

OBERON MEDIA, INC.
LICENSE AND DISTRIBUTION AGREEMENT (DOWNLOADABLE GAME)
STANDARD TERMS

This License and Distribution Agreement between Oberon Media, Inc. ("Oberon") and Licenser shall be effective as of the date listed as "Effective Date" on the Cover Page.

1. Definitions

1.1. "**Adjusted Gross Revenue**" means gross revenue actually received by Oberon from the sale or distribution of Download Game licenses to a Licensed User through the Distribution Network, less (i) sales and other applicable taxes and (ii) refunds, credits and chargebacks.

1.2. "**Commencement Date**" shall be the date that any Licensed Game is uploaded to the Oberon Media Repository.

1.3. "**Distribution Network**" means the Internet web sites, operated by Oberon or one of its partners, which is part of the distribution network through which Oberon sells and distributes Download Games to Licensed Users, which sites generally utilize Oberon's e-commerce solution, Oberon's digital rights management system, or Oberon otherwise manages the "back-end" solution of the games delivery.

1.4. "**Download Game**" means a version of a Licensed Game that is downloaded from a Distribution Network site onto a Licensed User's computer or other device.

1.5. "**Full Game**" means a version of a Download Game that has no time or functionality limitation.

1.6. "**Trial Game**" means a version of a Download Game that is restricted by time or functionality which becomes a Full Game when "activated."

1.7. "**Licensed Game(s)**" means the game software program(s) listed in Exhibit A to this Agreement, including the object code, Licenser Marks and related intellectual property, as updated by the parties from time-to-time by either exchange of a new Exhibit A, or by Licenser uploading new games to the Oberon Media Repository.

1.8. "**Licensed User**" means an end user who purchases or downloads a Licensed Game from a Distribution Network site pursuant to an end user license agreement.

1.9. "**Licensor Marks**" means the trademarks, service marks, trade names, logos, designs and other designations of Licenser and the Licensed Game.

1.10. "**Oberon Media Repository**" means the online content management system operated by Oberon and/or its subsidiaries to which Licenser uploads the Licensed Games.

1.11. "**Royalty Rate**" means the royalty rate applicable to each Licensed Game as specified in the Cover Page of this Agreement.

2. License Grant

2.1. **License Grants.** Licenser grants to Oberon a worldwide, non-exclusive license, during the Term of the Agreement, to publish and distribute the Licensed Games to end users as Trial Games and Full Games, provided that Full Games shall be distributed and activated only through the Distribution Network. Such license includes rights to:

2.1.1. install, execute and distribute the Licensed Games;

2.1.2. promote the Licensed Games;

2.1.3. grant user licenses to the Licensed Games;

2.1.4. make copies of the Licensed Games for distribution, back-up, archive or disaster recovery purposes;

2.1.5. provide Licensed Users with replacement copies or physical back-up copies; and

2.1.6. sub-license such rights for the promotion and

distribution of Licensed Games.

2.2. **Trademark License.** Licenser hereby grants Oberon a worldwide, non-exclusive license, during the term of the Agreement, to use and display Licenser's Marks and other intellectual property applicable to the Licensed Game(s) in connection with the advertising, promotion and distribution of the Licensed Games.

2.3. **Adding Games.** Uploading a game to the Oberon Media Repository will be deemed to amend Exhibit A to add such game to the list of Licensed Games.

2.4. **Back-up Copies.** Oberon may deliver a back-up copy of the Licensed Game on a CD or other physical storage medium to purchasers of a Download Game license. Such back-up copies are provided for convenience only and do not constitute a form of distribution subject to a royalty payment hereunder.

2.5. **Release Date.** Oberon shall have the right to commence public distribution of a Licensed Game once such Licensed Game has been uploaded to the Oberon Media Repository, unless a different release date (an "**Embargo Date**") is provided by Licenser in the applicable field when uploading the Licensed Game to the Oberon Media Repository. If Licenser provides such an Embargo Date, Oberon shall not publicly release the applicable Licensed Game prior to the Embargo Date.

