ANY KIND IN CONNECTION WITH THE PRODUCT. Activision shall refer any and all technical support requests in connection with the Product to Licensee, and Licensee shall reimburse Activision for any reasonable, actual costs incurred by Activision in connection with any technical support of the Product by Activision necessitated by Licensee's failure to provide adequate customer support.
- 6.6 Licensee shall bear the costs of submitting the Product to any rating authorities of the Territory, along with any rating, fees or administrative payments that become due.

7. CONVERSION OF THE PRODUCT TO OTHER PLATFORMS:

- 7.1 Notwithstanding anything to the contrary contained herein, Activision shall have during and after the Term of this Agreement the unlimited right to convert, or license to third parties the right to convert, the Activision Property and any gameplay elements of the Product for use on any and all operating systems and platforms other than the Converted Platform and to produce, develop,

manufacture, advertise, promote and distribute such converted product in any and all portions of the Territory without any obligation to Licensee whatsoever; provided, however, Activision will not be permitted to utilize any of information in furtherance of or in connection with, such activities.

- 8.1 For purposes of this Agreement, the term "Intellectual Property Rights" means patent rights, inventions, know-how, and registrations and applications, renewals and extensions therefor, all works of authorship, copyrights and copyrightable work product or elements (including, but not limited to, all titles, computer code, themes, objects, characters, character names, stories, dialog, catch phrases, locations, concepts, artwork, animation, designs, sounds, musical compositions, audio-visual effects and methods of operation and play, moral rights and related documentation), copyright registrations and applications, renewals and extensions therefor, trademark registrations and applications, renewals and extensions therefor, rights in trade dress and packaging, goodwill, trade and other intellectual property and other proprietary rights recognized by the US laws, laws in the Territory, and other applicable foreign and international laws, treaties and conventions.
- 8.2 Notwithstanding anything to the contrary set forth in this Agreement Activision or, as applicable, its licensor shall at all times be and remain the sole and exclusive owner of the Activision Property and all Intellectual Property Rights pertaining thereto. Without limiting the generality of the foregoing, nothing in this Agreement shall be deemed to grant Licensee any proprietary or ownership interest or Intellectual Property Rights in or to the Activision Property.
- 8.3 Notwithstanding the foregoing, Activision acknowledges and agrees that it has no right, title and/or interest in and to the work undertaken by Licensee to develop the Product, including, without limitation, (a) computer software, code, routines, tools, algorithms and the like which generate any of the audio-visual assets or other gameplay elements contained in the Product, (b) all originally created art, sound, music, and other assets and designs embodied in the Product, or any reproduction thereof, (a) the technical and/or maintenance documentation of or concerning the Product, and (d) the related instruction manuals and packaging for the Product, including all protectable trade dress contained in such packaging (collectively, the "Work Product"), to the extent the Work Product does not include any portion of the Activision Property or any artwork, assets or other materials supplied by Activision (collectively, "Activision Materials"). The Work Product shall be owned by Licensee to the extent such does not include any of the Activision Materials, all right, title and interest to which shall be owned exclusively by Activision or, as applicable, its licensor. Subject to Activision's or its licensor's ownership of the Activision Materials, Licensee shall have all rights, title and interests

in and to the Product and the Work Product, and all Intellectual Property Rights pertaining thereto.

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8.4 The Activision Property is licensed, not sold, by Activision to Licensee, and nothing in this Agreement will be interpreted or construed as a sale or purchase of any copy of the Activision Property, including but not limited to any use of a "purchase order" by Licensee in connection with the transactions contemplated hereunder. Furthermore, any distribution or delivery of the Product by Licensee to any sublicensee (including, without limitation, subdistributors and end-users) will be by license and not by sale. Accordingly, Licensee acknowledges that the "First Sale Doctrine" (as embodied in 17 U.S.C., Section 109 of the United States Copyright Act of 1976, as amended, or the equivalent law or statute in the Territory) does not apply to Licensee's acquisition of rights in and to the Activision Property hereunder or to any sublicensee's acquisition of rights in and to the Product under any agreement between Licensee and a sublicensee.

9. TRADEMARKS AND COPYRIGHTS: ACTIVISION'S TITLE AND GOODWILL:

9.1 Licensee agrees to place in the Product, on the packaging and related documentation and marketing materials all copyright notices, logos and designations in the form and manner directed by Activision. Activision's logo shall be at least equal in size to other logos featured in the Product, documentation and marketing materials, including Licensee's logo. Without limiting Activision's other approval rights set forth in this Agreement, Activision's specific approval is required on the placement of Activision's logo, copyright notices and designations. Except as provided in Section 8.3, all copyrights, trademarks and service marks relating to the subject matter of this Agreement are, will be and shall remain the sole property of Activision (or, if applicable, its Licensor and other contractors). Licensee shall create, execute and deliver to Activision all documents and instruments required by Activision for the protection of or otherwise in connection with the copyrights, trademarks and service marks of Activision (or, if applicable, its licensor and other contractors). Licensee shall not have the right to use Activision's (or, if applicable, its licensor's and other contractors') trademarks or trade names except in connection with the promotion and distribution of the Product in the Territory in accordance with the terms of this Agreement.

9.2 Licensee acknowledges that Activision or, as applicable, its

licensor, is the owner of all right, title and interest in and to the Activision Property, and further acknowledges the great value of the goodwill associated with the Activision Property and that the Activision Property has acquired secondary meaning in the mind of the public and that the trademarks and copyrights included in the Activision Property, and the registrations therefor, are valid and subsisting, and further agrees that it shall not during the Term of this Agreement or at any time thereafter do or cause to be done any act which in any way may impair, harm or bring into disrepute Activision's or its licensor's exclusive rights and title to the Activision Property, as well as any properties owned by Activision which are not licensed hereunder, or the validity thereof or the validity of this Agreement, and shall not assist others in so doing.

9.3 Licensee shall not in any manner represent that it has any ownership in the Activision Property, or in any trademarks or copyrights included in the Activision Property (or registrations therefor), but may, only during the Term of this Agreement, and only if Licensee has complied with any and all applicable laws and registration requirements within the Territory for so doing, represent that it is a "licensee" or "official licensee" hereunder. Licensee shall not register or attempt to register any copyright or trademark in the Activision Property, in its own name or that of any third party, nor shall it assist any third party in doing so.

10. REPRESENTATIONS, WARRANTIES AND COVENANTS:

10.1 Licensee hereby warrants and represents that Licensee has the right and power and is free to enter into and fully perform this Agreement, without approval from any governmental entity or third party other than as has been or, if later imposed, will be obtained.

10.2 Licensee further warrants and represents that any information or materials developed in connection with the development of the Product hereunder shall not rely, or in any way be based upon, proprietary information or Intellectual Property Rights obtained or derived by Licensee from sources other than Activision, unless Licensee has received specific authorization or license in writing from any such source to use such information or rights in connection with the development of the Product.

10.3 Licensee further warrants and represents that any materials developed by Licensee pursuant to this Agreement will not

infringe upon or misappropriate the Intellectual Property Rights (with respect to patent rights, Licensee's representation herein shall be limited to Licensee's best knowledge) or any other legal rights of any third party through any act or omission to act of Licensee hereunder. Should any aspect of the Product become, or, in Activision's opinion, is likely to become, the object of any infringement or misappropriation claim or suit arising out of any act or omission to act of Licensee, Licensee will procure, at Licensee's expense, the right to use the Product in all respects, or will replace or modify the affected Product to make it non-infringing.

- 10.4 Licensee hereby covenants to put forth its commercially reasonable efforts to diligently market, distribute and promote the Product at Licensee's sole cost and expense.
- 10.5 Licensee hereby further covenants not to sell the Product to any party who it knows, or reasonably should know, will infringe Activision's Intellectual Property Rights in the Product.
- 10.6 Licensee hereby further covenants to: (a) conduct its business in a manner that reflects favorably at all times on the Activision Property, the Product and the good name, goodwill and reputation of Activision; (b) avoid deceptive, misleading or unethical practices, that are or might be detrimental to Activision, the Activision

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Property, the Product or the public; (c) avoid making disparaging, false or misleading statements or representations with regard to Activision, the Activision Property or the Product; (d) not employ or cooperate in the employment of any deceptive or misleading advertising material with regard to Activision, the Activision Property or the Product; and (e) make no representations, warranties or guarantees to customers or to the trade with respect to the specifications, features or capabilities of the Product that are inconsistent with the warranties and disclaimers included in or with the Product.

- 10.7 Licensee hereby further covenants that it will comply with all applicable international, national, regional, and local laws in performing its duties hereunder and in any of its dealings with respect to the Product.
- 10.8 If any approval with respect to this Agreement, or the

notification or registration thereof; will be required at any time during the Term, with respect to giving legal effect to this Agreement in the Territory, or with respect to compliance with exchange regulations or other requirements. Licensee will immediately take whatever commercially reasonable steps may be necessary in this respect, and any charges incurred in connection therewith will be for the account of Licensee. Licensee shall keep Activision currently informed of its efforts in this regard. Activision shall be under no obligation to provide the Product to Licensee hereunder for the relevant portions of the Territory until Licensee has provided Activision with satisfactory evidence that such approval has been obtained, or that no such approvals are required.

- 10.9 Licensee hereby further covenants that it will not distribute more than two hundred fifty (250) promotional copies of the Product.
- 10.10 Activision hereby represents and warrants that it has the right and power to enter into and grant the rights described herein, that it is free to enter into this Agreement, and that the rights granted herein will not infringe upon the rights of any other person or entity.
- 10.11 THE ACTIVISION PROPERTY IS PROVIDED TO LICENSEE "AS IS." EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, ACTIVISION MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE ACTIVISION PROPERTY OR THE PRODUCT, AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY SPECIFICALLY EXCLUDED. ACTIVISION DOES NOT REPRESENT THAT THE ACTIVISION PROPERTY OR THE PRODUCT WILL BE ERROR FREE OR OPERATE WITHOUT INTERRUPTION.

11. TERMINATION:

- 11.1 This Agreement shall continue in effect throughout the Term unless terminated by either party for the reason stated below:

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11.1.1. If, after notifying the other party in writing of a breach of this Agreement, the breaching party does not fully cure such breach within thirty (30) days of receipt of such notice. Such termination shall be effected by giving the breaching party written notice of the termination.

11.1.2. If either party fails to pay its debts as its debts

became due, becomes insolvent, files or has filed against it a petition under any bankruptcy law (which, if involuntary, is unresolved after sixty (60) calendar days), proposes any dissolution, liquidation, composition, financial reorganization, or recapitalization with creditors, makes an assignment or trust mortgage for the benefit of the creditors, or a receiver trustee, custodian, or similar agent is appointed or takes possession with respect to any property or business of Licensee.

