This Storyboard End User License Agreement below (**"Agreement"**) is an agreement between You and Crank Software Inc. (**"Crank"**) of 1000 Innovation Drive, Suite 100, Kanata, Ontario, Canada K2K 3E7. It governs Your use of the Software (as defined in Section 1.24 ("Software") below), unless You and Crank have executed an alternative Software license agreement (in which case You may ignore the terms of this Agreement). Permission to use the Software is conditional upon Your acceptance of the terms of this Agreement. Nothing else grants You permission to copy, use or modify the Software. These actions are prohibited by law if You do not accept these terms (unless You have an alternative Software license agreement with Crank). Registration or use of the Software may send Crank certain information as described in Section 4.2 (Activation) below, which information is governed by Crank's Privacy Policy (**"Privacy Policy"**, available at https://info.cranksoftware.com/privacy) which forms part of this Agreement.

BY CHOOSING THE **"I ACCEPT THE AGREEMENT"** OPTION IN THE SOFTWARE INS-TALLER, OR BY DOWNLOADING, INSTALLING OR USING THE SOFTWARE, YOU WILL HAVE INDICATED THAT YOU UNDERSTAND AND AGREE TO THIS AGREEMENT, IN-CLUDING CRANK'S PRIVACY POLICY. Do not proceed unless You are able and willing to enter into and comply with the terms of this Agreement. If You have any questions, please contact Crank before You proceed.

Acceptance will bind You to the terms of this Agreement in a legally enforceable contract with Crank. If You are accepting the terms of this Agreement on behalf of a company or other legal entity, You personally represent and warrant that You have the authority to bind that company or other legal entity to the terms of this Agreement, and, in such event, "You" and "Your" will refer to that company or other legal entity. If You do not accept all the terms of this Agreement (and do not have an alternate signed agreement with Crank), then Crank is unwilling to license the Software to You and You must immediately destroy all copies of the Software, License Certificates and License Keys in Your possession or control.

Storyboard End User License Agreement.

For good and valuable consideration, the receipt of which is hereby acknowledged, You and Crank (each a "Party", and together the "Parties") hereby agree as follows:

1. **DEFINITIONS**. In this Agreement:

1.1 **"Affiliate"** means with respect to any entity, any other entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the entity in question, however such entity will be deemed to be an Affiliate only for so long as such control exists;

1.2 **"Authorized Workstation"** means an individual developer's workstation, laptop and/or home computer used to host and execute the Software for the Purpose, provided any Software thereon is used only by that individual and only on one of his/her computers at any one time;

1.3 **"Commercially Released"** means formally released, generally available and fully supported by Crank. "Commercially Released" does not include any: (i) release identified by Crank as an experimental, engineering, alpha, beta or unsupported release, (ii) any Custom Engineering Deliverables or custom Software builds; or (iii) any of the components identified in Subsections (ii), (iv) or (vi) of Section 1.21 (Runtime Components) below;

1.4 **"Confidential Information"** means: (i) any information marked or accompanied by documents clearly and conspicuously designating the information as "confidential" or the equivalent, (ii) any information identified by the disclosing Party ("Discloser") in writing as confidential before, during or promptly after disclosure, (iii) any information contained in or derived from the Software Source Code, (iv) License Keys, and (v) the terms of this Agreement. "Confidential Information" does not include any information that: (a) is already known or becomes known to the receiving Party ("Receiver") without an obligation to maintain the information as confidential, (b) has become publicly available through no wrongful act

of the Receiver or its Representatives, (c) is independently developed without use of any Discloser Confidential Information, or (d) is general technical knowledge, experience, know-how or information in a non-tangible form that has been retained in the unaided memories of Representatives to whom the Confidential Information was disclosed, provided such individuals are unaware the information forms part of Discloser's Confidential Information ("Residual Information"). An individual's memory will be not be considered unaided if they have recorded or intentionally memorized Confidential Information to retain and subsequently use or disclose it;

1.5 **"Custom Engineering Deliverables"** means any Derivative Works of the Software or other custom software deliverable provided to You for the Project by Crank pursuant to a custom engineering engagement;

1.6 **"Derivative Works"** means any work of authorship based upon one or more preexisting works (including any revision, modification, translation, compilation, abridgement, condensation, expansion or any other form in which the preexisting works may be recast, transformed or adapted) that if prepared without authorization of the owner of the preexisting work would constitute infringement of the Intellectual Property rights of that owner;

1.7 **"Developer Documentation"** means the developer documentation, read-me files, release notes and License Guides that are provided by Crank in or for use with the Software;

1.8 **"Error"** means when a Commercially Released version of the Software fails to behave the way the Developer Documentation says it should and the problem is reproducible on a corresponding Reference Platform. "Error" does not include problems resulting from modifications to, or incorrect or improper configuration or use of, any Software, inadequate hardware resources, or any problems that are only reproducible on Target System hardware;

1.9 **"Intellectual Property"** or **"IP"** means any and all proprietary rights recognized in any jurisdiction in the world, including: (i) rights associated with works of authorship and software, including copyrights and moral rights, (ii) trademark, trade name, and trade dress rights and similar rights, (iii) trade secrets and confidential information rights, (iv) patent rights, patents, designs, algorithms and other industrial property rights, (v) all other intellectual and industrial property rights, however designated, and (vi) all registrations, priority rights, initial applications, renewals, extensions, continuations, divisions, reissues, and associated rights relating to any of the foregoing rights;

1.10 **"License Certificate"** means a document delivered to You by Crank to authenticate the Software licenses and Standard Support service subscriptions issued under this Agreement, including - the Software name and release, one or more License Keys and their respective expiry date(s) (if any), the conforming number of Licensed Users, and the start and end dates for corresponding Standard Support subscriptions;

1.11 **"License Guide"** means the Crank Software Third Party License Guide published at https://www.cranksoftware.com/product-licensing for the applicable version of the Software;

1.12 **"License Key"** means a unique license key and/or password issued by Crank and required by You to install or use the Software. Each License Key is for use by a single Licensed User, unless otherwise expressly provided in the corresponding License Certificate;

