

**NINTENDO 3DS CONTENT LICENSE AGREEMENT (DIGITAL CONTENT) FOR EEA,
AUSTRALIA, NEW ZEALAND, RUSSIA AND AFRICA**

This NINTENDO 3DS CONTENT LICENSE AGREEMENT ("Agreement") is entered into by and between NINTENDO CO., LTD. ("NINTENDO"), at 11-1 Hokotate-cho, Kamitoba, Minami-ku, Kyoto, Japan 601-8501, Attn: General Manager, Licensing Division, Licensing Department (Fax: 81.75.662.9608), and the "CONTENT PROVIDER", a business partner who has been approved by Nintendo as an authorized developer and who has accepted this Agreement by means specifically provided by Nintendo for this purpose on the Nintendo Developer Portal.

1. RECITALS

1.1 NINTENDO designs, develops, manufactures, markets and sells advanced design, high-quality video game systems, including the Nintendo 3DS systems.

1.2 CONTENT PROVIDER desires a license to use highly proprietary programming specifications, development tools, trademarks and other valuable intellectual property rights of NINTENDO to develop Digital Content (as defined below) for use on the Nintendo 3DS System(s) (as defined below) and CONTENT PROVIDER wishes to have NINTENDO sell such Digital Content through the Nintendo Shop (as defined below) under the commission agent scheme.

1.3 NINTENDO is willing to grant a license to CONTENT PROVIDER on the terms and conditions set forth in this Agreement and desires to sell the Digital Content in the Nintendo Shop under the commission agent scheme on the terms and conditions set forth in this Agreement.

2. DEFINITIONS

2.1 "Add-On Content" means any new, additional and optional content, feature or service for any video game content as well as non-video game content of the Nintendo 3DS System (including for Packaged Content) that: (a) is developed by or for CONTENT PROVIDER for distribution in digital form, (b) is not playable by itself, and (c) users can purchase and/or download through the Network Service.

2.2 "Claim" shall have the meaning set forth in Section 12.1 of this Agreement.

2.3 "Commission" means, for each copy of Digital Content Sold, the Standard Commission.

2.4 "Confidential Information" shall have the meaning set forth in Section 10.1 of this Agreement.

2.5 "Content Fees" means any and all costs, fees, expenses, royalties and other payments (except for the payment for Quarterly Sales payable by NINTENDO to CONTENT PROVIDER under Section 7.4 of this Agreement) that are or may become payable to an owner, licensor, music performance or collective licensing society, administrator or any other third party (in each case gross of any taxes triggered thereon at the level of the respective Nintendo Entity) in respect of any rights existing in or relating to the Digital Content Sold and Distributed by NINTENDO and/or a Sub-Commission Agent, including (without limitation) any costs, fees, royalties and other payments that are payable in respect of any script, speech, compositions, music, images, sound effects, video clips or any other works in the Digital Content.

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

2.7 "Digital Commission Sheet" means the then current version of NINTENDO's Commission schedule, posted at <https://noeplts.de> (or other URL communicated by NINTENDO to

CONTENT PROVIDER). The initial Digital Commission Sheet is attached to this Agreement as **Annex A**.

2.8 "Digital Content" means any interactive video game software programs, Add-On Content and other non-video game content (including, without limitation, source and object/binary code) developed to be compatible with the Nintendo 3DS System for distribution in digital form, together with any associated Product Materials. Digital Content does not include any Packaged Content.

2.9 "Distribute," "Distributed," or "Distribution" means any delivery of single copies of Digital Content to a Nintendo 3DS System through the Network Service, either by download or stream or by any other form of transmission.

2.10 "Download Code" is a string of characters that when entered in the relevant field in Nintendo Shop allows (a) the download of Digital Content from Nintendo Shop and/or (b) the registration of a single copy of the respective Digital Content to the Nintendo Network ID and/or the Shop Account.

2.11 "Effective Date" means the date on which CONTENT PROVIDER has accepted this Agreement.

2.12 "Free Software" means software made available under licenses generally known as "free software," "open source," or "copyleft" licenses, including, without limitation, GNU General Public License, GNU Lesser General Public License, Common Public License, Eclipse Public License, Mozilla Public License, or Common Development and Distribution License, Creative Commons share-alike licenses or substantially similar licenses.

2.13 "Guidelines" means the current version, or any future version of the "Nintendo 3DS Programming Guidelines", "Nintendo Trademark Guidelines", "Nintendo 3DS Packaging Guidelines", "Nintendo 3DS Development Manual", "Nintendo Marketing Guidelines", "Guidelines on Ethical Content", "Nintendo 3DS Software Submission Requirements," "Patching Policy", and all other guidelines that any of the Nintendo Entities may provide to CONTENT PROVIDER from time to time pertaining to Digital Content or to CONTENT PROVIDER's development, manufacture, sale, advertising, promotion, or other activity under this Agreement or to CONTENT PROVIDER's collection and processing of data of consumers. The Guidelines on Ethical Content are attached as **Annex B**, and the remainder of the Guidelines has been or will be provided to CONTENT PROVIDER independent of this Agreement. The Guidelines may be changed or updated from time to time without notice.

2.14 "Icons" means any banners, icons or any other graphical representations of the Digital Content provided by CONTENT PROVIDER together with the Digital Content.

2.15 "Independent Contractor" means any individual or entity that is not an officer, director or employee of CONTENT PROVIDER, including any independent programmer, consultant, contractor, board member or advisor.

2.16 "Marketing Materials" means marketing, advertising or promotional materials developed by or for CONTENT PROVIDER (or subject to CONTENT PROVIDER's approval) to promote the Digital Content, including, but not limited to, television, radio and online advertising, print media or materials and all audio or video media (other than the Product Materials).

2.17 DELETED.

2.18 "Developer Portal Terms" means the Nintendo Developer Portal Terms of Service and Non-Disclosure Agreement previously entered into between any of Nintendo Entities and CONTENT PROVIDER.

2.19 "NOA" means NINTENDO's subsidiary, Nintendo of America Inc., of Redmond, Washington, USA.

2.20 "NOE" means NINTENDO's subsidiary, Nintendo of Europe GmbH, of Frankfurt am Main, Germany.

2.21 "Net Amount" means, for each copy of Digital Content Sold, the amount NINTENDO or Sub-Commission Agents actually received respectively from end users, minus any Transaction Taxes.

2.22 "Network Service" means (a) the Nintendo Network and/or (b) the Nintendo Shop, other channels, applications, games, software, data and any other services or content of Nintendo Entities or third party partner of Nintendo Entities that are available to users of a Nintendo 3DS System outside the Nintendo Network, over the Internet or by any electronic means, now known or hereafter devised.

2.23 "Nintendo 3DS System(s)" means the Nintendo 3DS handheld video game system and any successor and/or compatible systems designated by the Nintendo Entities in their sole discretion.

2.24 "Nintendo Entity(ies)" means NINTENDO, NOA, NOE, and their respective subsidiaries and affiliates.

2.25 "Nintendo 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, advertising, distribution or marketing of the Digital Content, including, without limitation, (a) registered and unregistered trademarks and trademark applications used in connection with Digital Content for the Nintendo 3DS System including "Nintendo@", "Nintendo 3DS™", and the "Original Nintendo Seal of Quality™", (b) select trade dress associated with the Nintendo 3DS System, (c) Proprietary Rights in the Security Technology, (d) rights in the Development Tools for use in developing the Digital Content, (e) patents, patent applications, utility models or design registrations associated with the Digital Content, (f) copyrights in the Guidelines, and (g) other Proprietary Rights of NINTENDO in the Confidential Information.

2.26 "Nintendo Network" means the Nintendo Shop, other channels, applications, games, software, data and any other services or content of Nintendo Entities or third party partner of Nintendo Entities that are available to registered users of a Nintendo Network account (a) through NINTENDO consoles over the Internet or by any electronic means, now known or hereafter devised, or (b) when such users access channels, applications, games, software, data or any other service or content identified as Nintendo Network content on any other device connected to the Internet.

2.27 "Nintendo Network ID" means an account registered by an end user with a Nintendo Entity to use the Nintendo Network.

2.28 "Nintendo Shop" means any channels, applications and services provided by the Nintendo Entities via the Network Service whereby customers, through an Internet connection or by any other electronic means, can download or access content, through the redemption of funds, a code that can redeem a specific content, a code that can activate a specific content, cash/credit purchases, gift cards, or other methods.

2.29 "Notice" means any notice permitted or required under this Agreement. All Notices shall be sufficiently given when (a) personally served or delivered, (b) transmitted by facsimile or email, with an original sent concurrently by certified 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 actual receipt.

2.30 "Packaged Content" means any interactive video game software programs and other non-video game content (including, without limitation, source and object/binary code) developed to be stored on physical media, e.g., custom card, disc, or other physical media specifically manufactured under the terms of a separate agreement between CONTENT PROVIDER and NINTENDO.

2.31 "Price" means the then-current price to be charged to an end user for each Sale as determined by CONTENT PROVIDER in its sole discretion.

2.32 "Product Code Request Form" means the form completed and submitted by CONTENT PROVIDER to request the code for proposed Digital Content prior to CONTENT PROVIDER's submission of the Digital Content to NINTENDO, which form, among other things, provides certain technical specifications and the intended distribution territory of the proposed Digital Content.

2.33 "Product Materials" means any materials which are distributed in conjunction with the Digital Content as part of the Digital Content including, without limitation, instruction manuals.

2.34 "Proprietary Rights" means any registered or unregistered rights or applications for rights owned, licensed or otherwise held in patents, trademarks, service marks, trade names, titles, logos, copyrights and neighbouring rights, semiconductor chip layouts or masks, trade secrets, utility models, registered design rights, unregistered design rights, database rights, get up, trade dress, moral rights, good will, and publicity rights, together with all inventions, discoveries, technology, ideas, know-how, data, information, processes, methods, procedures, formulas, drawings and designs, computer programs, software source code and object code, and all amendments, modifications, and improvements thereto for which such patent, trademark, service mark, copyright and neighbouring rights, semiconductor chip layouts or masks, trade secrets, utility models, registered design rights, unregistered design rights, database rights, get up, trade dress, moral rights or publicity rights may exist or may be sought and obtained in the future.

2.35 "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.

