

# **LICENSE AGREEMENT**

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In consideration of the terms and conditions and mutual obligations contained in this Agreement, the parties agree as follows:

### **SECTION 1. DEFINITIONS**

For the purposes of this Agreement, the following definitions shall apply to the defined terms used herein.

1.1 “Derivative Code” shall mean software code derived from, or including, all of or a portion of SunBurn.

1.2 “Edition” shall mean the applicable SunBurn edition, with all associated media and supporting documentation, such as, for example, the Framework edition, the Professional edition, the Community edition, or the Studio edition. Comparatively, SunBurn Editions have different licensing restrictions, as described herein, and may have different features or functionality.

1.3 “Error(s)” shall mean a substantial, reproducible deviation of the performance of SunBurn software from the applicable documentation. Errors do not include defects or failures in any hardware, or in any third party software not provided by Synapse Gaming, failures due to operator error or misuse, failures arising from enhancements or modification of SunBurn made by Licensee or a third party, or problems arising from Licensee’s failure to comply with Synapse Gaming’s written instructions or documentation.

1.4 “Game” shall mean a video game product that is created by Licensee and licensed, published, released, distributed, and/or transmitted to a third party user by or

on behalf of Licensee, including without limitation, full games, partial games, demos, and trials, but excluding engine, world creation, and development components (collectively, "Engine Software"). "Game" includes both Entertainment Games and Educational Games.

- (a) "Entertainment Game" means a Game created and intended solely for the purpose of entertainment.
- (b) "Educational Game" means a Game created, intended, or used in any way for educational, learning, or training purposes.

1.5 A "Non-Redistributable Portion" of SunBurn is any portion of SunBurn that is not a Redistributable Portion. Non-Redistributable Portions of SunBurn include without limitation (i) SunBurn development executable code, editors, tools, content processors, and templates, (ii) Derivative Code, (iii) executable code that is not part of a Game or Simulation Software, (iv) SunBurn documentation, and (v) starter source code, example source code, and source artwork originally provided to Licensee by Synapse Gaming.

1.6 "Permitted User" shall mean an employee, agent, or contractor of Licensee permitted to access and use the Licensed Version(s) of SunBurn Edition(s) licensed by Licensee hereunder as described for each Edition in Section 2.3 below. If the Licensee is a natural person, the Licensee may be a Permitted User.

1.7 A "Redistributable Portion" of SunBurn consists ONLY of the redistributable version of the SunBurn dll (located in the 'Redist' directory of the SunBurn installation location), and compiled versions (in XNB file format) of SunBurn example artwork.

1.8 "Licensed Version" shall mean the major version release of the applicable Edition(s) of SunBurn for which Licensee has paid License Fees per an applicable order accepted by Synapse Gaming (e.g., v.1.\_\_, v.2.\_\_, v.3.\_\_).

1.9 "Reverse Engineering" shall mean: (i) the disassembly, decompilation, decryption, extraction, simulation, debugging, or code tracing of microcode, and (ii) the disassembly, decompilation, decryption, extraction, simulation, debugging, or code tracing of object code or executable code.

1.10 "Simulation Software" shall mean simulation or visualization software developed by Licensee, including viewing and rendering components (collectively, "Viewer Software"), but excluding engine, world creation, and development components (collectively, "Engine Software").

1.11 "SunBurn™ Software" and "SunBurn" shall mean Synapse Gaming's SunBurn™ software, all associated media, including the downloadable object code, source code, art assets, and supporting documentation, and all modifications, enhancements, and derivative works made to the same by Synapse Gaming. Unless

otherwise stated, SunBurn shall be interpreted to include any Edition or all Editions, as applicable.

## **SECTION 2. LICENSE GRANT AND RESTRICTIONS**

### **2.1 License Grant**

Subject to the terms of this Agreement, and unless terminated according to the terms herein, Synapse Gaming grants to Licensee, and Licensee accepts, a limited, nonexclusive, non-transferable (except as otherwise stated herein) license to use the Licensed Version of each Edition of SunBurn, up to the number of copies of each Licensed Version of each Edition for which Licensee has paid License Fees, to create Games and/or Simulation Software, subject to the specific restrictions for each Edition described in Section 2.3 below.