1.13 **"Licensed User"** means an individual Representative to whom You have assigned a License Key for the Crank Storyboard™ Designer tool suite;

1.14 **"Modify"** means: (i) compiling Sample Source Code (and Derivative Works thereof) into Object Code form, (ii) porting Sample Source Code to the Target System environment, (iii) correcting any errors in the Sample Source Code; and (iv) improving the performance of Sample Source Code, provided that any modifications made pursuant to Subsections (i) to (iv) of this Section 1.14 maintain compatibility with the published API specification for the Software;

1.15 **"Object Code"** means computer-programming code substantially in binary form that is directly executable by a computer after linking or processing, but without compilation or assembly;

1.16 **"Open Source Software"** or **"OSS"** means any software, firmware, data, font, documentation or content (collectively, **"Materials"**) licensed under terms that, as a condition of use, copying, modification and/or redistribution: (i) require such Materials (and/or any Derivative Works thereof) to be disclosed or distributed in Source Code form, licensed for the purpose of making Derivative Works, or distributed as free software, open source software or under a similar licensing and/or distribution model (**"Reciprocal License"**), including any version of the GNU GPL, GNU LGPL or Eclipse license, or (ii) only require that such Materials (and/or any Derivative Works thereof) be accompanied by a copy of, or expressly state they are licensed under, their original license terms (**"Permissive License"**), including any version of the BSD or MIT license. The License Guide identifies the license terms for all OSS delivered with the Software;

1.17 **"Project"** means an undertaking by or for You to develop, maintain and/or support a single Target System;

1.18 **"Purpose"** means: (i) for You, to design, develop, test, maintain and support the graphical user interfaces (**"UI"**) and user experience (**"UX"**) for Target Systems, and (ii) for Crank, to deliver Software-related services and deliverables to You or on Your behalf;

1.19 **"Reference Platform"** means, unless otherwise expressly agreed by Crank in writing: (i) for Runtime Components, the embedded processor, operating system and renderer, chosen from those identified in Developer Documentation as commercially supported by the Runtime Components, that are most represented of the corresponding components used in the Target System, and (ii) for other Software, a workstation meeting the specifications (including host operating system) specified in the Developer Documentation;

1.20 **"Representative"** means any director, officer, employee or individual agent of a Party and, subject to the provisions of Sections 2.9 (Affiliates, Consultants and Subcontractors), any: (i) director, officer, employee or individual agent of an Affiliate, (ii) any individual consultant or subcontractor of a Party or its Affiliate, and (iii) any employee of a consultant or subcontractor of a Party or its Affiliate;

1.21 **"Runtime Components"** means Object Code versions of Software components that are intended (as described in the Developer Documentation) to be integrated into and distributed as an integral part of Target Systems. "Runtime Components" include: (i) required Software libraries and utilities, (ii) Derivative Works of Sample Source Code, (iii) Updates to Runtime Components received pursuant to Your Standard Support subscriptions, (iv) Custom Engineering Deliverables expressly provided to You for distribution and use at no additional charge in Target Systems in association with other Runtime Components, (v) Solutions for Runtime Components provided pursuant to Section 7.1(a) (Software Performance) or Your Standard Support or Priority Support subscriptions, and (vi) any Crank-specific Improvements (as defined in Section 2.12 (Feedback) to Runtime Components. Unless otherwise expressly agreed by Crank in writing, "Runtime Components" do not include any Software identified by Crank as experimental, alpha, beta or trial software;

1.22 **"Sample Source Code"** means Source Code provided by Crank in or for use with the Software to provide implementation examples or to otherwise facilitate or accelerate Your Target System UI development efforts. "Sample Source Code" is not Commercially Released Software and may contain or require use of Third-Party Components;

1.23 **"Subcontractor"** means any individual or entity sub-contracted to provide Target System design, development, testing, manufacturing, maintenance or support services, including any independent contractor or consultant You retain in connection with a Project. "Subcontractor" does not include any individual or entity who purchases Target Systems as an end user or for re-distribution;

1.24 **"Software"** means, for a particular Project: (i) the Crank Storyboard™ Designer tool suite version(s) for which You have received one or more "Crank Software Storyboard Suite License Certificates", which software includes a variety of development tools (such as debuggers, libraries, header files, utilities and a

simulation engine) as well as Developer Documentation, Sample Source Code and Runtime Components; (ii) any optional Storyboard software development kit(s) (or **"SDK(s)"**) for which You have received one or more "Crank Software Storyboard SDK License Certificates", and (iii) any Updates to (i) or (ii). "Software" includes Custom Engineering Deliverables but does not include any Third-Party Components;

1.25 **"Solution"** means an explanation, workaround or patch that addresses an Error;

1.26 **"Source Code"** means computer-programming code in human-readable form not suitable for machine execution (without the additional steps of interpretation or compilation) and includes hypertext-based and scripting code and extensions thereof;

1.27 **"Target System"** means a product designed by or for You that uses an embedded processor, operating system, renderer and copy of the Crank Storyboard Embedded Engine to generate a UI that significantly enhances the function and value of the Runtime Components. Any change (other than normal updates) to the embedded processor, operating system, renderer, or UI display screen size or resolution of a product after its first commercial shipment date constitutes a new Target System, unless otherwise expressly agreed by Crank in writing;

1.28 **"Term"** means: (i) for this Agreement, the period commencing on Effective Date and continuing until termination of this Agreement pursuant to Section 10 (Term and Termination), (ii) for any time-limited license, the period commencing on Effective Date and continuing until the end date of the applicable license term (as indicated in the corresponding License Certificate(s), as specified by Crank at the time of download, or as otherwise expressly provided by Crank in writing), unless earlier renewed in accordance with the terms herein, or unless earlier terminated pursuant to Section 2.3 (Evaluation Licenses), 2.4 (Educational Licenses) or Subsection (i) of this Section 1.28, and (iii) for any Service subscription, the period commencing on the start date and continuing until the end date of the applicable subscription term (as indicated in the corresponding License Certificate(s), or as otherwise expressly provided by Crank in writing), unless earlier renewed in accordance with the terms herein, or unless earlier terminated pursuant to Section 6.4 (Priority Support) or Subsection (i) of this Section 1.28;