2.36 "Sale" means the sale of single copies of Digital Content by NINTENDO (or a Sub-Commission Agent, as applicable) via Nintendo Shop to an end user against payment of the Price by an end user to NINTENDO (or a Sub-Commission Agent, as applicable), including, without limitation, payment by cash, in way of credit, by redemption of funds or any other payment methods accepted by NINTENDO (or a Sub-Commission Agent, as applicable). "Sell" or "Sold" shall mean the completion of each such Sale. The download of a copy of Digital Content and/or the registration of Digital Content by redemption of a Download Code is not considered a Sale under this Agreement.

2.37 "Security Technology" means, without limitation, any security signature, bios, data scrambling, password, hardware security apparatus, watermark, hologram, encryption, digital rights management system, copyright management information system or any technology, device or component that (a) is designed to prevent or restrict acts in respect of copyright protected works, including but not limited to measures which require an authentication prior to using Digital Content or (b) facilitates or limits compatibility with other hardware, software, or accessories or other peripherals outside of the Territory.

2.38 "Shop Account" means an account automatically established on the Nintendo 3DS System to use the Nintendo Shop without registering a Nintendo Network ID.

2.39 "Sole License" means a license under which only the licensor and a single licensee can utilize the subject matter of the license.

2.40 "Standard Commission" means, for each copy of Digital Content Sold, the standard commission payable to NINTENDO by CONTENT PROVIDER as specified in the Digital Commission Sheet.

2.41 "Sub-Commission Agent" means a Nintendo Entity that (a) is appointed by any other Nintendo Entity to act as a sub-commission agent for the respective appointing Nintendo Entity in relation to the offer, Sale and Distribution of Digital Content within the Territory or within certain parts of the Territory through the Nintendo Shop, (b) operates as the respective appointing Nintendo Entity's sale commission agent, (c) Sells the Digital Content in its own name, but for the account of the respective appointing Nintendo Entity and that (d) Distributes the Digital Content to its customers. The Notification about Sub-Commission Agents appointed is attached to this Schedule as **Annex C**.

2.42 "System Updates" means upgrades, bug fixes, or additional features that modify the operating system of the Nintendo 3DS System and/or are designed to optimize, enhance, increase Security Technology, or otherwise modify the operation or performance of the Network Service or the Nintendo 3DS System.

2.43 "Term" means five (5) years from the Effective Date.

2.44 "Territory" means any and all countries within the European Economic Area (namely Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey and the United Kingdom. The Territory also includes Albania, Australia, Azerbaijan, Bosnia and Herzegovina, Chad, Djibouti, Eritrea, Israel, Macedonia, Mali, Mauritania, Montenegro, New Zealand, Niger, Russia, Serbia, Somalia, South Africa and Sudan. NINTENDO may add additional countries to the Territory upon Notice to CONTENT PROVIDER. NINTENDO makes no representations or warranties that the Nintendo 3DS System is being or will continue to be distributed in all of the foregoing countries.

2.45 "Transaction Taxes" means, for each Sale, all value-added taxes, consumption taxes, sales taxes, or similar transaction-based taxes, if applicable.

3. SUBJECT MATTER OF THE AGREEMENT

3.1 The terms and conditions of this Agreement set forth the terms and conditions under which NINTENDO is willing to grant CONTENT PROVIDER a license to use highly proprietary programming specifications, development tools, trademarks and other valuable intellectual property rights of NINTENDO to develop Digital Content as well as the terms and conditions under which CONTENT PROVIDER will provide Digital Content for the Nintendo 3DS System to NINTENDO for enabling NINTENDO to sell the Digital Content in the Territory through the Nintendo Shop under the commission agent scheme. This Agreement applies to (a) all Digital Content provided by CONTENT PROVIDER as far as the commencement date of an offer for a specific Digital Content in the Nintendo Shop is on or after 1 November 2012, excluding, however, specific titles of Digital Content agreed between CONTENT PROVIDER and NINTENDO to be sold and distributed under any other scheme than the commission agent scheme and to (b) specific titles of Digital Content provided by CONTENT PROVIDER as far as the commencement date of an offer for such a specific Digital Content in the Nintendo Shop was before 1 November 2012 and as far as CONTENT PROVIDER and NINTENDO agreed that these specific titles of Digital Content are Sold and Distributed under the commission agent scheme.

3.2 This Agreement shall take precedence over any contrary terms of such submission of Digital Content to NINTENDO for Sale through the Nintendo Shop under the commission agent scheme or any other written documents submitted by CONTENT PROVIDER. NINTENDO hereby objects to any general terms and conditions of the CONTENT PROVIDER and such general terms and conditions shall only become binding if NINTENDO explicitly accepts such terms and conditions in writing.

3.3 This Agreement does not authorize CONTENT PROVIDER to develop Packaged Content for the Nintendo 3DS System which may be developed under the terms of a separate agreement between NINTENDO and CONTENT PROVIDER. Further, this Agreement does neither cover any offer for sale of Digital Content outside of the Nintendo Shop, any offer for sale of Download Codes for such Digital Content outside the Nintendo Shop nor any offer for sale of Digital Content outside the commission agent scheme, which may be subject of separate agreements between CONTENT PROVIDER and NINTENDO or a Nintendo Entity.

4. GRANT OF LICENSE; CONTENT PROVIDER RESTRICTIONS

4.1 Limited Development License Grant. Subject to the terms and conditions of this Agreement, NINTENDO grants to CONTENT PROVIDER, during the Term and in the Territory, a nonexclusive, non-transferable, non-sublicensable, limited license to use the Nintendo Intellectual Property Rights for the purpose of and only to the extent necessary, to develop (i) Digital Content only

for use on the Nintendo 3DS System, (ii) Product Materials only for use as part of the Digital Content and (iii) Marketing Materials only for use in accordance with this Agreement. This license is royalty-free. The license shall be limited to the use of the Nintendo Intellectual Property Rights in conformity with all legal requirements. Except as provided herein, CONTENT PROVIDER shall have no right to use the Nintendo Intellectual Property Rights for any other purposes whatsoever.

4.2 CONTENT PROVIDER Acknowledgement. CONTENT PROVIDER's use of the Nintendo Intellectual Property Rights shall not create any right, title or interest of CONTENT PROVIDER therein. In the event that CONTENT PROVIDER challenges NINTENDO's ownership or the validity of the Nintendo Intellectual Property Rights, NINTENDO may provide CONTENT PROVIDER with Notice that it is concerned that the challenge in question will fundamentally undermine the relationship between the parties. If NINTENDO is still concerned thirty (30) calendar days after notifying CONTENT PROVIDER of its concern, NINTENDO may, at its option, terminate this Agreement immediately.

4.3 Restrictions on License Grant. NINTENDO does not guarantee that the Nintendo 3DS System is distributed throughout the Territory. Moreover, the present limited license to CONTENT PROVIDER does not extend to the use of the Nintendo Intellectual Property Rights for the following purposes:

(a) grant access to, distribute, transmit or broadcast any Digital Content 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, except (i) as a part of wireless game play on and among Nintendo 3DS Systems, (ii) for the purpose of facilitating game development under the terms of this Agreement, or (iii) as otherwise approved in writing by NINTENDO. CONTENT PROVIDER shall use reasonable security measures, customary within the high technology industry, to reduce the risk of unauthorized interception or retransmission of any Digital Content transmission. No right of retransmission shall attach to any authorized transmission of Digital Content,

(b) modify, install or operate Digital Content on any server or other device for the purpose of or resulting in the rental, lease, loan or sale of rights of access to the Digital Content,

(c) emulate, interoperate, interface or link Digital Content for operation or use with any hardware platform, software program, accessory, computer language, computer environment, chip instruction set, consumer electronics device, telephone, cell phone, PDA, or other device, including for purposes of data interchange, password usage or interactive video game play, other than a Nintendo 3DS System, an application approved by NINTENDO, or the Development Tools,

(d) emulate any past, current or future NINTENDO brand video game system or console, or any portion thereof, in software or hardware or any combination thereof,

(e) embed, incorporate, or store Digital Content in any media or format except the format utilized by the Nintendo 3DS System, except as may be necessary as a part of the Digital Content development process under this Agreement,

(f) create, design, implement or undertake any device, process, procedure, program or act designed to circumvent the Security Technology,

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

(h) manufacture, reproduce or distribute Digital Content developed under this Agreement, except through NINTENDO,

(i) Reverse Engineer or assist in the Reverse Engineering of all or any part of the Nintendo 3DS System, including the hardware or software (whether embedded or otherwise), the Development Tools or the Security Technology, except as specifically permitted under the laws and regulations applicable in the Territory, or

(j) authorize or permit any online activities involving Digital Content, including without limitation, multiplayer, peer-to-peer or online play, except as expressly permitted in writing by NINTENDO and in accordance with the Guidelines.

4.4 Development Tools. Nintendo Entities may license, lease, loan or sell Development Tools, including any improvements made by Nintendo Entities from time to time, to CONTENT PROVIDER to assist in the development of Digital Content under this Agreement on such terms as may be agreed between the parties. Ownership and use of any Development Tools, whether provided by Nintendo Entities, prior to or during the Term hereof, shall be subject to the terms of this Agreement and/or any separate license or purchase agreement required by Nintendo Entities. CONTENT PROVIDER acknowledges the exclusive rights of Nintendo Entities in and to the Nintendo Intellectual Property Rights associated with the Development Tools. CONTENT PROVIDER's use of the Development Tools shall not create any right, title or interest of CONTENT PROVIDER therein. Any license to CONTENT PROVIDER to use the Development Tools does not extend to: (a) use of the Development Tools for any purpose except the design and development of Digital Content under this Agreement, (b) reproduction or creation of derivatives of the Development Tools, except in association with the development of Digital Content under this Agreement, (c) Reverse Engineering of the Development Tools (except as specifically permitted under the laws and/or regulations applicable in the Territory), or (d) selling, leasing, assigning, lending, licensing, encumbering or otherwise transferring the Development Tools. Any tools developed or derived by CONTENT PROVIDER as a result of a study of the performance, design or operation of the Development Tools shall be considered derivative works of the Nintendo Intellectual Property Rights, but may be retained and utilized by CONTENT PROVIDER only in connection with and subject to the limitations provided under this Agreement. Unless CONTENT PROVIDER can demonstrate that such derivative work has one or more applications that are independent of and separate from the Nintendo Intellectual Property Rights ("Independent Applications"), CONTENT PROVIDER shall be deemed to have granted to Nintendo Entities an indefinite, worldwide, royalty-free, transferable and Sole License (including the right to sub-license) to such derivative work. To the extent that CONTENT PROVIDER can demonstrate one or more Independent Applications, CONTENT PROVIDER shall be deemed to have granted to Nintendo Entities a royalty-free and transferable non-exclusive license (including the right to sub-license) in relation to such Independent Applications for the Term. Any tools developed or derived by CONTENT PROVIDER as a result of a study of the performance, design or operation of any third-party Development Tools shall be governed by the terms of the license agreement applicable to such Development Tools. Notwithstanding any referral or information provided or posted regarding third-party Development Tools, Nintendo Entities make no representations or warranties with regard to any such third-party Development Tools. CONTENT PROVIDER acquires and utilizes third-party Development Tools at its own risk.