Licensee is not permitted to use any major version release of any Edition of SunBurn that is newer or later than the Licensed Version for which Licensee has paid License Fees. Licensee may upgrade a Licensed Version to a newer or later major version release with the payment of an additional, incremental License Fee, as described in Section 6below.

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The license granted to Licensee under this Section 2.1 commences upon the date that Licensee or one with actual or apparent authority to act on behalf of Licensee agrees or is deemed to have agreed to bind Licensee to the terms of the Agreement by clicking the acceptance button or installing, copying, or using SunBurn and continues until the license is terminated according to the terms of this Agreement ("License Term").

### **2.2 General Restrictions**

The following general restrictions shall apply to each and every SunBurn Edition.

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### 2.3 Specific Restrictions

The following restrictions shall apply to the corresponding Edition(s) licensed by the Licensee.

- (a) Framework Edition. The Framework Edition of SunBurn is available to and shall be licensed to Licensee only to

create Entertainment Games (commercial and non-commercial) for the Microsoft Windows platform that are (a) self-funded (i.e., for which Licensee does not receive funding from a third party entity that routinely engages in commercial activities related to the creation of software, such as, for example, software publishers and distributors) and (b) self-published (i.e., for which Licensee does not engage a third party entity to publish or distribute such Entertainment Games). Licensee is not licensed to and shall not access or use the Framework Edition of SunBurn to create any Game, Simulation Software, or other product that does not meet the conditions of the prior sentence.

Where Licensee uses a Licensed Version of the Framework Edition to create an Entertainment Game that is not compliant with the above paragraph at any point during the creation of such Entertainment Game, Licensee must upgrade, within thirty (30) days of the first occurrence of the event or condition that resulted in non-compliance, to a different Licensed Version of an Edition of SunBurn for which the licensing terms allow the creation of such Entertainment Game and for which Licensee qualifies. If the Licensee does not upgrade to a Licensed Version of such an Edition of SunBurn within such time, Licensee shall be deemed in material breach of this Agreement and the Agreement and all licenses granted herein shall terminate immediately.

For the avoidance of doubt, Licensee may not use the Framework Edition of SunBurn to create Entertainment Games for any platform other than the Microsoft Windows platform (for example, Licensee may not use the Framework Edition to create any Games for the Xbox 360 platform) and Licensee may not use the Framework Edition of SunBurn to create Educational Games or Simulation Software for any platform. Any use of the Framework Edition of SunBurn to create a product that is not an Entertainment Game for the Microsoft Windows platform is unlicensed and unlawful.

The Framework Edition of SunBurn shall be licensed to Licensee on a "per user" basis, meaning that for each unique product key provided by Synapse Gaming to Licensee and for which Licensee has paid the applicable License Fee to Synapse Gaming, Licensee may designate one (1) permanent Permitted User to activate and maintain concurrent activation of up to four (4) copies of a Licensed Version of the applicable Edition of SunBurn, installed on up to four (4) machines, for use only by that Permitted User. Permitted User may deactivate any copy of SunBurn previously activated by the Permitted User's product key and activate another copy of the Licensed Version of the same Edition of SunBurn, provided that the number of copies activated with the product key at any one time is not more than four (4). No user other than the Permitted User may

use a copy of SunBurn activated by the Permitted User's unique product key.

- (b) Pro Edition. The Pro Edition of SunBurn is available to and shall be licensed to Licensee only to create (1) Entertainment Games (commercial and non-commercial) for the Microsoft Windows platform and (2) non-commercial Entertainment Games (i.e., Entertainment Games for which Licensee does not generate any revenue) for the Xbox LIVE Community Games portion of Xbox LIVE, where (1) and (2) must also be (a) self-funded (i.e., for which Licensee does not receive funding from a third party entity that routinely engages in commercial activities related to the creation of software, such as, for example, software publishers and distributors) and (b) self-published (i.e., for which Licensee does not engage a third party entity to publish or distribute such Entertainment Games). Licensee is not licensed to and shall not access or use the Pro Edition of SunBurn to create any Game, Simulation Software, or other product that does not meet the conditions of the prior sentence.

