

A DEFENDANT	United States District Court Northern District of California	
	Case No.	4:20-cv-05640-YGR
	Case Title	Epic Games, Inc. v. Apple, Inc.
	Exhibit No.	DX-3585
	Date Entered	Susan Y. Soong, Clerk By: _____, Deputy Clerk

VALVE CORPORATION
STEAM DISTRIBUTION AGREEMENT - ONLINE VERSION

This STEAM DISTRIBUTION AGREEMENT ("Agreement") is made and entered into by and between **Valve Corporation**, a Washington corporation, with offices located at 10400 NE 4th Street, Suite 1400, Bellevue, WA 98004 ("Valve"), and the person or entity identified by you in the "Company Legal Name" field in connection with the Agreement completion process ("Company"), collectively the "Parties" and individually a "Party," and is effective as of the date on which Valve provides Company with notice of its acceptance ("Effective Date").

RECITALS

- A. Company owns and/or has the rights to develop, publish and/or distribute certain applications.
- B. Valve has an online delivery system referred to as "Steam" through which, among other things, it distributes third party applications.
- C. Company wishes to grant to Valve, and Valve wishes to receive, a license to use and to distribute Company's computer applications via Steam, as set forth herein, in exchange for the compensation described herein.

AGREEMENT

1. DEFINITIONS. The following terms will have the following meanings as used in this Agreement.

1.1 "Adjusted Gross Revenue" shall mean, with respect to Valve, the gross revenue actually received by Valve from Valve's exploitation of the Applications pursuant to **Section 3.2** (including, for the sake of clarity, gross revenue generated from subscription fees paid with respect to one or more Company Applications or from distribution of any DLC), less the Applicable Adjustments.

1.2 "Affiliate" shall mean a person or entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with a Party.

1.3 "Applicable Adjustments" shall mean (a) actual costs resulting directly from returns, discounts, refunds, fraud or chargebacks for the Applications; (b) Customer Taxes, if and only to the extent that any such Customer Taxes have been included in the calculation of gross revenue earned, however, for absence of doubt the deduction under clause (b) above does not include any taxes other than Customer Taxes, including without limitation taxes on the income or business operations of Valve.

1.4 "Applications" shall mean the Company computer games or other applications specified in connection with the Agreement completion process, or otherwise provided by Company to Valve for distribution over Steam, including, upon delivery to Valve, any Application Updates and any Localized Versions of such Applications. Applications include only the versions of such games or applications that operate on Windows, Macintosh, or Linux operating systems, or other operating systems supported by Steam in the future.

1.5 "Application Updates" shall mean any updates, corrections, and enhancements provided by Company for use by any end user of the Applications and shall include any such updates, corrections, and enhancements made available to third parties or end users. Application Updates include any DLC provided for an Application.

1.6 "Customer Taxes" shall mean taxes that are imposed on a customer of Valve on the distribution, sale or license of Applications (such as sales, use, excise, value-added and other similar taxes) and that are received from such customer by Valve for payment to governmental authorities, and any withholding or repatriation tax assessed with respect to the remittance of transaction proceeds from a foreign country to Valve.

1.7 "Demo Version" shall mean any demonstration versions of the Applications, if any.

1.8 "DLC" shall mean any online content, features or software specific to an Application that is made available by Company for purchase, download or online access separately from the Application, whether through in-application purchase transactions or otherwise (for example, but without limiting the foregoing, Application-themed virtual items, expansion packs, additional filters, codecs, stock multimedia, game scenarios or levels, additional functionality, etc.). DLC also includes any services provided with respect to an Application in exchange for a subscription payment.

1.9 "Localized Version" shall mean any versions of the Applications created for specific languages or jurisdictions.

1.10 "Sales Data" shall mean non-personally identifiable sales and activation data for Steam Account Owners that is retained by Valve and typically analyzed by Valve for its own computer games, including but not limited to sales rates by country.

1.11 "Steam" shall mean Valve's online delivery system. For the purposes of this Agreement, "Steam" does not include any content, including but not limited to video games, from Company, Valve, or other third parties.

1.12 "Steam Account Owner" shall mean an end user of one or more of the Applications who has obtained a Steam account, agreed to Valve's Steam Subscriber Agreement, and licensed a Valve distributed version of the Applications or completed a Steamworks Product Key Authorization.

1.13 "Steam Installer" shall mean the proprietary Valve software program that performs software installation functions for any Applications with which it is distributed.

1.14 "Steamworks" shall mean those Steam services and features described on the Steamworks partner website found at <https://partner.steamgames.com/> and any other features and services that Valve decides, in its sole discretion, to make available to Steam Account Owners and/or Company as part of Steamworks.

1.15 "Steamworks Product Key" shall mean a valid Steam product authorization code generated by Valve.

1.16 "Steamworks Product Key Authorization" shall mean validation by Steam of a Steamworks Product Key.