1.29 **"Third-Party Component"** means: any components, including software programs, libraries, header files, utilities, plug-ins, codecs, fonts, data, content, API's, specifications or documentation in any form, that: (i) are Open Source Software, (ii) require You as a condition of use, copying, modification and/or distribution of such materials to agree to alternative or supplementary terms, or (iii) are sourced by You from a third party, or for You by a third party. The License Guide identifies the license terms for all Third-Party Components in Subsections (i) and (ii) of this Section 1.29 delivered by Crank with or for Commercially Released versions of the Software;

1.30 **"Updates"** means any Commercially Released versions of the Software that provide error corrections, functional enhancements and/or performance improvements, including any intervening maintenance releases (such as service packs and patches). "Updates" are designated by a change to the minor version number (i.e. n.1 to n.2). They do not include major new software releases (e.g., Storyboard 5 to Storyboard 6) or access to unlicensed products or technologies (e.g., new features that Crank only offers as a separate or extra-cost enhanced royalty bearing Runtime Component, products or technologies formerly offered as separate royalty-bearing Runtime Components but that have been bundled into a single component that has a greater list price than the Runtime Component You want to update, or any technologies or features that require Crank to pay additional third-party fees). "Updates" include any Software component(s) made available to You by Crank in order to deliver a Solution.

Other capitalized terms defined in any part of this Agreement will have their indicated meaning throughout this Agreement.

2. LICENSING.

2.1 <u>License Grant.</u> Subject to the terms of this Agreement, including payment of all applicable license fees, Crank hereby grants to You for the Software identified in (and the number of Licensed Users authorized

by License Keys provided in) License Certificates You have received from Crank (or from one of its authorized distributors) for Software licenses purchased for use under this Agreement, a non-exclusive, non-transferable, worldwide, license for the Term to:

i. use and copy (to the extent incidental to such use, including installation, backup and execution) the Object Code of the Software strictly as required to install the Software on Authorized Workstations and for Licensed Users to use such copies solely for the Purpose;

ii. use, Modify and copy (to the extent incidental to such use and modification, including installation, backup, compilation, linking and execution) Sample Source Code strictly as required to install the Sample Source Code on Authorized Workstations and for Licensed Users to use such copies solely for the Purpose; and

iii. use and copy (to the extent incidental to such use, including installation, backup and execution) the Object Code of the Runtime Components strictly as required to install such Runtime Components: (a) on a reasonable number of Target System development platforms (including Reference Platforms) for Licensed Users to use such copies internally for the Purpose, and (b) on one Target System for each Licensed User for You to use such Target Systems for demonstration, promotion, evaluation or training purposes, provided that such Target Systems are not left with any third parties.

For greater certainty, this Agreement does not provide You with any right to distribute any part of the Software (including any Runtime Components) in or for Target Systems for the intended end-user use by You or any third parties. Any such distribution requires a separate agreement with Crank.

2.2 <u>Time Limited Licenses.</u> If You received any Software under a time-limited license, then all Your license rights for that Software will end when the applicable Term ends. Crank may, at its discretion, include capabilities in the Software to remind You of upcoming Term limits and to prevent You from continuing to use the Software once the Term expires.

2.3 <u>Evaluation Licenses.</u> If You received any Software under an evaluation or beta license (collectively, "Evaluation License"), then, in addition to any Term restrictions, Your license rights in Section 2.1 (License Grant) are strictly limited to use of that Software for determining its suitability for Your intended Target System application, and expressly exclude any authorization to use that Software for any commercial development purposes. Crank reserves the right to end the Term of any Evaluation License at any time upon written notice.

2.4 <u>Educational Licenses.</u> If You received any Software under an **"Educational License"**, then, in addition to any Term restrictions, Your license rights in Section 2.1 (License Grant) are strictly limited to use of that Software for educational, academic, research, instructional, teaching and training purposes, and expressly exclude any authorization to use that Software for any commercial purposes. Crank reserves the right to further limit Educational License rights (including by stating restrictions in applicable License Certificates or License Guides, or at the time of Software download) and to end the Term of any Educational License at any time upon written notice.

2.5 <u>Reservations / Restrictions.</u> Except as specifically licensed in accordance with Section 2.1 (License Grant), You acquire no right, title or interest in or to any Software (including any Intellectual Property therein) or any other Crank Confidential Information. You agree not to do any of the following, and in no event will the license rights granted in Section 2.1 be construed as granting You (expressly or by implication, estoppel or otherwise) any right or license to do any of the following:

i. use any Crank technology other than the Software, or any Intellectual Property owned or licensed by Crank that is not embodied in the Software, or any Intellectual Property owned or licensed by Crank in relation to the use of technology other than the Software;

ii. translate, adapt, arrange or otherwise alter or modify the Object Code of the Software except as allowed by local legislation implementing Article 6 of the EC Directive on the legal protection of computer

programs (91/250/EEC) and then only to the extent necessary to achieve interoperability of an independently created program with other programs;

iii. reverse compile the Object Code of the Software, or otherwise or otherwise attempt or assist others to reverse engineer any Source Code of the Software for any purpose (including error correction);

iv. use the Software or any Crank Confidential Information to determining if any features, functions or processes provided or disclosed are covered by any patents or patent applications owned by You, to develop technology or products which avoid any of Crank's Intellectual Property licensed hereunder, or as a reference for modifying existing patents or patent applications or creating any continuation, continuation in part, or extension of existing patents or patent applications;

v. use the Software or any Crank Confidential Information to generate data for publication or disclosure to third parties, which compares the performance or functionality of the Software (including the Runtime Components) with any other products created by You or a third party, without obtaining Crank's prior written consent;

vi. use the Software for any High-Risk Applications (as defined in Section 2.8 (High Risk));

vii. distribute to any third parties any Software in or for Target Systems, except as and for the purposes expressly permitted in Section 2.9 (Affiliates, Consultants and Subcontractors);

vi-
ii. directly or indirectly, export, import or transmit the Software to any country in contravention of the laws of that country or the laws of Canada or the United States; or

ix. use unauthorized License Keys or otherwise attempt to circumvent any License Key activated, or evaluation period or subscription term expiry, mechanisms.