Where Licensee uses a Licensed Version of the Pro Edition to create an Entertainment Game that is not compliant with the above paragraph at any point during the creation of such Entertainment Game, Licensee must upgrade, within thirty (30) days of the first occurrence of the event or condition that resulted in non-compliance, to a different Licensed Version of an Edition of SunBurn for which the licensing terms allow the creation of such Entertainment Game and for which Licensee qualifies. If the Licensee does not upgrade to a Licensed Version of such an Edition of SunBurn within such time, Licensee shall be deemed in material breach of this Agreement and the Agreement and all licenses granted herein shall terminate immediately.

For the avoidance of doubt, Licensee may not use the Pro Edition of SunBurn to create commercial Entertainment Games for any platform other than the Microsoft Windows platform (for example, Licensee may not use the Pro Edition to create commercial Entertainment Games for the Xbox 360 platform) and Licensee may not use the Pro Edition of SunBurn to create Educational Games or Simulation Software for any platform. Any use of the Pro Edition of SunBurn to create a product that is not an Entertainment Game for the Microsoft Windows platform or a non-commercial Entertainment Game for the Xbox 360 platform is unlicensed and unlawful.

The Pro Edition of SunBurn shall be licensed to Licensee on a "per user" basis, meaning that for each unique product key provided by Synapse Gaming to Licensee and for which Licensee has paid the applicable License Fee to Synapse Gaming, Licensee may

designate one (1) permanent Permitted User to activate and maintain concurrent activation of up to four (4) copies of a Licensed Version of the applicable Edition of SunBurn, installed on up to four (4) machines, for use only by that Permitted User. Permitted User may deactivate any copy of SunBurn previously activated by the Permitted User's product key and activate another copy of the Licensed Version of the same Edition of SunBurn, provided that the number of copies activated with the product key at any one time is not more than four (4). No user other than the Permitted User may use a copy of SunBurn activated by the Permitted User's unique product key.

- (c) Community Edition. The Community Edition of SunBurn is available to and shall be licensed to Licensee only to create (1) Entertainment Games (commercial and non-commercial) for the Microsoft Windows platform and (2) Entertainment Games (commercial and non-commercial) for the Xbox LIVE Community Games portion of Xbox LIVE, where (1) and (2) must also be (a) self-funded (i.e., for which Licensee does not receive funding from a third party entity that routinely engages in commercial activities related to the creation of software, such as, for example, software publishers and distributors) and (b) self-published (i.e., for which Licensee does not engage a third party entity to publish or distribute such Entertainment Games). Licensee is not licensed to and shall not access or use the Community Edition of SunBurn to create any Game, Simulation Software, or other product that does not meet the conditions of the prior sentence.

Where Licensee uses a Licensed Version of the Community Edition to create an Entertainment Game that is not compliant with the above paragraph at any point during the creation of such Entertainment Game, Licensee must upgrade, within thirty (30) days of the first occurrence of the event or condition that resulted in non-compliance, to a different Licensed Version of an Edition of SunBurn for which the licensing terms allow the creation of such Entertainment Game and for which Licensee qualifies. If the Licensee does not upgrade to a Licensed Version of such an Edition of SunBurn within such time, Licensee shall be deemed in material breach of this Agreement and the Agreement and all licenses granted herein shall terminate immediately.

For the avoidance of doubt, Licensee may not use the Community Edition of SunBurn to create Entertainment Games for any platform other than the Microsoft Windows platform and the Xbox 360 platform and Licensee may not use the Community Edition of SunBurn to create Educational Games or Simulation Software for any platform. Any use of the Community Edition of SunBurn to create a product that is not an Entertainment Game for the

Microsoft Windows platform or the Xbox 360 platform is unlicensed and unlawful.

The Community Edition of SunBurn shall be licensed to Licensee on a “per user” basis, meaning that for each unique product key provided by Synapse Gaming to Licensee and for which Licensee has paid the applicable License Fee to Synapse Gaming, Licensee may designate one (1) permanent Permitted User to activate and maintain concurrent activation of up to four (4) copies of a Licensed Version of the applicable Edition of SunBurn, installed on up to four (4) machines, for use only by that Permitted User. Permitted User may deactivate any copy of SunBurn previously activated by the Permitted User’s product key and activate another copy of the Licensed Version of the same Edition of SunBurn, provided that the number of copies activated with the product key at any one time is not more than four (4). No user other than the Permitted User may use a copy of SunBurn activated by the Permitted User’s unique product key.

