

## **AGREEMENT**

This agreement (the “Agreement”), effective as of October 25, 2022 (the “Effective Date”), is entered into by and between the Open Text Corporation, a Canadian corporation with its headquarters at 275 Frank Tompa Drive, Waterloo, Ontario, N2L 0A1, Canada (“OpenText”) and the Museum of Art and Digital Entertainment, a U.S. nonprofit corporation with an address at 921 Washington St, Oakland, CA 94607 (“MADE”).

## **BACKGROUND**

MADE is a nonprofit museum and archive dedicated to the preservation of video games in playable form. OpenText owns intellectual property rights related to historically significant “virtual world” products and social networks (the “EC Works”), which it obtained in its acquisition of Electric Communities Inc.

MADE wishes to collect, exhibit, and disseminate digital works reflecting the historical development of online virtual worlds, including the EC Works. OpenText wishes to enable MADE to do so and, to this end, is willing to license its intellectual property rights in the EC Works under an Open Source License.

Because the EC Works have not been actively maintained or published for many years, OpenText no longer has complete functional copies of them. Therefore, to archive and exhibit the works, MADE will need to collect whatever extent copies of the works are in the possession of Archival Sources, including persons previously involved in the production of the EC Works. OpenText wishes to ensure that MADE may legally carry out this archival work, and that Archival Sources may provide those copies to MADE without liability.

## **AGREEMENT**

### **1. Definitions.**

“Archival Source” means any person in possession of any EC Works, or any portion thereof.

“EC Works” means all software, website assets, and related materials obtained by OpenText in its acquisition of Electronic Communities Inc. and relating to the following entities, products, and websites: (a) Communities.com, (b) The Palace, (c) OnLive! Technologies, (d) Microcosm, (e) EnterTV, and (f) the E programming language. The EC Works include any OpenText-owned software or platforms used to produce or operate any of the foregoing.

The “MADE Parties” means MADE and its officers, directors, agents, and volunteers.

“Open Source License” means a software license approved by the Open Source Initiative as “open source” and listed at <https://opensource.org/licenses/>.

“Personal Data” has the same meaning as in the EU General Data Protection Regulation.

“Third-Party IP” means any work of authorship that is not (a) owned by OpenText, (b) in the public domain, or (c) available under an Open Source License.

**2. Collection, Review, and Publication of EC Works.**

2.1. **Collection.** OpenText understands and agrees that MADE will solicit the submission of digital assets constituting the EC Works from Archival Sources, publicly and via direct outreach to individuals previously involved with the development of the EC Works. MADE will collect submissions into a private digital archive (the “EC Archive”) controlled by MADE. Periodically, and upon OpenText’s reasonable request, MADE will provide OpenText a listing of all of the materials collected in the EC Archive.

2.2. **Review and Approval.** MADE shall provide a copy of all such collected materials for review by OpenText and MADE shall not publish any such collected materials without prior written consent and approval by OpenText. Before publishing any materials contained in the EC Archive, MADE will review the materials for Third-Party IP and Personal Data. For any Third-Party IP found in the materials, MADE will either: (a) remove the Third-Party IP; (b) replace the Third-Party IP with existing or original materials licensed or licensable under an Open Source License; or (c) secure an Open Source License to the Third-Party IP from its owner(s). MADE will remove or de-identify any Personal Data in the materials before publication.

2.3. **Publication and License.** MADE may publish any materials from the EC Archive after reviewing them as required in Section 2.2. Effective upon such publication, OpenText hereby licenses any such materials owned by OpenText to MADE and to the general public under the terms of the MIT License attached to this Agreement as Exhibit A. OpenText understands that the MIT License permits MADE to distribute and sublicense the EC Works to third parties under the same terms.

2.4. **Post-Publication Review by OpenText.** If OpenText identifies any Third-Party IP or Personal Data in the EC Archive materials published by MADE, OpenText may notify MADE of the issue, and MADE shall promptly remove or disable public access to the Third-Party IP and/or Personal Data. Except for the indemnification in Section 5, the foregoing shall be OpenText’s sole remedy for the publication of Third-Party IP and/or Personal Data by MADE.

**3. Credit to OpenText.** Any exhibit or other public display of the EC Works by MADE will incorporate prominent credit to OpenText for its contribution of the EC Works. All such credits to OpenText (including those comprising OpenText trademarks, whether registered or not) must be approved (and not unreasonably be held back) by OpenText prior to publication.

**4. Release by OpenText.**

4.1. Subject to MADE’s indemnification obligations under Section 5, OpenText hereby releases, waives, and forever discharges MADE from all claims which OpenText

may have relating to MADE's (i) reasonable solicitation of EC Works from Archival Sources, and (ii) collection, review, and publication of the EC Works.

- 4.2. OpenText hereby releases, waives, and forever discharges each Archival Source from all claims which OpenText may have relating to: (i) Archival Sources' possession of the EC Works, (ii) Archival Sources' provision of the EC Works to MADE, and (iii) MADE's collection, review, and publication of the EC Works. Archival Sources that provide EC Works to MADE under this agreement are intended third-party beneficiaries of this release.
- 4.3. Each release in this Section 4 extends, without limitation, to claims related to trade secrets, confidentiality, or intellectual property rights.