2.6 <u>Ownership.</u> Crank and its licensors retain all right, title and interest in and to the Software, including all Intellectual Property therein. All copies will be considered Software for the purpose of this Agreement and will remain the property of Crank and its licensors. Subject to any underlying rights in the Software, and subject to any Feedback provided under Section 2.12 (Feedback), You retain all right, title and interest in and to any Derivative Works, application software files, and data that You develop or generate using the Software for Your Target System UI or UX pursuant to this Agreement.

2.7 <u>License Keys.</u> Each Licensed User requires a dedicated Software License Key, but SDK License Keys can be shared by all Licensed Users within a single Project. Software License Keys can be re-assigned as developer assignments and Project demands change over time, provided that any License Key is not re-assigned more than once every thirty (30) days. SDK License Keys are Project-specific, so they cannot be re-assigned.

2.8 <u>High Risk.</u> Unless Crank has provided its express written consent, the Software may not be, and You will ensure that it is not, used in any application in which the failure of the Software could foreseeably lead to death, personal injury or severe physical or property damage (collectively, **"High-Risk Applications"**), including any use in nuclear power monitoring or control systems, mass transit monitoring or control systems, aircraft navigation, aircraft communication or air traffic monitoring or control systems, weapon systems, or in direct life support equipment. Crank expressly disclaims any express or implied warranty or condition of fitness of the Software for any High-Risk Applications.

2.9 <u>Affiliates, Consultants and Subcontractors.</u> You may sublicense Your license rights under Subsections (i) and (ii) of Section 2.1 (License Grant), and disclose Crank Confidential Information under Section 3 (Confidentiality), to Affiliates and to Subcontractors of You or Your Affiliates (collectively, **"Sublicensees"**) strictly for the purpose of providing Project-related services on Your behalf as and for so long as they remain Project collaborators, provided that You will be and remain responsible for ensuring compliance with the terms of this Agreement by all Sublicensees and for any breach of the terms of this Agreement by any of them. You will allocate the required number of Software License Keys for Sublicensees'

developers for the duration of their Project collaboration and will ensure any and all copies of the sublicensed Software and Crank Confidential Information are returned to You or destroyed when their Project collaboration ends. You acknowledge and agree that any breach of the terms of this Agreement by any Sublicensee will be treated as a breach of this Agreement by You, which will give Crank the right to terminate this Agreement in accordance with the provisions of Section 10 (Term and Termination).

2.10 Intellectual Property Notices. You will reproduce, and not remove or obscure, any notice incorporated in on or the Software by Crank to affirm Crank's Intellectual Property therein and/or to acknowledge the Intellectual Property of any third party. You will also incorporate corresponding notices on all copies of the Software and any Derivatives Works thereof.

2.11 Third-Party Components. Third-Party Components (including Open Source Software) may be embedded in or bundled with the Software, as set forth in the applicable License Guide. You acknowledge and agree that: (i) use of OSS is expressly subject to the terms of any applicable Open Source Software license(s), (ii) this Agreement does not limit Your rights under, or grant You rights that supersede, the terms of such Open Source Software license(s), (iii) Crank will have no liability under the terms of this Agreement in respect of any Third-Party Components, including under the provisions of Sections 7.1 (Limited Warranties) and 8.1 (Infringement Indemnity). You are entitled to receive a copy of, distribute and/or modify any OSS in accordance with the applicable OSS license terms. If the Open Source Software license terms require the distribution of OSS Source Code, then Crank will provide the required Source Code upon receipt of a written request, if received within three (3) years from the date of OSS delivery and against payment of Crank's shipping and handling charges.

2.12 Feedback. At Your option, Crank would like to receive any feedback You may have about the Software (i.e., regarding its utility, reliability, performance, user acceptance, and any features or functionality that You would like to see in future versions). Crank would also like to hear about any Software-related problems You have encountered. In order to incorporate any suggested improvements, Crank requires and You hereby agree to assign and waive all right, title and interest (if any) in and to all Crank-specific Improvements You may provide, including any associated Intellectual Property and moral rights, to and on behalf of Crank. In this Section 2.12 "Crank-specific Improvements" means any work-arounds, error corrections, enhancements or other suggestions or improvements to the Software that You provide to Crank.

3. CONFIDENTIALITY.

3.1 Disclosure and Use. Except as expressly provided below, a Receiver will use the Discloser's Confidential Information solely for the Purpose, will maintain the Discloser's Confidential Information in confidence and will apply security measures no less stringent than those the Receiver applies to its own like information, but not less than a reasonable degree of care, to prevent unauthorized use and disclosure of the Discloser's Confidential Information. The Receiver will ensure any disclosure of the Discloser's Confidential Information to Receiver's Representatives is limited on a "needs-to-know" basis and is made under non-disclosure terms at least equivalent to those in this Section 3.1. Receiver may disclose Discloser's Confidential Information: (i) to third parties to the extent required pursuant to a court order or as otherwise required by law, provided that Receiver promptly notifies Discloser upon learning of such requirement, (ii) to nominated third parties under written authority from Discloser, and (iii) to Receiver's legal counsel, accountants or professional advisors.

4. DELIVERY AND ACTIVATION.

4.1 Delivery. Crank or its authorized distributor will deliver (or make available for download) the Software, and corresponding License Certificates, to (or by) You promptly after receipt of Your order under this Agreement.

4.2 Activation. The Software may require activation in order to order for Licensed Users to complete Software installation on their Authorized Workstations, in which case certain machine-specific information (**"Activation Information"**) may be sent to Crank at the time of activation and periodically thereafter.