- 11.1.3. In the event a third party, who is in the primary business of developing, publishing, licensing or distributing video games or entertainment software products, acquires more than a fifty percent (50%) equity ownership interest in Licensee, acquires all or a substantial portion of Licensee's assets, or succeeds to the business of Licensee by operation of law or otherwise, Activision shall have the right to terminate this Agreement immediately upon notice thereof. In the event of termination by Activision pursuant to this Section 11.1.3, Activision shall:
- (a) pay to Licensee the amount by which all actual documented development costs of the Product spent by Licensee as of the date of such termination (including any unrecouped portion of the Advance paid by Licensee to Activision as of such date) exceeds Licensee's net revenues (after deduction of actual, documented marketing and sales expenses) of the Product;
 - (b) purchase from Licensee all of Licensee's existing inventory of the Product at Licensee's actual cost therefor;
 - (c) have the right to manufacture, distribute, market, advertise, promote and sell the Product in exchange for payment of a royalty to Licensee, which such royalty to Licensee may be used to recoup all sums paid by Activision to Licensee pursuant to Section 11.1.3(a) (payable on the same basis, including without limitation the royalty rate payable, as the Royalty is paid to Activision pursuant to the terms of this Agreement);
 - and (d) further assume any obligation on the part of Licensee to pay advances to any Outside Developer in connection with the Product (provided that Licensee provides Activision with written documentation of such royalty obligations). Upon such termination by Activision, all of Licensee's rights in and to the Product shall terminate and be deemed immediately transferred to Activision, and Licensee will deliver to Activision a complete asset package for the Product and all associated packaging and documentation, including without limitation, source

code for the Product.

11.1.4. Activision shall have the right to terminate this Agreement immediately after ten (10) days prior notice to Licensee in the event Licensee (a) fails

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to pay any portion of the Advance when due, (b) fails to pay Royalties and/or make Royalty accountings to Activision in accordance with the terms of this Agreement, or (c) has underpaid Royalties owing to Activision by more than five percent (5%), any event of which shall be deemed a material breach of this Agreement by Licensee, and Licensee fails to cure the material breach within such ten (10) day notice period.

11.2 The right to terminate this Agreement as set forth above shall be in addition to and not in limitation of any other remedy, right, undertaking, obligation or agreement of either party. No waiver by either party of any breach of this Agreement shall be deemed a waiver of any preceding or succeeding breach hereof.

11.3 The parties agree that if as of the expiration of the Term or as of the date this Agreement is terminated due to Licensee's uncured breach or otherwise pursuant to Section 11.1, Licensee has failed to pay any portion of the Advance to Activision, or any Royalties have accrued to Activision, then without limiting Activision's other rights and remedies, Licensee shall promptly pay Activision the remaining balance of such Advance or such Royalties in full.

11.4 The parties agree that in case of expiration or early termination of this Agreement, all Licensee's rights related to the Activision Property shall cease as of the date of such expiration or termination, any and all other rights granted to Licensee pursuant to this Agreement shall immediately and automatically terminate without prejudice to any rights or claims Activision may have, and all rights granted to Licensee in this Agreement shall immediately revert to and be vested in Activision except that Licensee, for a period of ninety (90) calendar days only, may distribute such units of the Product in Licensee's possession, provided that such termination is not the result of Licensee's breach and Licensee continues to promptly provide full accountings and make full payments to Activision with respect to all Royalties then due and in connection with such additional sales. Licensee agrees not to

stockpile units of the Product or manufacture units of the Product in excess of reasonable market demand in anticipation of such expiration or early termination.

11.5 Upon expiration or early termination of this Agreement, Licensee shall promptly and automatically return to Activision any property of Activision then in its possession or under its control.

11.6 No termination or cancellation of this Agreement by either party shall in any way affect or impair Activision's rights to develop, publish, manufacture, and distribute the Activision Property or any derivative work or other version of the Activision Property in the Territory, provided that such derivative work or other version of the Activision Property does not utilize any of Licensee's Work Product.

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11.7 Licensee acknowledges and agrees that if Activision terminates this Agreement for a material breach, Activision shall have the right to terminate any other Agreement with Licensee. In addition, Licensee acknowledges that if Activision terminates for material breach any other Agreement between Activision and Licensee, or if Licensee uses the Activision Property or any part thereof beyond the scope of the license granted herein or uses any properties owned by Activision which are not licensed to Licensee, Activision shall have the right to terminate this Agreement. In either event, Activision's right, to terminate shall be effective upon written notice to Licensee.

12. CONFIDENTIAL INFORMATION:

12.1 Each party agrees to use reasonable efforts and at least the same care that it uses to protect its own confidential information of like importance, to prevent unauthorized dissemination and disclosure of the other party's confidential information during and for a period of three (3) years after the Term. These obligations will be subject to the following terms and conditions:

12.1.1. Confidential information includes, but is not limited to, the following: (a) the design, technology and know-how related to the Product and the Activision Property; (b) the computer object and source code of the Product and the Activision Property; (c) non-public information concerning either party's financing, financial status, research and development, proposed new products, marketing plans and pricing, unless and until publicly announced; and

(d) any information designated by either party as confidential or proprietary in writing;

12.1.2. The foregoing obligations will not apply to any information that: (a) becomes known to the general public without fault or breach on the part of the receiving party; (b) the receiving party receives from a third party without breach of a nondisclosure obligation and without restriction on disclosure; (c) was in the possession of the receiving party prior to disclosure by the other; (d) is independently developed by the receiving party's personnel having no access to similar confidential information obtained from the other; or (e) is required to be disclosed by Licensee in order to obtain any entertainment software ratings board approval in fulfillment of Licensee's obligations pursuant to this Agreement; and

12.1.3. Nothing in this Agreement will affect any obligation of either party to maintain the confidentiality of a third party's confidential information.

13. INDEMNIFICATION:

13.1 Licensee shall indemnify, defend and hold harmless Activision and its officers, directors, agents and employees from claims, suits, losses, liabilities, damages or expenses (including costs of suit and attorneys' fees) (collectively, "Claims")

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arising out of Licensee's breach of this Agreement or any representations or warranties contained herein.

13.2 Activision shall indemnify, defend and hold harmless Licensee and its officers, directors, agents and employees from and against any Claims arising out of Activision's breach of this Agreement or any representations or warranties contained herein.

13.3 If a party requests to be indemnified pursuant to this Section ("requesting party"), it must give prompt notice of the Claim to the other party ("requested party") specifying all details relevant thereto. The requested party may, at its option, assume the defense of a Claim, in which event the requesting party will cooperate fully in such defense and may participate in such defense with counsel of its own choice, provided that the requesting party will be responsible for all expenses

relating to such separate counsel. If the requested party assumes the defense of a Claim, its obligation will be limited to paying the attorneys' fees, costs and expenses associated with such defense (except as otherwise expressly provided herein) and holding harmless the requesting party from and against any judgment paid on account of such Claim or monetary settlement the requested party has made (with the requesting party's approval, not to be unreasonably withheld) or approved. The requesting party may, if necessary or desirable, join the requested party as a party in any litigation in respect of a Claim for which indemnity is requested. No settlement may be made by the requesting party without the requested party's prior approval. If either party fails to fulfill any of its material obligations hereunder, the other party will be deemed excused from its obligations pursuant to this Section.

14. MISCELLANEOUS:

- 14.1 No amendment or modification of this Agreement will be made except by an instrument in writing signed by both parties.
- 14.2 This Agreement shall be deemed entered into in Los Angeles County, California and shall be governed by and interpreted in accordance with the substantive laws of the State of California and, if applicable, United States Federal Law. The parties agree that any dispute arising under this Agreement shall be resolved exclusively in the state or federal courts within Los Angeles County, State of California and expressly consent to jurisdiction therein. The parties agree that process may be served upon it by mailing such process to its address for notices as provided in this Agreement. Licensee irrevocably waives objection to venue or forum in any such court in California
- 14.3 Should any provision of this Agreement be held to be void, invalid or inoperative, such provision shall be enforced to the extent possible and the remaining provisions of this Agreement shall not be affected.
- 14.4 The headings of the Sections of this Agreement are for convenience only and shall not be of any effect in construing the meanings of the Sections.
- 14.5 Licensee's relationship with Activision during the term of this Agreement shall be that of an independent contractor. Licensee shall not have, and shall not represent that it has, any power; right or authority to bind Activision, or to assume

or create any obligation or responsibility, express or implied, on behalf of Activision or in Activision's name, except as herein expressly provided. Nothing stated in this Agreement shall be construed as constituting Licensee and Activision as partners or as creating the relationships of employer/employee, franchisor/franchisee, or principal/agent between the parties. Licensee shall not, without Activision's prior written consent, register as Activision's distributor or agent in the Territory.

- 14.6 The following Sections shall survive the expiration or termination of this Agreement 1.3, 8.2, 10, 11.3, 11.4, 11.5, 11.6, 11.7, 12, 13 and 14.
- 14.7 This Agreement, including Schedules A, B, C, D and E, which are incorporated into this Agreement by this reference, constitutes the entire understanding between the parties with respect to the subject matter hereof, superseding all prior negotiations, preliminary agreements, correspondence or understandings, written or oral.
- 14.8 No waiver of any obligation by any party hereto under this Agreement shall be effective unless in writing, specifying such waiver, executed by the party making such waiver. A waiver by a party hereto of any of its rights or remedies under this Agreement on any occasion shall not be a bar to the exercise of the same right of remedy on any subsequent occasion or of any other right of remedy at any time.
- 14.9 This Agreement may be executed in counterparts, each of which shall be deemed an original Agreement for all purposes, including the judicial proof of any of the terms hereof, provided, however that all such counterparts shall constitute one and the same Agreement
- 14.10 Because the parties hereto have participated in drafting and negotiating this Agreement, there shall be no presumption against any party on the ground that such party was responsible for preparing this Agreement or any part of it.
- 14.11 Unless expressly set forth to the contrary, either party's election of any remedies provided for in this Agreement shall not be exclusive of any other remedies available hereunder or otherwise at law or in equity, and all such remedies shall be deemed to be cumulative.
- 14.12 Neither party shall be liable to the other party for any incidental, consequential, special or punitive damages arising out of this Agreement or its termination, or the breach of any of its provisions, whether liability is asserted in contract or tort (including negligence and strict product liability),

and irrespective of whether the parties have been advised or been advised of the possibility of any such loss or damage.