1.17 "Steamworks Redistributable Code" shall mean the Steam Client and any other software code that is contained in the folder titled

â€œredistributable_binâ€ within the Steamworks SDK.

1.18 â€œSteamworks SDKâ€ shall mean the software development toolkit for Steamworks, the Steam Installer, and any other Valve software that is delivered to or made available to Company for its use pursuant to this Agreement.

1.19 â€œTermâ€ shall mean the term of the Agreement, as set forth in **Section 7.1**.

1.20 â€œTerritoryâ€ means (a) worldwide or (b) the nations authorized for distribution by Company on Steam, if Company has restricted an Applicationâ€™s distribution territory through the online tools provided by Valve for this purpose.

2. DELIVERY.

2.1 Delivery. Company shall submit the Applications to Steam for release no later than the first commercial release of each Application or Localized Version, or, if already commercially released as of the Effective Date, within thirty (30) days of the Effective Date. Thereafter, Company shall submit to Steam any Localized Versions and Application Updates (in beta and final form) when available, but in no event later than they are provided to any other third party for commercial release. Company shall provide these copies in object code form, in whatever format Valve reasonably requests.

2.2 Steam Compatibility. Company shall make the Applications compatible with Steam and any Steamworks services that Company may choose to use. Company shall, in cooperation with Valve, use reasonable efforts to maintain compatibility of the Applications with future versions of Steam.

2.3 QA. Company shall perform quality assurance and other error testing of the Applications (including any Localized Versions and all Application Updates and other deliverables delivered pursuant to **Section 5.2**), consistent with industry standards, prior to its delivery of final versions of each to Valve.

2.4 DLC. If Company distributes the Application through any other (non-Steam) distribution channel, and if Company distributes any material DLC for the Application through that other channel, it will deliver the DLC to Valve at the same time such that Steam Account Owners will receive comparable DLC with customers acquiring the Application through other channels. Company is free to offer special and unique promotional content through other distribution channels, provided that material parity is maintained between Steam Account Owners and users of other distribution channels who make a comparable investment in the Application and the associated DLC.

2.5 No Other In-Application Stores. The parties agree that Applications distributed via Steam will not include functionality from or links or references to any store other than Steam, or any other facility for making purchases or payments. For clarification, the preceding sentence does not apply to versions of Applications that are distributed outside of Steam (whether at brick-and-mortar retail stores or online), whether or not such versions use Steamworks.

2.6 Application Items and/or Currency. To the extent any Application supports the sale of digital items or digital currency for use in the Application, Company shall not allow or facilitate the redemption or exchange of such digital items or digital currency for real-world currency.

2.7 User Reviews. Company shall not artificially manipulate the user review system for Applications. For example, Company may not solicit reviews in exchange for anything of value, with a single exception that Company may provide a free copy of the Application to bona fide press or reviewers (who may be required to disclose the gift).

2.8 Open Source Software. Company shall not distribute via Steam, or combine any Valve materials with, open source or other software that is licensed under terms that purport to bind Valve to contractual obligations (e.g. the GNU General Public License or Lesser General Public License), without prior discussion with and separate written agreement from Valve.

3. LICENSES; OWNERSHIP.

3.1 License for Valve to Use the Applications. Company hereby grants to Valve a non-exclusive, worldwide, royalty-free license to internally reproduce, use and modify the Applications in object code format for general access and as necessary to (a) enable the use and distribution of the Applications (including Demo Versions, Localized Versions and Application Updates) via Steam as described in **Section 3.2**, (b) support Steam Account Owners in the use of Steam accounts as described in **Section 5.1**, and (c) support Steam Account Owners as described in **Section 5.3** in the event Company fails to fulfill its obligations under **Section 5.3**.

3.2 Electronic Delivery License. Company hereby grants to Valve a non-exclusive license to reproduce, publicly display and perform, transmit, sell, license and otherwise distribute the Applications in object code form via Steam and through any type of payment method to Steam Account Owners in the Territory. To the extent that the Agreement includes versions of an Application for multiple operating systems (e.g. a Windows version, a Linux version and an Apple OS version) such versions shall be sold together as a single "hybrid" Application unit on Steam. Therefore, an Apple OS version of any Application, a Linux version of an Application, and a Windows version of an Application shall not be considered to be separate sales when calculating the payment obligations pursuant to **Section 6**. In the case of Demo Versions available outside of Steam, if any, if such a Demo Version includes a reference to how/where to purchase the Application (e.g., screens on start or exit), Company shall cooperate with Valve to include a reference to Steam in that location.