4.5 Digital Content Developed for Linked Play on Two Systems. In the event CONTENT PROVIDER wants to develop Digital Content for simultaneous or linked play on a Nintendo 3DS System to another Nintendo 3DS, or Nintendo 3DS System to another video game console or any other compatible system, CONTENT PROVIDER shall be required to acquire NINTENDO's written consent to the use of the Nintendo Intellectual Property Rights associated with such simultaneous or linked play.

4.6 Advertising included in Digital Content. CONTENT PROVIDER shall not, in connection with Digital Content using the trademarks or trademark applications referred to in Section 2.25(a), include advertising or product placements for products or services in the Digital Content without NINTENDO's prior written consent.

4.7 Use of Mii Characters. CONTENT PROVIDER shall not develop any Digital Content that permits NINTENDO's Mii characters (or any other NINTENDO characters) to appear in the Digital Content without NINTENDO's prior written consent.

4.8 Sending Data to Consumers. CONTENT PROVIDER shall not, without the prior written consent of NINTENDO, send any data, content, messages, advertising, or other communications of any kind to any consumer's Nintendo 3DS System or Digital Content through the Network Service or otherwise.

4.9 Collecting Data of Consumers. CONTENT PROVIDER undertakes to collect and process any data of consumers only in compliance with the Guidelines and any applicable laws on privacy and data protection in the Territory.

4.10 Deletion and Blocking of Data. In the event (a) of a judicial or pre-judicial procedure in connection with CONTENT PROVIDER sending data to and/or collecting data of consumers, (b) of any other procedure initiated by authorities in connection with CONTENT PROVIDER sending data to and/or collecting data of consumers or (c) NINTENDO deems itself at a risk with respect to any claim, action or proceeding in connection with CONTENT PROVIDER sending data to and/or collecting data of consumers, NINTENDO may, at its sole discretion and without prejudice to any other rights or remedies NINTENDO may have under this Agreement or under applicable law, (i) block or remove any such data, in whole or in part, or (ii) request CONTENT PROVIDER to stop sending and/or collecting any such data. CONTENT PROVIDER agrees to use commercially reasonable efforts to immediately comply with NINTENDO's request and to provide evidence, where required by NINTENDO, showing that such action has been completed. CONTENT PROVIDER agrees that the foregoing does not create any obligation for NINTENDO to monitor, block, or remove data. CONTENT PROVIDER further agrees that Nintendo's exercise, or failure to exercise, its right to block or remove data shall not create any obligation or liability on the part of Nintendo Entities and that CONTENT PROVIDER will be and will remain liable for any transmission or collection of data to or from the Nintendo 3DS System or through the Network Service, regardless of whether NINTENDO has provided prior written consent.

4.11 Trademark or Domain Name Registration. CONTENT PROVIDER shall not register or apply to register any trademarks or domain names in connection with the Digital Content that are confusingly similar to domain names, trademarks, or other intellectual property rights arising out of or relating to the Nintendo Intellectual Property Rights.

4.12 Screen Shots. The Nintendo 3DS System may allow users to create screen shots and/or other materials of Digital Content (collectively, the "Screen Shots"), to store such Screen Shots on the Nintendo 3DS System and to publish such Screen Shots within the Network Service or online by using the functionalities of the Nintendo 3DS System which NINTENDO provides or may provide in the future to users. CONTENT PROVIDER acknowledges and agrees that (a) all Screen Shots shall be Proprietary Rights owned by, or licensed to, CONTENT PROVIDER, that are subject to the terms and conditions of this Agreement, including without limitation CONTENT PROVIDER's representations, warranties, and indemnification obligations and (b) that the Nintendo Entities shall have the non-exclusive, perpetual, world-wide, royalty-free, non-revocable, sub-licensable right and license to utilize the Screen Shots within the functionality of the Nintendo 3DS System, the Network Service or online.

4.13 Security Technology / System Updates. In its sole discretion, and without Notice to CONTENT PROVIDER, the Nintendo Entities may add Security Technology, System Updates, and trademark, copyright or customer notifications to the Digital Content; provided, however, any such addition by the Nintendo Entities will not serve to release CONTENT PROVIDER from any indemnification or other obligations under this Agreement or under applicable laws, rules or regulations. NINTENDO may in addition require CONTENT PROVIDER at CONTENT PROVIDER's sole expense to update a Digital Content from time to time to comply with (a) any new Network Service or Nintendo 3DS System requirements, (b) new or updated Guidelines, or to remedy bugs or other operation defects or errors in the Digital Content, or (c) applicable laws, rules or regulations.

4.14 Parental Consent Mechanism. In the event that NINTENDO makes available a parental consent and parental control mechanism through the Nintendo 3DS System and/or Network Service, CONTENT PROVIDER will comply with any Guidelines related thereto. Any parental consent or parental control mechanism that NINTENDO may make available is provided "AS IS" AND WITHOUT ANY WARRANTY OF ANY KIND WHATSOEVER. Any use of such parental consent or parental control mechanism by CONTENT PROVIDER will not diminish or otherwise affect CONTENT PROVIDER's warranties, representations, or indemnification obligations described in this Agreement, or create any liability of Nintendo Entities to CONTENT PROVIDER or third parties. CONTENT PROVIDER acknowledges and agrees that it remains responsible for complying with all applicable laws, rules and regulations, including, without limitation, those related to parental consent, youth protection or privacy.

5. COMMISSION AGENT SCHEME.

All Digital Content CONTENT PROVIDER provides to NINTENDO for Sale on the Nintendo 3DS System in the Territory through the Nintendo Shop is Sold under the commission agent scheme as follows:

5.1 Sale Commission Agent. CONTENT PROVIDER appoints NINTENDO as CONTENT PROVIDER's sale commission agent ("Kommissionär" in the sense of sec. 383 para. 1 German Commercial Act – "Handelsgesetzbuch") and NINTENDO will operate as CONTENT PROVIDER's sale commission agent for all Sales of Digital Content through the Nintendo Shop within the Territory: NINTENDO will Sell the Digital Content in its own name, but for the account of CONTENT PROVIDER and will Distribute the Digital Content, whereas NINTENDO may, at its sole discretion, and subject to Section 5.2 below, engage one or more Sub-Commission Agents for any such Sales.

5.2 Sub-Commission Agent. NINTENDO is authorized to appoint one or more Sub-Commission Agents, together with the authorization that any of the respective Sub-Commission Agents appointed by NINTENDO may, in turn, appoint another Nintendo Entity as its Sub-Commission Agent. To the extent necessary for the parties to carry out their duties under this Agreement, NINTENDO shall (a) provide Notice to CONTENT PROVIDER of any Sub-Commission Agent appointed, including the name of the Nintendo Entities that act as Sub-Commission Agents and the parts of the Territory in which they act as Sub-Commission Agent and (b) ensure that any Sub-Commission Agent appointed by NINTENDO, in turn, complies with the obligations set forth under (a) above vis-à-vis NINTENDO. NINTENDO has to ensure that the obligations and contractual requirements under this Agreement also apply to any Sub-Commission Agent and that any Sub-Commission Agent only offers, Sells and Distributes Digital Content in accordance with the instructions issued by CONTENT PROVIDER, in particular that any Sub-Commission Agent only offers, Sells and Distributes the Digital Content in the Nintendo Shop within the Territory and at the Price set by CONTENT PROVIDER. In the event NINTENDO appoints any Sub-Commission Agent, the provisions of this Agreement shall continue to govern the relationship between NINTENDO and CONTENT PROVIDER and NINTENDO shall remain obligated under this Agreement for the performance of any Sub-Commission Agent and will be responsible and liable vis-à-vis CONTENT PROVIDER, subject to the limitations under Sections 11.3 to 11.6 of this Agreement, for the acts of any Sub-Commission Agent. NINTENDO and CONTENT PROVIDER agree that the appointment of a Sub-Commission Agent does not result in a Sub-Commission Agent becoming a party to this Agreement, but that any Sub-Commission Agent only enters into an agreement with its respective appointing Nintendo Entity.

Where NINTENDO and/or any other Nintendo Entity appointed a Sub-Commission Agent, such Sub-Commission Agent (provided that the respective Sub-Commission Agent had not appointed another Nintendo Entity as its Sub-Commission Agent for the Territory or part of it) Sells the Digital Content to the end user and will be the contractual partner of the end user in relation to all such Sales. Only the respective Sub-Commission Agent will have a payment claim for any such Sale against the end user.

5.3 Pricing. CONTENT PROVIDER alone will set the Price at which NINTENDO (or a Sub-Commission Agent, as applicable) will offer, Sell and Distribute each copy of the Digital Content in the Nintendo Shop at all times. CONTENT PROVIDER may change the Price from time to time in its sole discretion. Changes will be processed through NINTENDO's standard processes and systems, as further described in the Guidelines and/or in memorandums provided by NINTENDO to CONTENT PROVIDER.

5.4 Offer for Sale. NINTENDO (or a Sub-Commission Agent, as applicable) will make reasonable efforts of a prudent business man to offer for Sale any Digital Content provided by CONTENT PROVIDER and to comply with CONTENT PROVIDER's lawful instructions in relation to the commencement date of an offer for a specific Digital Content and the length of time for any such offer. However, NINTENDO does not guarantee that the Nintendo Shop is available throughout the Territory and assumes no liability in this regard.

5.5 Content Removal. NINTENDO (or a Sub-Commission Agent, as applicable) may at any time, without notice, (a) remove Digital Content from the Nintendo Shop for all or a part the Territory

without liability to CONTENT PROVIDER, or (b) restore (subject to Section 5.4 of this Agreement) Digital Content to the Nintendo Shop for all or a part the Territory during the Term, if NINTENDO (or a Sub-Commission Agent, as applicable), applying the care of a prudent business man, deems such removal and/or restoration reasonable.