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- 14.13 Should any litigation be commenced among the parties in relation to this Agreement, the party prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for attorneys fees in connection with such litigation or in a separate action brought for that purpose.
- 14.14 This Agreement may not be assigned in whole or in part by either party without consent of the other, which consent will not be unreasonably withheld, and Activision and Licensee may assign (subject to any rights of the other party) any or all of such party's rights (but not delegate its obligations) under this Agreement to any subsidiary or affiliate of such party. As used in this Section "Subsidiary" means any company which is controlled, directly or indirectly, by the relevant party, and "affiliate" means any company which controls, is controlled by or is under common control with the party, where "control" means possession of more than fifty percent (50%) of the equity interest and voting power of such party. Furthermore, subject to the provisions of Section 11.1.3, either party may assign this Agreement to any third party which succeeds by operation of law to, purchases or otherwise acquires substantially all of the assets of such party and assumes such party's obligations under this Agreement.
- 14.15 Licensee agrees that any material breach or attempted or threatened breach of this Agreement could result in irreparable injury to Activision for which there would be no adequate remedy at law and consents to injunctive relief without limiting the applicability of any other remedies.
- 14.16 Unless otherwise stated, time shall be of the essence for the purpose of the performance by Licensee under this Agreement.

15. NOTICES:

- 15.1 All notices, statements and payments to Licensee shall be delivered to it at the address specified on the first page of this Agreement, or at such other address as it shall designate in writing by notice given in accordance with this Section from time to time. All notices, statements and payments to be given to Activision shall be delivered to the undersigned at the address specified on the first page of this Agreement, to the attention of the Royalty Manager/Contract Administrator, with a copy to Senior Vice President and General Counsel, or

at such other address as it shall designate in writing, by notice given in accordance with this Section from time to time. All notices shall be in writing and shall either be served by personal delivery, certified mail return receipt requested, or internationally recognized overnight courier service, all charges prepaid. Except as otherwise provided herein, such notices shall be effective only after the actual receipt thereof.

ACCEPTED AND AGREED TO:

ACTIVISION:

LICENSEE:

Activision Publishing, Inc.

Majesco Sales, Inc.

By: _____

By: _____

Name: George Rose

Name: _____

Title: Senior Vice President and
General Counsel

Title: _____

Date: _____

Date: _____

SCHEDULE A

"Activision Property" is herein defined as the Windows 95/98 PC CD-ROM English language version and any localized versions Activision has created, of the entertainment software product entitled Soldier of Fortune, including its title, characters, artwork, music, copyrights, designs, animation, sounds, locations, catch phrases, dialogues, stories, storyline, software program, audio-visual display, concept, tradename, trademarks, logos and any other creative elements, subject to the following limitations:

(1) The Product shall constitute for purposes of this Agreement a direct port (as defined below) of the original version of the Activision Property. "Direct port" of the Activision Property shall mean that the Product (a) is to be marketed under substantially the same title as the Activision Property, (b) shall contain materially the same basic story lines and concepts as the Activision Property, (c) not require any additional production services from Activision, and (d) the changes made to the original version of the Activision Property and the conversion thereof are such as only are reasonably required to accommodate the capabilities and requirements of the Sony PlayStation 2 console platform.

(2) The Product will be in an action/adventure genre, which may contain elements of combat, strategy, fighting, shooting and use of other weapons and various simulations. The parties agree that; while Activision reserves the final right to determine, among other matters, the elements of the Product, the central characters of the Product will not be portrayed in the manner of a parody or satire.

(3) Licensee shall not use any of the following names as names of any characters in the Product: Caristo, Carter, Chatellier, Donovan and Taylor.

SCHEDULE B

The "Territory" is herein defined as worldwide.

SCHEDULE C

The Term shall commence on the Effective Date and will terminate as of the date which is two (2) years following the Effective Date,

SCHEDULE D

Advance:

Three Hundred Fifty Thousand Dollars (US\$350,000), payable as follows: (a) One Hundred Nineteen Thousand Dollars (US\$119,000) immediately upon execution of this Agreement, but in no event later than June 30, 2000; (b) One Hundred Fifteen Thousand Five Hundred Dollars (US\$115,500) within One Hundred Twenty (120) days following the Effective Date; and (c) One Hundred Fifteen Thousand Five Hundred Dollars (US\$ 115,500) within Two Hundred Ten (210) days following the Effective Date.

Royalties

Royalties payable to Activision shall be calculated as a percentage of Licensee's Net Receipts (as defined below) as follows: (a) eight percent (8%) with respect to the first 145,000 units of the Product sold or licensed by Licensee, but in no event shall the Royalty payable to Activision be less than Two Dollars and Forty Cents (\$240) per unit, irrespective of the wholesale price of the Product or any deductions from gross receipts; (b) nine percent (9%) with respect to 145,001 to 200,000 units of the Product sold or licensed by Licensee, but in no event shall the Royalty payable to Activision be less than One Dollar and Fifty Cents (\$1.50) per unit, irrespective of the wholesale price of the Product or any deductions from gross receipts; and (c) ten percent (10%) with respect to units above 200,000 sold or licensed by Licensee.

Definition of "Net Receipts"

For purposes of this Schedule D, "Net Receipts" means the gross receipts actually received by Licensee from all sales and licenses of the Product, less actual amounts paid by Licensee for taxes on sales or licenses of the Product, such as sales, use, excise and other taxes.

SCHEDULE E

CONFIDENTIALITY AGREEMENT

I have been engaged to work on the conversion of Activision Publishing, Inc.'s ("Activision") Windows 95-98-based entertainment software product titled Soldier of Fortune, to be converted for use with the Sony PlayStation 2 operating system (such conversion being hereinafter referred to as the "Product"). I acknowledge that I may have access to confidential information relating to the products and business activities of Activision. I understand that disclosure of that information to third parties would cause substantial detriment to Activision's on-going business.

I agree that I will not at any time for my own benefit or, for the benefit of a third party or disclose to any third party (except as necessary in the ordinary course of my duties in developing the Product), any of the following information: (1) trade secrets of confidential information relating to Activision's products, processes, know-how, machines designs, drawings, software, formulas, test data, marketing data, business plan, business strategies, employees, negotiations, contracts, patents or patent applications (including the status of their prosecution), and (2) any other confidential information relating to any of Activision's clients, customers, consultants, licensees or affiliates.

I acknowledge that all of the foregoing information is proprietary to Activision and that it is a valuable and unique asset of Activision. I understand, however, that any information that is already public knowledge or that was known to me before I signed this Confidentiality Agreement is not covered by this Confidentiality Agreement.

Signature _____ Date _____

Name (printed or typed) _____

LICENSE AGREEMENT

This Amendment No. 1 to License Agreement (this "Amendment") is entered into as of June 28, 2001, by and between Majesco Sales, Inc. ("Licensee"), with offices at 160 Raritan Center Parkway, Edison, New Jersey 08837, and Activision Publishing, Inc. ("Activision"), a Delaware corporation, with offices at 3100 Ocean Park Boulevard, Santa Monica, California 90405.

- A. Activision and Licensee entered into that certain License Agreement dated as June 30, 2000 relating to the license by Activision to Licensee of rights to convert Activision's entertainment software product entitled Solider of Fortune for use on the Sony PlayStation 2 video game console (the "SOF Agreement"), that License Agreement dated as of September 29, 2000 relating to the license by Activision to Licensee of rights to convert Activision's entertainment product entitled Star Trek Voyager: Elite Force for use on the Sony PlayStation 2 video game console (the "Elite Force Agreement"), and that License Agreement dated as of October 1, 2000 relating to the license by Activision to Licensee of rights to convert Activision's entertainment software product entitled Pitfall: The Mayan Adventure for use on the Nintendo Game Boy Advance handheld video game system (the "Pitfall Agreement") (the SOF Agreement, the Elite Force Agreement and the Pitfall Agreement are collectively referred to herein as the "Agreements"), and, with respect to all of the Agreements, the right to develop, manufacture, advertise, promote, distribute and sell such converted entertainment software products throughout the world.
- B. The Agreements prohibit Licensee from sublicensing to a third party the rights granted to Licensee by Activision.
- C. The parties now desire to amend each of the Agreements to permit Licensee to sublicense its rights under the Agreements to a third party, subject to the terms and conditions of this Amendment.

The parties hereby amend the Agreements as follows:

1. Rights to Sublicense. Notwithstanding Section 1.2(a) of each of the Agreements, Activision hereby grants to Licensee the right to sublicense the rights granted to Licensee by Activision under (a) the SOF Agreement and the Elite Force Agreement to EON Digital Entertainment Ltd. ("EON"), located at 53/54 Grosvenor Street, Mayfair, London W1K 9FH, United Kingdom, and (b) the Pitfall Agreement to THQ, Inc. ("THQ"), located at 27001 Agoura Road, Suite 325, Calabasas, California 91301, provided that Licensee shall be permitted to

sublicense such rights to EON and THQ only with respect to Europe, Australia, New Zealand and those other territories specified in Licensee's

written agreements with EON and THQ (but in all cases, specifically excluding North America). Licensee shall not be permitted to sublicense its rights under the Agreements to any other party or with respect to North America or any other part of the Territory without Activision's prior written approval.

2. Additional Advance. In consideration of the further rights granted to Licensee pursuant to this Amendment, Licensee agrees to pay Activision an additional non-refundable Advance in the amount of One Hundred Sixty Seven Thousand Seven Hundred Fifty Dollars (\$167,750), fifty percent (50%) of which shall be due and payable via wire transfer within one (1) business day of execution of this Amendment and the remaining fifty percent (50%) of which shall be due and payable no later than six (6) months after the execution of this Amendment. Seventy One Thousand Eight Hundred Seventy Five Dollars (\$71,875) of the total additional Advance shall be allocated each to the EOF Agreement and the Elite Force Agreement, and the remaining Twenty Four Thousand Dollars (\$24,000) of the total additional Advance shall be allocated to the Pitfall Agreement.
3. Royalties. Notwithstanding the Royalty percentages set forth in Schedule D of each of the Agreements, Licensee shall pay Activision royalties as follows: (a) SOF Agreement and Elite Force Agreement: twenty five percent (25%) of any and all sums received by Licensee from EON with respect to the rights granted to EON pursuant to this Agreement and sales or licensees of units of the Product by EON in Europe (including any advance or guarantee payments and royalties); provided, however, that, in no event shall Royalties payable to Activision be less than One Dollar Twenty Five Cents (\$1.25) per unit; and (b) Pitfall Agreement: twenty five percent (25%) of any and all sums received by Licensee from THQ with respect to the rights granted to THQ pursuant to this Amendment and sales or licenses of units of the Product by THQ in Europe (including any advance or guarantee payments and royalties); provided, however, that, in no event shall Royalties payable to Activision be less than Forty Cents (\$0.40) per unit.
4. Term. The Term of each of the Agreements shall be extended by one (1) year, such that the Term of the SOF Agreement shall expire on June 29, 2003, the Term of the Elite Force Agreement shall expire on September 28, 2003, and the term of the Pitfall Agreement shall expire on September 30, 2003.
5. General Conditions. Capitalized terms used in this Amendment and not

otherwise defined herein shall have the meanings respectively ascribed to such terms under the Agreements. Unless otherwise stated herein, the parties agree that all of the terms and conditions contained in the Agreements shall remain in full force and effect and shall be equally applicable to this Amendment (including, without limitation, Activision's (and its licensors') Sony's and Nintendo's approval rights with respect to the Product, and any version or localization thereof created and developed by EON or THQ, as set forth in Sections 2.5 and 2.6 of the SOF Agreement and the Pitfall Agreement and Sections 2.5 and 2.7 of the Elite force Agreement). Notwithstanding the foregoing, if any term or provision of the Agreements is contradictory to, or inconsistent with, any term or provision of this amendment, then the terms and provisions of this Amendment shall in

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all events control and such contradictory or inconsistent term or provision of the Agreements shall be null and void solely for purposes of interpreting this Amendment.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the date specified below.