3.3 License for Company to Use Valve Trademarks. Valve hereby grants to Company a royalty-free, fully paid up license, during the Term, to use, publicly display and perform, reproduce, and distribute Valveâ€™s trademarks, including logos set forth in, and in accordance with, Valveâ€™s Branding Guidelines, the current version of which can be accessed at <https://partner.steamgames.com/documentation/branding> (the "Steam Marks"), on packaging for or at the site of distribution of a Steam-enabled version of the Application outside of Steam, and in marketing and promotional materials for the Application. Valve shall have the right to review and approve any particular use of the Steam Marks prior to that use, provided that (a) such approval shall not be unreasonably withheld, and (b) any previously approved use shall not require a new approval merely because the Steam Mark is being used in the form approved in connection with translated versions of the same materials for which that prior approval was obtained.

3.4 Trademark and Copyright License for Applications Marketing. Company hereby grants to Valve a worldwide, nonexclusive, royalty-free license, during the Term, to use, publicly display and perform, reproduce, distribute and display the trademarks, including logos, used for the Applications, materials from the Applications (e.g., screenshots, movies, etc.), marketing material and Ratings Information (the "Company Marks") as part of or in connection with promotion, marketing, licensing or sale of the Applications.

3.5 Ownership; Reservation of Rights. Except as expressly provided herein, Company retains all right, title and interest in and to the Applications and

the Company Marks, and Valve retains all right, title and interest in and to Steam, the Steam Marks, and Sales Data. All rights not expressly granted hereby are reserved by each of the Parties.

3.6 Territory Restrictions. Any Territory restrictions, if any, shall apply to the sale or initial distribution of the Application. Company acknowledges and agrees that, since Steam Account Owners can access their accounts from anywhere, Steam Account Owners may receive subsequent distributions of Applications from places outside the Territory. In addition, Company agrees that the display of Company Marks on a Valve or Steam website in a manner intended primarily to reach prospective Steam Account Owners in the Territory shall be considered permissible use of the Marks even though such Marks are capable of being viewed by Steam Account Owners outside the Territory.

4. MARKETING; PUBLICITY AND SALES DATA.

4.1 Valve Marketing. Valve may, at its own expense and sole discretion, market and promote the Applications via Steam and the Steam web site located at store.steampowered.com (the "Steam Website") and other channels. Valve shall be entitled to release the Application(s) day and date with the first release of the Application(s) in any other distribution channel.

4.2 Press Release. Valve and Company may reference in public statements the fact that the Applications are or will be available on Steam; however, any press release about the other Party shall be subject to the prior approval of the other Party.

4.3 Application Sales Data. Subject to Valve's privacy policy, the Steam Subscriber Agreement, applicable laws and any other third party confidentiality obligations, Valve will provide Company with Sales Data for the Applications. Valve agrees to provide access to a web site containing the Sales Data.

4.4 Ratings Information. Company agrees to provide, and to keep up-to-date, any applicable ratings information obtained from ratings or government authorities (including, without limitation, The Entertainment Software Rating Board) (the "Ratings Information"). Valve will provide Company with an online tool to facilitate the embedding of Ratings Information in the Steam Website.

4.5 Press Accounts. As soon as an Application is released on Steam, Valve may add the Application to its press subscription accounts, such that these industry and general interest journalists may access the Application free-of-charge in order to evaluate, and potentially review, the Application.

4.6 Compatibility and Performance Test Accounts. As soon as Company submits an Application for release on Steam, Valve may add, at no cost and without any payment due to any third party, the Application to select third-party accounts for their use in providing hardware and software compatibility and performance testing in connection with Steam, but only so long as Valve provides its own games to such accounts.

5. SUPPORT.

5.1 Valve Support to Steam Account Owners. Subject to Company's compliance with Section 5.2, Valve will provide support for Steam account and Steam billing problems encountered by Steam Account Owners. Valve will provide this support at the same level that Valve provides customer support to customers of third-party products that Valve distributes via Steam.

5.2 Company Support to Valve. Company shall provide Valve with the following support for the Applications: (a) deliver all Application Updates, in object code form, made to the Applications, in beta and final forms, when available but in no event later than they are provided to any other third party; (b) promptly correct all material errors or defects in the Applications reported by Valve and deliver such corrections to Valve in object code form in a timely fashion; (c) provide such other reasonable additional support as Valve may reasonably request in order to maintain compatibility of the Applications with Steam and, if applicable, with any Steamworks services used by the Application; and (d) promptly respond to Valve's questions regarding the Applications. Upon delivery to Valve of final versions of any corrections and enhancements or other deliverables under this Section, those materials shall be deemed to be part of the Applications.

5.3 Company End User Support. Company will provide support to Steam Account Owners who have acquired a copy of the Applications, including but not limited to general questions concerning use of the Applications and assisting customers in the diagnosis and correction of problems encountered in using the Applications. Company will provide such support at the same level that Company provides customer support for other applications developed and/or distributed by or for Company.

5.4 Use of Partner Site and Tools. Valve makes a Partner portal and related tools available to Company to assist in submitting and viewing information relevant to its Applications. Company will ensure that any password needed to access this site is treated as Confidential Information, and agrees that it will be responsible for any use that is made of that password.