- (d) Studio Edition. The Studio Edition of SunBurn is available to and shall be licensed to Licensee only to create (1) Entertainment Games (commercial and non-commercial) for the Microsoft Windows platform; (2) Educational Games (commercial and non-commercial) for the Microsoft Windows platform; (3) Simulation Software for the Microsoft Windows platform; and (4) Entertainment Games (commercial and non-commercial) for the Xbox LIVE Community Games portion of Xbox LIVE. Licensee is not licensed to and shall not access or use the Studio Edition of SunBurn to create any Game, Simulation Software, or other product that does not meet the conditions of the prior sentence.

Where Licensee uses a Licensed Version of the Studio Edition to create a Game or Simulation Software that is not compliant with the above paragraph at any point during the creation of such Game or Simulation Software, Licensee must upgrade, within thirty (30) days of the first occurrence of the event or condition that resulted in non-compliance, to a different Licensed Version of an Edition of SunBurn for which the licensing terms allow the creation of such Game or Simulation Software and for which Licensee qualifies. If the Licensee does not upgrade to a Licensed Version of such an Edition of SunBurn within such time, Licensee shall be deemed in material breach of this Agreement and the Agreement and all licenses granted herein shall terminate immediately.

For the avoidance of doubt, Licensee may not use the Studio Edition of SunBurn to create Educational Games or Simulation Software for any platform other than the Microsoft Windows platform. Any use of the Studio Edition of SunBurn to create a



product that is not an Educational Game, Entertainment Game, or Simulation Software for the Microsoft Windows platform or an Entertainment Game for the Xbox 360 platform is unlicensed and unlawful.

The Studio Edition of SunBurn shall be licensed to Licensee on a “per user” basis, meaning that for each unique product key provided by Synapse Gaming to Licensee and for which Licensee has paid the applicable License Fee to Synapse Gaming, Licensee may designate one (1) Permitted User at any one time to activate and maintain concurrent activation of up to four (4) copies of a Licensed Version of the applicable Edition of SunBurn, installed on up to four (4) machines, for use only by that Permitted User. Permitted User may deactivate any copy of SunBurn previously activated by the Permitted User’s product key and activate another copy of a Licensed Version of the same Edition of SunBurn, provided that the number of copies activated with the product key at any one time is not more than four (4). No user other than the Permitted User may use a copy of SunBurn activated by the Permitted User’s unique product key. Licensee may, without notice to Synapse Gaming, not more often than twelve (12) times each calendar year, and not more often than once in a period of twenty (20) consecutive days, un-designate and re-designate which Permitted User may use a particular product key, however only one Permitted User may use a product key and the copies of SunBurn activated by that product key at any one time.

### **SECTION 3. SUPPORT SERVICES**

From time to time and in Synapse Gaming’s sole discretion, Synapse Gaming may provide support for SunBurn in the form of a Web forum where users of SunBurn may post questions about SunBurn and request answers from other SunBurn users or Synapse Gaming.

### **SECTION 4. DIGITAL RIGHTS MANAGEMENT**

Certain Editions of SunBurn include digital rights management (“DRM”) technology designed to prohibit the access to and use of unauthorized copies of SunBurn. The DRM included in SunBurn uses product keys and an active, continuing validation scheme to (1) activate or enable SunBurn on installation, (2) validate that installed copies of SunBurn are authorized and within the maximum concurrent installations, and (3) deactivate or disable SunBurn in the event of stolen, shared, or publicly disclosed product keys. The DRM may prevent or restrict use, performance, or functionality of SunBurn. In the event of theft or accidental public disclosure of product keys Synapse Gaming may reissue replacement keys, in its sole discretion, up to a maximum of two (2) times.