ACTIVISION:

LICENSEE:

ACTIVISION PUBLISHING, INC.

MAJESCO SALES, INC.

By: _____
George L. Rose
Senior Vice President and
General Counsel

By: _____
Jesse Sutter
President

Date: _____

Date: _____

CONFIDENTIAL TREATMENT
AMENDMENT NO. 2.

TO

LICENSE AGREEMENT

This Amendment No. 2 to License Agreement (this "Amendment No. 2") is entered into as of December 20, 2001, by and between Majesco Sales, Inc. ("Licensee"), with offices at 160 Raritan Center Parkway, Edison, New Jersey 08837, and Activision Publishing, Inc. ("Activision"), a Delaware corporation, with offices at 3100 Ocean Park Boulevard, Santa Monica, California 90405.

- A. Activision and Licensee entered into that certain License Agreement dated as of June 30, 2000 relating to the license by Activision to Licensee of rights to convert Activision's entertainment software product entitled Soldier of Fortune for use on the Sony PlayStation 2 video game console (the "SOF Agreement"), that License Agreement dated as of September 29, 2000 relating to the licenses by Activision to Licensee of rights to convert Activision's entertainment software product entitled Star Trek Voyager, Elite Force for use on the Sony PlayStation 2 video game console (the "Elite Force Agreement"), and that License Agreement dated as of October 1, 2000 relating to the license by Activision to Licensee of rights to convert Activision's entertainment software product entitled Pitfall; The Mayan Adventure for use on the Nintendo Game Boy Advance handheld video game system (the "Pitfall Agreement") (the SOF Agreement, the Elite Force Agreement and the Pitfall Agreement are collectively referred to herein as the "Agreements"), and, with respect to all of the Agreements, the right to develop, manufacture, advertise, promote,

distribute and sell such converted entertainment software products throughout the world.

- B. The Agreements prohibit Licensee from sublicensing to a third party the rights granted to Licensee by Activision.
- C. The parties entered into Amendment No. 1 to License Agreement dated as of June 28, 2001 ("Amendment No. 1"), which amended each of the Agreements and pursuant to which Activision granted Licensee the right to sublicense the rights granted to Licensee by Activision under (1) the SOF Agreement and the Elite Force Agreement to EON (as defined in Amendment No. 1), and (2) the Pitfall Agreement to THQ (as defined in Amendment No. 1).
- D. The parties now desire to further amend the SOF Agreement and the Elite Force Agreement to replace EON as a permitted sublicensee with another third party, subject to the terms and conditions of this Amendment No. 2.

The parties hereby amend the SOF Agreement and the Elite Force Agreement as follows:

1. Right to Sublicense/Replace EON With Codemasters. Notwithstanding Section 1.2(a) of the SOF Agreement and the elite Force Agreement, Activision hereby grants to Licensee the right to sublicense the rights granted to Licensee by Activision under the SOF

Agreement and the Elite Force Agreement to The Codemasters Software Company ("Codemasters"), whose principal place of business is at Lower Farm House, Stoneythorpe, Southam, Warwickshire, CV47-2DL United Kingdom. The parties acknowledge and agree that Codemasters shall replace EON as a permitted sublicensee under the SOF Agreement and the Elite Force Agreement and that EON shall no longer be a permitted sublicensee under either of such Agreements. For the avoidance of doubt, Licensee shall not be permitted to sublicense its rights under the SOF Agreement and the Elite Force Agreement to any party other than Codemasters without Activision's and its licensors' prior written approval. The parties agree that, in the event that either Licensee fails to reach an agreement with Codemasters with respect to the sublicense of the rights under the SOF Agreement and the Elite Force Agreement or Codemasters ceases to distribute units of the Product pursuant to such sublicense rights, Activision's approval of a new sublicensee to replace Codemasters shall not be unreasonably withheld (for the avoidance of doubt, the parties acknowledge and agree that (a) Activision's disapproval of a sublicense to a direct competitor of Activision shall not be deemed to be unreasonable and (b) the approval of Activision's licensors may be withheld in each of such licensors

sole discretion) and in no event shall any Advance in excess of that set forth in Section 3 below be required. Nothing in this Amendment No. 2 or the Agreement shall prevent Codemasters or any other permitted sublicensee of Majesco from utilizing Independent distributors or sales agents in the distribution of the units of the Product, provided that such Independent distributors and sales agents are not engaged in the business of publishing entertainment software products and their sole purpose is to facilitate distribution of units to retail outlets.

2. Territory for Codemasters. Licensee shall be permitted to sublicense its rights under the SOF Agreement and the Elite Force Agreement to Codemasters only with respect to the countries and/or territories specifically set forth in Exhibit A2 attached hereto. Licensee shall not be permitted to sublicense such rights under the SOF Agreement or the Elite Force Agreement with respect to North America or any other part of the Territory without Activision's prior written approval.
3. Additional Advance. Pursuant to Amendment No. 1 Licensee agreed to pay Activision an additional nonrefundable, recoupable Advance in the total amount of \$143,750 in consideration of the sublicense rights granted to Licensee by Activision with respect to EON and the SOF Agreement and the Elite Force Agreement (i.e., \$71,875 per each Agreement). In consideration of the further rights granted to Licensee pursuant to this Amendment No. 2 with respect to Codemasters and the SOF Agreement and the Elite Force Agreement, Licensee agrees to pay Activision an additional non-refundable Advance in the amount of \$56,250, in addition to the \$143,750 payable under Amendment No. 1, bringing the total additional non-refundable, recoupable Advance due and payable by Licensee with respect to the sublicense of rights under the SOF Agreement and the Elite Force Agreement to \$200,000. The parties acknowledge and agree that Licensee has already made a payment to Activision in the amount of \$71,875 pursuant to Amendment No. 1, thus leaving a total balance due of \$128,125 (\$200,000 minus \$71,875). Licensee agrees to pay Activision such remaining balance due of \$128,125 via wire transfer within one (1) business day of execution of this Amendment No 2. The parties further acknowledge and agree that the \$200,000 total additional, non-

refundable, recoupable Advance due and payable by Licensee shall be recoupable only from the Royalties due and payable by Licensee to Activision pursuant to Section 4 of this Amendment No. 2 pertaining to sales or licenses of units of the Product by Codemasters, and shall expressly not be recoupable on a cross-collateralized basis with respect to any other Royalties due and payable by Licensee to Activision under the SOF Agreement and the Elite Force Agreement.

4. Royalties Due From Sales by Codemasters. Notwithstanding the Royalty

percentages set forth in Schedule D of the SOF Agreement and the Elite Force Agreement or Section 3 of Amendment No. 1, Licensee shall pay Activision Royalties equal to twenty five (25%) of any and all sums invoiced by or otherwise due and payable to Licensee (including any advance or guarantee payments and royalties), regardless of the actual time of receipt or collection by Licensee, with respect to the rights granted to Codemasters pursuant to this Amendment No. 2 and from sales or licenses of units of the Product by Codemasters pursuant to the sublicense rights granted under this Amendment No 2; provided, however, that in no event shall Royalties payable to Activision for sales and licenses of units of the Product be less than \$1.25 per unit. No Royalties shall be due and payable to Activision until such time as Licensee has fully recouped the \$200,000 additional Advance set forth in Section 3 above.

5. General Conditions. Capitalized terms used in this Amendment No. 2 and not otherwise defined herein shall have the meanings respectively ascribed to such terms under the SOF Agreement, the Elite Force Agreement and Amendment No. 1. Unless otherwise stated herein, the parties agree that all of the terms and conditions contained in the SOF Agreement, the Elite Force Agreement and Amendment No. 1 (expressly including those terms amending the Pitfall Agreement) shall remain in full force and effect and shall be equally applicable to this Amendment No. 2 (including, without limitation, Activision's (and its licensors'), and Sony's approval rights with respect to the Product, and any version or localization thereof created and developed by Codemasters, as set forth in Sections 2.5 and 2.6 of the SOF Agreement and Sections 2.5 and 2.7 of the Elite Force Agreement.

EXHIBIT A2

TERRITORY FOR CODEMASTERS

Andorra	Ireland	Qatar
Armenia	Israel	Romania
Australia	Italy	Russian Federation
Austria	Jordan	San Marino

Azerbaijan	Kazakhstan	Saudi Arabia
Bahrain	Kenya	Serbia
Belarus	Kuwait	Slovakia
Belgium	Latvia	Slovenia
Bosnia Herzegovina	Lebanon	Somalia
Botswana	Liechtenstein	South Africa and Namibia
Bulgaria	Lithuania	Spain
Croatia	Luxembourg	Sweden
Cyprus	Macedonia	Swaziland
Czech Republic	Madagascar	Switzerland
Denmark	Malta	Tanzania
Djibouti	Mauritius	Tunisia
Egypt	Moldavia	Turkey
Estonia	Monaco	Turkmenistan
Ethiopia	Morocco	Ukraine
Finland	Mozambique	United Arab Emirates
France	Netherlands	United Kingdom
Georgia	New Zealand	Uzbekistan
Germany	Nigeria	Vatican
Gibraltar	Norway	Yemen
Greece	Oman	Zambia
Hungary	Poland	Zimbabwe
Iceland	Portugal	

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the date specified below.

ACTIVISION:

LICENSEE:

ACTIVISION PUBLISHING, INC.

MAJESCO SALES, INC.

By: _____
George L. Rose
Senior Vice President and
General Counsel

By: _____
Jesse Sutter
President

Date: _____

Date: _____

CONFIDENTIAL TREATMENT

AMENDMENT NO. 3

TO

LICENSE AGREEMENT

This Amendment No. 3 to License Agreement (this "Amendment No. 3") is entered into as of September 22, 2002 (the "Effective Date"), by and between Majesco Sales, Inc. ("Licensee"), with offices at 160 Raritan Center Parkway, Edison, New Jersey 08837, and Activision Publishing, Inc. ("Activision"), a Delaware corporation, with offices at 3100 Ocean Park Boulevard, Santa Monica, California 90405.