6. REVENUE SHARE.

6.1 Payment. Beginning on the date Valve first receives gross revenue from the sale of any Applications over Steam, within thirty (30) days after the end of each calendar month, Valve shall provide a report of gross revenue, adjustments made in calculating Adjusted Gross Revenue, and a report of the payment amount owed, for such month, and pay to Company seventy percent (70%) of the Adjusted Gross Revenue actually received by Valve from Valve's exploitation of each of the Applications pursuant to Section 3.2 during the such calendar month. Monthly statements will also report revenues and adjustments by Primary Platform, where applicable. For purposes of such reporting, the "Primary Platform" is the operating system on which the majority of usage occurred during the seven day period following the date of purchase (if no usage occurred during that period, the Primary Platform shall be the operating system on which the Steam Account Owner purchased the Application). Payments under this Section will only be paid with respect to the version of the Application running on the Primary Platform. To the extent that the payment calculation results in a negative amount, that negative amount will be carried forward and deducted from any future amounts otherwise payable by Valve hereunder.

6.2 Withholding Tax. If, pursuant to the applicable tax law, a withholding tax is or reasonably could be imposed on Valve's payments to Company as reasonably determined by Valve in good faith, then Valve may deduct from such payments the appropriate amount of withholding taxes that are required to be withheld according to applicable law and remit such withholding to the relevant taxing authority as reasonably determined by Valve in good faith. Valve shall indicate the amount of withholding, if any, in any statement or along with any payment hereunder and deliver to Company upon request any withholding tax certificate or other evidence of payment received from the relevant tax authorities. Upon request, Valve agrees to take reasonable measures to cooperate in minimizing any such withholding or other applicable tax. Company and Valve shall cooperate with each other in regard to filing and maintaining any tax documents necessary to collect, remit, and/or reduce such withholding, including but not limited to the United States Internal Revenue Service form W-8 BEN (or its equivalent) and appropriate supporting documents.

6.3 Special Provisions Regarding Workshop Contributions. Some Applications (â€œWorkshop-enabled Applicationsâ€) may integrate with an Application-specific Steam Workshop web page (a â€œWorkshopâ€). These Workshops are a place where Steam Account Owners, or other licensees of the Application, can submit user-generated content they create based on the Application (â€œWorkshop Contributionsâ€). In some Workshops, these Workshop Contributions may be offered for sale, either directly through the Workshop, or through an in-game store. If any Company Applications are Workshop-enabled Applications, this Section 6.3 will apply.

6.3.1 License to Workshop Contributions. Workshop Contributions are not Applications or DLC. However, the licenses in Sections 3.1 and 3.2 apply to any Company content that is incorporated into a Workshop Contribution.

6.3.2 Sharing of Revenues from Workshop Contribution Sales. Unless otherwise agreed between the parties, and notwithstanding Section 6.1, Valve will pay Company a share of Adjusted Gross Revenues derived from any sales of Workshop Contributions that occur on a Workshop page specific to a Company Application or within a Company Application. Unless a different revenue-sharing arrangement is agreed to by the parties, Company's revenue share shall be equal to seventy percent (70%) of Adjusted Gross Revenues, less a percentage to be paid to the contributor(s) that submitted the Workshop Contribution (â€œContributorâ€). Valve may provide Company with the means to set or change the percentage paid to Contributors, and/or the allocation of the contributor percentage amongst contributors in cases of bundled item sales. If no percentage is specified by Company, the default percentage shall be twenty-five percent (25%) of Adjusted Gross Revenues.

6.3.3 Sales of Workshop Contributions Through Third-party Workshops. Some Workshop-enabled Applications permit (or do not prohibit) the sale of Workshop Contributions through Steam Workshop pages other than the Workshop page that is specifically set up for that Application. Unless otherwise agreed, Valve has no obligation to pay Company any revenue share from sales of Workshop Contributions through Workshops other than the Workshop specifically set up for the Company Application.

6.4 Special Provisions Regarding Community Market Sales. Valve operates a â€œCommunity Marketâ€ in which Steam Account Owners can sell virtual items to other Steam Account Owners. If a Company Application is integrated with or supports the Steam Community Market such that virtual items derived from the Application can be sold in the Community Market, this Section 6.4 will apply.

6.4.1 Transaction and Game Fees. Valve charges a â€œtransaction feeâ€ for each sale made in a community market, which is typically equal to five percent (5%) of the amount paid for the item sold (although Valve may adjust this transaction fee in its sole discretion). The â€œtransaction feeâ€ and the sales proceeds received by the seller in connection with the sale of a virtual item, are excluded from Adjusted Gross Revenues. In addition to the â€œtransaction feeâ€ a â€œgame feeâ€ may be assessed for each sale made in a community market. Valve may provide Company with the ability to set or change the â€œgame feeâ€ percentage. If Company does not specify a different â€œgame feeâ€ percentage, the default percentage shall be ten percent (10%).