3. Licensor Rights and Obligations

3.1. Licenser shall ensure that:

3.1.1. each Licensed Game is uploaded to the Oberon Media Repository in object code form and otherwise in compliance with the instructions of Oberon Media Repository;

3.1.2. each Licensed Game includes placement of an Oberon logo, as instructed in the developer wiki provided by Oberon;

3.1.3. no Licensed Game includes an explicit (visual or linked) URL or email addresses; and

3.1.4. no Licensed Game accesses the Internet for any purpose, including communicating high scores, downloading or uploading of new content, or creation of global user profiles, unless specific prior written approval is obtained from Oberon.

3.2. Licenser shall use commercially reasonable efforts to provide, at no cost to Oberon, such assistance as Oberon may from time to time request in readying the Licensed Games for market and responding to requests for technical support and Licensed User customer service, including, but not limited to, providing bug fixes as reasonably necessary.

3.3. Licenser will provide updates of the Licensed Games within a commercially reasonable time after it makes such updates available to its other distributors.

4. Oberon Rights and Obligations

4.1. Oberon will not alter or remove any copyright notices or other required legal notices that Licenser may reasonably prescribe for placement in the Licensed Games.

4.2. Oberon shall have sole discretion in the methodology of promotion and sale of the Licensed Games. Trial Games may be distributed in any manner, including via electronic or physical means. Oberon shall have sole discretion in the configuration, functionality, and appearance of the Distribution Network sites and all applications, installers, wrappers, add-ons, advertisements, widgets and other

programs or content distributed or displayed thereon or in connection with the Licensed Game(s).

4.3. Notwithstanding anything else in this Agreement, Oberon shall not be obligated to publish, display, link, license or otherwise distribute any or all Licensed Game(s) pursuant to this Agreement.

5. Term, Renewal and Termination

5.1. Term and Renewal. This Agreement will take effect on the Effective Date listed on the Cover Page and remain in force thereafter for as long as the term of the license grant for any Licensed Game continues pursuant to this Agreement. For any particular Licensed Game, the initial term of the licenses granted pursuant to this Agreement shall be three (3) years starting from the Commencement Date(s), unless otherwise agreed in writing by the parties. Following the initial term, the license grants for each Licensed Game shall continue until terminated by either party on no less than sixty (60) days prior written notice.

5.2. Termination for Cause. Either party may (without prejudice to its other rights) terminate this Agreement with immediate effect by notice in writing to the other if the other party (a) defaults in due performance or observance of any material obligation hereunder which is not capable of remedy or has not been remedied within thirty (30) days of receiving notice of that breach or (b) ceases to carry on business.

5.3. Effect of Termination. Upon termination of the license grant for any or all Licensed Games, the applicable licenses granted to Oberon in this Agreement shall terminate, provided however, that Oberon shall have the right to continue to exercise its rights under this Agreement for a sell off period of ninety (90) days from the date of termination. Further, Oberon shall have the right to sell Download Game licenses for Full Games that result from Trial Games distributed during the Term or sell off period. Oberon shall pay royalties to Licensor for all sales of Download Game licenses after the Term of the Agreement, pursuant to the terms of this Agreement notwithstanding its termination. Oberon shall have the right to provide replacement copies of Full Games to Licensed Users that had previously purchased Full Games. Termination of this Agreement or the licenses granted to Oberon under this Agreement shall have no effect upon any end user's license agreement for a Licensed Game, which shall continue pursuant to its own terms.

5.4. Survival. Sections 5.3, 5.4, 6, 7, 8, 9, and 10 of these Standard Terms shall survive the expiration or earlier termination of this Agreement.

6. Payment of Royalties.

6.1. Download Game License Payments. Oberon shall pay to Licensor an amount equal to the Adjusted Gross Revenue multiplied by the Royalty Rate. Adjusted Gross Revenue received in connection with bundles, memberships and/or time-based access shall be allocated to the Licensed Games based upon the relative proportions as determined by Oberon.

6.2. Reporting and Payment. Oberon will provide Licensor with electronic reports setting forth the calculation of royalties due to Licensor based on the information received by Oberon within forty-five (45) days of the end of the month in which the Adjusted Gross Revenue has been received by Oberon. All royalty payments due from Oberon to Licensor shall be made by Oberon or its designee within sixty (60) days of the end of the month in which the Adjusted Gross Revenue has been received by Oberon.