- A. Activision and Licensee entered into that certain License Agreement dated as of June 30, 2000 relating to the license by Activision to Licensee of rights to convert Activision's entertainment software product entitled Soldier of Fortune for use on the Sony PlayStation 2 computer entertainment system (the "Agreement"), as amended by Amendments No.1 and No. 2 to the Agreement dated as of June 28, 2001 and December 10, 2002, respectively.
- B. The parties now desire to further amend the Agreement subject to the terms and conditions of this Amendment No. 3.

The parties hereby amend the Agreement as follows:

1. Extension of Term. Activision agrees to extend the Term of the Agreement as set forth on Schedule C of the Agreement for a period of one (1) year from the Effective Date of this Amendment No. 3.
2. Additional Advance. Licensee, upon execution of this Amendment No. 3, will pay to Activision an additional, non-refundable recoupable advance in the amount of Seventy five Thousand Dollars (\$75,000) for the right to distribute an additional Fifth Thousand (50,000) units of Soldier of Fortune for the Sony PlayStation 2 console, in North America only, at the royalty rates set forth in Section 3 of this Amendment No. 3.
3. Royalty. In consideration of the rights granted to Licensee pursuant to this Amendment No. 3, Licensee shall pay to Activision a per unit royalty of One Dollar and fifty Cents (\$1.50) for all units sold under this Amendment No. 3 at a wholesale price equal or lower than Twenty Four Dollars (\$24.00). For avoidance of doubt, the royalty structure set forth in Exhibit D of the Agreement shall apply to all units sold at a wholesale price which exceeds Twenty-Four Dollars (\$24.00).
4. General Conditions. Capitalized terms used in this Amendment No. 3 and not otherwise defined herein shall have the meanings respectively ascribed to such terms under the Agreement. Unless otherwise stated herein, the parties agree that all of the terms and conditions contained in the Agreement shall remain in full force and effect and shall be

equally applicable to this Amendment No. 3. Notwithstanding the foregoing, if any term or provision of the Agreement is contradictory to, or inconsistent with, any term or provision of this Amendment No. 3, then the terms and provisions of this Amendment No. 3 shall in all events control and such contradictory or inconsistent term or provision

of the Agreement shall be null and void solely for purposes of interpreting this Amendment No. 3.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the date specified below.

ACTIVISION:

LICENSEE:

ACTIVISION PUBLISHING, INC.

MAJESCO SALES, INC.

By: _____
George L. Rose
Senior Vice President and
General Counsel

By: _____
Jesse Sutter
President

Date: _____

Date: _____

CONFIDENTIAL LICENSE AGREEMENT
FOR GAME BOY ADVANCE
(Western Hemisphere)

THIS LICENSE AGREEMENT ("Agreement") is entered into between NINTENDO OF AMERICA INC. ("NOA"), at 4820 150th Avenue N.E., Redmond, WA 98052 Attn: General Counsel (Fax: (425)-882-3585) and Majesco Sales, Inc., ("LICENSEE") at 160 Raritan Center Parkway, Edison, NJ 08837 Attn: Jesse Sutton (Fax: (732) 225-8408). NOA and LICENSEE agree as follows:

1. RECITALS

1.1 NOA markets and sells advanced design, high-quality video game systems, including the GAME BOY(R) ADVANCE system.

1.2 LICENSEE desires a license to use highly proprietary programming development specifications, development tools, trademarks and other valuable intellectual property rights of NOA and its parent company, Nintendo Co., Ltd. (collectively "Nintendo"), to develop, have manufactured, advertise, market and sell video game software for play on the GAME BOY(R) ADVANCE system.

1.3 NOA is willing to grant a license to LICENSEE on the terms and conditions set forth in this Agreement.

2. DEFINITIONS

2.1 "Artwork" means the design specifications for the Game Cartridge label and Printed Materials in the format specified by NOA in the Guidelines.

2.2 "Development Tools" means the development kits, programming tools, emulators, and other materials that may be used in the development of Games under this Agreement.

2.3 "Effective Date" means the last date on which all parties shall have signed this Agreement.

2.4 "Finished Product(s)" means the fully assembled and shrink-wrapped Licensed Products, each including a Game Cartridge, Game Cartridge label and Printed Materials.

2.5 "Game Cartridges(s)" means custom cartridges specifically manufactured under the terms of this Agreement for play on the GAME BOY ADVANCE system, incorporating semiconductor components in which a Game has been stored.

2.6 "Game(s)" means interactive video game programs (including source

and object/binary code) developed for play on the GAME BOY(R) ADVANCE system.

2.7 "Guidelines" means the current version or any future revision of the "Game Boy Packaging Guidelines, "Nintendo Trademark Guidelines", "Game Boy Advance Development Manual" and related guidelines.

2.8 "Independent Contractor" means any individual or entity that is not an employee of LICENSEE, including any independent programmer, consultant, contractor, boa member or advisor.

2.9 "Intellectual Property Rights" means individually, collectively or in any combination, Proprietary Rights owned, licensed or otherwise held by Nintendo that are associated with the development, manufacturing, advertising, marketing or sale of the Licensed Products, including, without limitation, (a) registered and unregistered trademarks and trademark applications used in connection with video games for play on the GAME BOY(R) ADVANCE system including "Nintendo(R)", "GAME BOY(R) ADVANCE", "AGB" and the "Official Nintendo Seal of Quality(R)", (b) select trade dress associated with the GAME BOY(R) ADVANCE system and licensed video games for play thereon, (c) Proprietary Rights in the Security Technology incorporated into the Game Cartridges, (d) rights in the Development Tools for use in developing the Games, (e) patents or design registrations associated with the Game Cartridges, (f) copyrights in the Guidelines, and (g) other Proprietary Rights of Nintendo in Confidential Information.

2.10 "Licensed Products" means (a) Finished Products, or (b) Stripped Products when fully assembled and shrink-wrapped with the Printed Materials.

2.11 "Marketing Materials" means marketing, advertising or promotional materials developed by or for LICENSEE (or subject to LICENSEE's approval) to promote the sale of the Licensed Products, including, but not limited to, television, radio and on-line advertising, point-of-sale materials (e.g. posters, counter-cards), package advertising and print media or materials.

2.12 "NDA" means the non-disclosure agreement providing for the protection of Confidential Information related to the GAME BOY(R) ADVANCE system previously entered into between NOA and LICENSEE.

2.13 "Notice" means any notice permitted or required under this Agreement. All notices shall be sufficiently given when (a) personally served or delivered, or (b) transmitted by facsimile, with an original sent concurrently by first class U.S. mail, or (C) deposited, postage prepaid, with a guaranteed air courier service, in each case addressed as stated herein, or addressed to such other person or address either party may designate in a Notice. Notice shall be deemed effective upon the earlier of actual receipt or two (2) business days after transmittal.

2.14 "Price Schedule" means the current version or any future revision of NOA's schedule of purchase prices and minimum order quantities for the Licensed Products.

2.15 "Printed Materials" means the box, user instruction booklet, poster, warranty card and LICENSEE inserts incorporating the Artwork, together with a precautions booklet as specified by NOA.

2.16 "Proprietary Rights" means any rights or applications for rights owned, licensed or otherwise held in patents, trademarks, service marks, copyrights, mask works, trade secrets, trade dress, moral rights and publicity rights, together with all inventions, discoveries, ideas, technology, know-how, data, information, processes, formulas, drawings and designs, licenses, computer programs, software source code and object code, and all amendments, modifications, and improvements thereto for which such patent, trademark, service mark work, trade secrets,

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trade dress, moral rights or publicity rights may exist or may be sought and obtained in the future.

2.17 "Reverse Engineer(ing)" means, without limitation, (a) the x-ray, electronic scanning or physical or chemical stripping of semiconductor components, (b) the disassembly, decompilation, decryption or simulation of object code or executable code, or (c) any other technique designed to extract source code or facilitate the duplication of a program or product.

2.18 "Security Technology" means, without limitation, any security, signature, bios, data scrambling, password, hardware security apparatus, watermark, hologram, copyright management information system or any feature which facilitates or limits compatibility with other hardware or software outside of the Territory or on a different video game system.

2.19 "Stripped Product(s)" means the Game Cartridges with Game Cartridge labels affixed.

2.20 "Term" means three (3) years from the Effective Date.

2.21 "Territory" means all countries within the Western Hemisphere and their territories and possessions.

3. GRANT OF LICENSE: LICENSEE RESTRICTIONS

3.1 Limited License Grant. For the Term and for the Territory, NOA grants to LICENSEE a nonexclusive, nontransferable, limited license to use the Intellectual Property Rights to develop Games for manufacture, advertising, marketing and sale as Licensed Products, subject to the terms and conditions of this Agreement. Except as permitted under a separate written authorization from Nintendo, LICENSEE shall not use the Intellectual Property Rights for any other purpose.

3.2 LICENSEE Acknowledgement. LICENSEE acknowledges (a) the value of the Intellectual Property Rights, (b) the right, title, and Interest of Nintendo in and to the Intellectual Property Rights, and (c) the right, title and interest of Nintendo in and to the Proprietary Rights associated with all aspects of the GAME BOY(R) ADVANCE system. LICENSEE recognizes that the Games, Game Cartridges and Licensed Products will embody valuable rights of Nintendo and Nintendo's licensors. LICENSEE represents and warrants that it will not undertake any act or thing which in any way impairs or is intended to impair any part of the right, title, interest or goodwill of Nintendo in the Intellectual Property Rights. LICENSEE's use of the Intellectual Property Rights shall not create any right, title, or interest of LICENSEE therein.

3.3 LICENSEE Restrictions and Prohibitions. LICENSEE represents and warrants that it will not at any time, directly or indirectly, do or cause to be done, any of the following:

(a) Grant access to, distribute, transmit or broadcast a Game by electronic means or by any other means known or hereafter devised, including, without limitation, by wireless, cable, fiber optic, telephone lines, microwave, radiowave, computer or other device network; provided, however, that limited transmissions may be made for the sole purpose of

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facilitating development under the terms of this Agreement, but no right of retransmission shall attach to any such authorized transmission and, reasonable security measures, customary within the high technology industry, shall be utilized to reduce the risk of unauthorized interception or retransmission of any such authorized transmission,

(b) authorize or permit any online activities involving a Game, including, without limitation, multiplayer, peer-to-peer or online play,

(c) modify, install or operate a Game on any server or computing device for the purpose of or resulting in the rental, lease, loan or other grant of remote access to the Game,

(d) emulate, interoperate, interface or link a Game for operation or use with any hardware or software platform, accessory, computer language, computer environment, chip instruction set, consumer electronics device or device other than the GAME BOY(R) ADVANCE system or the Development Tools,

(e) embed, incorporate, or store a Game in any media or for format except the cartridge format utilized by the GAME BOY(R) ADVANCE system, except as may be necessary as part of the Game development process under this Agreement,

(f) design, implement or undertake any process, procedure,

program or act designed to circumvent the Security Technology,

(g) utilize the Intellectual Property Rights to design or develop any interactive video game program, except as authorized under this Agreement,

(h) manufacture or reproduce a Game developed under this Agreement, except through Nintendo, or

(i) Reverse Engineer or assist in the Reverse Engineering of all or any part of the GAME BOY(R) ADVANCE system, including the hardware or software (whether embedded or otherwise), or the Security Technology.