Activation Information may include a Software identification number, MAC address, UUID, IP address, identification numbers set by hardware manufacturers and/or identification numbers related to the host operating system. During some instances of activation, Licensed Users may be asked for certain personal information such as their name, email address and company information ("Licensed User Information"). Other than Licensed User Information, Crank does not collect any personally identifiable information during activation. Crank will only use Licensed User Information in compliance with its Privacy Policy and for the purpose of performing its obligations and exercising its rights under this Agreement. Crank may collect Activation Information at any time and may use Activation Information and Licensed User Information for the purposes of verifying compliance with the terms of this Agreement.

4.3 <u>Compliance.</u> Crank may, or may have an independent third party, designated by Crank, audit and inspect You at any time during the Term of this Agreement, and for a period of three years thereafter, to assess whether all Software has been and is being handled, stored, and disposed of in accordance with the terms of this Agreement. Crank will provide You with at least five (5) days' notice before commencing such an audit, and You agree to support, and not in any way hinder or delay, the execution of a properly noticed audit. If the Software is found to not have been handled, stored or disposed of, as required, You will be liable for the cost of the audit which must be paid to Crank no later than thirty (30) days after the completion of the audit. Crank may also require that You provide Crank with a written report to verify Your compliance with the terms of this Agreement. The report will be signed by an individual with the authority to bind You to this Agreement, who will confirm the accuracy of the report. The report will include the serial number of each Software product You have licensed, the MAC address or other unique identifier of each computer on which each copy of the Software is installed, and confirmation that each Software user has the Software installed only on his/her Authorized Workstations.

5. FEES.

5.1 <u>Fees.</u> You agree to pay to Crank (or its authorized distributor in the case of indirect sales) in accordance with the terms of this Section 5 the Software license and/or support subscription (or renewal) fees (**"Fees"**) set out in invoices issued accurately in response to Your orders.

5.2 <u>Taxes.</u> All sums stated under this Agreement are in United States dollars and do not include taxes. All applicable taxes will be payable by You in accordance with relevant legislation in force at the relevant tax point. Any income or other tax which You are required by law to pay or withhold on behalf of Crank with respect to any fees payable under this Agreement may be deducted from the amount of such fees otherwise due, provided, however, that in regard to any such deduction: (i) You will give to Crank such assistance as may be necessary to enable or assist Crank to claim exemption therefrom, or credit therefor, and will upon request furnish to Crank such certificates and other evidence of deduction and payment thereof as Crank may properly require, and (ii) You will in each case pay an additional amount to Crank such that the net amount actually received by Crank will, after all such withholdings, equal the full amount of the sum then due. Any amounts recovered (or credits obtained and successfully applied) by Crank under Subsection (i) of this Section 5.2 will be credited to the next payment of Fees to be made by You under this Agreement.

5.3 <u>Payment.</u> You agree to pay to Crank (or its authorized distributor in the case of indirect sales) all properly invoiced Fees under this Agreement on or before the thirtieth (30th) day after the invoice date ("Due Date"). Invoices will be sent for payment to the mailing and/or email addresses set out in Your corresponding orders. If any properly invoiced Fee is not paid by the Due Date, then without prejudice to any other rights and remedies, Crank (or its authorized distributor in the case of indirect sales) reserves the right to charge interest on the outstanding amount from the from the Due Date until the date of payment at a rate equal to the lesser of twelve percent (12%) per year and the maximum amount permitted by law.

6. SERVICES.

6.1 <u>Support Entitlements.</u> Your right to obtain maintenance and support services for the Software is subject to Your purchase (and ongoing renewal) of Standard Support and Priority Support service subscriptions (collectively **"Services"**), as provided below.

6.2 <u>Standard Support.</u> **"Standard Support"** is a subscription-based maintenance and support offering from Crank that entitles Your subscribing Licensed Users to the technical support service and Update entitlements described in Section 6.3 (Standard Support Entitlements) for a period of one year. Standard Support subscriptions are specific to the Licensed Users, Software products and time period for which subscription fees have been paid (respectively, **"Subscribing Users", "Covered Software" and "Subscription Period"**). Standard Support subscription fees (**"Standard Support Fees"**) are specified for the first subscription-year on corresponding Software License Certificates issued to You by Crank (or its authorized distributor in the case of indirect sales), and subsequently on corresponding subscription-renewal invoices. Subscription Periods end on the anniversary of the first day of the month following the date of the original corresponding Standard Support subscription invoice, unless You first renew the subscription by delivering a purchase order to Crank for the applicable Standard Support Fee(s) for the next Subscription Period at least thirty (30) days prior to the expiry date. Subscription Periods may not be renewed once expired and may not be initiated if declined at time of applicable Software license purchase. Crank may cease to provide Standard Support for any Software upon twelve (12) months prior notice.

6.3 <u>Standard Support Entitlements.</u> Subscribing Users are eligible for the following Standard Support maintenance and support services and Update entitlements for Covered Software throughout the applicable Subscription Period.

i. Technical Support. Telephone, email and web-based assistance: (a) with Software installation and configuration issues, and (b) to understand the functionality and behavior of specific Software parts;

ii. Error Support. Telephone, email and web-based assistance: (a) to help isolate problems encountered to verify whether (or not) they are Errors; (b) to provide You with Solutions for known Errors; and (c) to submit problem reports for confirmed Errors that do not have current Solutions. Crank reserves the right to publish information (including work-arounds and fixes) relating to any issues You report for the benefit of the Storyboard development community, provided that Crank does not publish any details that would identify You or Your customers; and

iii. Updates. Access to Updates for use under the terms of this Agreement. Updates: (a) may only be used if they are first made available by Crank before You purchased the applicable License Certificate or during the Subscribing User's Standard Support subscription for the Covered Software, (b) may not be shared with any other individual, unless they too are a Subscribing User who is entitled to use them, and (c) do not include any Crank products You have not licensed commercially.