The validation scheme operates by generating an acceptably unique machine identification number ("Machine ID") based ONLY on the system hardware configuration and sending the Machine ID along with the product key to Synapse Gaming's activation servers for authorization. Periodically (approximately monthly) SunBurn automatically revalidates the installation by communicating the Machine ID and product key to Synapse Gaming's activation servers. Each validation is initiated by SunBurn automatically without notice. When a validation fails, e.g., because the product key communicated to Synapse Gaming's activation servers has been identified as lost or stolen or because Licensee has exceeded the maximum number of authorized installations for the product key, SunBurn will become deactivated and disabled. A notice indicating SunBurn's deactivated status will be displayed. The validation scheme has a two week grace period in the event the Internet or activation servers are temporarily inaccessible, meaning that when the Internet or activation servers are inaccessible during a validation, SunBurn will continue to function for two weeks before becoming deactivated for failure to complete validation.

The validation scheme does not transmit any personal, system, or user information over the Internet or to Synapse Gaming.

## **SECTION 5. THIRD PARTY ACCESS**

Licensee agrees that it shall not allow any third party other than Permitted Personnel to have access to SunBurn without Synapse Gaming's prior written consent. In this regard, Licensee agrees that it shall use its best efforts to safeguard SunBurn so as to insure that no third party other than Permitted Personnel have access to SunBurn, and that no Permitted Personnel that are authorized to access SunBurn shall make any unauthorized copy. With regard to any copy of SunBurn licensed by the Licensee, Licensee agrees that it shall use its best efforts to assist Synapse Gaming in identifying and preventing any unauthorized access to or use, installation, copying, disclosure, or distribution of SunBurn or any portions thereof or any of the algorithms or the logic contained in SunBurn. Licensee shall promptly notify Synapse Gaming of the loss or unauthorized use or disclosure of SunBurn and shall promptly act to recover any such information and/or prevent any breach of any obligations herein, including obligations of confidentiality.

The foregoing notwithstanding, Licensee shall advise Synapse Gaming immediately in the event Licensee learns, or has reason to believe, that any Permitted Personnel to whom Licensee has given access to SunBurn has violated, or intends to violate, the terms of this Agreement, and Licensee will, at Licensee's expense, cooperate with Synapse Gaming in seeking injunctive or other equitable relief in the name of Licensee or Synapse Gaming against any such person. Licensee acknowledges and agrees that any unauthorized access to or use, installation, copying, disclosure, or distribution of any aspect of SunBurn will immediately give rise to continuing irreparable injury to Synapse Gaming inadequately compensable by damages at law and, without prejudice to any other remedy available to Synapse Gaming, shall entitle Synapse Gaming to obtain injunctive relief.

## **SECTION 6. PAYMENT**

Licensee shall make payment to Synapse Gaming of any fees for SunBurn specified in any applicable order executed by the parties ("License Fees"). An "applicable order" includes a written or electronic record generated as a result of Licensee's agreement to pay Synapse Gaming for a download transaction initiated by Licensee via a Synapse Gaming on-line storefront (such as, for example, the on-line store-front accessible at <http://www.synapsegaming.com/shops/>). Payment of such License Fees shall be made in U.S. currency no later than thirty (30) days of the date of invoice, unless otherwise agreed by the parties.

Licensee may upgrade a Licensed Version to a newer or later major version release with the payment of an additional, incremental License Fee, as published by Synapse Gaming from time to time.

Licensee shall pay any and all applicable federal, state, or local taxes, such as, but not limited to sales tax, use tax, excise tax, personal property tax, or any other applicable taxes. In the event Licensee is required to withhold tax from amounts due to Synapse Gaming, the amount due to Synapse Gaming shall be increased by an amount such that the amount Synapse Gaming receives is equal to the amount Synapse Gaming would have received if no withholding had been required.

Any failure by Licensee to make monetary payment of any License Fees due to Synapse Gaming under this Agreement by the date such payment is due is deemed to be a material breach upon which Synapse Gaming may immediately terminate this Agreement, including all licenses granted herein, under the provisions herein.

Any unpaid payment obligations of Licensee shall survive and continue beyond termination of the Agreement and Synapse Gaming shall be considered to have earned all License Fees owed and shall be entitled to retain any License Fees that have already been paid by Licensee.