5.6 Termination or Cancellation of Sale. Refund. NINTENDO (or a Sub-Commission Agent, as applicable) shall have the right to terminate and/or cancel any Sale (including the termination of any license granted to end users in connection with such Sale) and/or to refund the Price to the end user in whole or in part ("Refund") if NINTENDO (or a Sub-Commission Agent, as applicable), applying the care of a prudent businessman, deems such termination, cancellation or Refund reasonable. Refund shall also cover the return of the Price by NINTENDO (or a Sub-Commission Agent, as applicable) to the credit card issuing institution following an end user's request for a charge back to the end user's credit card issuing institution.

6. GRANT OF LICENSE: DIGITAL CONTENT

6.1 License for Sale and Distribution. Only in order to enable NINTENDO (or a Sub-Commission Agent, as applicable) to Sell single copies of Digital Content provided by CONTENT PROVIDER without infringing CONTENT PROVIDER's Proprietary Rights, CONTENT PROVIDER grants to NINTENDO and any Sub-Commission Agent, during the Term and throughout the Territory, a non-exclusive and royalty-free license in and to the Digital Content, and all of the CONTENT PROVIDER's Proprietary Rights associated therewith, sufficient to permit NINTENDO and any Sub-Commission Agent to Distribute and Sell the Digital Content. The license includes the right to adjust or alter the Digital Content to (a) Distribute the Digital Content, and (b) make it downloadable, viewable, and otherwise accessible on the Nintendo 3DS System. Only in order to enable the respective Sale NINTENDO (or Sub-Commission Agent, as applicable) is granting a license for the respective Digital Content to the respective end user.

6.2 Territory of Sale and Distribution. In accordance with the scope of the license, NINTENDO (or a Sub-Commission Agent, as applicable) will Sell and/or Distribute the Digital Content only to a Nintendo 3DS System if the country settings on the Nintendo 3DS System or, if a Nintendo Network ID is registered on such Nintendo 3DS System, the country settings of the registered Nintendo Network ID indicate a country within the Territory. CONTENT PROVIDER acknowledges and undertakes not to base any claims on the fact that the users indicate themselves their country settings and that neither NINTENDO nor a Sub-Commission Agent can control whether the settings are accurate or whether the user is actually located outside the Territory. CONTENT PROVIDER further acknowledges and undertakes not to base any claims on the fact that, after a copy of the Digital Content has been purchased and downloaded on a Nintendo 3DS System, (a) any user of such Nintendo 3DS System can use the Digital Content, and (b) any limitations concerning the Territory do not affect or restrict the territory in which the Digital Content is used, i.e. the Digital Content may be used in any country in which the Nintendo 3DS System is permanently or temporarily located.

6.3 Storage of Digital Content. The Digital Content may be stored during and after the Term by or on behalf of Nintendo Entities on electronic distribution equipment located within the Territory and/or outside the Territory. CONTENT PROVIDER acknowledges that any limitations concerning the Territory do not affect the location of such equipment where the Digital Content is stored and from where the Digital Content is Distributed.

6.4 Period of Use, Re-downloads and Transfers. CONTENT PROVIDER acknowledges that a license for the Digital Content (Sold or registered via a Download Code) is granted to the end user for an unlimited period of time, except where the end user purchased a single copy with an underlying time limited right to use the Digital Content; in particular, (a) the Digital Content that has been downloaded on the Nintendo 3DS System will be stored and useable on the Nintendo 3DS System for an unlimited period of time; (b) end users will be able to re-download the Digital Content that they have purchased free of charge, and (c) Digital Content may be transferred from one Nintendo 3DS System to another Nintendo 3DS System if NINTENDO (or a Sub-Commission Agent, as applicable) in its sole discretion determines that an end user is enabled to such a transfer. Any such re-downloads and transfers will not be considered a Sale and will not be considered when

calculating the Quarterly Sales and the Quarterly Net Amounts under Section 7 of this Agreement and will not be subject to any other payments to CONTENT PROVIDER.

7. COMMISSION AND PAYMENT OF SALES PRICE.

7.1 Commission. NINTENDO will receive from CONTENT PROVIDER for each Sale in the Territory a Commission. The Commission per Sale will be determined as stipulated in the Digital Commission Sheet.

7.2 Quarterly Sales and Quarterly Commission. Following the end of each calendar quarter, NINTENDO (or a Sub-Commission Agent, as applicable) will determine for this calendar quarter for each title of Digital Content: (a) the total number of Sales ("Quarterly Sales"), (b) the total Net Amount ("Quarterly Net Amount"), and (c) the total Commission (the "Quarterly Commission").

7.3 Reports. NINTENDO will use reasonable efforts to provide CONTENT PROVIDER with quarterly reports within 31 calendar days following the end of the calendar quarter in written form containing the Quarterly Sales, the Quarterly Net Amount, the Quarterly Commission and any offsets (as set forth in Section 7.4 below) for such quarter. CONTENT PROVIDER agrees and acknowledges that NINTENDO will not provide CONTENT PROVIDER with the identity of any end users to whom NINTENDO (or a Sub-Commission Agent, as applicable) Sold the Digital Content and that not providing CONTENT PROVIDER with the identity of any end users will not constitute a liability of NINTENDO for the fulfilment of the end user's payment obligation.

7.4 Calculation of the Final Payable Amount and Payment. NINTENDO shall calculate the final payable amount as follows: from the Quarterly Net Amount, NINTENDO shall offset: (a) the Quarterly Commission, (b) Content Fees, (c) Refunds, and (d) withholding taxes, where applicable (as set forth in Section 7.8 below).

If the calculation shows a positive balance in favour of CONTENT PROVIDER, NINTENDO shall pay this amount to the CONTENT PROVIDER within ten (10) calendar days following the issuance of a quarterly report.

If the calculation shows a positive balance in favour of NINTENDO, the CONTENT PROVIDER shall pay the respective amount within ten (10) calendar days after receipt of the quarterly report.

7.5 Currency. Unless otherwise agreed to in writing by NINTENDO, all payments under this Agreement will be made in Euros. For a Sale in a currency other than Euro, the foreign currency Price of a Sold single copy of the Digital Content and the applicable Transaction Taxes and Transaction Fees will be converted to Euro based upon the daily "Euro foreign exchange reference rates" published on the official website of The European Central Bank (the "Rate") on the date of Sale. For a Sale on the calendar day when the Rate is not published, the Rate published on the last calendar day before that day on which a Rate was published shall be used.

7.6 Payments. All payments NINTENDO has to make to CONTENT PROVIDER under Section 7.4 of this Agreement will be made by check, electronic transfer, or such other means as NINTENDO may designate from time to time, to the account listed in CONTENT PROVIDER's initial Product Code Request Form provided to NINTENDO (or a Sub-Commission Agent, as applicable) for Sale, or such other account as CONTENT PROVIDER may thereafter designate in a Notice to NINTENDO. If any payment NINTENDO has to make to CONTENT PROVIDER under Section 7.4. of this Agreement is less than one hundred Euros (100 EUR), NINTENDO may in its sole discretion delay making such payment until (i) payments due under Section 7.4 have a minimum amount of one hundred Euros (100 EUR) or (ii) this Agreement expires or is terminated; whichever is the earlier. All payments CONTENT PROVIDER has to make to NINTENDO under Section 7.4 of this Agreement will be made as designated by NINTENDO in the respective quarterly report.

7.7 Taxes. NINTENDO (or a Sub-Commission Agent, as applicable) will collect from end users and remit to the relevant tax authorities all applicable Transaction Taxes in connection with all Sales.

7.8 Withholding Taxes. In the event that any payment by NINTENDO to CONTENT PROVIDER or by CONTENT PROVIDER to NINTENDO is subject to any withholding or other similar tax levied by any applicable jurisdiction, the payer shall withhold such tax and pay the payee the amount of money after deducting such withholdings. The payer shall not be obliged to make gross-up payments to the payee. In the event any tax levied on the payment by the payer to the payee, both parties will cooperate in mitigating any withholding tax burden.

7.9 Claims. Without prejudice to any other rights and remedies of NINTENDO, in the event any Claim is made against a Nintendo Entity that may be subject to CONTENT PROVIDER's indemnification obligations under this Agreement, NINTENDO may in its sole discretion withhold payment to CONTENT PROVIDER up to the amount of any such Claim until such time as the Claim has been resolved, and any amounts due to a Nintendo Entity have been fully paid or any offsets have been fully determined and recovered by any Nintendo Entity.

8. SUBMISSION OF DIGITAL CONTENT; SUPPORT.

8.1 Responsibility for Digital Content.

8.1.1 CONTENT PROVIDER is solely responsible for development, testing, quality, content, operation, and support of Digital Content. CONTENT PROVIDER will ensure that all Digital Content submitted to NINTENDO (or a Sub-Commission-Agent, as applicable) for Sale complies with the terms and conditions of this Agreement, including without limitation all Guidelines, and is free of bugs or other operational defects or errors that have a material adverse effect on the use and/or enjoyment of the Digital Content. NINTENDO's responsibility in relation to the Digital Content shall be limited to offering the Sale of the Digital Content through the Nintendo Shop under the commission agent scheme as set forth in this Agreement.

8.1.2 The Nintendo Entities are not responsible for conducting any legal clearance for Digital Content, including, without limitation, ensuring that CONTENT PROVIDER owns or has been granted a license to all necessary Proprietary Rights in the Digital Content. In particular, CONTENT PROVIDER warrants and represents that it is solely responsible for all required copyright clearances and for obtaining all rights and consents necessary for NINTENDO (or a Sub-Commission Agent, as applicable) to offer the Sale and/or Distribution of the Digital Content under the terms of this Agreement, including rights held by any collecting societies. Without limiting the foregoing, NINTENDO in its sole discretion may, but is not obligated to, (a) alert CONTENT PROVIDER to potential issues of Proprietary Rights infringement or other legal issues, (b) require CONTENT PROVIDER at CONTENT PROVIDER's sole expense to provide NINTENDO with acceptable proof that CONTENT PROVIDER owns or has been granted licenses for all necessary Proprietary Rights, (c) require CONTENT PROVIDER at CONTENT PROVIDER's sole expense to modify the Digital Content to address any potential issues, and (d) stop offering the Sale and/or Distribution of a certain Digital Content. CONTENT PROVIDER acknowledges and agrees that any action or inaction of NINTENDO under this Section 8.1.2 will not diminish or otherwise affect CONTENT PROVIDER's warranties, representations, or indemnification obligations described in this Agreement, or create any liability of NINTENDO to CONTENT PROVIDER or to any third party.