6.4.2 Sharing of Game Fee Revenues. Valve will share the â€œgame feeâ€ net of Applicable Adjustments (the â€œNet Game Feeâ€) with Company. Unless a different revenue-sharing arrangement is agreed to by the parties, Company's share of the Net Game Fee will be equal to seventy percent (70%), except that, if the item sold is a Workshop Contribution, the Net Game Fee will be equal to seventy percent less a percentage to be paid to the original Contributor(s) of the Workshop Contribution. Unless otherwise agreed between the Parties, the percentage to the Game Fee to be paid to the Contributor(s) will be the same percentage of Adjusted Gross Revenues from the original sale of that Workshop Contribution that was paid to such Contributor(s), as described in Section 6.3.2 above.

6.5 Minimum Monthly Payment. In the event amounts due to Company for a given month do not exceed one hundred dollars (US\$100), Valve may elect not to remit payment for that month, and to accumulate payments due until they exceed one hundred dollars (US\$100) at the time of a future monthly payment cycle.

7. TERM.

7.1 Term. This Agreement shall become effective as of the Effective Date and continue until terminated in accordance with this Agreement.

7.2 Termination by Either Party for Cause. Either Party may terminate this Agreement immediately upon written notice at any time if the other Party is in material breach of any warranty, term or condition of this Agreement and has failed to cure that breach within thirty (30) days after written notice thereof, or the other Party experiences an Event of Default. â€œEvent of Defaultâ€ means any of the following events: (a) a Party becomes insolvent or is unable to pay its debts as they mature, or makes an assignment for the benefit of creditors; (b) a petition under any foreign, state or United States federal bankruptcy act, receivership statute, or the like, as they now exist, or as they may be amended, is filed by a Party; or (c) such a petition is filed by any third party, or an involuntary petition is not resolved favorably to such Party within sixty (60) days after the petition is filed.

7.3 Termination for Convenience. Either Party may terminate the Agreement for convenience at any time after expiration of the Initial Term, without cause, by providing the other Party with thirty (30) days prior written notice of such termination. â€œInitial Termâ€ means the period beginning on the Effective Date and ending one (1) year after the last Application to release on Steam under this Agreement was so released.

7.4 Survival. Sections 3.1, 3.5 and 5.2 (but in each case only with respect to supporting Steam Account Owners that have licensed an Application prior to termination or expiration), 6, 7.4, and 8 - 14, and any then-existing Steam Account Owner licenses to Applications, shall survive any termination or expiration of this Agreement. In addition, upon termination of this Agreement, Company hereby grants to Valve a non-exclusive, worldwide, perpetual, irrevocable, fully-paid-up license to use, reproduce, transmit and distribute the Applications and any error corrections in object code form via electronic delivery solely to Steam Account Owners that have licensed a Valve distributed version of the Applications prior to the date of any termination of this Agreement, and Company will continue to give Steam Account Owners access to online features of the Application on an equal, non-discriminatory basis with other users, for so long as Company supports such online features.

8. WARRANTIES; DISCLAIMER.

8.1 Mutual Representations and Warranties. Each Party hereby represents and warrants that (a) this Agreement has been duly and validly executed and delivered by such Party and constitutes a legal and binding obligation of such Party, enforceable against such Party in accordance with its terms; (b) such Party has all necessary power and authority to execute and perform in accordance with this Agreement; and (c) such Party's execution, delivery and performance of this Agreement will not conflict with or violate any provision of law, rule or regulation to which such Party is subject, or any agreement or other obligation directly or indirectly applicable to such Party or binding upon its assets.

8.2 Company Warranties. Company warrants that (a) it originally created the Applications, any Demo Version and the Company Marks, or has the rights necessary to grant the licenses it has granted, and to fulfill its obligations, under this Agreement; (b) the Applications delivered to Valve will conform in all respects to the

functional and other descriptions contained in any documentation for the Applications, the system requirements for the Applications, and any marketing materials for the Applications; (c) the Applications, any Demo Versions and the Company Marks do not violate, infringe or misappropriate any copyright, trade secret, trademark, or right of publicity or privacy of any third party, violate any terms of the Steam Subscriber Agreement (including but not limited to the Steam Online Conduct Rules); (d) Company will comply with all applicable international, national, state, regional and local laws and regulations and its own privacy policy in connection with its distribution of any Steam-enabled version of the Application outside of Steam (if it chooses to make such a distribution), and in connection with its use of any end user data supplied by Valve to Company under this Agreement; (e) Company has all necessary rights to any content or information it submits to Valve through the Steam partner portal or using any Steam-provided partner or publishing tools; and (f) the Applications and any Demo Versions do not contain any: (i) software viruses, trojan horses, or any other computer code, files or programs that are designed or intended to disrupt, damage or limit the functioning of any computer software or hardware or to damage or obtain unauthorized access to any data or other information of Valve or any third party, or (ii) any other materials that are unlawful, defamatory, or libelous.