6.4 <u>Priority Support.</u> **"Priority Support"** is a pre-paid support service offering from Crank that entitles You to tailor Your own Software support plan, within reason. You can initiate and replenish Your Priority Support subscription by purchasing a block of Priority Support service hour credits (**"Priority Support Hours"**) in advance. Crank then deploys its Priority Support technical support and R&D resources, as required in Crank's reasonable discretion, against those person-hour credits to deliver the agreed upon Software-related support services. Priority Support Hours are available in fixed blocks of time for use over a maximum period of twelve (12) months from the date of Crank's corresponding invoice (**"Priority Support Subscription Term"**). If Your order does not specify a schedule for use of Priority Support Hours, then Crank will prorate them into equal weekly allotments over the Priority Support Subscription Term and will use reasonable efforts to accommodate variance in Your actual demand over the subscription period. Any unused Priority Support Hours expire at the end of the scheduled Priority Support Subscription Term. Priority Support Subscription Terms end immediately once all Priority Support Hours have been used up (if not replenished). Crank will notify You if Your Priority Support Hours are at risk of being exhausted or expiring. Priority Support Hours are specific to a single Project and require all active Authorized Users to be Standard Support Subscribing Users for the entire Priority Support Subscription Term.

6.5 Priority Support Entitlements. Subject to reasonable advance notice to Crank, Priority Support allows You to use Your Priority Support Hours to:

i. Pursue the reproduction, isolation and correction of Errors based on Your priorities and schedule (including monitoring progress and making adjustments as Your Project proceeds);

ii. Extend Crank support to Crank-supplied custom engineering deliverables;

iii. Host Your Target System hardware at Crank to accelerate the investigation and resolution of Target System platform integration issues;

iv. Provide custom builds of Runtime Components;

v. Provide, in exceptional cases (as determined by Crank in its sole discretion, e.g., if Crank has been unable to resolve a critical Error in field-deployed Target Systems remotely), Priority Support at Your premises or host members of Your Project Team at Crank's offices, in each case subject to Your agreement to pay all reasonable travel, accommodation and living expenses thereby incurred;

vi. Supplement Runtime Component and Solution testing processes; and

vii. Extend the life of Software version support.

If as part of Your Priority Support Crank Modifies any Sample Source Code, or prepares any Derivative Works of any Software or any other custom software deliverables, then subject to any pre-existing underlying rights, Crank shall own all right, title and interest in and to all such deliverables, including all Intellectual Property therein.

6.6 <u>No Consulting.</u> Standard Support and Priority Support services provided under this Agreement do not include the provision by Crank of any information relating to the design of products incorporating the Runtime Components. Consulting services may be available from Crank under the terms of a separate written agreement. Services supplied by Crank may not be used either: (i) as a substitute for training, or (ii) as additional engineering resource for Your Project.

6.7 <u>Hours and Location.</u> All Services will be provided weekdays (excluding Saturday, Sunday and statutory holidays in the Province of Ontario) from Crank's head office in Kanata Ontario during Crank's regular office hours in the Eastern time zone.

6.8 <u>Software Version Support.</u> Crank will provide Services for the most recent Commercially Released version of the relevant Software and for the previous Commercially Released version that it replaced. Crank is not obligated to provide Services for any older or modified versions of the Software, or for other related software created by or for You. In such cases, Crank may, in its sole discretion, be prepared to extend services to You as part of a Priority Support plan.

7. WARRANTIES.

7.1 <u>Limited Warranties.</u>

a. Software Performance. For a period of ninety (90) days from Your first purchase of a Software license for Your Project, Crank warrants to You that the Software as delivered by Crank will perform substantially in accordance with the Developer Documentation. Crank's total liability and Your exclusive remedy for any breach of the warranty provided in this Subsection 7.1(a) will be for Crank to use commercially reasonable efforts to: (i) promptly correct any Errors and deliver the corrected Software to You; or (ii) replace the defective Software. THE FOREGOING STATES THE ENTIRE LIABILITY OF CRANK WITH RESPECT TO BREACH OF THE WARRANTY PROVIDED IN THIS SUBSECTION 7.1(a).

b. Services. Crank warrants to You that it will perform the Services: (i) using personnel of required skill, experience and qualifications, (ii) in accordance with generally recognized industry standards for similar Services, and (iii) without infringing any third party copyright, misappropriating any third party trade secrets, or knowingly infringing any third party patent rights. Crank's total liability and Your exclusive remedy for any breach of the warranty provided in this Section 7.1(b) will be for Crank to

use commercially reasonable efforts to promptly repeat the Services to correct any deficiencies. THE FOREGOING STATES THE ENTIRE LIABILITY OF CRANK WITH RESPECT TO BREACH OF THE WARRANTY PROVIDED IN THIS SUBSECTION 7.1(b).

c. Non-Infringement. Crank warrants to You that to Crank's knowledge as of the Effective Date: (i) the Software does not infringe any third-party copyright or misappropriate any third-party confidential information; and (ii) there are no pending claims or actions commenced or threatened against Crank for infringement by the Software of any third-party Intellectual Property. YOUR EXCLUSIVE REMEDY FOR ANY BREACH OF THE WARRANTIES PROVIDED IN THIS SUBSECTION 7.2(c) WILL BE PROVIDED UNDER THE INDEMNIFICATION IN SECTION 8.1 (INFRINGEMENT INDEMNITY).

7.2 <u>WARRANTY DISCLAIMER.</u> EXCEPT AS EXPRESSLY PROVIDED IN SECTION 7.1 (LIMITED WARRANTIES), THE SOFTWARE AND SERVICES ARE PROVIDED "AS IS" AND WITHOUT REPRESENTATION, WARRANTY, UPGRADES, OR SUPPORT OF ANY KIND. CRANK AND CRANK'S AFFILIATES, LICENSOR(S) AND SUPPLIER(S) (COLLECTIVELY REFERRED TO AS "CRANK" FOR THE PURPOSES OF THIS SECTION 7 (WARRANTIES) AND SECTION 9 (LIMITATION OF LIABILITY)) EXPRESSLY DISCLAIM ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, AND OF ACCURACY. CRANK DOES NOT WARRANT THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS, THAT ITS OPERATION WILL BE UNINTERRUPTED OR ERROR-FREE, THAT SOFTWARE DEFECTS WILL BE CORRECTED, OR THAT THE SOFTWARE WILL BE COMPATIBLE WITH FUTURE CRANK PRODUCTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CRANK OR A CRANK REPRESENTATIVE WILL CREATE A REPRESENTATION, WARRANTY OR CONDITION UNDER THIS AGREEMENT.