8.2 Digital Content Ratings. CONTENT PROVIDER, at its sole expense, will provide to NINTENDO any applicable ratings for proposed Digital Content, including, without limitation, certificates of rating for each proposed Digital Content, issued by all of the applicable rating entities for countries within the Territory for that type of content and in case of a self-rating by CONTENT PROVIDER any statement in writing confirming such self-rating. NINTENDO will not Distribute any Digital Content that is rated "Adult Only" or its equivalent. Where any Digital Content or any other content that is wholly or substantially identical to any Digital Content is censored or banned or if a censorship/banning procedure is initiated in any country of the Territory CONTENT PROVIDER must immediately provide Notice to NINTENDO of any such censorship/ban or procedure.

8.3 Content Fees. As between the parties, the Content Fees are the sole responsibility of CONTENT PROVIDER. CONTENT PROVIDER will promptly and fully indemnify NINTENDO and any Sub-Commission Agent from any and all liability for the Content Fees. Any failure to promptly and fully indemnify NINTENDO and any Sub-Commission Agent from any and all liability for the Content Fees under this Section 8.3 will be deemed to be a material breach of this Agreement.

8.4 Approvals. CONTENT PROVIDER will submit Digital Content to NINTENDO for approval only after CONTENT PROVIDER has completed development and testing of Digital Content, and will provide along with each submission any applicable certificates and/or statements of rating/self-rating and a completed Product Code Request Form for Digital Content. NINTENDO may require additional information, including, without limitation, evidence that CONTENT PROVIDER owns or has been licensed all necessary Proprietary Rights in such Digital Content, and may withhold its approval for any reason whatsoever in its sole discretion.

8.5 Customer Support. CONTENT PROVIDER is solely responsible for all customer support for the Digital Content, which customer support shall meet or exceed any minimum customer support requirements set forth in the Guidelines. Notwithstanding the foregoing, CONTENT PROVIDER acknowledges that Nintendo Entities shall have the right to post manuals and other information relating to Digital Content on websites of Nintendo Entities for customer support purposes.

8.6 Technical Support. CONTENT PROVIDER shall provide all necessary support to NINTENDO relating to the Digital Content to enable NINTENDO to market, Distribute and Sell the Digital Content under the commission agent scheme as set forth in this Agreement.

9. MARKETING AND ADVERTISING.

9.1 Marketing by a Nintendo Entity.

9.1.1 Any Nintendo Entity may, but is not required to, in its sole discretion and at its expense, advertise, promote and market Digital Content, including its Distribution and/or Sale. NINTENDO may from time to time at CONTENT PROVIDER's expense, ask for reference materials such as character print samples and other materials in connection with these advertising, marketing, and promotional activities.

9.1.2 License for Marketing Use. CONTENT PROVIDER grants to Nintendo Entities a non-exclusive and royalty-free license for advertising, promotion and marketing purposes during the Term:

(a) to publicly show the Digital Content in whole or in part (gameplay, screen shots, etc.), including, but not limited to, conventions, events and trade shows;

(b) to use demos, trailers, footage, artwork, screen shots, sound effects and other information regarding the Digital Content during the Term to advertise and promote the Digital Content and the availability of the Digital Content in the Nintendo Shop and in any and all media (including TV commercials, advertising campaigns, including both online and print campaigns, newsletters, press releases, on websites, at conventions, events, and trade shows);

(c) to make derivative works of the Digital Content solely in connection with any such advertising, promotion and marketing.

CONTENT PROVIDER warrants and represents that CONTENT PROVIDER is responsible for all required copyright clearances and for obtaining all rights and consents necessary for NINTENDO and Sub-Commission Agents to distribute any such demos, trailers, video game footage and any other promotional material, including rights held by any collecting societies.

A Nintendo Entity is required to submit to CONTENT PROVIDER samples of proposed materials for CONTENT PROVIDER's review. CONTENT PROVIDER shall, within ten (10) calendar days of receipt, approve or disapprove such samples. If any of the samples are disapproved, CONTENT PROVIDER shall specify the reasons for such disapproval and state what corrections and/or improvements are necessary. After making the necessary corrections and/or improvements, NINTENDO or a Nintendo Entity shall submit revised samples for approval by CONTENT PROVIDER. No materials shall be used or distributed by any Nintendo Entity without CONTENT PROVIDER's prior written approval. CONTENT PROVIDER shall not unreasonably withhold or delay its approval of any proposed materials.

9.1.3 Icons. CONTENT PROVIDER acknowledges and agrees that (a) all Icons (as defined in Section 2.14) shall be intellectual property owned by, or licensed to, CONTENT PROVIDER, that is subject to all terms and conditions of this Agreement, including without limitation CONTENT PROVIDER's representations, warranties, and indemnification obligations, and (b) the Nintendo Entities shall have the non-exclusive, perpetual, world-wide, royalty-free, non-revocable right and license to utilize the Icons (i) within advertising, promotional, and marketing media and materials, including without limitation on websites operated by or on behalf of the Nintendo Entities, on the Network Service, and in other online, media or print marketing channels (ii) within the functionality of the Nintendo 3DS System or the Network Service, and (iii) for the purposes set forth in the Guidelines.

9.2 Marketing by CONTENT PROVIDER and approval of Marketing Materials. CONTENT PROVIDER may in its sole discretion and at its expense advertise, promote, and market the Digital Content, subject to the following conditions:

CONTENT PROVIDER represents and warrants that the Marketing Materials shall (a) comply with the Guidelines as well as the guidelines of all applicable national or regional age rating organization, including PEGI, the USK, or any other applicable national or regional game rating system in a country of the Territory and (b) comply with all applicable laws, rules, regulations and official codes of practice in those countries in the Territory where they will be used or distributed. All CONTENT PROVIDER controlled websites featuring the Digital Content shall adopt, if legally required, a privacy policy that complies with all applicable local and international laws, rules, regulations and official guidelines and that access to such websites complies with all applicable national and international youth protection laws, rules and regulations. To protect the valuable Nintendo Intellectual Property Rights, to prevent the dilution of NINTENDO's trademarks, and to avoid use of the licensed Nintendo Intellectual Property Rights giving rise to any implication of NINTENDO's sponsorship, association, approval or endorsement where this is not the case, prior to actual use or distribution, CONTENT PROVIDER shall submit to NINTENDO for review samples of all proposed Marketing Materials. NINTENDO shall, within ten (10) calendar days of receipt, approve or disapprove such samples. If any of the samples are disapproved, NINTENDO shall specify the reasons for such disapproval and state what corrections and/or improvements are necessary. After making the necessary corrections and/or improvements, CONTENT PROVIDER shall submit revised samples for approval by NINTENDO. No Marketing Materials shall be used or distributed by CONTENT PROVIDER without NINTENDO's prior written approval. NINTENDO shall not unreasonably withhold or delay its approval of any proposed Marketing Materials.

9.3 Complimentary Copies and Download Codes. NINTENDO may provide CONTENT PROVIDER with a reasonable number of Download Codes for each title of Digital Content for the purpose of promoting and demonstrating such Digital Content. In such event, Nintendo may charge CONTENT PROVIDER fees for the issuance of such Download Codes. CONTENT PROVIDER may allow NINTENDO, at no charge, to use a reasonable number of Download Codes for each title of Digital Content for NINTENDO's promoting or demonstrating the Digital Content or the Network Service. NINTENDO is entitled, at no charge, to use a reasonable number of copies for each title of Digital Content for NINTENDO's testing the Digital Content or the Network Service. For the avoidance of doubt, such complimentary Download Codes and usage of copies will not be regarded as Sales.

10. CONFIDENTIAL INFORMATION

10.1 Definition. "Confidential Information" means information provided or to be provided to CONTENT PROVIDER by Nintendo Entities relating to the business and operating secrets of Nintendo Entities, including all facts that refer to the business activity and operational process of a Nintendo Entity. Such Confidential Information shall comprise any information related to the hardware and software for the Nintendo 3DS System or the Development Tools, including, but not limited to, (a) all current or future information, know-how, techniques, methods, tools, emulator hardware or software, software development specifications and/or trade secrets, (b) any inventions, 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 or to be 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 information that were in the public domain prior to CONTENT PROVIDER's receipt of the same hereunder, or that subsequently becomes part of the public domain by publication or otherwise, except by the wrongful act or omission of CONTENT PROVIDER or any third party, (ii) data and information that CONTENT PROVIDER can demonstrate, through written records kept in the ordinary course of business, were in its possession without restriction on use or disclosure, prior to its receipt of the same hereunder and were not acquired directly or indirectly from Nintendo Entities under an obligation of confidentiality that is still in force, and (iii) data and information that CONTENT PROVIDER can show were received by it from a third party who did not acquire the same directly or indirectly from Nintendo Entities and to whom CONTENT PROVIDER has no obligation of confidentiality.

10.2 Disclosures Required by Law. CONTENT PROVIDER shall be permitted to disclose Confidential Information if such disclosure is required by an authorized governmental or judicial entity, provided that NINTENDO is given Notice thereof at least thirty (30) calendar days prior to such disclosure, or such lesser period as may be needed to comply with such requirement. CONTENT PROVIDER shall use its best efforts to limit the disclosure to the greatest extent possible, consistent with CONTENT PROVIDER's legal obligations, and if required by NINTENDO, shall cooperate in the preparation and entry of appropriate court orders limiting the persons to whom Confidential Information may be disclosed and the extent of disclosure of such Confidential Information.

10.3 Disclosure and Use. Nintendo Entities may provide CONTENT PROVIDER with highly confidential development information, Guidelines, Development Tools, systems, specifications and related resources and information constituting and incorporating the Confidential Information to assist CONTENT PROVIDER in the development of Digital Content. CONTENT PROVIDER agrees to maintain all Confidential Information as strictly confidential and to use such Confidential Information only in accordance with this Agreement and for the proper performance under this Agreement. CONTENT PROVIDER shall limit access to the Confidential Information to CONTENT PROVIDER's officers, directors and employees having a strict need to know and shall advise such officers, directors and employees of their obligation of confidentiality as provided herein. CONTENT PROVIDER shall require each such officer, director or employee to retain in confidence the Confidential Information pursuant to a written non-disclosure agreement between CONTENT PROVIDER and such officer, director or employee. CONTENT PROVIDER shall ensure that its officers, directors and employees working with or otherwise having access to Confidential Information shall not disclose or make any unauthorized use of the Confidential Information.