6.3. Currency. All royalties due and payable to Licensor hereunder shall be converted from the local currency of the source country to U.S. Dollars at the rate of exchange published in The Wall Street Journal or on the OANDA.com currency information web site (or similar publicly accessible currency exchange website).

6.4. Taxes and Withholding. All sums payable hereunder are exclusive of value added tax (where applicable) or any comparable sales tax. All sums paid hereunder will be net of any withholding tax required by law. At Licensor's request, Oberon shall provide a certificate of such withholding. Licensor shall provide to Oberon any reasonably requested information in connection with such withholding.

6.5. Payment Method. Unless otherwise instructed by Licensor, all Royalties due hereunder shall be sent to Licensor in accordance with the information stated on the New Vendor Form. Oberon shall have sole discretion to determine whether payment to Licensor shall be made by check, ACH or wire transfer.

6.6. Minimum Threshold. If the amount payable to Licensor is less than two hundred dollars (\$200) for any given month, Oberon may, at its sole discretion, withhold payment until the earlier of (i) the termination of this Agreement or (ii) the amount payable to Licensor is equal to or greater than two hundred dollars (\$200).

6.7. Books and Records. Oberon agrees to maintain accurate books and records relating to the revenues earned by Oberon on all Licensed Games for a period of two (2) years after the close of the calendar year in which such revenues were earned (the "**Audit Period**"). Such books and records shall be available for inspection at Oberon's principal offices, for the purpose of verifying royalties. Licensor shall have the right to conduct such an audit during the Audit Period, at its sole cost and expense, upon thirty (30) days advance written notice at a reasonable, mutually agreeable time no more than once in any consecutive twelve (12) month period and no more than once for each period audited.

7. Representations and Warranties

7.1. By Licensor. Licensor represents and warrants to Oberon as follows:

7.1.1. it has the power and authority to enter into this Agreement, has not granted any rights which conflict with the rights granted under this Agreement, and has the ability, power and authority to perform its obligations hereunder and grant the rights set out in this Agreement;

7.1.2. it will comply with all applicable laws and regulations;

7.1.3. the use and publication of the Licensed Game and Licensor Marks as anticipated by this Agreement do not violate, misappropriate or infringe the intellectual property rights or other rights of any third parties;

7.1.4. no Licensed Game is the subject of any threatened or pending legal action;

7.1.5. the Licensed Game shall contain no content, language, images or material of any nature which is offensive, obscene, defamatory or in breach of any applicable law; and

7.1.6. the Licensed Game will be free from all viruses, worms, trojan horses and other contaminants including but not limited to any codes or restrictions that may be used to access, modify, delete or damage any data files, software or hardware used by Oberon or its partners or Licensed Users.

7.2. By Oberon. Oberon represents and warrants to Licensor as follows:

7.2.1. it has the power and authority to enter into this Agreement and perform its obligations hereunder; and

7.2.2. it will comply with all applicable laws and regulations.

7.3. No Other Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY MAKES ANY WARRANTIES RELATING TO THE LICENSED GAMES OR THE METHODOLOGY BY WHICH THE LICENSED

GAMES MAY BE DISTRIBUTED, AND ALL IMPLIED WARRANTIES INCLUDING THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXCLUDED.

8. Indemnification

8.1. **Indemnity.** Each party (the “**Indemnifying Party**”) agrees to indemnify, defend and hold harmless the other and its successors, assigns, parent, subsidiaries and affiliates, and their respective directors, officers, employees, and agents (collectively, the “**Indemnified Party**”) against all losses, damages, liabilities, and expenses (including reasonable outside attorneys’ fees) arising out of or in connection with any third-party claim which, taking the claimant’s allegations to be true, would show the Indemnifying Party to be in breach of any of its warranties and covenants set forth in this Agreement.