8. INDEMNITY.

8.1 <u>Infringement Indemnity.</u> Except as provided under Section 8.2 (Limitations), in the event of a suit against You based upon a claim that the Software delivered by Crank to You, when used in accordance with the provisions of this Agreement, infringes any third-party Intellectual Property, Crank agrees, subject to the limitations of Section 9 (Limitation of Liability), to defend You, at Crank's expense, and to pay, indemnity and hold You harmless from any costs and damages finally awarded in any such suit or agreed to in any settlement, provided that: (i) Crank is promptly notified by You, in writing, of any threats, claims and proceedings related thereto, (ii) Crank has sole control of the defense and any settlement thereof, (iii) You do not make any admission of liability nor settle or otherwise compromise any such claim without Crank's prior written consent, (iv) You furnish to Crank, upon request, any information available to You relating to the defense of such claim, (v) You provide reasonable assistance to Crank in the defense of such claim, and (vi) You cease use of the Software which is the subject of the infringement claim upon receipt from Crank of any non-infringing replacement for such Software. THE FOREGOING STATES THE ENTIRE LIABILITY OF CRANK WITH RESPECT TO INFRINGEMENT BY THE SOFTWARE OF ANY THIRD-PARTY INTELLECTUAL PROPERTY.

8.2 <u>Limitations.</u> Crank will have no liability under Section 8.1 (Infringement Indemnity) in respect of: (i) any infringement arising from: (a) the combination of the Software with other products not supplied by Crank if such infringement would not have occurred but for such combination, or (b) any modification of the Software by or for You if such infringement would not have occurred but for such modification; (ii) any suit brought by a third party against You based upon a claim that any of the Software delivered by Crank to You under this Agreement infringes a patent owned by such third party where such claim has been made by such third party in response to an initial claim by You that such third party infringes any patent owned or controlled by You; or (iii) in respect of any suit brought by a third party against You based upon a claim that any of the Software delivered by Crank to You under this Agreement infringes a patent owned by such third party where such claim is based on the implementation of a Standard. In this Section 8.2, **"Standard"** means any industry standard, including any standards of ITU, IEEE, ETSI, ISO, MPEG,

CSS, DVD, JPEG, DivX, Dolby, AVC/H.264, ATM Forum, Frame Relay Forum, SMPTE, ATSE, GSM, IETF, OpenGL, Posix, OpenVG or DirectFB.

8.3 <u>Mitigation.</u> If either a third party alleges, or Crank has any concerns, that any Software infringes or may infringe the Intellectual Property of a third party, then without any admission of liability, Crank at its option and expense may develop an Update to the relevant Software which in Crank's opinion avoids such alleged infringement and upon receipt of such Update from Crank, You will in respect of any new Target Systems that have not been shipped or any shipped Target Systems that may be updated, immediately cease use of the Software which the Update replaces. Crank will only be liable under Section 8.1 (Infringement Indemnity) for any damages awarded by a court, for infringement by the Software of the Intellectual Property of a third party, up to the date upon which such court issues its judgment. Crank will have no continuing liability under Section 8.1 for any loss suffered by You in respect of the same infringement after the date of such judgment.

<u>9. LIMITATION OF LIABILITY.</u>

9.1 EXCEPT TO THE EXTENT SUCH A LIMITATION IS PROHIBITED BY LAW, IN NO EVENT WILL CRANK BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREE-MENT OR YOUR USE OR INABILITY TO USE THE SOFTWARE WHETHER UNDER A THEO-RY OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCTS LIABILITY, OR OTHERWISE, EVEN IF CRANK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAM-AGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. IN NO EVENT WILL CRANK'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES AND CLAIMS UNDER OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT YOU HAVE PAID TO CRANK UNDER THIS AGREEMENT.

Nothing in this Agreement will limit or exclude Crank's liability for death or personal injury caused by its negligence or for fraudulent misrepresentation or for any other liability which by law cannot be excluded.

10. TERM AND TERMINATION.

10.1 <u>Term.</u> This Agreement will commence on the Effective Date and will continue in force for each Software license and Service subscription purchased for the applicable Term unless earlier terminated in accordance with the provisions of Section 10.2 (Termination by Either Party).

10.2 <u>Termination by Either Party.</u> Without prejudice to any other right or remedy which may be available to it, either Party will be entitled to immediately terminate this Agreement by giving written notice to the other, if the other Party: (i) has committed a material breach of any of its obligations under this Agreement which is not capable of remedy, (ii) has committed a material breach of any of its obligations under this Agreement which is capable of remedy but which has not been remedied within a period of thirty (30) days following receipt of written notice to do so, (iii) any circumstances arise which would entitle the court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding-up petition or make a winding-up order, (iv) makes any voluntary arrangement with its creditors for the general settlement of its debts or becomes subject to an administration order, or (v) has an order made against it, or passes a resolution, for its winding-up (except for the purposes of amalgamation or reconstruction) or has a receiver or similar officer appointed over all or substantially all of its property or assets.

10.3 <u>Effect of Termination or Expiration.</u> Upon expiration or termination of this Agreement by either Party in accordance with Section 10.2 (Termination by Either Party), You will immediately discontinue all use of any and all Software, Crank Confidential Information and any products or materials embodying such technology or information. Recipient will, at Discloser's option, either destroy or return to Discloser any Discloser Confidential Information, including in any copies thereof in its possession (which in Your case includes any Software or Derivative Works thereof in Your possession). Within thirty (30) days of Discloser's written request after termination of this Agreement, Recipient will furnish to Discloser a

certificate signed by a duly authorized representative of Recipient that to the best of his or her knowledge, information and belief, after due enquiry, Recipient has complied with provisions of this Section 10.3. Termination is without prejudice to any right or remedy that may have accrued or be accruing to either Party prior to termination. Termination will not relieve You of Your obligation to pay Crank any and all Fees or other amounts due under this Agreement at any time or for any period. Any pre-payment of license or subscription fees is non-refundable.