10.4 No Disclosure to Independent Contractors. CONTENT PROVIDER shall not disclose the Confidential Information, including without limitation the Guidelines and Nintendo Intellectual Property Rights, to any Independent Contractor, nor permit any Independent Contractor to perform or assist in development work for a Digital Content, without the prior written consent of NINTENDO. Any Independent Contractor seeking access to Confidential Information shall be required to enter into a written non-disclosure agreement with Nintendo Entities prior to receiving any access to or disclosure of the Confidential Information from CONTENT PROVIDER or Nintendo Entities.

At CONTENT PROVIDER's option, the written non-disclosure agreement may be with CONTENT PROVIDER rather than Nintendo Entities, in which case the form and substance of the written non-disclosure agreement must be acceptable to NINTENDO. Also, in such case CONTENT PROVIDER shall provide to NINTENDO on a continuing basis a listing of all Independent Contractors who have received or been granted access to Confidential Information along with copies of the applicable written non-disclosure agreements. In addition, CONTENT PROVIDER shall take all reasonable measures to ensure that its Independent Contractors fulfil the requirements of the applicable written non-disclosure agreements.

CONTENT PROVIDER shall ensure that its officers, directors, employees and Independent Contractors working with or otherwise having access to Confidential Information shall not disclose or make unauthorised use of the Confidential Information. CONTENT PROVIDER agrees to indemnify NINTENDO (and any of its affiliates, subsidiaries, licensors, suppliers, officers, directors, employees or agents) against all loss or damage, including consequential economic loss, for breach of these obligations by the CONTENT PROVIDER, its officers, directors, employees and Independent Contractors.

10.5 Agreement Confidentiality. CONTENT PROVIDER 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 Digital Content developed by CONTENT PROVIDER under this Agreement shall be subject to NINTENDO's prior written approval. CONTENT PROVIDER 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 government agencies in the Territory that regulate publicly-traded securities, provided that all Confidential Information regarding Nintendo Entities shall be edited from such disclosures to the maximum extent allowed by such government agencies, (d) in response to lawful process, subject to court order limiting the persons to whom Confidential Information may be disclosed and the extent of disclosure of such Confidential Information, approved in advance by NINTENDO, and (e) to a third party proposing to enter into a business transaction with CONTENT PROVIDER or with any of the Nintendo Entities, but only to the extent reasonably necessary for carrying out the proposed transaction and only under terms of mutual confidentiality.

10.6 Notification Obligations. CONTENT PROVIDER shall promptly notify NINTENDO of the unauthorized use or disclosure of any Confidential Information by CONTENT PROVIDER or any of its employees, or any Independent Contractor or its employees, and shall promptly act to recover any such information and prevent further breach of the obligations herein. The obligations of CONTENT PROVIDER set forth herein are in addition to and not in lieu of any other legal remedy that may be available to NINTENDO under this Agreement or applicable law.

10.7 Continuing Effect of the NDA. The terms of this Section 10 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.

10.8 Parallel Development. CONTENT PROVIDER acknowledges that the Nintendo Entities may already be independently aware of, considering, developing or publishing content similar or identical to the proposed Digital Content identified in the Product Code Request Form. Consistent with the copyright laws and other applicable laws of the Territory, CONTENT PROVIDER acknowledges and agrees that this Agreement shall in no way impair the right of the Nintendo Entities to develop, make use of, procure, market, sell or distribute such content, and the Nintendo Entities shall in no way be liable to CONTENT PROVIDER in respect of any such independent and parallel awareness, consideration, development or distribution.

11. REPRESENTATIONS AND WARRANTIES

11.1 CONTENT PROVIDER's Representations and Warranties. CONTENT PROVIDER represents and warrants that:

(a) if CONTENT PROVIDER is an individual, it is at least legal age of majority in its country of residence; if CONTENT PROVIDER is a corporation or other legal entity, (i) it is a duly organized and validly existing entity and has the full authority to enter into this Agreement and perform all of its obligations under this Agreement; and (ii) a person who accepts this Agreement on behalf of CONTENT PROVIDER, has the right and authority to bind CONTENT PROVIDER to this Agreement,

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

(c) except for any Nintendo Intellectual Property Rights, System Updates, or notifications included by NINTENDO in the Digital Content or Marketing Materials, CONTENT PROVIDER either (i) is the undisputed sole owner of all right, title and interest in and to the Digital Content and Marketing Materials (including, without limitation, any music, trademarks, service marks, or other Proprietary Rights contained in or relating to the Digital Content or Marketing Materials), or (ii) throughout the Territory, has obtained all necessary rights, licenses or approvals of third parties in writing (including, without limitation, any music performance or collecting licensing societies or public authorities), at CONTENT PROVIDER's expense, for CONTENT PROVIDER to (A) use such third

party's Proprietary Rights in the Digital Content or Marketing Materials for the purposes contemplated by this Agreement and (B) grant to Nintendo Entities the rights set forth in this Agreement, and those licenses or approvals are undisputed;

(d) the Digital Content will not contain any Free Software that would require the Digital Content, Development Tools, Security Technology or the Nintendo Intellectual Property Rights, or any portion or derivative work thereof, to be disclosed or distributed in source code form, to be licensed for the purpose of making derivative works, or to be redistributed free of charge, under the terms of said license;

(e) the Digital Content and Marketing Materials do not misappropriate or infringe any intellectual property or other Proprietary Rights of any third party anywhere in the Territory (such Proprietary Rights of third parties correspond to, but are not limited to, those rights set forth in Section 2.34 herein);

(f) the Digital Content will be delivered to NINTENDO (or a Sub-Commission Agent, as applicable) free of any bugs, errors, or other operational defects that could materially affect the use and enjoyment of the Digital Content;

(g) the Digital Content and Marketing Materials do not contain any material that is extremely violent, obscene, libellous or defamatory, or that discloses private or personal matters concerning any person, or any computer virus, Trojan horse, spyware, or other contaminating, malicious, or destructive feature and that the Digital Content and Marketing Materials comply with the Guidelines on Ethical Content, Annex B;

(h) the Digital Content and Marketing Materials as well as all activities of CONTENT PROVIDER related to the Digital Content and/or Marketing Materials will conform with the requirements of this Agreement, including, without limitation, (i) the Guidelines, and (ii) all applicable national and international laws, rules and regulations in the Territory, including, without limitation, all applicable privacy, data protection and youth protection laws;

(i) CONTENT PROVIDER is solely responsible for familiarizing itself with the Guidelines and all updates thereto. CONTENT PROVIDER acknowledges and agrees that NINTENDO's provision of the Guidelines will not in any way impact CONTENT PROVIDER's obligation to comply with the terms and conditions of the Agreement or with any applicable law. In addition, the provision of the Guidelines by any of the Nintendo Entities shall not create any obligation or liability on the part of the Nintendo Entities to provide any notice to CONTENT PROVIDER, or to gain consent of CONTENT PROVIDER, regarding the Guidelines or any update thereto.

11.2 NINTENDO's Representations and Warranties. NINTENDO 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 NINTENDO do not conflict with any agreement or understanding to which NINTENDO may be bound.

11.3 INTELLECTUAL PROPERTY RIGHTS DISCLAIMER BY NINTENDO. NINTENDO MAKES NO REPRESENTATION OR WARRANTY CONCERNING THE SCOPE OR VALIDITY OF THE NINTENDO INTELLECTUAL PROPERTY RIGHTS. NINTENDO DOES NOT WARRANT THAT THE DESIGN, DEVELOPMENT, ADVERTISING, MARKETING OR SALE OF THE DIGITAL CONTENT OR THE USE OF THE NINTENDO INTELLECTUAL PROPERTY RIGHTS BY CONTENT PROVIDER WILL NOT INFRINGE UPON PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHTS OF A THIRD PARTY. TO THE MAXIMUM EXTENT LEGALLY PERMISSIBLE, ANY WARRANTY, CONDITION OR TERM THAT MAY BE PROVIDED IN ANY APPLICABLE PROVISION OF ANY LAW OR REGULATION IN THE TERRITORY GOVERNING COMMERCIAL ACTIVITY, OR ANY OTHER COMPARABLE LAW OR STATUTE IS EXPRESSLY DISCLAIMED. CONTENT PROVIDER HEREBY ASSUMES THE RISK OF INFRINGEMENT.

11.4 NETWORK SERVICE DISCLAIMER. TO THE EXTENT PERMITTED BY LAW, NINTENDO (ON BEHALF OF ITSELF, NINTENDO ENTITIES AND THE SUB-COMMISSION AGENTS, AS APPLICABLE) EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO THE NETWORK SERVICE, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A GENERAL OR PARTICULAR PURPOSE. CONTENT PROVIDER ACKNOWLEDGES THAT THE NETWORK SERVICE MAY BE SUBJECT TO DISRUPTIONS, AND THAT NINTENDO ENTITIES MAY DECIDE TO DISCONTINUE OR TERMINATE ALL OR PART OF THE NETWORK SERVICE, INCLUDING BUT NOT LIMITED TO THE NINTENDO SHOP, AT ANY TIME IN NINTENDO ENTITIES' SOLE DISCRETION AND WITHOUT NOTICE TO CONTENT PROVIDER.

11.5 GENERAL DISCLAIMER BY NINTENDO. TO THE EXTENT PERMITTED BY LAW, NINTENDO DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO THE DIGITAL CONTENT, INCLUDING WITHOUT LIMITATION, THE SECURITY TECHNOLOGY AND THE SYSTEM UPDATES. NINTENDO DISCLAIMS ALL WARRANTIES UNDER THE APPLICABLE LAWS OF ANY COUNTRY, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES CONDITIONS OR OTHER TERMS OF ANY KIND OF MERCHANTABILITY OR FITNESS FOR A GENERAL OR PARTICULAR PURPOSE.

11.6 LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER ANY OF NINTENDO ENTITIES, ITS AFFILIATES, LICENSORS NOR SUPPLIERS SHALL BE LIABLE FOR LOSS OF PROFITS, OR FOR ANY SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF CONTENT PROVIDER OR ITS CUSTOMERS ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE BREACH OF THIS AGREEMENT BY NINTENDO, THE SALE OR DISTRIBUTION OF THE DIGITAL CONTENT OR THE USE OF THE DIGITAL CONTENT ON ANY NINTENDO VIDEO GAME SYSTEM OR CONSOLE BY CONTENT PROVIDER OR ANY END USER.