## **SECTION 7. REPRESENTATIONS AND WARRANTIES**

### **7.1 Licensee's Representations and Warranties**

Licensee warrants, covenants, and represents that:

- (a) all Games and Simulation Software created by Licensee using SunBurn shall include a "splash screen" (i.e., an image that is displayed each time Licensee's Game or Simulation Software is initiated by a user) consisting of only the specific Synapse Gaming splash screen intended for the licensed SunBurn Edition, which is provided as an embedded resource in SunBurn's executable code for the Licensee's convenience and that is displayed for a minimum of five (5) seconds within the first thirty (30) seconds after the Game or Simulation Software is initiated by a user;
- (b) all Games and Simulation Software created by Licensee with SunBurn do not contain any libelous or otherwise

unlawful material or violate any proprietary right of any person or entity;

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- (d) all Games and Simulation Software created by Licensee with SunBurn are unique, were and will be created solely by Licensee, and contain no unlicensed third party materials;
- (e) Licensee will not deactivate, disable, impair, or circumvent, the DRM technology or validation scheme described in Section 4above; and
- (f) Licensee will not violate any agreements it may have with third parties by entering into this Agreement; and
- (g) Licensee has the requisite power and authority to enter into this Agreement.

## **SECTION 8. TERMINATION**

Subject to the termination provisions of Section 2.3, which Section provides for immediate termination of this Agreement and the licenses granted herein upon the breach of certain specific license restrictions, this Agreement and any licenses granted herein may be terminated by either party upon written notice to the other party after the other party's breach of any non-monetary provision of this Agreement that is not cured within thirty (30) days of written notice of such breach to the breaching party ("Termination for Breach"). For the avoidance of doubt, a breach of any monetary provision of this Agreement shall be deemed a material breach upon which Synapse Gaming may immediately terminate this Agreement, including all licenses granted herein, under the provisions herein.

Upon termination for any reason, including Licensee's failure to make payment of License Fees due, if, pursuant to a separate services agreement, Synapse Gaming is providing any services for SunBurn, Synapse Gaming will immediately cease providing the services for SunBurn to Licensee.

Upon termination for any reason, including Licensee's failure to make payment of License fees due, Licensee agrees that it will de-install SunBurn and delete or return to Synapse Gaming all copies of SunBurn that are in Licensee's custody, possession, or control.

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## **SECTION 11. CONFIDENTIALITY**

### **11.1 Proprietary Information**

In the course of carrying out the provisions of this Agreement, Licensee may receive or acquire from Synapse Gaming information or data pertaining to specifications, drawings, sketches, models, samples, computer programs, methods, concepts, know-how, techniques, processes, and other technical or business

information that Synapse Gaming desires to protect against unauthorized use or further disclosure. Licensee shall maintain Proprietary Information related to SunBurn in strict confidence and will use such Proprietary Information only in accordance with the terms of this Agreement. For purposes of this Agreement, "Proprietary Information" shall mean: (i) any information in written, other tangible or electronic form which is labeled as or should reasonably be considered to be labeled as "Confidential", "Proprietary," or with a legend of similar import; (ii) SunBurn in any form (including related documentation), whether or not labeled in accordance with the preceding; (iii) any and all trade secrets relating to Synapse Gaming's business, products, services, or technologies; (iv) any and all information relating to Synapse Gaming's business, financial information, customers, schedules, projects, programs, products, and services not generally known to the public; and (v) information orally disclosed to Licensee or received by Licensee through observation and identified by Synapse Gaming as confidential at the time of such disclosure. For the avoidance of doubt, without regard to any other Proprietary Information that might be provided to Licensee by Synapse Gaming hereunder, Licensee acknowledges that Synapse Gaming believes that SunBurn (including any documentation) is proprietary and confidential to Synapse Gaming, and contains information that constitutes trade secrets pursuant to the Uniform Trade Secrets Act.

#### 11.2 Exceptions

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Synapse Gaming shall remain the exclusive owner of its Proprietary Information and Licensee shall not use or disclose Synapse Gaming's Proprietary Information except for the purposes expressly permitted by this Agreement. Licensee shall exercise the same degree of care and protection with respect to Synapse Gaming's Proprietary Information that it exercises with respect to its own proprietary information and shall not directly or indirectly disclose, copy, distribute, republish, or allow any third party to have access to any of Synapse Gaming's Proprietary Information other than (i) Permitted Personnel of Licensee for the purposes that are expressly permitted in this Agreement; and (ii) any Synapse Gaming affiliates and third party consultants to Synapse Gaming that Synapse Gaming identifies to Licensee as a party that has a need to know the information regarding Synapse Gaming's exercise of any of its rights or obligations under this Agreement.