10.4 <u>Surviving Provisions.</u> The provisions of this Agreement that are expressed or by their sense and context are intended to survive the termination of this Agreement will survive, including Sections 1 (Definitions), 2.5 (Reservations/Restrictions), 2.6 (Ownership), 2.9 (Affiliates, Consultants and Subcontractors - to the extent that any obligations under this Section remain outstanding), 2.12 (Feedback), 3 (Confidentiality), 4.3 (Compliance), 5 (Fees - to the extent that any rights and obligations under this Section remain outstanding), 7.2 (Warranty Disclaimer), 8 (Indemnities), 9 (Limitation of Liability), 10 (Term and Termination) and 11 (General) will survive termination.

11. GENERAL.

11.1 <u>Assignment.</u> Neither Party will assign or otherwise transfer this Agreement or any of its rights and obligations hereunder whether in whole or in part without the prior written consent of the other Party, which will not be unreasonably withheld. An assignment will be deemed to include, without limitation: (i) any transaction or series of transactions whereby a third party acquires, directly or indirectly, the power to control the management and policies of the Party, whether through the acquisition of voting securities, by contract or otherwise: or (ii) the sale of more than fifty percent (50%) of the Party's assets whether in a single transaction or series of transactions. A mere change in a Party's organizational structure (such as reincorporation in a different jurisdiction or a change in legal form) not accompanied by a sale or other transfer of securities or assets, merger, reorganization, business combination or other similar transaction involving a third party shall not be deemed a prohibited assignment or transfer under this Agreement.

11.2 <u>Force Majeure.</u> Neither Party will be liable for any failure or delay in its performance under this Agreement due to causes, including, but not limited to, acts of God, acts of civil or military authority, fires, epidemics, floods, earthquakes, riots, wars, sabotage, third-party industrial disputes and governments actions, which are beyond its reasonable control: provided that the delayed Party: (i) gives the other Party written notice of such cause promptly, and in any event within fourteen (14) days of discovery thereof: and (ii) uses its reasonable efforts to correct such failure or delay in its performance. The delayed Party's time for performance or cure under this Section 11.2 will be extended for a period equal to the duration of the cause.

11.3 <u>Independent Contractors.</u> The Parties are independent contractors, and nothing in this Agreement creates an employer-employee relationship, a partnership, joint venture, agency, employment or other relationship between the Parties. No Party will represent itself to be an employee, representative or agent of another Party. No Party has authority to assume or create obligations of any kind on the other Party's behalf.

11.4 <u>Modification; Waiver.</u> This Agreement may not be modified except by a written agreement dated after the Effective Date and signed by the Party against which it is to be enforced. A waiver of one breach under this Agreement is not a waiver of any other breach. No waiver will be effective unless signed by the waiving Party.

11.5 <u>Enforceability.</u> The provisions contained in each Section and Subsection of this Agreement will be enforceable independently of each of the others and if a provision of this Agreement is, or becomes, illegal, invalid or deemed unenforceable by any court or administrative body of competent jurisdiction it will not affect the legality, validity or enforceability of any other provisions of this Agreement. If any of these provisions is so held to be illegal, invalid or unenforceable but would be legal, valid or enforceable if some part of the provision were deleted, the provision in question will apply with such modification as may be necessary to make it legal, valid or enforceable.

11.6 <u>Entire Agreement; Counterparts.</u> This Agreement, including the Privacy Policy, is the entire agreement between the Parties regarding the subject matter hereof. It supersedes all prior and contemporaneous agreements and communications about the subject matter. Also, other terms on any purchase order (other than Software licenses or Service subscriptions ordered), any response to it (other than invoiced Fees), or any other document will have no effect.

11.7 <u>Export.</u> You will not directly or indirectly export, re-export, transmit, or cause to be exported, re-exported or transmitted, any Software to any country, individual, corporation, organization, or entity to which such export, re-export, or transmission is restricted or prohibited, including any country, individual, corporation, organization, or entity under sanctions or embargoes administered by the US Departments of State, Treasury or Commerce, Global Affairs Canada, the European Union, or any other applicable government authority. Supplier will not use Software or knowingly export, re-export, or transmit any Software to any party who may use the Software in relation to nuclear, biological or chemical weapons or missile systems capable of delivering same or the development of any weapons of mass destruction. You are responsible for obtaining any license required to export, re-export, import, or transmit Software under applicable export/import controls laws and regulations.

11.8 <u>US Government.</u> The Software provided under this Agreement consists solely of commercial items. You are responsible for ensuring that any Software provided to the US Government in accordance with the terms of this Agreement is provided with the rights and restrictions described elsewhere herein.

11.9 <u>No Third-Party Beneficiaries.</u> Except as expressly stated in this Agreement, nothing in this Agreement will confer on any third party the right to enforce any provision of this Agreement.

11.10 <u>Language; Interpretation; Currency.</u> This Agreement is executed in English only. Any translation of this Agreement into another language will be for reference only and without legal effect. The Parties have fully negotiated this Agreement, and it 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. Unless otherwise expressly stated, when used in this Agreement "include," "includes," and "including" are not exclusive or limiting; "Section" and "Subsection" refers to this Agreement's provisions; "days" refers to consecutive calendar days including Saturdays, Sundays and holidays; "dollars" and the symbol "$" refer to United States dollars; and "Schedule" refers to the Schedules attached to this Agreement (if any). Section headings in this Agreement are for ease of reference only.

11.11 <u>Notice.</u> Unless otherwise agreed to by the Parties, all notices required under this Agreement [(except those relating to*)] will be deemed effective when received and made in writing by either: (i) registered mail, (ii) internationally recognized courier, or (iii) certified mail, return receipt requested, to the addresses identified in a purchase order or invoice issued under this Agreement.

11.12 <u>Applicable Law.</u> The validity, construction and performance of this Agreement will be governed by the laws of the Province of Ontario, without regard to conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

11.13 <u>Account Reference.</u> The Parties each agree to allow the other Party to display its name (and, if applicable, its logo) as a customer/supplier in the Party's marketing/sales collateral and advertising.