3.4 Development Tools. Nintendo may lease, loan or sell Development Tools to LICENSEE to assist in the development of Games under this Agreement. Ownership and use of any Development Tools provided to LICENSEE by Nintendo shall be subject to the terms of this Agreement. LICENSEE acknowledges the exclusive interest of Nintendo in and to the Proprietary Rights associated with the Development Tools. LICENSEE's use of the Development Tools shall not create any right, title or interest of LICENSEE therein. LICENSEE shall not, directly or indirectly, (a) use the Development Tools for any purpose except the design and development of Games under this Agreement, (b) reproduce or create derivatives of the Development Tools, except in association with the development of Games under this Agreement, (c) Reverse Engineer the Development Tools, or (d) sell, lease, assign, lend, license, encumber or otherwise transfer the Development Tools. Any tools developed or derived by LICENSEE as a result of a study of the performance, design or operation of the Development Tools shall be considered derivative works of the Intellectual Property Rights, but may be retained and utilized by LICENSEE in connection with this Agreement. In no event shall LICENSEE (i) seek, claim or file for any patent, copyright or other Proprietary Right with regard to any such derivative

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work, (ii) make available any such derivative work to any third party, or (iii) use any such derivative work except in connection with the design and development of Games under this Agreement.

4. SUBMISSION OF GAME AND ARTWORK FOR APPROVAL

4.1 Development and Sale of the Games. LICENSEE may develop Games and have manufactured, advertised, marketed and sold Licensed Products for play on the GAME BOY(R) ADVANCE system only in accordance with this Agreement.

4.2 Third Party Developers. LICENSEE shall not disclose the Confidential Information, the Guidelines or the Intellectual Property Rights to any Independent Contractor, nor permit any Independent Contractor to perform or assist in development work for a Game, unless and until such Independent Contractor has been approved by NOA and has executed a written confidentiality

agreement with NOA relating to the GAME GOY(R) ADVANCE system.

4.3 Delivery of Completed Game. Upon completion of a Game, LICENSEE shall deliver a prototype of the Game to NOA in a format specified in the Guidelines, together with written user instructions, a complete description of any security holes, backdoors, time bombs, cheats, "easter eggs" or other hidden features or characters in the Game and a complete screen text script. NOA shall promptly evaluate the Game with regard to (a) its technical compatibility with an error-free operation on the GAME BOY(R) ADVANCE system, and (b) its compliance with the game content guidelines of the Entertainment Software Ratings Board ("ESRB"). LICENSEE shall provide NOA with a certificate of a rating for the Game from the ESRB other than "AO" or "ADULTS ONLY".

4.4 Approval of Completed Game. NOA shall, within a reasonable period of time after receipt, approve or disapprove each submitted Game. If a Game is disapproved, NOA shall specify in writing the reasons for such disapproval and state what corrections or improvements are necessary. After making the necessary corrections or improvements, LICENSEE shall submit a revised Game to NOA for approval. NOA shall not unreasonably withhold or delay its approval of any Game. The approval of a Game by NOA shall not relieve LICENSEE of its sole responsibility for the development, quality and operation of the Game or in any way create any warranty for a Game or a Licensed Product by NOA.

4.5 Submission of Artwork. Upon submission of a completed Game to NOA, LICENSEE shall prepare and submit to NOA the Artwork for the proposed Licensed Product. Within ten (10) business days of receipt, NOA shall approve or disapprove the Artwork. If any Artwork is disapproved, NOA shall specify in writing the reasons for such disapproval and state what corrections or improvements are necessary. After making the necessary corrections or improvements, LICENSEE shall submit revised Artwork to NOA for approval. NOA shall not unreasonably withhold or delay its approval of any Artwork. The approval of the Artwork shall not relieve LICENSEE of its sole responsibility for the development and quality of the Artwork or in any way create any warranty for the Artwork or the Licensed product by NOA.

4.6 Artwork for Stripped Product. If LICENSEE submits an order for Stripped Product, all Artwork shall be submitted to NOA in advance of NOA's acceptance of the order and no

production of Printed Materials shall occur until such Artwork has been approved by NOA under Section 4.5 herein.

5. ORDER PROCESS, PURCHASE PRICE, PAYMENT AND DELIVERY

5.1 Submission of Orders by LICENSEE. LICENSEE may at any time submit written purchase orders to NOA for any approved Licensed Product title. The

purchase order shall specify whether it is for Finished Product or Stripped Product. The terms and conditions of this Agreement shall control over any contrary terms of such purchase order or any other written documents submitted by LICENSEE. All orders are subject to acceptance by NOA in Redmond, WA.

5.2 Purchase Price and Minimum Order Quantities. The purchase price and minimum order quantities for the Licensed Products shall be set forth in NOAs then current Price Schedule. The purchase price includes the cost of manufacturing together with a royalty for the use of the Intellectual Property Rights. No taxes, duties, import fees or other tariffs related to the development, manufacture, import, marketing or sale of the Licensed Products are included in the purchase price and all such taxes are the responsibility of LICENSEE (except for taxes imposed on NOA's income). The Price Schedule is subject to change by NOA at any time without Notice.

5.3 Payment. Upon placement of an order with NOA, LICENSEE shall pay the full purchase price to NOA either (a) by placement of an irrevocable letter of credit in favor of NOA and payable at sight, issued by a bank acceptable to NOA and confirmed, if requested by NOA, at LICENSEE's expense, or (b) in cash, by wire transfer to NOA's designated account. All associated banking charges shall be for LICENSEE's account.

5.4 Shipment and Delivery. The Licensed Products shall be delivered F.O.B. Japan or such other delivery point specified by NOA, with shipment at LICENSEE's direction and expense. Orders may be delivered by NOA in partial shipments, each directed to not more than two (2) destinations designated by LICENSEE within the Territory. Title to the Licensed Products shall vest in accordance with the terms of the applicable letter of credit or, in the absence thereof, at the point of delivery.

6. MANUFACTURE OF THE LICENSED PRODUCT

6.1 Manufacturing. Nintendo Co., Ltd. shall be the exclusive source for the manufacture of the Game Cartridges, with responsibility for all aspects of the manufacturing process, including the selection of the locations and specifications for any manufacturing facilities, determination of materials and processes, appointment of suppliers and subcontractors and management of all work-in-progress.

6.2 Manufacture of the Licensed Products. Upon acceptance by NOA of a purchase order for an approved Licensed Product title and payment as provided for under Section 5.3 herein, NOA (through Nintendo Co., Ltd., and/or its subcontractors), will arrange for the Product or Stripped Product, as specified in LICENSEE's purchase order.

6.3 Security Features. The final release version of the Game, Game Cartridges and Printed Materials shall include such Security Technology as Nintendo, in its sole discretion, may deem necessary or appropriate.

6.4 Production of Stripped Product Printed Materials. For Stripped Product, LICENSEE shall arrange and pay for the production of the Printed Materials using the Artwork. Upon receipt of an order of Stripped Product, LICENSEE shall assemble the Game Cartridges and Printed Materials into the Licensed Products. Licensed Products may be sold or otherwise distributed by LICENSEE only in fully assembled and shrink-wrapped condition.

6.5 Prior Approval of LICENSEE's Independent Contractor. Prior to the placement of a purchase order for Stripped Product, LICENSEE shall obtain NOA's approval of any Independent Contractors selected to perform the production and assembly operations. LICENSEE shall provide NOA with the names, addresses and all business documentation reasonably requested by NOA for such Independent Contractors. NOA may, prior to approval and at reasonable intervals thereafter, (a) require submission of additional business or financial information regarding the Independent Contractors, (b) inspect the facilities of the Independent Contractors, and (c) be present to supervise any work on the Licensed Products to be done by the Independent Contractors. If at any time NOA deems an Independent Contractor to be unable to meet quality, security or performance standards reasonably established by NOA, NOA may refuse to grant its approval or withdraw its approval upon Notice to LICENSEE. LICENSEE may not proceed with the production of the Printed Materials or assembly of the Licensed Product until NOA's concerns have been resolved to its satisfaction or until LICENSEE has selected and received NOA's approval of another Independent Contractor.

6.6 NOA Inserts for Stripped Product. NOA, at its option, may provide LICENSEE with NOA produced promotional materials (as provided for at Section 7.7(a) herein), which LICENSEE agrees to include in the assembly of the Licensed Products.

6.7 Sample Printed Materials and Stripped Product. Within a reasonable period of time after LICENSEE's assembly of the initial order for a Stripped Product title, LICENSEE shall provide NOA with (a) one (1) sample of the fully assembled, shrink-wrapped Licensed Product, and (b) fifty (50) samples of LICENSEE produced Printed Materials for such Licensed Product.

6.8 Retention of Sample Licensed Products by Nintendo. Nintendo may, at its own expense, manufacture reasonable quantities of the Game Cartridges or the Licensed Products to be used for archival purposes, legal proceedings against infringers of the Intellectual Property Rights or for other lawful purposes.

7. MARKETING AND ADVERTISING

7.1 Approval of Marketing Materials. LICENSEE represents and warrants that the Marketing Materials shall (a) be of high quality and comply with the Guidelines, (b) comply with all voluntary ESRB advertising, marketing or merchandising guidelines, and (c) comply with all applicable laws and regulations. In those jurisdictions in the Territory where they will be used or distributed. Prior to actual use or distribution, LICENSEE shall submit to NOA for review samples of all proposed Marketing Materials. NOA shall, within ten (10) business days of

receipt, approve or disapprove the quality of such samples. If any of the samples are disapproved, NOA shall specify the reasons for such disapproval and state what corrections and/or improvements are necessary. After making the necessary corrections and/or improvements, LICENSEE shall submit revised samples for approval by NOA. No Marketing Materials shall be used or distributed by LICENSEE without NOA's prior written approval. NOA shall not unreasonably withhold or delay its approval of any proposed Marketing Materials

7.2 No Bundling. LICENSEE shall not market or distribute any Finished Product or Stripped Product that has been bundled with (a) any peripheral designed for use with the GAME BOY(R) system which has not been licensed or approved in writing by NOA, or (b) any other product or service where NOA's sponsorship, association, approval or endorsement might be suggested by the bundling of the products or services.