8.3 Disclaimer. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, EACH PARTY DISCLAIMS ALL WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL MATERIAL PROVIDED BY SUCH PARTY HEREUNDER IS PROVIDED "AS IS" AND WITHOUT WARRANTY OR REPRESENTATION.

9. INDEMNITY.

Company will indemnify, defend, and hold harmless Valve and its Affiliates, successors, officers, directors and employees from any cost, loss, liability, expense or damage (including reasonable attorneys' fees) ("Liabilities") arising out of any action, cause of action, claim or demand ("Claim") based on facts which, if true, would represent a material breach by Company of its representations and warranties under Section 8 of this Agreement. Company will reimburse Valve upon invoicing for any payment made by Valve in respect of any liability or claim to which any indemnity obligation under this contract relates. Valve will promptly notify Company of the existence of a Claim (though any delay in providing such notice shall not relieve Company of its obligations unless and only to the extent that such delay prejudiced Company). Valve shall give Company sole control of the defense of the Claim, provided that Company shall not settle any Claim requiring financial payment from Valve, or the admission of fault, or any non-monetary penalty, unless Valve consents. Valve will provide reasonable cooperation to Company, at Company's expense. Valve may participate in the defense with its own counsel, provided that it shall do so at its own expense, and that ultimate control of the defense shall remain with Company.

10. LIMITATIONS OF LIABILITY.

EXCEPT FOR LIABILITY ARISING UNDER SECTION 9 (INDEMNITY) AND SECTION 13 (CONFIDENTIALITY), IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY PROVISION HEREIN, REGARDLESS OF THE LEGAL THEORY UPON WHICH ANY CLAIM FOR SUCH DAMAGES IS BASED. THE FOREGOING EXCLUSION SHALL APPLY EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

11. SPECIFIC RIGHTS AND OBLIGATIONS IN CONNECTION WITH STEAMWORKS SERVICES

11.1 Scope of Steamworks services. This Section 11 applies in case Company chooses to use any Steamworks services.

11.2 License for Company to Use Steamworks SDK. Valve hereby grants to Company (a) a non-exclusive, royalty-free, worldwide right and license to use and reproduce the Steamworks SDK internally, solely for the purpose of evaluating, testing and adding Steamworks for use by Steam Account Owners of the Applications; and (b) a non-exclusive, royalty-free, worldwide right and license to distribute to its end users, in object code form, the Steam Installer and the Steam Redistributable Code. Company must comply with Section 2.8 in the implementation of Steamworks features.

11.3 Provision of Network Support for Steamworks Services. Valve will use reasonable efforts to provide network support via Steam for the Steamworks services, for Steam Account Owners, in substantially the same manner in which they are provided for Valve's own games. Company understands that network support may be unavailable due to routine maintenance and unplanned interruptions due to hardware, software and/or Internet failures. Valve's obligations under this Section 11.3 are conditioned upon Company continually performing all tasks necessary, as directed by Valve, to ensure the Applications are compatible with Steam, the Steam Installer and Steamworks. Valve may make changes to, add services to, or remove services from Steamworks in its sole discretion, provided that Valve shall use commercially reasonable efforts to ensure that any such changes are backwardly compatible with any Applications that were made commercially available to end users and that incorporated earlier versions of Steamworks features prior to such change.

11.4 Steamworks Product Keys. Prior to manufacturing or reproducing (or having manufactured or reproduced) any copies of Applications that use Steamworks for distribution outside of Steam, including any pre-release copies made available as part of a beta program, Company shall request Steamworks Product Keys from Valve for distribution with such copies and Company shall include such Steamworks Product Key(s) with each copy of the Applications in accordance with instructions provided by Valve. Additionally, for any copies of Applications that use Steamworks, Company shall include the Steam Client with those copies in accordance with instructions provided by Valve. Company hereby acknowledges that a Steamworks version of the Application requires a Steamworks Product Key and that Valve uses authentication software such that an end user must have a valid Steamworks Product Key and authenticate such Steamworks Product Key via the Internet to use the Steamworks version of the Application.

11.5 Revenue Share Inapplicable to non-Steam Distributions. For the sake of clarity, the revenue share obligations set forth in Section 6 (Revenue Share) of the Agreement do not apply to distributions of Applications by Company through distribution channels other than Steam.

11.6 Notice to End Users Regarding Steam Account Requirement. In any distribution of a Steam-enabled version of the Application through a distribution channel other than Steam, Company will include a prominent notice to end users that a Steam account is required for use. Valve shall have the right to review and approve any such form of notice prior to distribution, provided that any previously approved form of notice shall not require a new approval merely because the notice is being used in the form approved in connection with translated versions of the same Application.