8.2. **Procedure.** The Indemnified Party shall promptly notify the Indemnifying Party in writing of any action, suit, proceeding or investigation (“**Proceeding**”) for which indemnification is sought, provided that any failure to so notify the Indemnifying Party will not relieve the Indemnifying Party from any liability or obligation which it may have to the Indemnified Party except to the extent of any material prejudice to the Indemnifying Party resulting from such failure. If any such Proceeding is brought against an Indemnified Party, the Indemnifying Party will be entitled to participate therein and to assume the defense thereof with counsel satisfactory to the Indemnifying Party. Each Indemnified Party shall be obligated to cooperate reasonably with the Indemnifying Party, at the expense of the Indemnifying Party, in connection with such defense and with the compromise or settlement of any such Proceeding. Neither the Indemnified Party nor the Indemnifying Party may settle or dispose of any Proceeding in any manner which involves a remedy other than the payment of money damages by such Indemnified Party or Indemnifying Party, respectively, without the prior written consent of the other, which consent shall not unreasonably be withheld.

9. No Consequential Damages; Limitation of Liability

9.1. **No Consequential Damages.** NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, OR FOR LOSS OF REVENUE, LOSS OF BUSINESS OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF A PARTY HERETO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR IF SUCH DAMAGE COULD HAVE BEEN REASONABLY FORESEEN.

9.2. **Limitation of Liability.** EXCEPT AS IT RELATES TO EITHER PARTY’S INDEMNIFICATION OBLIGATIONS PROVIDED HEREIN, THE TOTAL LIABILITY OF EITHER PARTY TO THE OTHER UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED THE AMOUNTS PAID OR OWING BY OR TO IT PURSUANT TO THIS AGREEMENT DURING THE ONE (1) YEAR PERIOD IMMEDIATELY PRIOR TO THE DATE OF THE REQUEST FOR INDEMNIFICATION.

10. Miscellaneous.

10.1. **Confidentiality.** Each party will treat the terms of this Agreement and any payment or other financial or other reporting information exchanged as confidential, and not disclose to any other person or party, except as necessary to perform this Agreement or as required by law.

10.2. **Press Releases.** Neither party shall make any press releases or similar public statements concerning this Agreement or the relationship of the parties, without the prior written consent of the other party.

10.3. **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed duly given (a) if delivered personally, when received, (b) if transmitted by fax, upon the generation by the transmitting fax machine of a confirmation that the entire document has been successfully transmitted, (c) if sent by email, the earlier of (i) the date of any response by recipient, or (ii) 24 hours after receipt of a ‘read-receipt’ from recipient, (d) if sent by recognized courier service (e.g., FedEx or DHL), on the date of receipt, or (e) if sent by registered mail, postage prepaid, return receipt requested, on the fifteenth business day following the date of mailing, in each case to the applicable addresses set forth on the Cover Page.

10.4. **Relationship of the Parties.** Each party shall be and act as an independent contractor and not be or act as a partner, joint venturer or agent of the other.

10.5. **Assignment.** The parties agree that this Agreement and the rights hereunder are not transferable or assignable without prior written consent of the other, not to be unreasonably withheld. Notwithstanding the foregoing, Oberon shall have the right to assign, sell, transfer, delegate or otherwise dispose of this Agreement or any of its rights or obligations under this Agreement in connection with any solvent merger or consolidation, or with the sale of the company or the sale or transfer of all or substantially all of its assets. Subject to the foregoing, this Agreement shall bind and benefit each parties’ respective permitted successors and assigns. Any purported assignment, sale, transfer, delegation or other disposition by a party, except as permitted herein, shall be null and void.

10.6. **Entire Agreement.** The Cover Page, these Standard Terms and Exhibit A, constitute the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter hereof.

10.7. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.8. **Amendment.** Unless otherwise specified, any amendment, supplement or modification of or to any provision of this Agreement shall be effective only if it is made or given in writing and signed by both parties.

10.9. **Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the minimum extent necessary without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provisions in any other jurisdiction.

10.10. **Governing Law.** This Agreement shall be governed by the substantive laws of the State of New York (without giving effect to its conflict of law rules). All rights and obligations of the parties of this Agreement and the interpretation, construction and enforceability hereof shall also be governed by the laws of the State of New York (without giving effect to its conflict of law rules) and any action relating to this Agreement shall be brought exclusively in the Federal and/or state courts located within the State of New York, County of New York, which courts shall have sole jurisdiction for such actions. Licensor and Oberon agree to waive any objection they may have now or hereafter to the venue of any suit brought pursuant to clause (i) above, and to accept service of process pursuant to any delivery method set forth in Section 10.3(a), (d) or (e).