7.3 Warranty and Repair. LICENSEE shall provide the original consumer with a minimum ninety (90) day limited warranty on all Licensed Products. LICENSEE shall also provide reasonable product service, including out-of-warranty service, for all Licensed Products.

7.4 Business Facilities. LICENSEE agrees to develop and maintain (a) suitable office facilities within the United States, adequately staffed to enable LICENSEE to fulfill all responsibilities under this Agreement, (b) necessary warehouse, distribution, marketing, sales, collection and credit operations to facilitate proper handling of the Licensed Products, and (c) customer service and game counseling, including telephone service, to adequately support the Licensed Products.

7.5 No Sales Outside the Territory. LICENSEE represents and warrants that it shall not market, sell, offer to sell, import or distribute the Licensed Products outside the Territory, or within the Territory, when with actual or constructive knowledge that a subsequent destination of the Licensed Product is outside the Territory.

7.6 Defects and Recall. In the event of a material programming defect in a Licensed Product that would, in NOA's reasonable judgment, significantly impair the ability of a consumer to play the Game, NOA may, after consultation with LICENSEE, require the LICENSEE to recall the Licensed Product and undertake suitable repairs or replacements.

7.7 NOA Promotional Materials, Publications and Events. At its option, NOA may (a) insert in the Printed Materials for the Licensed Products promotional materials concerning Nintendo Power magazine or other NOA products, services or programs, (b) utilize screen shots, Artwork and information regarding the Licensed Products in Nintendo Power, Nintendo Power Source or other advertising, promotional or marketing media which promotes Nintendo

products, services or programs, and (c) exercise public performance rights in the Games and use related trademarks and Artwork in connection with NOA sponsored contests, tours, conventions, trade shows, press briefings and similar events which promote the GAME BOY(R) ADVANCE system.

7.8 Nintendo Gateway System. To promote and increase demand for games on Nintendo video game systems, NOA licenses a system (the "Nintendo Gateway System") in various non-coin activated commercial settings such as commercial airlines, cruise ships, rail systems and hotels, where customers play games on specially adapted Nintendo video game systems. If NOA

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identifies a Game for possible license on the Nintendo Gateway System, the parties agree to conduct good faith negotiations toward including the Game in the Nintendo Gateway System.

8. CONFIDENTIAL INFORMATION

8.1 Definition. "Confidential Information" means Information provided to LICENSEE by Nintendo or any third party working with Nintendo relating to the hardware and software for the GAME BOY(R) ADVANCE system or the Development Tools, including, but not limited to, (a) all current or future information, know-how, techniques, methods, information, tools, emulator hardware or software, software development specifications, and/or trade secrets, (b) any patents or patent applications, (c) any business, marketing or sales data or information, and (d) any other information or data relating to development, design, operation, manufacturing, marketing or sales. Confidential Information shall include all confidential information disclosed, whether in writing, orally, visually, or in the form of drawings, technical specifications, software, samples, pictures, models, recordings, or other tangible items which contain or manifest, in any form, the above listed information. Confidential Information shall not include (i) data and manifest information which was in the public domain prior to LICENSEE's receipt of the same hereunder, or which subsequently becomes part of the public domain by publication or otherwise except by LICENSEE's wrongful act or omission, (ii) data and information which LICENSEE can demonstrate, through written records kept in the ordinary course of business, was in its possession without restriction on use or disclosure, prior to its receipt of the same hereunder and was not acquired directly or indirectly from Nintendo under an obligation of confidentiality which is still in force, and (iii) data and information which LICENSEE can show was received by it from a third party who did not acquire the same directly or indirectly from Nintendo and to whom LICENSEE has no obligation of confidentiality.

8.2 Disclosures Required by Law. LICENSEE shall be permitted to disclose Confidential Information if such disclosure is required by an authorized governmental or judicial entity, provided that NOA is given Notice thereof at least thirty (30) days prior to such disclosure. LICENSEE shall use its best efforts to limit the disclosure to the greatest extent possible

consistent with LICENSEE's legal obligations, and if required by NOA, shall cooperate in the preparation and entry of appropriate protective orders.

8.3 Disclosure and Use. NOA may provide LICENSEE with highly confidential development information, Guidelines, Development Tools, systems, specifications and related resources and information constituting and incorporating the Confidential Information to assist LICENSEE in the development of Games. LICENSEE agrees to maintain all Confidential Information as strictly confidential and to use such Confidential Information only in accordance with this Agreement. LICENSEE shall limit access to the Confidential Information to LICENSEE's employees having a strict need to know and shall advise such employees of their obligation of confidentiality as provided herein. LICENSEE shall require each such employee to retain in confidence the Confidential Information pursuant to a written nondisclosure agreement between LICENSEE and such employee. LICENSEE shall use its best efforts to ensure that its employees working with or otherwise having access to Confidential Information shall not disclose or make any unauthorized use of the Confidential Information.

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8.4 No Disclosure to Independent Contractors. LICENSEE shall not disclose the Confidential Information to any Independent Contractor without the prior written consent of NOA. Any Independent Contractor seeking access to Confidential Information shall be required to enter into a written nondisclosure agreement with NOA prior to receiving any access to or disclosure of the Confidential Information from either LICENSEE or NOA.

8.5 Agreement Confidentiality. LICENSEE agrees that the terms, conditions and contents of this Agreement shall be treated as Confidential Information. Any public announcement or press release regarding this Agreement or the release dates for Games developed by LICENSEE under this Agreement shall be subject to NOA's prior written approval. The parties may disclose this Agreement (a) to accountants, banks, financing sources, lawyers, parent companies and related parties under substantially equivalent confidentiality obligations, (b) in connection with any formal legal proceeding for the enforcement of this Agreement, (c) as required by the regulations of the Securities and Exchange Commission ("SEC"), provided that all Confidential Information regarding NOA shall be redacted from such disclosures to the maximum extent allowed by the SEC, and (d) in response to lawful process, subject to a written protective order approved in advance by NOA.

8.6 Notification Obligations. LICENSEE shall promptly notify NOA of the unauthorized use or disclosure of any Confidential Information and shall promptly act to recover such information and prevent further breach of the obligations herein. The obligations of LICENSEE set forth herein are in addition to and not in lieu of any other legal remedy that may be available to NOA under this Agreement or applicable law.

8.7 Continuing Effect of the NDA. The terms of this Section 8 supplement the terms of the NDA, which shall remain in effect In the event of a

conflict between the terms of the NDA and this Agreement, the terms of this Agreement shall control.

9. REPRESENTATIONS AND WARRANTIES

9.1 LICENSEE's Representations and Warranties. LICENSEE represents and warrants that:

(a) it is a duly organized and validly existing corporation and has full authority to enter into this Agreement and to carry out the provisions hereof,

(b) the execution, delivery and performance of this Agreement by LICENSEE does not conflict with any agreement or understanding to which LICENSEE may be bound,

(c) excluding the Intellectual Property Rights, LICENSEE is either (i) the sole owner of all right, title and interest in and to the trademarks, copyrights and other intellectual property rights used on or in association with the development, advertising, marketing and sale of the Licensed Products and the Marketing Materials, or (ii) the holder of such rights to the trademarks, copyrights and other intellectual property rights which have been licensed from a third party as are necessary for the development, advertising, marketing an sale of the Licensed Products and the Marketing Materials under this Agreement.

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9.2 NOA's Representations and Warranties. NOA represents and warrants that:

(a) It is a duly organized and validly existing corporation and has full authority to enter into this Agreement and to carry out the provisions hereof, and

(b) The execution, delivery and performance of this Agreement by NOA does not conflict with any agreement or understanding to which NOA may be bound.

9.3 INTELLECTUAL PROPERTY RIGHTS DISCLAIMER BY NOA. NOA MAKES NO REPRESENTATION OR WARRANTY CONCERNING THE SCOPE OR VALIDITY OF THE INTELLECTUAL PROPERTY RIGHTS. NOA DOES NOT WARRANT THAT DESIGN, DEVELOPMENT, ADVERTISING, MARKETING OR SALE OF THE LICENSED PRODUCTS OR THE USE OF THE INTELLECTUAL PROPERTY RIGHTS BY LICENSEE WILL NOT INFRINGE UPON PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHTS OF A THIRD PARTY. ANY WARRANTY THAT MAY BE PROVIDED IN ANY APPLICABLE PROVISION OF THE UNIFORM COMMERCIAL CODE OR ANY OTHER COMPARABLE LAW OR STATUTE IS EXPRESSLY DISCLAIMED. LICENSEE HEREBY ASSUMES THE RISK OF INFRINGEMENT.

9.4 GENERAL DISCLAIMER BY NOA. NOA DISCLAIMS ANY AND ALL WARRANTIES

WITH RESPECT TO THE LICENSED PRODUCTS, INCLUDING, WITHOUT LIMITATION, THE SECURITY TECHNOLOGY. LICENSEE PURCHASES AND ACCEPTS ALL LICENSED PRODUCTS ON AN "AS IS" AND "WHERE IS" BASIS. NOA DISCLAIMS ALL WARRANTIES UNDER THE APPLICABLE LAWS OF ANY COUNTRY, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A GENERAL OR PARTICULAR PURPOSE.

9.5 LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER NOA NOR NINTENDO CO., LTD. (OR THEIR RESPECTIVE AFFILIATES, LICENSORS OR SUPPLIERS) SHALL BE LIABLE FOR LOSS OF PROFITS, OR FOR ANY SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF LICENSEE OR ITS CUSTOMERS ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE BREACH OF THIS AGREEMENT BY NOA, THE MANUFACTURE OF THE LICENSED PRODUCTS OR THE USE OF THE LICENSED PRODUCTS ON ANY NINTENDO VIDEO GAME SYSTEM BY LICENSEE OR ANY END USER.

10. INDEMNIFICATION

10.1 LICENSEE's Indemnification. LICENSEE shall indemnify and hold harmless NOA and Nintendo Co., Ltd. (and any of their respective affiliates, subsidiaries, licensors, suppliers, officers, directors, employees or agents) from any claims, losses, liabilities, damages, expenses and costs, including, without limitation, reasonable attorneys' fees and costs and any expenses incurred in the settlement or avoidance of any such claim, which result from or are in connection with:

(a) a breach of any of the provisions, representations or warranties undertaken by LICENSEE in this Agreement,

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(b) any infringement of a third party's Proprietary Rights as a result of the design, development, advertising, marketing, sale or use of the Licensed Products or the Marketing Materials,

(c) any claims alleging a defect, failure to warn, bodily injury (including death) or other personal or property damage arising out of, or in connection with the design, development, advertising, marketing, sale or use of any of the Licensed Products, and

(d) any federal, state or foreign civil or criminal actions relating to the design, development, advertising, marketing, sale or use of the Licensed Products or the Marketing Materials.