11.7 Feedback and Guidelines. In the event that Nintendo Entities provide CONTENT PROVIDER with feedback regarding CONTENT PROVIDER's Digital Content, such feedback is provided "AS IS" AND WITHOUT ANY WARRANTY OF ANY KIND WHATSOEVER. Any use of such feedback by CONTENT PROVIDER will not diminish or otherwise affect CONTENT PROVIDER's warranties, representations, or indemnification obligations described in this Agreement, or create any liability of Nintendo Entities to CONTENT PROVIDER or third parties, unless a Nintendo Entity has intentionally or by gross negligence provided inaccurate feedback. CONTENT PROVIDER understands that the Guidelines are not considered legal advice of any Nintendo Entity and that the Guidelines do not release CONTENT PROVIDER from its obligation to ensure that the Digital Content and any activities of the CONTENT PROVIDER related to the Digital Content comply with all applicable national and international laws, rules and regulations.

12. INDEMNIFICATION

12.1 Claim. "Claim" means any and all third-party claims, demands, actions, suits, proceedings, 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. "Claim" shall specifically include civil, criminal, and regulatory matters, and those brought by any third party (including governmental authorities or agencies) under any national, subnational, or multinational law or regulation, or the rules of any self-regulatory body (e.g., PEGI), including any matters brought by a national authority in relation to any self-rating provided by the CONTENT PROVIDER.

12.2 CONTENT PROVIDER's Indemnification. CONTENT PROVIDER shall defend, indemnify and hold harmless each and all of the Nintendo Entities (and any of their affiliates, subsidiaries, licensors, suppliers, officers, directors, employees or agents) from any Claims which are arising out of, alleged to result from or be in connection with:

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

(b) any infringement of a third party's Proprietary Rights as a result of the design, development, advertising, marketing, Distribution, Sale or use of any aspect of the Digital Content or the Marketing Materials,

(c) 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, Distribution, Sale or use of any of the Digital Content,

(d) the design, development, advertising, marketing, Distribution, Sale or use of any aspect of the Digital Content or the Marketing Materials, and

(e) any withholding tax (or similar tax) payable by any of the Nintendo Entities on behalf of CONTENT PROVIDER in connection with the conclusion or as a result of the execution of this Agreement provided that the respective Nintendo Entity cannot or is not entitled to withhold the respective amount of tax from any payment to be made by the respective Nintendo Entity to the CONTENT PROVIDER.

NINTENDO and CONTENT PROVIDER shall give prompt Notice to the other of any indemnified Claim under this Section 12.2. With respect to any third party Claim subject to this indemnity clause, CONTENT PROVIDER, as the defending and indemnifying party, shall have the right to select counsel and to control the defense and/or settlement thereof. NINTENDO may, at its own expense, participate in such action or proceeding with counsel of its own choice. CONTENT PROVIDER shall not enter into any settlement of any such Claim in which (i) NINTENDO has been named as a party, or (ii) Claims relating to the Nintendo Intellectual Property Rights have been asserted, without NINTENDO's prior written consent. NINTENDO shall provide reasonable assistance to CONTENT PROVIDER in its defense of any such Claim.

12.3 Suspension of Performance. In the event NINTENDO deems itself at risk with respect to any Claim, action or proceeding under this Section 12, NINTENDO may, at its sole option and without prejudice to any other rights or remedies NINTENDO may have under this Agreement or under applicable law, suspend or cancel performance under this Agreement, including, without limitation, as applicable, Distribution and/or Sales for any Digital Content, in whole or in part, pending resolution of such Claim, action or proceeding. In the event NINTENDO decides to suspend or cancel performance under this Agreement CONTENT PROVIDER shall reimburse the Nintendo Entities for any related costs. In addition, NINTENDO may, at its sole discretion and without prejudice to any other rights and remedies NINTENDO may have under this Agreement or under applicable law, condition performance under this Agreement in relation to any Digital Content, in whole or in part, on the provision of certain declarations and/or securities, including, without limitation, any written proof that CONTENT PROVIDER owns or has been granted licenses to all necessary rights, including third parties' Proprietary Rights. For the avoidance of any doubt, if NINTENDO decides to provide performance under this Agreement this shall not release CONTENT PROVIDER from any warranties and indemnifications under this Agreement and CONTENT PROVIDER shall indemnify the Nintendo Entities from any and all losses that arise in connection with any such Claim, including, without limitation, court costs and reasonable attorney costs.

13. OWNERSHIP IN PROPRIETARY RIGHTS

13.1 Ownership by CONTENT PROVIDER. Except for those rights expressly granted to NINTENDO in this Agreement, CONTENT PROVIDER shall retain whatever rights it owns or has been licensed, and NINTENDO shall obtain no rights in or to, any Proprietary Rights of CONTENT PROVIDER.

13.2 Ownership by NINTENDO. Except for the limited license granted to CONTENT PROVIDER pursuant to Section 4.1 of this Agreement, nothing in this Agreement shall be construed to grant to CONTENT PROVIDER any rights in the Nintendo Intellectual Property Rights.

14. PROTECTION OF PROPRIETARY RIGHTS

14.1 Joint Actions Against Infringers. CONTENT PROVIDER and NINTENDO may agree to jointly pursue cases of infringement or potential infringement involving the Digital Content, as such

Digital Content 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 CONTENT PROVIDER and NINTENDO for their respective reasonable attorneys' fees and costs incurred in bringing such action, pro rata, and any remaining recovery shall be distributed to CONTENT PROVIDER and NINTENDO, pro rata, based upon the fees and costs incurred in bringing such action.

14.2 Actions by CONTENT PROVIDER. CONTENT PROVIDER, without the consent of NINTENDO, may bring any action or proceeding relating to an infringement or potential infringement of CONTENT PROVIDER's Proprietary Rights in the Digital Content. CONTENT PROVIDER shall make reasonable efforts to inform NINTENDO of such actions in a timely manner. CONTENT PROVIDER will have the right to retain all proceeds it may derive from any recovery in connection with such actions.

14.3 Actions by NINTENDO. NINTENDO, without the consent of CONTENT PROVIDER, may bring any action or proceeding relating to an infringement or potential infringement of the Nintendo Intellectual Property Rights. NINTENDO shall make reasonable efforts to inform CONTENT PROVIDER of such actions in a timely manner. NINTENDO will have the right to retain all proceeds it may derive from any recovery in connection with such actions.

15. ASSIGNMENT

15.1 Definition. "Assignment" means every type and form of assignment, transfer, sale, sublicense, delegation, encumbrance, pledge and/or hypothecation of a party's rights or obligations under this Agreement, including, but not limited to, (a) a voluntary assignment, transfer, sale, sublicense, delegation, encumbrance, pledge and/or hypothecation by a party of all or any portion of its rights or obligations under this Agreement, (b) the assignment, transfer, sale, sublicense, delegation, encumbrance, pledge and/or hypothecation of all or any portion of party's rights or obligations under this Agreement to or by a party's trustee in bankruptcy, receiver, or other individual or entity appointed to control or direct the business and affairs of a party, (c) an involuntary assignment, transfer, sale, sublicense, delegation, encumbrance, pledge or hypothecation of all or a portion of a party's rights or obligations under this Agreement, including but not limited to a foreclosure by a third party upon assets of a party, (d) the merger or consolidation of a party if the party is a corporation, and (e) any other means or method whereby rights or obligations of a party under this Agreement are sold, assigned or transferred to another individual or entity for any reason. Assignment also includes the sale, assignment, transfer or other event affecting a change in the controlling interest of a party, whether by sale, transfer or assignment of shares in that party, or by sale, transfer or assignment of partnership interests in that party, or otherwise.

15.2 No Assignment by CONTENT PROVIDER. This Agreement and the subject matter hereof are personal to CONTENT PROVIDER. No Assignment of CONTENT PROVIDER's rights or obligations hereunder shall be valid or effective without NINTENDO's prior written consent, which consent may be withheld by NINTENDO for any reason whatsoever in its sole discretion. In the event of an attempted Assignment in violation of this provision, NINTENDO shall have the right at any time, at its sole option, to immediately terminate this Agreement. Upon such termination, NINTENDO shall have no further obligation under this Agreement to CONTENT PROVIDER or to CONTENT PROVIDER's intended or purported assignee.

15.3 Proposed Assignment. Notwithstanding Section 15.2 above, prior to any proposed Assignment of this Agreement, CONTENT PROVIDER shall give NINTENDO not less than thirty (30) calendar days prior written Notice thereof, which Notice shall disclose the name of the proposed assignee, the proposed effective date of the Assignment and the nature and extent of the rights and obligations that CONTENT PROVIDER proposes to assign. NINTENDO may, in its sole discretion, approve or disapprove such proposed Assignment. Unless written consent is given by NINTENDO to a proposed Assignment, any attempted or purported Assignment shall be deemed disapproved and NINTENDO shall have the unqualified right, in its sole discretion, to terminate this Agreement at any time. Upon termination, NINTENDO shall have no further obligation under this Agreement to CONTENT PROVIDER or to CONTENT PROVIDER's intended or purported assignee.

15.4 CONTENT PROVIDER's Obligation of Non-Disclosure. CONTENT PROVIDER shall not (a) disclose Confidential Information to any proposed assignee of CONTENT PROVIDER, or (b) permit access to Confidential Information by any proposed assignee or other third party, without the prior written consent of NINTENDO to such disclosure.

15.5 Assignment by NINTENDO. This Agreement may be Assigned by NINTENDO without Notice to or consent of CONTENT PROVIDER. In particular, without limitation, NINTENDO may entitle a Nintendo Entity to exercise any of the rights granted to NINTENDO under this Agreement.

16. TERMINATION.

16.1 Term. This Agreement shall commence on the Effective Date and shall continue for the Term, unless earlier terminated as provided herein, or extended by an amendment to this Agreement (either by click-through on the Nintendo Developer Portal or in writing).

16.2 Default or Breach. In the event that either party is in default or commits a breach of this Agreement that is not cured within thirty (30) calendar days after Notice thereof, then the non-breaching party shall be entitled to terminate this Agreement without further notice. In the event either party commits a material breach of this Agreement, then the non-breaching party shall be entitled to terminate this Agreement immediately.