**5. Indemnification by MADE.**

- 5.1. MADE shall defend, indemnify and hold harmless OpenText, and its officers, directors, employees, agents, permitted successors, and permitted assigns (each an "Indemnified Party"), against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind incurred by an Indemnified Party as a result of a claim of a third party alleging that any materials published by MADE according to Section 2.3 above infringes any right of that third party.
- 5.2. An Indemnified Party seeking indemnification under this Section 5 shall give MADE: (i) prompt notice of the relevant claim; and (ii) reasonable cooperation in the defense of such claim. MADE shall have the right to control the defense and settlement of any such claim; provided, however, that MADE shall not, without the prior written approval of the Indemnified Party, settle or dispose of any claims in a manner that affects the Indemnified Party's rights or interests. The Indemnified Party shall have the right to participate in the defense at its own expense.
- 5.3. THIS SECTION 5 SETS FORTH THE ENTIRE LIABILITY AND OBLIGATION OF EACH INDEMNIFYING PARTY AND THE SOLE AND EXCLUSIVE REMEDY OF EACH INDEMNIFIED PARTY FOR ANY DAMAGES COVERED BY THIS SECTION 5.

**6. Term and Termination.**

- 6.1. This Agreement shall be effective as of the Effective Date and shall remain in effect until terminated as provided in this Section 6.
- 6.2. Either party may terminate this Agreement upon written notice to the other, if the other party breaches any material term of this agreement and fails to cure the breach within 30 days of receipt of the notice.
- 6.3. In the event of termination, the following provisions shall survive termination: Sections 3 ("Credit to OpenText"), 7 ("Limitation of Liability; Disclaimer of Warranty"), and 8 ("Miscellaneous"). The license in Section 2.3 ("Publication and

License”) and the releases granted in Section 4 (“Release by OpenText”) shall survive with respect to any materials published by MADE prior to termination.

**7. LIMITATION OF LIABILITY; DISCLAIMER OF WARRANTY.**

7.1. NEITHER PARTY SHALL BE LIABLE TO THE OTHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE FOR (I) ANY (DIRECT OR INDIRECT) LOSS OF PROFITS, OF PRODUCTION, OF ANTICIPATED SAVINGS, OF BUSINESS, OR GOODWILL OR (II) FOR ANY OTHER LIABILITY, DAMAGE, COSTS, OR EXPENSE OF ANY KIND INCURRED BY THE OTHER PARTY OF AN INDIRECT OR CONSEQUENTIAL NATURE, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF THESE DAMAGES.

7.2. OPENTEXT HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. OPENTEXT MAKES NO WARRANTY OF ANY KIND THAT THE EC WORKS, OR ANY OTHER MATERIALS OBTAINED BY MADE UNDER THIS AGREEMENT, WILL MEET MADE’S OR ANY OTHER PERSON’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

**8. Miscellaneous.**

8.1. Relationship of the Parties. The parties shall be independent contractors under this Agreement. Nothing in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the parties. Neither party shall by virtue of this Agreement have any right, power, or authority to act or create an obligation, express or implied, on behalf of the other party.

8.2. Force Majeure. Except with regard to payment obligations, each party shall be excused from delays in performing or from failure to perform its obligations under this Agreement to the extent the delays or failures result from causes beyond the reasonable control of the party, including, but not limited to: default of subcontractors or suppliers; failures or default of third party software, vendors, or products; acts of God or of the public enemy; U.S. or foreign governmental actions; strikes; communications, network/internet connection, or utility interruption or failure; fire; flood; epidemic; and freight embargoes.

8.3. Governing Law and Forum. This agreement shall be governed by and construed in accordance with the laws of the state of California without giving effect to any


choice of law or conflict of law provision. The parties agree that any claim or dispute arising out of or in relation to this Agreement shall be brought exclusively in a state or federal court located in Alameda County, California.

- 8.4. Entire Agreement. This Agreement and any SOW attached constitute the final, entire understanding and agreement of the parties. All prior agreements, understandings, and representations are hereby terminated and canceled in their entirety and are of no further force and effect. This Agreement may not be amended or modified except by a written instrument signed by both parties.
- 8.5. Unenforceable Provisions. If any provision of this Agreement, or any portion thereof, is held to be invalid and unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.
- 8.6. Waiver. A party's failure or delay in exercising its rights under the Agreement shall not operate as a waiver of those rights or constitute a waiver of any prior, concurrent, or subsequent breach.
- 8.7. No Assignment. This Agreement may not be assigned by either party without the other's prior written consent.

[Signatures on following page.]

**MADE**

**OPENTEXT**

Signed:   
DocuSigned by:  
AD6E397F3DC4497...

Signed: 

Name: Alex Handy

Name: Michael Acedo

Title: Chair of the Board/Founder

Title: EVP, CLO + Corporate Secretary

Date: 10/25/2022

Date: Nov 8, 2022

**Exhibit A**  
**MIT LICENSE FOR EC WORKS**

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