NOA and LICENSEE shall give prompt Notice to the other of any indemnified claim under this Section 10.1. With respect to any third party claim subject to this indemnity clause, LICENSEE, as indemnitor, shall have the right to select counsel and to control the defense and/or settlement thereof. NOA may, at its own expense, participate in such action or proceeding with counsel of its own choice. LICENSEE shall not enter into any settlement of any such claim in which (i) NOA or Nintendo Co., Ltd. has been named as a party, or (ii) claims relating to the intellectual Property Rights have been asserted, without NOA's prior

written consent. NOA shall provide reasonable assistance to LICENSEE in its defense of any such claim.

10.2 LICENSEE's Insurance. LICENSEE shall, at its own expense, obtain a comprehensive policy of general liability. insurance (including coverage for advertising and product liability claims) from a recognized insurance company. Such policy of insurance shall be in an amount of not less than Five Million Dollars (\$5,000,000 US) on a per occurrence basis and shall provide for adequate protection against any suits, claims, loss or damage by the Licensed Products. Such policy shall name NOA and Nintendo Co., Ltd. as additional insureds and shall specify that it may not be canceled without thirty (30) days' prior written Notice to NOA. A Certificate of Insurance shall be provided to NOA's Licensing Department not later than the date of the initial order of Licensed Products under this Agreement. If LICENSEE fails to maintain such insurance at any time during the Term and for a period of two (2) years thereafter, NOA may secure such insurance at LICENSEE's expense.

10.3 Suspension of Production. In the event NOA deems itself at risk with respect to any claim, action or proceeding under this Section 10, NOA may, at its sole option, suspend production, delivery or order acceptance for any Licensed Products, in whole or in part, pending resolution of such claim, action or proceeding.

11. PROTECTION OF PROPRIETARY RIGHTS

11.1 Joint Actions Against Infringers. LICENSEE and NOA may agree to jointly pursue cases of infringement involving of the Licensed Products,, as such Licensed Products will contain Proprietary Rights owned by each of them. Unless the parties otherwise agree, or unless the recovery is expressly allocated between them by the court, in the event of such an action, any recovery shall be used first to reimburse LICENSEE and NOA for their respective reasonable attorneys' fees and costs incurred in bringing such action, pro rata, and any remaining recovery

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shall be distributed to LICENSEE and NOA, pro rata, based upon the fees and costs incurred in bringing such action.

11.2 Actions by LICENSEE. LICENSEE, without the consent of NOA, may bring ay action or proceeding relating to an infringement or potential Infringement of LICENSEE's Proprietary Rights in the Licensed Products. LICENSEE shall make reasonable efforts to inform NOA of such actions in a timely manner. LICENSEE will have the right to retain all proceeds it may derive from any recovery in connection with such actions.

11.3 Actions by NOA. NOA, without the consent of LICENSEE, may bring ay action or proceeding relating to an infringement or potential Infringement of NOA's Proprietary Rights in the Licensed Products. NOA shall make reasonable

efforts to inform LICENSEE of such actions in a timely manner. NOA will have the right to retain all proceeds it may derive from any recovery in connection with such actions.

12. ASSIGNMENT

12.1 No Assignment by LICENSEE. This Agreement is personal to LICENSEE and may not be sold, assigned, delegated, sublicensed or otherwise transferred or encumbered, in whole or in part, without NOA's prior written consent, which consent may be withheld by NOA in its sole discretion. In the event of an assignment or other transfer in violation of this Agreement, NOA shall have the unqualified right to immediately terminate this Agreement without further obligation to LICENSEE.

12.2 Assignment by Operation of Law. In the event of an assignment of this Agreement by operation of law, LICENSEE shall, not later than thirty (30) days thereafter, give Notice and seek consent thereto from NOA. Such Notice shall disclose the name of the assignee, the effective date and the nature and extent of the assignment. An assignment by operation of law includes, but is not limited to (a) a merger of LICENSEE into another business entity or a merger of another business entity into LICENSEE, (b) the sale, assignment or transfer of all or substantially all of the assets of LICENSEE to a third party, (c) the sale, assignment or transfer to a third party of any of LICENSEE's intellectual property rights which are used in the development of or are otherwise incorporated into any Licensed Products, or (d) the sale, assignment or transfer of any of LICENSEE's stock resulting in the acquirer having management power over or voting control of LICENSEE. Following the later of (i) such an assignment by operation of law, or (ii) receipt of Notice therefor, NOA shall have the unqualified right for a period of ninety (90) days to immediately terminate this Agreement without further obligation to LICENSEE.

12.3 Non-Disclosure Obligation. In no event shall LICENSEE disclose or allow access to NOA's Confidential Information prior to or upon the occurrence of an assignment, whether by operation of law or otherwise, unless and until NOA gives its written consent to such disclosure.

13. TERM AND TERMINATION

13.1 This Agreement shall commence on the Effective Date and continue for the Term, unless earlier terminated as provided for herein.

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13.2 Default or Breach. In the event that either party is in default or commits a breach of this Agreement, which is not cured within thirty (30) days after Notice thereof, then this Agreement shall automatically terminate on the date specified in such Notice.

13.3 Bankruptcy. At NOA's option, this Agreement may be terminated immediately and without Notice in the event that LICENSEE (a) makes an

assignment for the benefit of creditors, (b) becomes insolvent, (C) files a voluntary petition for bankruptcy, (d) acquiesces to any involuntary bankruptcy petition, (e) is adjudicated as a bankrupt, or (f) ceases to do business.

13.4 Termination Other Than by Breach. Upon the expiration of this Agreement or its termination other than by LICENSEE's breach, LICENSEE shall have a period of one hundred eighty (180) days to sell any unsold Licensed Products. All Licensed Products in LICENSEE's control following the expiration of such sell-off period shall be destroyed by LICENSEE within ten (10) days and proof of such destruction (certified by an officer of LICENSEE) shall be provided to NOA.

13.5 Termination by LICENSEE's Breach. If this Agreement is terminated by NOA as a result of a breach of its terms and conditions by LICENSEE, LICENSEE shall immediately cease all distribution, advertising, marketing or sale of any Licensed Products. All Licensed Products in LICENSEE's control as of the date of such termination shall be destroyed by LICENSEE within ten (10) days and proof of such destruction (certified by an officer of LICENSEE) shall be provided to NOA.

13.6 Breach of NDA or Other NOA License Agreements. At NOA's option, any breach by LICENSEE of (a) the NDA or (b) any other license agreement between NOA and LICENSEE relating to the development of games for any Nintendo video game system which is not cured within the time period for cure allowed under the applicable agreement, shall be considered a material breach of this Agreement entitling NOA to terminate this Agreement in accordance with Section 13.5 herein.

13.7 No Further Use of the Intellectual Property Rights. Upon expiration and/or termination of this Agreement, LICENSEE shall cease all use of the Intellectual Property Rights for any purpose, except as may be required in connection with the sale of Licensed Products authorized under Section 13.4 herein. LICENSEE shall, within thirty (30) days thereafter, return or destroy all Guidelines, writings, drawings, models, data, tools and other materials and things in LICENSEE's possession or in the possession of any past or present employee, agent or contractor receiving the information through LICENSEE, which constitute or relate to or disclose any Confidential Information, without making copies or otherwise retaining any such information. Proof of any destruction shall be certified by an officer of LICENSEE and promptly provided to NOA.

13.8 Termination by NOA's Breach. If this Agreement is terminated by LICENSEE as a result of a breach of its terms or conditions by NOA, LICENSEE may continue to sell the Licensed Products in the Territory until the expiration of the Term, at which time the provisions of Section 13.4 shall apply.

14. GENERAL PROVISIONS

14.1 Export Control. LICENSEE agrees to comply with the export laws and

regulations of the United States and any other country with jurisdiction over the Licensed Products and/or either party.

14.2 Force Majeure. Neither party shall be liable for any breach of this Agreement occasioned by any cause beyond the reasonable control of such party, including governmental action, war, riot or civil commotion, fire, natural disaster, labor disputes, restraints affecting shipping or credit, delay of carriers, inadequate supply of suitable materials or any other cause which could not with reasonable diligence be controlled or prevented by the parties. In the event of material shortages, including shortage of materials or production facilities necessary for production of the Licensed Products, NOA reserves the right to allocate such resources among itself and its licensees.

14.3 Records and Audit. During the Term and for a period of two (2) years thereafter, LICENSEE agrees to keep accurate, complete and detailed records related to the development and sale of the Licensed Products and the Marketing Materials. Upon reasonable Notice to LICENSEE, NOA may, at its expense, audit LICENSEE's records, reports and other information related to LICENSEE's compliance with this Agreement.

14.4 Waiver, Severability, Integration. and Amendment. The failure of a party to enforce any provision of this Agreement shall not be construed to be a waiver of such provision or of the right of such party to thereafter enforce such provision. In the event that any term, cause or provision of this Agreement shall be construed to be or adjudged invalid, void or unenforceable, such term, clause or provision shall be construed as severed from this Agreement, and the remaining terms, clauses and provisions shall remain in effect. Together with the NDA, this Agreement constitutes the entire agreement between the parties relating to the subject matter hereof. All prior negotiations, representations, agreements and understandings are merged into, extinguished by and completely expressed by this Agreement and the NDA. Any amendment shall be in writing signed by both parties.

14.5 Survival. In addition to those rights specified elsewhere in this Agreement, the rights and obligations set forth in Sections 3, 8, 9, 10 and 13 shall survive any expiration or termination of this Agreement to the degree necessary to permit their complete fulfillment or discharge.

14.6 Governing Law and Venue. This Agreement shall be governed by the laws of the State of Washington, without regard to its conflict of laws principles. Any legal action (including judicial and administrative proceedings) with respect to any matter arising under or growing out of this Agreement, shall be brought in a court of competent jurisdiction in King County, Washington. Each party hereby consents to the jurisdiction and venue of such courts for such purposes.

14.7 Equitable Relief. LICENSEE acknowledges that in the event of its breach of this Agreement, no adequate remedy at law may be available to NOA and that NOA shall be entitled to seek injunctive or other equitable relief in addition to any relief available at law.

14.8 Attorneys' Fees. In the event it is necessary for either party to this Agreement to undertake legal action to enforce or defend any action arising out of or relating to this Agreement, the prevailing party in such action shall be entitled to recover from the other party all reasonable attorneys' fees, costs and expenses relating to such legal action or any appeal therefrom.

14.9 Counterparts and Signature by Facsimile. This Agreement may be signed in counterparts, which shall together constitute a complete Agreement. A signature transmitted by facsimile shall be considered an original for purposes of this Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the dates set forth below.

NOA:

LICENSEE:

NINTENDO OF AMERICA INC.

MAJESCO SALES, INC.

By: /s/

Title: Executive VP, Administration

Date: 5/10/01

By: /s/

Title: President

Date: 4/18/01