#### 11.4 Disclosure Under Applicable Law and Notification

If Licensee receives a request to disclose any of Synapse Gaming's Proprietary Information, whether pursuant to a subpoena, an order issued by a court or other governmental authority of competent jurisdiction, or otherwise, and, on advice of legal counsel, determines that disclosure is required under applicable law, Licensee agrees that, prior to disclosing any of Synapse Gaming's Proprietary Information, it shall: (i) notify Synapse Gaming of the existence and terms of such request or advice, (ii) cooperate with Synapse Gaming in taking legally available steps to resist or narrow any such request or to otherwise eliminate the need for such disclosure at Synapse Gaming's sole expense, if requested to do so by Synapse Gaming, and (iii) if disclosure is required, it shall be the sole obligation of Synapse Gaming to use its commercially reasonable efforts to obtain a protective order or other reliable assurance that confidential treatment shall be afforded to such portion of Synapse Gaming's Proprietary Information as is required to be disclosed.

#### **11.5 Continuing Obligations**

The obligation of non-disclosure and non-use with respect to SunBurn and any of Synapse Gaming's Proprietary Information shall survive the expiration or termination of the License Term and continue indefinitely (or so long as permitted by applicable law).

### **SECTION 12. DISCLAIMER OF WARRANTIES**

SYNAPSE GAMING DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY SYNAPSE GAMING SHALL CREATE A WARRANTY AND LICENSEE MAY NOT RELY UPON SUCH INFORMATION OR ADVICE. SYNAPSE GAMING DOES NOT WARRANT THAT ANY SOFTWARE PROVIDED BY SYNAPSE GAMING WILL MEET LICENSEE'S REQUIREMENTS OR THAT OPERATION OF ANY SOFTWARE PROVIDED BY SYNAPSE GAMING WILL BE UNINTERRUPTED OR ERROR-FREE. ALL SOFTWARE IS PROVIDED BY SYNAPSE GAMING "AS IS." THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF ALL LICENSED SOFTWARE SHALL BE WITH LICENSEE.

### **SECTION 13. LIMITATION OF LIABILITY**

#### **13.1 LIMITATION ON TYPE OF DAMAGES**

IN NO EVENT SHALL SYNAPSE GAMING OR ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS, OR SUPPLIERS BE LIABLE TO LICENSEE (OR TO ANY OTHER THIRD PARTY PERMITTED ACCESS TO OR USE OF ANY SOFTWARE PROVIDED UNDER THIS AGREEMENT) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHETHER ARISING IN CONTRACT, EQUITY, NEGLIGENCE, TORT, OR OTHERWISE (INCLUDING BREACH OF WARRANTY, NEGLIGENCE, AND STRICT LIABILITY IN TORT), INCLUDING WITHOUT LIMITATION DAMAGES ARISING FROM DELAY; LOSS OF GOODWILL; LOSS OF OR DAMAGE TO DATA; WORK

STOPPAGE; HARDWARE FAILURE OR MALFUNCTION; LOST PROFITS, LOST REVENUE, OR LOST SAVINGS (ACTUAL OR ANTICIPATED); ANY ECONOMIC LOSS IN CONNECTION WITH OR ENSUING FROM USE OF THE SOFTWARE PROVIDED BY SYNAPSE GAMING UNDER THIS AGREEMENT; OR ANY INABILITY TO USE ANY SOFTWARE PROVIDED BY SYNAPSE GAMING PURSUANT TO THIS AGREEMENT, EVEN IF LICENSEE OR ANY OTHER THIRD PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### 13.2 LIMITATION ON AMOUNT OF DAMAGES

IN NO EVENT SHALL SYNAPSE GAMING'S AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS ARISING UNDER THIS AGREEMENT EXCEED THE AGGREGATE OF THE LICENSE FEES PAID TO SYNAPSE GAMING FOR THE SOFTWARE SET FORTH IN THE APPLICABLE ORDER FOR WHICH THE CAUSE OF ACTION ACCRUED IN THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE WHEN THE CAUSE OF ACTION ACCRUED. THIS LIMITATION ON THE AMOUNT OF LIABILITY SHALL APPLY WHETHER A CLAIM ARISES IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY, INCLUDING BREACH OF WARRANTY. THIS LIMITATION SHALL ALSO SPECIFICALLY SURVIVE A FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDIES THAT MAY BE PROVIDED IN THIS AGREEMENT.