16.3 Infringement of Nintendo Intellectual Property Rights. Provided that NINTENDO reasonably believes that CONTENT PROVIDER has developed, marketed, or sold a product or content that infringes Nintendo Intellectual Property Rights anywhere in the world and provided that the parties are not able to resolve such alleged infringement within one hundred and twenty (120) calendar days' after Notice thereof, then NINTENDO shall be entitled to terminate this Agreement without further notice.

16.4 Bankruptcy. At NINTENDO's option, this Agreement may be terminated immediately and without notice in the event that CONTENT PROVIDER (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.

16.5 Breach of NDA or Other NINTENDO License Agreements. At NINTENDO's option, any breach by CONTENT PROVIDER of (a) the NDA, or (b) any other license agreement between any Nintendo Entity and CONTENT PROVIDER relating to the development of games and/or content for any Nintendo video game system or console that is not cured within the time period for cure allowed under the applicable agreement, shall be considered a material breach of this Agreement (and which shall give NINTENDO reasonable cause to believe that it needs to terminate this Agreement so as to protect its legitimate business interests) entitling NINTENDO to terminate this Agreement.

16.6 Legal Action Against a Nintendo Entity. If CONTENT PROVIDER or any entity that controls, is controlled by, or is under common control with CONTENT PROVIDER, initiates legal action against any Nintendo Entity, NINTENDO may provide CONTENT PROVIDER with Notice that it is concerned the legal action will fundamentally undermine the relationship between the parties and that it is inviting a dialogue in good faith on this question. If NINTENDO is still concerned thirty (30) calendar days after notifying CONTENT PROVIDER of its concerns, NINTENDO may, at its option, terminate this Agreement immediately.

16.7 No Further Use of the Nintendo Intellectual Property Rights. Upon expiration and/or termination of this Agreement, CONTENT PROVIDER shall cease all use of the Nintendo Intellectual Property Rights for any purpose, except as expressly permitted under this Agreement. CONTENT PROVIDER shall, within thirty (30) calendar days thereafter, return or destroy all Guidelines, Development Tools provided by Nintendo Entities, writings, drawings, models, data, tools and other materials and things in CONTENT PROVIDER's possession or in the possession of any past or present officer, director, employee, agent or contractor receiving the information through CONTENT PROVIDER, that 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 CONTENT PROVIDER and promptly provided to NINTENDO.

16.8 CONTENT PROVIDER'S Termination Right. CONTENT PROVIDER may terminate this Agreement in whole or with respect to specific title of Digital Content upon ninety (90) days prior written Notice.

16.9 NINTENDO's Termination Right. Nintendo may terminate this Agreement in whole or with respect to a specific title of Digital Content upon ninety (90) days prior written Notice

16.10 No Affect to Usability of Sold Copies of Digital Content. Any termination of this Agreement will neither affect the usability of Sold copies of Digital Content nor any re-download or transfer functionalities as described under Section 6.4 above. If NINTENDO or CONTENT PROVIDER terminate this Agreement with respect to a specific title of Digital Content pursuant to Section 16.8 or Section 16.9 of this Agreement, such termination will only affect that specific title of Digital Content.

16.11 Survival. In addition to those rights specified elsewhere in this Agreement that may reasonably be interpreted or construed as surviving, the rights and obligations set forth in Sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, and 17 shall survive any expiration or termination of this Agreement to the degree necessary to permit their complete fulfillment or discharge.

17. GENERAL PROVISIONS

17.1 Compliance with Applicable Laws and Regulations. CONTENT PROVIDER shall at all times comply with applicable national and international laws, rules, regulations, standards, guidelines, guidance notes, codes of practice, and orders in the countries of the Territory relating to or in any way affecting this Agreement and CONTENT PROVIDER's performance under this Agreement, including, without limitation, those relating to data protection, youth protection, the protection of children's privacy online and export laws and regulations. If there is any country in the Territory in which a marketing, Distribution or Sale of the Digital Content would violate any applicable national or international laws, regulations or orders of such country, CONTENT PROVIDER shall provide Notice to NINTENDO of such country prior to the submission of Digital Content to NINTENDO (or a Sub-Commission Agent, as applicable) subject to Section 8.

17.2 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, terrorism, 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 that could not with reasonable diligence be controlled or prevented by the parties.

17.3 Records and Audit. During the Term and for a period of two (2) years thereafter, CONTENT PROVIDER agrees to keep accurate, complete and detailed records relating to the use of the Confidential Information, the Development Tools, and the Nintendo Intellectual Property Rights. Upon reasonable Notice to CONTENT PROVIDER, NINTENDO may, at its expense, arrange for a third-party audit of CONTENT PROVIDER's records, reports and other information related to CONTENT PROVIDER's compliance with this Agreement; provided, however, that NINTENDO shall not, during the course of the audit, access CONTENT PROVIDER's source code, development plans, marketing plans, internal business plans or other items deemed confidential by CONTENT PROVIDER, except to the extent such materials incorporate, disclose or reference Confidential Information or Nintendo Intellectual Property Rights.

17.4 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, clause 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 together with any applicable Annexes 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.

17.5 Governing Law and Venue. This Agreement shall be governed by the laws of Japan, 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 only in the Tokyo District Court. Each party hereby consents to the jurisdiction and venue of such courts for such purposes.

17.6 Injunctive Relief. CONTENT PROVIDER acknowledges that in the event of its breach of this Agreement, no adequate remedy at law may be available to NINTENDO and that NINTENDO shall be entitled to seek injunctive or other similar available relief in addition to any additional relief available to NINTENDO.

17.7 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.

17.8 Third Party Rights. This Agreement does not confer, and is not intended to confer, any right on any person existing now or in the future who is not a party to this Agreement.

17.9 Expansion of Rights. Notwithstanding Section 17.4 of this Agreement, NINTENDO may expand the rights granted to CONTENT PROVIDER under this Agreement by providing Notice of such expansion of rights to CONTENT PROVIDER.

Attachments:

Annex A: Nintendo 3DS Digital Commission Sheet

Annex B: Guidelines on Ethical Content

Annex C: Notification about Sub-Commission Agents appointed

Annex A**NINTENDO 3DS DIGITAL COMMISSION SHEET**

With regard to Digital Content for the Nintendo 3DS system provided by CONTENT PROVIDER to NINTENDO under the NINTENDO 3DS CONTENT LICENSE AGREEMENT (DIGITAL CONTENT) FOR EEA, AUSTRALIA, NEW ZEALAND, RUSSIA AND AFRICA (the "Agreement") NINTENDO and CONTENT PROVIDER agree on the Commission as set forth in this Nintendo 3DS Digital Commission Sheet (the "Digital Commission Sheet").

The rates and conditions set forth below will remain in effect until further notice by NINTENDO. In the event that NINTENDO modifies any of the following, such modifications shall apply only to Digital Content made available on or after the effective date of such modification.

Unless otherwise defined in this Digital Commission Sheet, all capitalized terms have the meanings set forth in the Agreement.

Commission:

In accordance with the Agreement, in recognition of the innovation and efforts undertaken by NINTENDO in creating the Nintendo 3DS System and the valuable commercial opportunity that this presents for CONTENT PROVIDER, as well as NINTENDO's creation and operation of arrangements for the Distribution of Digital Content through the Nintendo Shop, NINTENDO will receive from CONTENT PROVIDER for each Sale in the Territory the Standard Commission.

Standard Commission: thirty per cent (30%) of the Net Amount.

Annex B**Guidelines on Ethical Content**

The following Guidelines on Ethical Content are presented for assistance in the development of Digital Content by defining the types of the theme inconsistent with NINTENDO's corporate philosophy. Exceptions may be made when necessary to maintain the integrity of the Digital Content or the Digital Content's theme. Digital Content shall not:

- (a) contain sexually explicit content including but not limited to nudity, rape, sexual intercourse and sexual touching; for instance, NINTENDO does not allow bare-breasted women in Digital Content, however, mild displays of affection such as kissing or hugging are acceptable;
- (b) contain language or depictions which specifically denigrate members of any race, gender, ethnicity, religion or political group;
- (c) depict gratuitous or excessive blood or violence. NINTENDO does not permit depictions of animal cruelty or torture;
- (d) depict verbal or physical spousal or child abuse;
- (e) permit racial, gender, ethnic, religious or political stereotypes; for example, religious symbols such as crosses will be acceptable when fitting into the theme of the Digital Content and not promoting a specific religious denomination;
- (f) use profanity, obscenity or incorporate language or gestures that are offensive by prevailing public standards and tastes; and
- (g) promote the use of illegal drugs, smoking materials, tobacco and/or alcohol; for example NINTENDO does not allow gratuitous beer or cigarette advertisement anywhere in a Digital Content; however, Sherlock Holmes smoking a pipe would be acceptable as it fits the theme of the Digital Content.

Annex C

Notification about Sub-Commission Agents appointed

This Annex refers to the NINTENDO 3DS CONTENT LICENSE AGREEMENT (DIGITAL CONTENT) FOR EEA, AUSTRALIA, NEW ZEALAND, RUSSIA AND AFRICA between NINTENDO CO., LTD. ("NINTENDO") and CONTENT PROVIDER (the "Agreement").

Unless otherwise defined in this Annex, all capitalized terms have the meanings set forth in the Agreement.

In accordance with section 2.41 of the Agreement NINTENDO hereby notifies the CONTENT PROVIDER that the following Nintendo Entities have been appointed as a Sub-Commission Agent in the parts of the Territory as specified below:

Nintendo Entity that has been appointed as Sub-Commission Agent	Territory
Nintendo of Europe GmbH Herriotstrasse 460528 Frankfurt am Main Germany Attn: European Publishers Business E-mail: agreements_publisher@nintendo.de	All parts of the Territory except for Australia and New Zealand.
Nintendo Australia Pty. Ltd. (appointed by Nintendo of Europe GmbH) 804 Stud Road, Scoresby VIC 3179 Australia Attn: Corporate Department E-mail: agreements_publisher@nal.nintendo.com.au	Australia, New Zealand

The Product Code Request Form for the Digital Content as well as the Digital Content for Sale in the Territory shall be submitted to the Sub-Commission Agent that has been appointed for the respective part of the Territory. Each Sub-Commission Agent will exercise NINTENDO's rights under the Schedule for the parts of the Territory for which it has been appointed.