11.7 Termination of Steamworks Services. If Company elects to use any Steamworks services ("Steamworks Services"), Valve's provision of Steamworks services may be terminated for cause on the same terms as the Agreement as a whole may be terminated for cause. Valve may terminate Steamworks Services without cause, for any particular Application, upon thirty (30) days prior written notice only after the expiration of the Initial Term. Either Party may terminate the Agreement without terminating the Steamworks Services, in which case Valve will continue to provide the Steamworks Services until a Party expressly terminates the Steamworks Services, and the terms of the Agreement shall survive such termination and continue to apply for the purposes of the continuation of the Steamworks Services. Moreover, Valve may terminate the Steamworks Services without terminating the Agreement, in which case such termination will only affect the additional rights and obligations set forth in this Section 11 "it shall not, in and of itself, terminate or otherwise effect the Agreement as a whole."

11.8 Effect of Termination of Steamworks Services and Survival of Certain Rights and Services.

11.8.1 If Company has commercially distributed a Steamworks version of an Application outside of Steam prior to any termination of this the Steamworks Services with respect to that Application, then termination of the Steamworks Services without cause shall not affect Company's rights under **Section 11.2**, which rights shall survive such termination. Valve shall have the right, however, to terminate such license immediately upon notice if any claim that the Steamworks SDK infringes any intellectual property rights of a third party is partially or fully adjudicated against Valve.

11.8.2 For as long as Valve distributes and maintains certain Steamworks features and services for its own games, Valve shall continue to provide network support for such Steamworks features and services in accordance with **Section 11.3** for the version of each Application that was current at the time of termination (the "Then-Current Version"). The licenses set forth in **Sections 3.1** (License for Valve to Use the Applications), **3.2** (Electronic Delivery License) and **3.4** (Trademark and Copyright Licenses for Applications Marketing) of the Agreement shall survive termination for this purpose.

11.8.3 For as long as the Application utilizes Steamworks, Company shall continue to provide support to end users and to Valve as set forth in **Section 5.2** (Company Support to Valve) and **5.3** (Company End User Support), for the Then-Current Version.

11.8.4 In the event Valve terminates Company's license under **Section 11.2**, unless Valve instructs otherwise in writing, Company shall cease the use of, and cease distribution of any Applications containing, any part of the Steamworks SDK, and if requested, shall return or certify destruction of all copies of the Steamworks SDK and any Valve Confidential Information.

12. GOVERNING LAW AND VENUE.

12.1 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Washington as such laws apply to contracts performed within Washington by its residents.

12.2 Disputes. Any dispute arising under, in connection with, or incident to this Agreement or concerning its interpretation will be resolved exclusively in the state or federal courts located in King County, Washington, USA, and the Parties irrevocably consent to the exclusive exercise of jurisdiction by said courts. In such a dispute, legal process may be served upon Valve or Company in the same manner as provided in Section 14.1(i), that is by a copy of legal process sent via a nationally recognized delivery service. Service shall be deemed to have been made upon delivery of process. The Parties agree not to contest any such service of legal process made pursuant to this Section.

13. Confidentiality.

13.1 "Confidential Information" shall mean the terms and conditions of this Agreement and all other non-public information that either Party designates in writing as being confidential, or which, under the circumstances of disclosure ought to be treated as confidential, including without limitation all tangible materials (e.g., written or printed documents and computer disks or tapes) containing such information. Confidential Information may include, without limitation, information relating to released or unreleased products, marketing or promotion of any product, business policies or practices, personnel, customers or suppliers, business and financial information, pricing and sales information, technology, computer programs, unpublished works of original authorship, trade secrets, or information received from third parties (including without limitation a Party's clients, suppliers, or principals) that either Party is obligated to treat as confidential. Sales Data will be Valve Confidential Information, except that Sales Data specific to a Company Application will be Confidential Information of both Parties. Confidential Information shall not include information that: (i) is or becomes generally known or available by publication, commercial use or otherwise through no fault of receiving Party; (ii) is known by receiving Party at the time of disclosure and is not subject to restriction; (iii) is independently developed or learned by receiving Party without the use of any Confidential Information of the disclosing Party; (iv) is lawfully obtained from a third party that has the right, set forth in writing, to make such disclosure; or (v) is made generally available by disclosing Party without restriction on disclosure, or (vi) is aggregate sales and usage data for Company or an Application where Steam sales are combined with sales from other channels.

13.2 The Parties understand and agree that any Confidential Information that may from time to time be made available or become known to either Party is to be treated as confidential, is to be used solely in connection with the performance under this Agreement, and is to be disclosed only to employees and contractors who have a need for such access. Both Parties will protect Confidential Information from unauthorized dissemination and use with the same degree of care that the Parties use to protect their own like information and in no event using less than reasonable care. Moreover, and without limiting the generality of the foregoing, both Parties shall enter into and maintain written confidentiality agreements with its employees and independent contractors sufficient to enable it to comply with all provisions of this Agreement. Subject to each Party's rights as set forth herein, either Party shall return any memoranda or papers containing Confidential Information or other proprietary information belonging to the other Party promptly, upon request.