### 13.3 LIMITATION ON TIME OF ACTION

NO ACTION ARISING OUT OF THIS AGREEMENT MAY BE BROUGHT BY LICENSEE MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

## **SECTION 14. INDEMNIFICATION**

### 14.1 General Indemnification by Licensee

Licensee shall, at its own expense, indemnify, defend, and hold Synapse Gaming harmless from any claim or suit arising out of the misuse or misappropriation of SunBurn, any use of SunBurn in violation of this Agreement, and any breach of Licensee's representations and warranties under Section 7.1 above or Section 15.3 below, including any losses, damage, or expenses arising from any such claim or suit. Synapse Gaming agrees to cooperate with Licensee in the defense or settlement of any such claim or suit, provided that Synapse Gaming shall be reimbursed for all reasonable out-of-pocket expenses incurred in providing any cooperation required by Licensee.

### 14.2 Indemnification Process

Promptly after receipt of a threat of any claim or suit, or a notice of the commencement or filing of any claim or suit against which Synapse Gaming may be indemnified hereunder, Synapse Gaming shall give written notice thereof to Licensee. Licensee shall have sole control of the defense and of all negotiations for settlement of such claim or suit. Subject to the foregoing, Synapse Gaming may participate in the defense of any such claim or suit at its own expense.



## **SECTION 15.**

## **GENERAL**

15.1 Applicable Law and Choice of Venue. This Agreement is governed by the laws of the Commonwealth of Pennsylvania. The Licensee consents to the non-exclusive jurisdiction of the courts in Pennsylvania for any dispute arising under this Agreement.

15.2 Assignment. The Licensee shall not assign, transfer, or novate any right, benefit, or obligation under this Agreement to any third party without the prior express written consent of Synapse Gaming. In the absence of such prior express written consent, any purported assignment, transfer, or novation of a right, benefit, or obligation under this Agreement shall be deemed void ab initio. Synapse Gaming may assign, transfer, or novate any right, benefit, or obligation under this Agreement in its sole discretion.

15.3 Compliance with Laws. Licensee represents and agrees that it will use SunBurn in compliance with all applicable laws, regulations, and tariffs, including, without limitation, all import and export restrictions. Synapse Gaming reserves the right to take all actions that it believes are necessary, in its sole discretion, to comply with applicable laws, regulations, and tariffs. Licensee agrees to discontinue any improper use of SunBurn promptly after receipt of written notice from Synapse Gaming as is reasonably feasible under the circumstances. Licensee shall indemnify and hold Synapse Gaming and its affiliates, officers, directors, employees, agents, consultants, and suppliers harmless from any claim, loss, fine, or expense, including reasonable attorneys' fees, arising out of Licensee's breach of this Section.

15.4 Entire Agreement. This Agreement and all written addenda and amendments to this Agreement (1) are the entire agreement between Licensee and Synapse Gaming relating to the license of SunBurn, and (2) supersede all prior or contemporaneous oral or written communications, proposals, and representations with respect to the license of SunBurn or any other subject matter covered by this Agreement. Except as otherwise provided herein, this Agreement may not be altered, amended, or modified except in writing and executed by each party's duly authorized representatives.

15.5 Notices. All notices required to be given hereunder shall be given to the respective parties by e-mail transmission or by such other method as will result in a written acknowledgment of receipt at the address(es) set forth in the applicable purchase order. Notices shall be deemed delivered on the Business Day (Monday through Friday, excluding legal holidays, as defined by 5 U.S.C. § 6103(a)) following the date shown on the e-mail transmission or on the date shown on the signed receipt. Either party may change its e-mail address for notice purposes by giving the other party written notice of the new address and the date upon which it will become effective in accordance with this Section.

15.6 Severability. If any provision of this Agreement is held to be unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

Schedule A

Names and Logos Licensed by Synapse Gaming to Licensee