13.3 Notwithstanding anything herein to the contrary, it shall not be a breach of this provision for either Party to disclose information in accordance with any judicial, administrative, or regulatory order or as necessary to comply with any applicable law or regulation governing regulated businesses or the issuance of securities to the public; provided, however, that prompt notice be given to the non-disclosing Party of the possibility of such disclosure, and that the potentially disclosing Party shall use its best efforts to resist disclosure, including without limitation, and if commercially reasonable to do so, cooperating with the non-disclosing Party in seeking protective orders or other similar relief if available in the applicable forum.

14. GENERAL.

14.1 Notices. Except as otherwise provided herein, all notices delivered in connection with this Agreement must be given via a paper writing. Notices will be deemed given as of (i) the day they are delivered on paper by a nationally recognized express delivery service (such as Federal Express or DHL), addressed, in the case of Valve, as set forth below, and in the case of Company, at the address provided in connection with the Agreement completion process; or (ii) the day they are sent by fax to the fax number set forth below, but only if (A) the receiving fax device immediately generates a message, printed by the sending fax device, that confirms receipt, and (B) receipt of the fax is confirmed by a telephone call between sender and recipient. Notwithstanding the foregoing, the approval by Company of uses of the Company Marks, and of any press release, may be given by e-mail, and Valve shall be entitled to rely on e-mail approval from any employee of Company. Either Party may make changes to its contact information under this Section 14.1 by giving notice to the other Party.

Valve Corporation
10400 NE 4th Street, Suite 1400
Bellevue, WA 98004

Attn: C.O.O.
Phone: 425-889-9642
Fax: 425-467-7188

14.2 Assignment. Neither Party may assign this Agreement or its rights hereunder without the other Party's prior written consent, except that a Party may assign this Agreement to an Affiliate in the regular course of business without other Party's prior written consent, and except that Valve may also partially assign, or sublicense some or all of, its rights under this Agreement to any of its Affiliates. Such assignment shall not relieve the assigning party of its obligations hereunder. Any attempted assignment by either of the Parties of all or part of its rights and/or obligations under this Agreement in contravention of this Section without the other Party's prior written consent shall be void and will constitute a material breach by the assigning Party of this Agreement. Subject to the limitations set forth in this Agreement, this Agreement will inure to the benefit of and be binding upon the Parties, their successors and assigns.

14.3 Language, Interpretive Rules. This Agreement is executed in the English language only. This Agreement has been fully negotiated by the Parties and will be interpreted according to the plain meaning of its terms without any presumption that it should be construed either for or against either Party. The Section headings used in this Agreement are for convenience only and are not to be used in interpreting this Agreement.

14.4 Attorneys' Fees. In any action to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing Party will be entitled to recover its costs, including attorneys' fees.

14.5 Waiver. No waiver of any provision of this Agreement will be effective unless it is in a signed writing, and no such waiver will constitute a waiver of any other provision(s) or of the same provision on another occasion.

14.6 Cumulative Remedies. The rights and remedies under this Agreement are cumulative and are not exclusive of any rights or remedies available at law or in equity or by any other agreement between the Parties.

14.7 No Partnership. This Agreement does not create any joint venture, partnership or formal business entity or organization of any kind.

14.8 Severability. If a court of competent jurisdiction holds any term, covenant or restriction of this Agreement to be illegal, invalid or unenforceable, in whole or in part, the remaining terms, covenants and provisions will remain in full force and effect and will in no way be affected, impaired or invalidated. If any provision in this Agreement is determined to be unenforceable in equity because of its scope, duration, geographical area or other factor, then the court making that determination will have the power to reduce or limit such scope, duration, area or other factor, and such provision will be then enforceable in equity in its reduced or limited form.

14.9 Entire Agreement; Amendments; No Reliance. This Agreement is not an offer by Valve and it is not effective until Valve provides Company with notice of its acceptance. This Agreement, including the Exhibits attached hereto, which are incorporated by this reference, and any Addenda, constitutes the entire agreement between the Parties with respect to the subject matter hereof and merges all prior and contemporaneous communications and proposals, whether electronic, oral or written, between the Parties with respect to such subject matter. Neither Party has relied in entering into this Agreement on any statement, inducement or representation that is not set forth in this Agreement. This Agreement may not be modified except by a written agreement dated subsequent to the date of this Agreement and signed on behalf of Valve and Company by their respective duly authorized representatives, or by an amendment or addendum submitted by Company and accepted by Company and Valve via an acceptance process similar to the process by which this Agreement was accepted.